Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan
1997 ELD 3
Civil Appeal No. 12992 of 1996, arising out of Special Leave Petition (Civil) No. 12553 of 1991, decided on 11-10-1996
K. Ramaswamy and G. B. Pattanaik, JJ.

(A) Constitution of India, Arts. 14, 21 - Natural justice - Removal of encroachment by Municipality - Requirement of following of principles of natural justice - Scope and contents.

The Constitution does not out an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Municipal Corporation allows settlement of encroachers is a long time for reasons best known to them reasons are not far to seek, then necessarily the modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specific time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed.

(B) Bombay Municipal Corporation Act of 1888, S. 63(i)(19) - Encroachment - Removal of - Corporation giving 21 days' notice to encroachers - Thus giving an opportunity of hearing before taking action for ejectment not necessary - Constitution of India, Art. 14.

Every Municipal Corporation has status obligation to provide free flow of traffic and pedestrians' right to pass and re-pass freely and safely, as its concomitance, the Corporation Municipality have statutory duly to have the encroachments removed. It would therefore, in inexpedient to give any direction not to remove or to allow the

encroachments on the pavements or foot-paths which is a constant source and unhygienic ecology, tariff hazards and risk prone to lives of the pedestrians. It would, therefore, necessary to permit the Corporation to exercise the statutory powers to prevent encroachments of the pavements/footpaths and to prevent construction thereon. The Corporation should always be vigilant and should not allow encroachments of the pavements and footpaths. As soon as they notice any encroachment they should forthwith take steps to have them removed and would not allow them to settle down for a long time. It is stated in the affidavit of the Corporation that they are giving 21 days notice before taking action for ejectment of the encroachers. That procedure is a fair procedure and therefore, the right to hearing before taking action for ejectment of the encroachers. That procedure is a fair procedure, and, therefore, the right to hearing before taking action is not necessary in the fact situation. But the Commissioner should ensure that everyone is served with a notice and as far as possible by personal service and if it is not possible for reasons to be recorded in the file though affixture of the notice on the treatment duly attested by two independent panchas. This procedure would avoid the dispute that they were not given opportunity: further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians.

(Para 20)

(C) Constitution of India, Art. 41 - Duties of State - Constant efflux of people to urban areas - Consequential growth of slums and encroachments - It is for Constitutional functionaries to evolve such schemes and policies to provide continuous means of employment in rural area.

The traditional source of employment or avocation to the rural people generally is the agricultural. It is rather unfortunate that even after till the century from the date of independence, no constructive planning has been implemented to ameliorate the conditions of the rural people by providing regular source of livelihood or infrastructural facilities like health, education, sanitation etc. It would be for the Union of India, or the State Government and the Planning Commission, which are Constitutional functionaries, to evolve such policies and schemes as are necessary to provide continuous means of employment in the rural area so that in the lean period, after agricultural operations, the agricultural labour or the rural poor would fall back upon those services to eke out their livelihood. The middle class and upper middle class people in the rural areas, due to lack of educational and medical facilities, migrate to the nearby urban areas resulting in constant increase in urban population. Once infrastructural facilities are provided by proper planning and execution, necessarily to urge to migrate to the urban areas would no longer compel the rural people for their transplantation in the urban areas. It would, therefore, be for the executive to evolve the schemes and have them implemented in letter and spirit.

(Para 22)

(D) Constitution of India, Arts. 38, 39, 46 - Directions under - Implementation of - It is duty and authority of Municipal Corporation to implement it - It is duty of Municipal Corporation to enforce schemes in planned manner by annual budgets to provide right in residence to poor.

The State i.e., the Union of India and the State Governments and the local bodies constitute an integral executive to implement the directive principles contained in Part IV through planned development under the rule of law. The Municipal Corporation, therefore, has Constitutional duty and authority to implement the directives contained in Articles 38, 39 and 46 and all cognate provisions to market the fundamental rights available to all the citizens are meaningful. It would, therefore, be the duty of the municipal corporation to enforce the schemes in a planned manner by annual budgets to provide right to residence to the poor.

(Para 24)

When the State, namely, Union of India or the appropriate State Government or the local bodies implement these schemes for housing accommodation of the Schedule Castes and Scheduled Tribes or any other schemes, they should, in compliance with mandates of Articles 46, 39 and 38, annually provide housing accommodation to them within the allocated budget and effectively and sincerely implement them using the allocations for the respective schemes so that the right to residence to them, would become a reality and meaningful and the budget allocation should not either be diverted or used for any other scheme meant for other weaker sections of the society. Any acts in violation thereof or diversion of allocated funds, misuse or misutilisation, would be in negation of constitutional objective defeating and deflecting the goal envisioned in the Preamble of the Constitution. The executive forfeits the faith and trust reposed in it by Article 261 of the Constitution.

(Para 25)

Similarly separate budget would also be allocated to other weaker sections of the society and the backward classes to further their socio-economic advancement. As facet thereof, housing accommodation also would be evolved and from that respective budget allocation the amount needed for housing accommodation for them should also be earmarked separately and implemented as an on-going process of providing facilities and opportunities including housing accommodation to the rural or urban poor and other backward classes of people.

It would be of necessity that the policy of the Government in executing the policies of providing housing accommodation either to the rural poor or the urban poor, should be such that the lands allotted or houses constructed/plots allotted be in such a manner that all the sections of the society, Schedules Castes, Scheduled Tribes, Backward Classes and other poor are integrated as cohesive social structure. The expenditure should be met from the respective budgetary provision allotted to their housing schemes in the respective proportion be utilised. All of them would, therefore, live in one locality in an integrated social group so that social harmony, integrity, fraternity and amity would be fostered religious and caste distinction would no longer remain a barrier for harmonised social intercourse and integration. The facts in the instant case do disclose that out of 29 encroachers who have constructed the houses on pavements, 10 of them have left the places, obviously due to such pressures and interests of rest have come into existence by way of purchase. When such persons part with possession in any manner known to law, the alienation or transfer is opposed to the Constitutional objectives and

public policy. Therefore, such transfers are void ab initio conferring no right, title or interest therein. In some of the States law has already been made in that behalf declaring such transfers as void with power to resume the property and allotment same to other needy people from these scheme. Other States should also follow the suit and if necessary the Parliament may make comprehensive law in this behalf.

(Para 27)

(E) Constitution of India, Art. 226 - Scope - Removal of encroachment - Mere fact that encroachers have approached the Court would be no ground to dismiss their cases - Plea that Intervention of Court would aid impetus to encroachers to abuse judicial process, is untenable.

Every citizen has a fundamental right to dress the perceived legal injury through judicial process. The encroachers are no exceptions to be Constitutional right to judicial redressal. The Constitutional Court, therefore, has a Constitutional duty as sentinel qui vive to enforce the right of a citizen when he approaches the Court for perceived legal injury, provided he establishes that he has a right to remedy. When an encroacher approaches the Court, the Court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief. In that behalf, it is the salutary duty of the State or local bodies or any instrumentality to assist the Court by placing necessary factual position and legal setting for adjudication and for granting/ refusal relief appropriate to the situation. Therefore, the mere fact that the encroachers have approached the Court would be no ground to dismiss their cases. The plea of the appellants Corporation that the intervention of the Court would aid impetus to the encroachers to abuse the judicial process is untenable. If the appellants Municipal Corporation or any local body or the State acts with vigilance and prevent encroachment immediately, the need to follow the procedure enshrined as an inbuilt fair procedure would be obviated. But if they allow the encroachers to remain in settled possession sufficiently for long time, which would be a fact to be established is an appropriate case, necessarily suitable procedure would be required to be adopted to meet the factual situation and that, therefore, it would be for the respondent concurred and also for the petitioner to establish respective claims and it is poor to consider as to what would be the appropriate procedure required to be adopted in the given facts and circumstances.

(Para 28)

(F) Constitution of India, Art. 226 - Encroachment - Removal of - Providing of alternative accommodation before ejectment - Not directed by Court as rule.

It is true that in all cases it may not be necessary, that he should be provided with an alternative accommodation at the expense of the State which if given due credence, is likely to result in abuse of the judicial process. But no absolute principle of universal application would be laid in the behalf. Each case is required to be examined on be given set of facts and appropriate direction or remedy be evolved by the Court suitable to the facts of the case. Normally, the Court may not, as a rule, direct that the encroachers should be provided with an alternative accommodation before ejectment when they

encroached public properties but each case requires examination and suitable direction appropriate to the facts requires modulation.

(Para 20)

Since the Municipal Corporation has a constitutional and statutory duty to provide means for settlement and residence by allotting the surplus land under the Urban Land Ceiling Act and if necessary by acquiring the land and providing house sites or tenements, as the case may be, according to the scheme formulated by the Corporation, the financial condition of the Corporation may also be kept in view but that would not be a constraint on the Corporation to avoid its duty of providing residence/plot to the urban weaker section. It would, therefore, be the duty of the Corporation to evolve the schemes, in the light of the schemes now in operation, the opportunity should be given to the 10 named petitioner-encroachers to opt for any of the three schemes and the named two persons who are carrying on commercial activities should immediately stop the same. If they intend to have any commercial activity or hawking, it should be availed of as per the directions already issued by this Court in the aforesaid judgment and no further modification any directions contra thereto need to be issued. One of these 10 persons, if they are eligible within the teams of the schemes and would satisfy the income criterion. They would be given allotment of the sites or the tenements, as the case may be, according to their option. In case they do not opt for any of the schemes, 21 days "notice would be served on them and other encroachers and they may be ejected from the present encroachments. As regards other persons who have become encroachers by way of purchase either from the original encroacher or encroached pending writ petition/appeal in Supreme Court, they are not entitled to the benefits given to the 10 encroachers.

(Para 30)

Animal and Environment Legal Defence Fund v. Union of India
AIR 1997 Supreme Court 1071
Writ Petition (Civil) No. 785 of 1996, D/-5-3-1997
A.M. Ahmadi, C. J. I., Mrs Sujata V. Manohar and K. Venkataswami, JJ.

Wild Life (Protection) Act (53 of 1972), S. 35(1) - Reserved Forest - Fishing in reservoir in National Park - Villagers, tribals formerly residing in National Park area Claiming preservation of their traditional right of fishing, the only source of their livelihood - Permits for fishing issued to them - Directions issued for properly implementing the licence conditions and for monitoring the fishing activity of all these permit holders.

(Para 13)

Cases Referred:	**Chronological Paras**
AIR 1996 SC 2040: 1996 AIR SCW 2445	15

Mrs. SUJATA V. MANOHAR, J.:- The petitioner is an association of lawyers and other persons who are concerned with protection of the environment. They have filed the

present petition in public interest challenging the order of the Chief Wildlife Warden, Forest Department, Government of Madhya Pradesh (second respondent) granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the Totladoh reservoir situated in the heart of the Pench National Park Tiger Reserve.

2. The Pench National Park covers an area falling in the States of Madhya Pradesh and Maharashtra. The area which falls in the State of Madhya Pradesh covers two districts, Seoni and Chhindwara. The districts of Seoni and Chhindwara were originally parts of the old C.P. and Berar Province. This area was originally declared as a Reserved Forest under the Indian Forest Act of 1878. It continued to remain as a Reserved Forest under the Indian Forest Act of 1927 Under S. 5 of the Indian Forest Act of 1927, once a notification is issued declaring any land as a reserved forest no right shall be acquired in or over such land, except by succession or under a grant or contract in writing made or enter into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. Under S. 26(1)(i) of the Indian Forest Act, 1927, any person who in contravention of any rules made in this behalf by the State Government hunts, shoots fishes poisons water or sets traps or snares, shall be punishable in the manner provided in that Section. According to the petitioner, in view of these provisions, the ancestors of the present tribals could not have acquired any fishing right in the Pench River. The present permits which are issued in lieu of this traditional right, therefore, are unwarranted and must be cancelled or set aside.

3. On the promulgation of the Constitution, the right to safeguard forests and wildlife has received constitution sanction. Under Art. 48A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Under Art. 51A(g), it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife. In furtherance of these objectives, the Wild Life (Protection) Act, 1972 was promulgated. It provides, inter alia, for declaration of sanctuaries, national parks, game reserves, and closed areas. Under S. 35 of the Wild Life (Protection) Act, 1972, whenever it appears to the State Government that on area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wildlife therein or its environment, it may, by notification, declared its intention to constitute such area as a National Park. Under sub-sec. (3) of S. 35 where any area is intended to be declared as a National Park, the provisions of Ss. 19 to 26 shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of rights, in relation to any land in such area as they apply to the said matters in relation to any land in a sanctuary. Under sub-sec. (4), when the period for preferring claims has elapsed, and all claims, if any, have been disposed of by the State Government and all rights in respect of lands proposed to be included in the National Park have become vested in the State Government, the State Government shall publish a notification specifying the limits of the area which shall be comprised within the National Park and declare that the said area shall be a National Park on and from such date as my be specified in the notification.

4. Accordingly, by Notification No. 5/15/82-10/77 dated 1-3-1983 the Government of Madhya Pradesh Forest Department declared its intention under S. 35(1) of the Wild life (Protection) Act, 1972, to constitute the areas specified therein as a National Park. The area of Pench National Park so notified was within the two districts of Seoni and Chhindwara. On such declaration, the Collector of the concerned district is required under S. 19 of the Wild Life (Protection) Act, 1972 to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary.

5. Under s. 21, the Collector is required to publish in every town and Village or in the neighbourhood of the area concerned, a proclamation specifying the situation and the limits of the National Park and requiring any person, claiming any right mentioned in S. 19, to prefer before the Collector, within two months a written claim in the prescribed form specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof.

6. Under S. 22 the Collector is required to hold an enquiry in the manner specified there. Accordingly on 10-12-1985, the Collector, Seoni issued a proclamation under Ss. 19 and 21 inviting claims within 60 days in respect of the areas notified under S. 35(1) by the notification of 1-3-1983. Apparently no one lodged any claim. The Collector issued a final order under S. 24 of the Wild Life (Protection) Act, on 28-8-1986.

7. The Collector, Chhindwara similarly issued a proclamation under Ss. 19 and 21 inviting claims. As no claims were received, a final order under S. 24 was issued by the Collector, Chhindwara on 27-12-1986. However, no notification under S. 35(4) has yet been issued by the Government of Madhya Pradesh declaring the said area as a National Park.

8. As per the counter-affidavit filed on behalf of the second respondent it has been stated that although the necessary proclamations were is sued earlier nobody came forward to claim their rights on account of illiteracy and unawareness. However, recently three applications regarding claims had been received pertaining to the traditional right of villagers residing in 8 villages within the notified area which have now been relocated outside the National Park area. These villagers are tribals. The Villagers claim that they had a traditional right of fishing for their Livelihood in the Pench River. They have claimed that their traditional right of fishing should be preserved as this is their only source of livelihood. Most of these tribal have been displaced from their original villages and have been resettled in villages outside the National Park area. Under an order dated 30-5-1996 these tribals have now been given permits to fish in the Totladoh reservoir which came into existence in 1986-86 on construction of a dam across the Pench River as a part of the Pench Hydro Electric Project. The reservoir is in the centre of the National Park area which partly falls in Maharashtra and partly in Madhya Pradesh. Apparently, fishing activity has been started in this reservoir by the Fisheries Development Corporation of the State of Madhya Pradesh despite protests from the forest department.

9. The petitioner as well as the State of Maharashtra has pointed out that if fishing is permitted in the heart of the National Park and as many as 305 fishing permits are issued,

the biodiversity and ecology of the area will be seriously affected. Fishing activity is a potential source of danger to the National Park because it may also lead to illegal felling of trees or poaching. It will be humanly impossible to monitor 305 licensees, their ingress and egress and to ensure that these licensees do not indulge in poaching and other ecologically harmful activities. It is also pointed out that in the Totladoh reservoir there are other wildlife varieties such as crocodiles and turtles. There are also a wide range of local fishes. All these may face extinction. The water birds as well as migratory birds that use dead or dying trees and small islands in the reservoir as their roosting and nesting sites will also be disturbed. The fishermen uproot such dead and dying trees to clear the path for movement of their boats. Their activity along the peripheral shallow areas also prevents vegetation along the cost line. The fishermen may light fires for cooking and other purposes or may throw garbage and polythene bags which may also prove damaging to the ecology of the area. There is also a danger of large scale poaching of wild animals. The National Park is also a titter revere and all these other activities have a direct bearing on the protection of wildlife in the National Park area.

10. The Petitioner is undoubtedly justified in expressing his apprehensions and in pointing out the dangers of permitting 305 licensees to fish in the Totladoh reservoir. The fishing permits, however, have been granted to the tribals in lieu of their traditional fishing rights. Although the petitioner relies upon the provisions of the Indian Forests Act in support of the contention that the tribals cannot have any rights in a Reserved Forest which has subsequently become a National Park, the Collector of Chhindwara, in his report has pointed out that in fact there were four villages of tribals in the Chhindwara District falling within the Reserved Forest-cum-National Park area where this tribals resided and fishing was their main source of livelihood. Thus the Collector of Chhindwara in his letter of 7th of June, 1996 addressed to the Secretary, Government of Madhya Pradesh, Forest Department, in connection with the issuing of a final notification for the establishment of Pench National Park has stated that displaced persons from 4 villages namely, Palaspani, Umarighat, Chhindewani and Chhedia have traditional fishing rights in Pench River. After displacement these persons have not been rehabilitated systematically. No agricultural land has been made available to them and they do not have any means of livelihood except catching fish which is their traditional occupation. If they are not given fishing permission a serious problem of betting and supporting their families will arise. He has, therefore, recommended recognition of traditional rights of 332 families of 4 villages. In view of these reports the State Government has stated on affidavit that it was satisfied that the traditional rights of fishermen had not been settled and instructions were given to the Chief Wildlife warden for issuing permission for fishing to 305 local fishermen whose names are set out in the annexure to the affidavit of respondent No. 2 under S. 33(e) of the Wild Life (Protection) Act as it stood prior to its amendment in 1991, the Chief Wildlife Warden had the power to "regulate, control or prohibit, any fishing". This provision is deleted by the amendment made in S. 33 in 1991. The permits granted in the present case, however, are in lieu of traditional fishing rights of the tribals. And these permits are issued in settlement of these rights prior to the final notification under S. 35(4) notifying the area as a National Park. Hence these do not fall under S. 33.

11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. Totladoh dam where fishing is permitted is in the heart of the National Park area. There are other parts of the reservoir which extend to the borders of the National Park. We are not in a position to say whether these outlying parts of the reservoir are accessible or whether they are suitable for fishing, in the absence of any material being placed before us by the State of Madhya Pradesh or by the petitioner. Some attempts, however, seem to have been made by the State of Madhya Pradesh to contain the Damage by imposing conditions on these fishing permits. The permissions which have been given are subject to the following conditions:-

(1) The identified families will be given photo identity cards only on the basis of which fishing and transport will be permitted;
(2) During the rainy season (months: July to October) fishing will be totally banned;
(3) During the rest of the year, entry will be permitted in the water from 12 p.m. to 4 p.m. and transport of fish will be allowed before sunset;
(4) The Photo identity card holders will not be allowed to enter the National Park or the Islands in the reservoir nor will they be allowed to make night halts;
(5) Transport of fish will be allowed only on Totladoh – Thuepani Road from Totladoh reservoir.

12. Despite these conditions the petitioner as well as the State of Maharashtra has opposed these fishing permits being granted. They have rightly pointed out the difficulties in monitoring the fishing activity of all these permit holders.

13. We, therefore find it necessary to clear some doubts and give some additional directions for properly implementing the licence conditions. We, direct that:

(1) Only the person named in Annexure R-XVI to the affidavit of respondent No. 2 shall be given individual permits for fishing in Totladoh reservoir. Each permit holder will have a photo identity card with his photograph on it. This will be a personal right given to the identity card holder and the permit granted to him shall not be transferable. The permit will also bear the photograph of the permit holder.

(2) The permit holder will be entitled to enter the National Park area only at Thuepani and shall be entitled to travel through the National Park only on the Highway joining Thuepani to Totladoh. He will not have any right to enter or travel in the National Park area except along the said highway in order to have access to the Totladoh reservoir.

(3) The Wildlife Warden and/or any other authority nominated by the Madhya Pradesh Government shall demarcate the area of the reservoir over which these permit holders are allowed to fish.

(4) It shall be made clear that the permit holders shall not be entitled to have any access to the islands in the reservoir.

(5) The State of Madhya Pradesh shall maintain check posts along the route of these fishermen to ensure that the fishermen do not transgress into any other part of the National Park.

(6) A daily record of the entry and exit of each permit holder and the quantity of fish carried by him out of the National Park shall be maintained.

(7) The fishermen will be prohibited from lighting fires for cooking or for any other purpose along the banks of the reservoir nor shall they throw any litter along the banks of the reservoir or in the water.

(8) The Madhya Pradesh State Government shall sanction an adequate number of personnel as also vehicles an boats for the purpose of monitoring the activities of these 305 permit holders. A monitoring squad shall be posted not merely at the entrance to the National Forest area but also along the route or in other areas of the National Forest as may be required to ensure that there in no poaching or other undesirable activity by the permit holders.

14. The intervener organisation which has intervened in this petition, namely, Jan Van Andolan Samiti, Totladoh shall explain to the concerned fishermen, the conditions, subject to which they are allowed to fish in the Totladoh reservoir and shall impress upon these fishermen their obligation to carry on the fishing activity in a manner which does not damage the ecology of the National Park or disturb its environment.

15. Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under S. 35(1) have been taken care of, it is necessary that a final notification under S. 35(4) is issued by the State Government as expeditiously as possible. In the case of Pradeep Krishen v. Union of India, AIR 1996 SC 2040, this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. We cannot, therefore afford in further Shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Art. 48A of the Constitution keeping in mind the duty enshrined in Art. 51A(g). We, therefore, direct that the State Government of the State of Madhya Pradesh Shall expeditiously issue the final notification under S. 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

16. The petition is disposed of with these directions.

Order accordingly.

Ashok (Dr.) v. Union of India
AIR 1997 Supreme Court 2298
Writ Petition (Civil) No. 1094 of 1989 with Transfer Case (Civil) Nos. 2 and 3 of 1997, D/-2-5-1997
S.C. Agrawal and G.B. Pattanaik, JJ.

(A) Insecticides Acts (46 of 1968), S. 27 – Insecticides and chemical hazardous to health – Ban on production, distribution, and sale – Supreme Court directed to constitute committee of Four Senior Officers from the Four different Ministries involved and committee should have deliberations at least once in three months and take suitable measures in future in respect of insecticides and chemicals found to be hazardous for health.

(Para 5A)

(B) Insecticides Acts (46 of 1968), S. 27 (2), 3 (e) (i) – Cancellation of Registration Certificate – Benzene Hexacloride is "Insecticide" within meaning of S. 3 (e) (i) – Specified in schedule – Certificate of Registration in respect of – Cannot be cancelled by exercising power under S. 27 (2).

(C) Insecticides Acts (46 of 1968), S. 27 (2) - Certificate of Registration – Cancellation – Consultation with Registration Committee by Central Govt. Before exercise of power – Is must.

PATTANAIK, J: - On the basis of a letter by one Dr. Ashok addressed to the Chief Justice of India indicating therein that several insecticides, colour additives, food additives are in widespread use in this country which have already been banned in several advanced countries as it has been found that those insecticides are carcinogenic, this Court treated the letter as a petition under Article 32 of the Constitution and took up the matter as a Public Interest Litigation. Notices were issued to the Union of India through the Secretary, Ministry of Health and Family Welfare, through the Secretary, Ministry of Environment and Forest, through the Secretary, Ministry of Agriculture, through Secretary, Ministry of Industry & Chemicals as well to Pesticides Association of India through its Secretary Shri H.S. Bahl and the Asbestos Central Products Manufacturers Association. The Annexure to the said letter contained 21 chemicals and additives and a prayer was made that the respondents should be directed to ban forthwith the import, production, distribution, sale and use of the listed chemicals and articles so that the citizens will not be exposed to the hazards which the aforesaid insecticides/additives are capable of being caused. It was alleged generally in the petition that food, water, air, drug and cosmetic contamination are the general results of the widespread use of the chemical in question and most of these chemicals have been banned in the United States of America and rest are in the process of being banned. Though initially the annexure to the letter contained only 21 items of insecticides and additives but by way of an application 19 other chemicals were added and thus in all the prayer of the petitioner is to prevent manufacture, production and use of 40 insecticides and/or additives. Counter-affidavits were filed on behalf of Secretary, Pesticides Association of India, Ministry of Environment and Forest, Director General of Health Services, President of the Chemical Industries Association, Madras. A supplementary affidavit was also filed on behalf of the

Ministry of Environment and Forest. A further affidavit was also filed in August 1989 by the Deputy Director General, Health Services giving the available information on the listed chemicals as to the carcinogens status on the basis of research carried out in the Indian Council of Chemical Research has indicated in the said affidavit that the benefits accrued as a result of use of chemicals should be weighed against anticipated risk and the whole issue be examined in totality before arriving at the conclusion. When the matter was heard on 24th September, 1996 this Court observed that there has been a time lag between the filing of the affidavits and the date of hearing of the petition and there is no material on record to indicate as to whether any further steps have been taken as regard to the control of use of these harmful pesticides and chemicals and whether any further study has been made in that regard. The Union of India as, therefore, granted time to file a further detailed affidavit clarifying the entire position. When the case was taken up for hearing on 10th November, 1996 it transpired that no further affidavit has been filed pursuant to the earlier direction and therefore, the Court was to constrained to pass an order requiring the officers of different Ministries involved to the present in the Court the next date of hearing and required affidavit should be filed. Pursuant to the aforesaid order the Court an additional affidavit was filed by the Under Secretary to the Government of India, Ministry of Agriculture on 18th November, 1996 stating therein the steps taken by the Government of India in prohibiting manufacture, important use of certain chemicals and in permitting restricted use of certain other chemicals and insecticides. To the aforesaid affidavit a Notification dated 26th May, 1989 was annexed which Notification indicates that the Government of India had set up an Expert Committee with a view to review continuance use in India of pesticides that are either banned or restricted for use in other countries. To the said additional affidavit also annexed a Notification dated 15th May, 1990 of the Ministry of Agriculture which Notification indicates that the Central Government after considering recommendation of the expert committee and in consultation with the Registration Committee. Under the Insecticides Act 1968 cancelled the Certificate of Registration in respect of Aldrin, restricted the use of Dieldrin, for Locus Control a desert areas by Plant Protection Adviser to the Government of India and restricted the use of Ethylene Dibromide as a Fumigant for Food grains through Central Government, State Government, Government Undertakings and Government Organization like Food Corporation of India and others. To the said Additional Affidavit yet another Notification of the Ministry of Agriculture dated 20th September, 1986 was annexed as Annexure III which Notification prohibited the manufacturing, import and use of heptachlor and Chlordane and called the Registration Certificate issued by the Registration Committee to various persons. It also prohibited the use of Alderin in India and cancelled the Registration Certificate issued under the Insecticides Act. It further transpires the Government of India, Ministry of Agriculture by Notification dated 1st January, 1996 cancelling Certificate of Registration in respect of Benzene Hexachloride with effect from 1st April, 1997, being of opinion that the manufacture and use of Benzene Hexachloride shall be phased out progressively and the production of its technical grade by the existing manufacturers reduced to the extent of 50 per cent by 31st March, 1996 and totally banned by 31st March, 1997. The Notification also indicated that the Certificate of Registration in respect of Benzene Hexachloride should be deemed to have lapsed in respect of those registrants who are now to obtain manufacture license. On

behalf of the Ministry of Environment also filed an Additional Affidavit indicating the steps taken by the Environment Ministry prohibiting import of Polychlorinated Biphenyl, Ministry of Health also filed an additional affidavit and Ministry of Petro-chemicals also filed an affidavit. When the case was taken up for hearing on 21st November, 1996 and these affidavits of different Ministries were placed it was noticed that the affidavits have dealt with 21 chemicals and additives, which were listed, in the original petition. But there has been no response in respect of 19 other chemicals and insecticides referred to in the additional list. It was also brought to the notice of the Court some writ petitions have been filed by the manufacturers of certain chemicals challenging the Notification of the Government cancelling the Registration Certificate issued under the Insecticides Act and prohibiting the manufacture with effect from 1st April, 1997. It was stated that a consolidated affidavit be filed by the Union of India, in consultation with all the concerned Ministries in respect of 40 chemicals so that it would be easier to deal with the problem . In response to the aforesaid direction of the Court dated 27th November, 1996 the Under Secretary to the Government of India in the Ministry of Agriculture has filed a consolidated affidavit dealing with 40 items of chemicals and the steps taken by the Government of India in the concerned Ministries either prohibiting and/or allowing restricted manufacture, use of chemicals on a thorough study and on receipt of recommendations from the experts. On the basis of applications by manufacturers, in respect of the writ petitions pending in Allahabad High Court and Madras Court orders were passed by this Court to get the cases transferred and those transferred petitions were also heard along with main writ petition.

In recent times the Central Government has set up the Pesticides Environment Pollution Advisory Committee in the Ministry of Agriculture to review from time to time the environmental repercussions and to suggest measures, whether necessary. It is a fact that pesticides considered hazardous in rich countries remain in use in the developing countries. Many of the developing countries lack scientific facilities for toxicological scrutiny as also for making proper cost assessment. It is true that different countries may have different requirements but it is difficult and dangerous to assume the pesticides banned or restricted in USA or other European countries will be acceptable in the Third World Countries. In India pesticides are used over the past four decades for crop protection and control or diseases like malaria. There has been much debate over the use of pesticides at the cost of the environment and public health. One will have to weigh the benefits of use of pesticides and the adverse effect that is produced on human health on account of such use of pesticides.....

4. In the United Nations Conference on the Human Environment held at Stockholm in 1972 it was stated that the protection and improvement of human environment is a major issue which affects the well being of people and economic development there, as the world and it is urgent desire of the people of whole world and the duty of all Government. It was also stated:

> "A point has *been reached* in *history wherever* must *shape our* actions *throughout the world with* a more *prudent* care for their *environmental consequences. Through ignorance or indifference we can do* massive *and irreversible* harm to the *earthy*

environment on which our life *and* well *being depend. Conversely, through* fuller *knowledge and wiser action, we can achieve* for our *prosperity and ourselves a better* life *in an environment* more *in keeping with human needs and hope. There* are *broad vistas* for the *enhancement of environmental* quality and the creation *of* a *good* life. What is *needed* is *an enthusiastic but calm* state *of mind.* For the purpose *of attaining freedom in the world of* nature, man must *use knowledge* to *build in collaboration with* nature a *better environment* to defend and *improve the human environment in present and future generations has become an operative goal* for *mankind a goal* to *be pursued* together with, *and in harmony* with, the established and fundamental goals *of peace and of* world "wide *economic and social development".*

5. What has been stated above in relation to the environmental hazardous would apply with much greater force when it comes to health hazards. By giving an extended meaning to expression 'life' Article 21 of this Court has brought health hazards due to pollution within it and so also the health hazards from use of harmful drugs. In the case of *Vincent Panilurlangara v. Union of India* (1987) SCC 165: (AIR 1987 SC 990), on a Public Interest petition seeking directions from this Court begun import, manufacture, sale and distribution certain drugs this Court had observed. A healthy body is the very foundation for all human activities and in a Welfare State it is the obligation of the State to ensure the creation and the sustaining of the conditions congenital to good health.....

5A. It is necessary to examine the present problem arising out of use of pesticides and other chemicals which on account of its adverse effects on human health has already been banned in other advanced countries. On examining the counter affidavits filed on behalf of the different Ministries of the Government it appears to us that though sufficient steps have been taken to either ban or to allow restrictive use of these insecticides but yet there is no co-ordinate effort and different Ministries of the Government of India are involved. It also further transpires that there has been no continuous effort to have research or to have minimum information about the adverse effects of the use of such pesticides and other chemicals as a result of which people at large of this country suffer to a great extent. As it is on account of lack of capacity of the people of the country to afford good and nutritious food, the average standard of human health is much below as compared to other advanced countries. In addition to that if insecticides and chemicals are permitted to be freely used in protecting the food-grains and in increasing the agricultural production then that will bring insurmountable hazards to all those countrymen who consume those food articles. To check these maladies what is essential for the Government of India is to have a co-ordinated and sustained effort. In this age of computerization and interlinking of the countries through internet it does not take more than a couple of minutes to gather the necessary information in respect of any particular insecticide or pesticide and now such commodities have been dealt with in other advanced countries. What is really essential is a genuine will on the part of the Administrative machinery and a conjoined effort of all the Ministries concerned. On the basis of the affidavits filed while we are satisfied that the different measures taken by the Central Government in totally prohibiting in some cases and in permitting restricted use in some other cases are adequate step from the health hazards point of view and no further direction is necessary

to be issued in respect of the 40 items of insecticides and chemicals identified in the petition filed, but we would direct that a Committee of Four Senior Officers from the Four different Ministries involved should be constituted which Committee should have deliberations at least once in three months and take suitable measures in future in respect of any other insecticides and chemical which is found to be hazardous for health. The Cabinet Secretary should constitute such a Committee within two months from the date of the order and the said Committee may take the assistance of such technical experts as they think appropriate.

6. We would accordingly dispose of this writ petition with the aforesaid observations.

7. In the two Transferred Cases, the Notification dated 1.1.1996 of the Central Government issued in exercise of powers under sub-section (2) of Section 27 of the Insecticides at, 1968 phasing out progressively the manufacture and use of Benzene Hexachloride and directing that the Certificate of Registration in respect of Benzene Hexachloride issued to various firms shall be deemed to have been cancelled w.e.d. 1st of April, 1997, has been challenged by the manufacturers *inter alia* on the ground that it is beyond the scope and powers of the Central Government under Section 27(2) of the Insecticides Act to issue such Notification.

8. It is contended by Mr. C.S. Vaidyanathan, the learned senior counsel for the petitioner M/s. Kanoria Chemicals and Industries Ltd., as well as Mr. Jayant Das, learned senior counsel appearing for the petitioner in the other Transferred Case that consultation with Registration Certificate being mandatory for exercise of power under sub-section (2) of Section 27 of the Repatriation Committee issuance of the important notification in purported exercise of power under Section 27(2) of the Act is vitiated and as such liable to be stuck down. It is further contended that neither there has been any investigation of its own by the Central Government nor the Central Government has received any report from the State Government on the basis of which the Central Government could have been satisfied about the insecticides in question is likely to cause any risk which would enable the Central Government to cancel the Certificate of Registration and therefore, the impugned Notification is invalid in the law since the satisfaction is based upon non existing material and as such the Notification in question is liable to be struck down. Lastly, it is contended that in exercise of power under sub-section (2) of Section 27 of the Certificate of Registration any insecticide specified in sub-clause (iii) Clause (c) of Section 3 or any specific batch thereof can be cancelled if the Central Government is of the opinion for reasons to be recorded in writing that the use of the said insecticides likely to involve such risk to human being or animals so as to render it expedient or necessary to take immediate action. Section 3(e)(iii) deals with a preparation containing any one or more of the substance specified in the Schedule. The said power, therefore cannot be exercised in respect of any substance specified in the schedule which is an insecticide within the meaning of Section 3(e) (i) Benzene Hexachloride being one of the substances in the Schedule issued under Section 3(c)(i) and not a preparation containing any one or more of the substances as provided in Section 3(e)(iii), the Central Government had no jurisdiction to issue the impugned Notification purported exercise of power under Section 27(2) of the Insecticides Act. In other words, what is to be contended by the counsel for

the petitioners these Transferred cases is the power to prohibit or cancel the registration under Section 27(2) is in respect of those preparations containing any one or more of such substances which are specified in the Schedule and which is consumer oriented and the said power cannot be exercised in respect of any substance included in the Schedule by the Parliament itself. Mr. Bhat, learned Addl. Solicitor General, on the other hand contended that in construing the provisions of the Insecticides Act the Court must adopt a construction, which would effectuate the objects of the statute instead of adopting a construction, which would defeat its objects. According to the learned Addl. Solicitor General contends that the Insecticides Act having been enacted to regulate the import, manufacture, safe, transport, distribution and use of insecticides with a view to prevent any risk to human beings or animals and the Central Government having been satisfied that the use of Benzene Hexachloride involves great risk to the human life and on being so satisfied having issued the impugned Notification phasing out the manufacture of such insecticide and completely prohibiting the same w.e.f. 1.4.1997, this Court should not set aside the Notification by interpreting the provisions of the Act, which would have the effect of frustrating the object of the legislation itself. According to the learned Addl. Solicitor General no doubt the words used in sub-section (2) of Section 27 are not very clear but the expression "as a result of its own investigation" in sub-section (2) of Section 27 does not necessarily refer to any insecticide specified in subclause (iii) of Clause (e) of Section 3 as engrafted in sub-section (1) of Section 27 and on the other hand it is wide enough to include any insecticide under Section 3(e) including a substance specified in the Schedule and such a construction alone would subserve the object of the Act. The learned Addl. Solicitor General also urged that when the power under the sub-section (2) of Section 27 authorize the Central Government to issue an order refusing to register the insecticide it would obviously mean that the said power could be exercised even prior to the registration of the insecticide in question, whereas the power under Section 27(1) can be exercised only after an insecticide has been registered and therefore, Section 27(2) does not necessarily refer to Section 27(1) as contended by the learned counsel appearing for the petitioners. So far as the question of lack of consultation with the Registration Committee is concerned, the Addl. Solicitor General contended that the Notification which was issued in December 1994 itself indicates that the Central Government had due consultation with the Registration Committee before issuance of Notification on 1st January, 1996. According to the learned Addl. Solicitor General when Benzene Hexachloride has already been banned in several other countries in the world because of its effect of human life, the Central Government has totally banned in production w.e.f. 31st of March, 1997, having decided it to phase out the production progressively and any interference with the said order will be against the society at large.

9. Before examining rival contention with regard to the power of the Central Government under the Insecticides Act to cancel Certificate of Registration it would be appropriate for us to find out as to what is Benzene Hexachloride and what are its effect on the human beings and the environment and to what extent it has actually been banned in other countries.

10. Benzene Hexachloride (BHC) is formed by the reaction of chloride with benzene in the presence of light. It is also called 1,2, 3, 4, 5, 6, HEXACHLOROCYCLOPHEXANE,

namely, any one of the several isometric compound; one of these isomers is an insecticide called Gammaxene. It was first prepared in 1825 and the insecticide properties were identified in 1944 with the y-isomer, which is about 1,000 times more toxic than any of the other isomers formed in the reaction. The chemical addition of chloride to benzene produced a mixture containing at least six of the eight possible isomers of BHC has a faster but less protracted action upon insects. Its use had declined by the 1960s because of competition from other insecticides and its effects on fishes (See. The New Encyclopaedia Britannica Volume 2 Page115).

11. Benzene Hexachloride, otherwise known as BHC is an insecticide specified in the Schedule to the Insecticides Act, 1968 and is different from its formulations which would also be an insecticide within the meaning of Section 3(e)(iii) of the said Insecticide Act. BHC is not used as such by farmer or consumer though its different formulations or preparations containing different concentrations of BHC are used in agricultural pest control, crop protection operation as well as in public health for control of diseases like malaria, dengue and plague. In the Tripathi Committee Report, which was constituted to review the continued use of DDT and BHC n the country in the light of their hazard to human health and environment pursuant to the earlier observations of the Banerjee Committee Report in 1986, it has been stated as follows:

"(1) In a large number of countries the use of BHC has been banned/withdrawn or severely restricted mainly due to bioaccumulation of residue and its associated environmental hazards.

(2) BHC is bio effective against pest complex of sugarcane, and pigen pea. Its dust has also been proved bio effective for locust control.

(3) It still continues to be effective in controlling vectors of malaria.

(4) The residue of BHC in soil of USA persists as long as ten years. However, in other comparative studies between 1977 and 1988 the residue has been decreased from 5.64 ppm to 0.06 ppm against studies of Indian Soils has shown a half-life of only 4 months.

(5) Residues of BH in water were found in a range of 1.07 to 81.23 mg/litre, in studies conducted during 1985 to 1987. Ganga water was reported to be contaminated with BHC residue in the range of 1.5 to 639 mammogram per litre during 1986 to 1989.

(6) Reported quantum of 17.66 to 40.90 ppms of residues in it is highest and for purpose of quantities was below tolerance limit. It is low in rabi crops and nil in sugarcane.

(7) Residue of BHC in Indian vegetable found to be higher than permissible limit as per PFA (84 ppm)

(8) The residue of BHC in vegetable oils and oilseeds ranged between 0.2 to 6.2 ppm, which showed a declining trend.

(9) Milk and milk products are contaminated with residues of BHC.

(10) Meat, chicken, fishes and eggs are also contaminated with BHC residues.

(11) There are reports of accumulation of BHC residues in human adipose tissue and blood.

(12) Animal feed as well as animal products contain BHC residues and there is an increasing trend.

(13) Sub chronic and long term toxicity studies show storage of BHC in body tissues as steriodigenic inhibition.

(14) Studies on reproduction indicate the effect on reproduction leading to impaired reproductive function.

(15) In some studies BHC is found to be mutagenic.

(16) BHC has been shown to be carcinogenic to mice and rats in one study and in mice or another two studies. But it has been shown not to carcinogenic to rats and hamsters in one study BHC has been classified by IARC into Group 25 i.e. probable carcinogenic to human.

(17) BHC has been shown to produce immunological changes.

(18) In human studies accidental long-term dietary exposure of BHC resulted in epidemic porphyries hyper pigmentation and neurotoxicity.

12. Thus, though it is of great use in control of malaria but its adverse effect on human health is no less, particularly when it has already shown to be carcinogenic to human beings. The certificate of Registration granted in favour of petitioners which are available on record indicates that it was the formulation namely BHC 10% dp, BHC 50% WP as well as BHC technical. Coming to the question of power of the Central Government under the Insecticides Act and rival contention of the parties in this Court as noticed earlier, it would be appropriate for us to notice some of the provisions of the Act.

13. Section 3(e) defines 'insecticides' to mean that:

> 3(e) "insecticide" means:
>
> (i) any substance specified in the Schedule; or
>
> (ii) such other substances (including fungicides and weedicides) as the Central Government may after consultation with the Board, by notification in the Official Gazette, include in the Schedule from time to time; or
>
> (iii) any preparation containing any one or more of such substances.

14. Section 4 contemplates constitution of a Board called Central Insecticides Board whose duty is to advice the Central Government and the State Government on

technical matters arising out of the administration of the Act as well as to carry out the other functions assigned to the Board under the Act. Section 5 stipulates constitution of the Registration Committee which is empowered to regulate its own procedure for conduct of business to be transacted by it. Section provides for registration of insecticides. Under sub-section (1) of Section 9 a person desirous of importing or manufacturing any insecticide is required to make an application to the Registration Committee for the registration of such insecticide. Under sub-section (3) of 9 the Registration Committee is required to hold such enquiry as it deems fit and on being satisfied about the efficacy and safety of the insecticide to human beings and animals register the same. Second proviso to sub-section (3) of Section 9 confers power on the Committee to refuse to register the insecticide. Section 10 provides for an appeal against the decision of the Registration Committee to the Central Government against non-registration. Section 11 is the suo moto power of the Central Government in exercise of which power the Government can call for the record of the Registration Committee in respect of any case for the purpose of satisfying itself as to the legality of propriety of the decision. Section 13 is the power to grant licence and any person desirous of manufacturing or selling or exhibiting for sale or distributing any insecticide is bound to have a licence under Section 13. Section 14 is the power of the Licensing Officer to revoke, suspend or amend the licence issued under Section 17 is the prohibition for import as well as manufacture of certain insecticides. "Section 26 is the power of the State Government to require any person or class of persons to report occurrence of poisoning through the use or handling of any insecticide coming within his cognizance. Section 27 of the interpretation of which come up for our consideration in the case in hand contains the power of the Central Government in purported exercise of which the impugned notifications have been issued. Since the same provision requires the consideration of this Court the same is extracted herein below in extensor.

> *"27. Prohibition of sale, etc. of insecticides for reasons of public safety - (1) If, on receipt of a report under Section 26 or otherwise, the Central Government or the State Government is of opinion, for reasons to be recorded in writing, that the use of any insecticide specified in sub-clause (iii) of Clause (e) of Section 3 or any specific batch thereof is likely to involve such risk to human beings or animals as to render it expedient or necessary to take immediate action then that Government may, by notification in the Official Gazette, prohibit the sale, distribution or use of the insecticide or batch. In such area, to such extent and such period (nor exceeding sixty days, at may be specified in the notification pending investigation into the matter;*

Provided that where the *investigation* is not *completed within the* said period, *the* Central *Government* or the State Government, as the case may *be*, may *extend* it *by* such further period or periods not *exceeding* thirty days *in* the aggregate as *it* may specify in a like *manner*.

> *(2) If, as a result of its own investigation or on receipt of the report from the State Government and after consultation with Registration Committee the*

Central Government, is satisfied that the use of the said insecticide or batch is or is not likely to cause any such risk, it may pass such order (including an order refusing to register the insecticide or cancelling the certificate of registration, if any, granted in respect thereof), as it deems fit, depending on the circumstances of the case. "

Section 36 is the rule making power of the Central Government.

15. An examination of the aforesaid provisions of the Act indicates that before registering a particular insecticide the Registration Committee is duty bound to hold such enquiry as it deems fit for satisfying itself that the insecticide to which the application relates is safe to human beings and animals. Coming now to the core question namely whether under Section 27 of the Act the Central Government can cancel the Certificate of Registration in respect of an insecticide, it appears to us that under sub-section (1) of Section 27 when the Central Government or the State Government is of the opinion that the use of any insecticide specified in sub-clause (iii) of Clause (e) of Section 3 or any specific batch thereof is likely to involve risk to human beings or animals and it is necessary to make immediate action then on recording reasons in writing the sale, distribution or use of the insecticide or batch can be prohibited in such area, to such extent not exceeding 60 days as may be specified in the notification pending investigation into the matter. In other words, in respect of an insecticide within the meaning of Section 3(e) (iii) i.e. a preparation of formulation containing anyone or more of such substances specified in the Schedule, the appropriate Government can immediately by issue of notification prohibit the sale, distribution or use of the same pending investigation. Under the provision to sub-section (1) of Section 27, if the investigation is not completed within the period of 60 days then the prohibition in question could be extended for such further period not exceeding 30 days in the aggregate. Under sub-section (2) of the Central Government on the basis of own investigation or on receipt of the report from the State Government and after consultation with the Registration Committee is satisfied that the use of the said insecticide or batch is or is not likely to cause any such risk then it may pass such order as it deems fit depending upon the circumstances of the case, either refusing to register the insecticide or cancel the Certificate of Registration, if already granted. The use of the word 'said insecticide' in sub-section (2) obviously refers to the insecticides in question which was the subject-matter of consideration under sub-section (1) and in respect of which pending further investigation into the matter the Central Government has already issued a prohibition for sale, distribution or use of the insecticide in question. Therefore, the power of cancellation of Certificate of Registration conferred upon the Central Government under sub-section (2) of Section 27 can be exercised only in respect of any insecticides specified in sub-clause (iii) of Clause (e) of Section 3 i.e. a preparation of formulation of one or more of the substances specified in the schedule but the said power can not be exercised in respect of an insecticide which is specified in the schedule itself by the Parliament, we are unable to accept the arguments advanced by the learned Additional Solicitor General that subsection (2) of Section 27 is not restricted to an insecticide in respect of which the Central Government has already

issued a notification prohibiting the sale distribution or pending investigation into the matter. The scheme of subsection (1) and sub-section (2) of Section 27 is that in respect of a formulation which is also an insecticide within the meaning of Section 3(e) the Central Government for reasons to be recorded in writing and pending investigation into the matter can immediately prohibit sale distribution or use and after further investigation can cancel the Certificate of Registration in respect thereof under Sub-section (2) of Section 27. That being the position in exercise of such power under sub-section (2) of Section 27 a Certificate of Registration in respect of an insecticide under sub-section (e)(i) cannot be cancelled under sub -section (2) of Section 27 (sic). This is also a consonance with the logic that an insecticide which is the formulation of any one or more of the substances specified in the schedule and is consumer oriented power of cancellation of registration certainly has been conferred upon the Central Government but in respect of an insecticide which does not come to a consumer and is a substance specified in the schedule itself and therefore an insecticide under Section 3(e)(i), the power has not been conferred upon the Central Government since the specified substance in the schedule has been specified by the Parliament itself. In view of the aforesaid conclusion of ours we would hold that those of the Certificates of Registration granted to the petitioner in respect of any formulations namely, BHC 10% DP and BHC 50% WP, the order of the Central Government canceling Certificate of Registration is well within the jurisdiction and there is no legal infirmity in the same. But in respect of Benzene Hexachloride which is one of the substances specified in the schedule and as such is an insecticide within the meaning of Section 3(e)(i) there is no power with the Central Government under Sub-section (2) of Section 27 to cancel the Certificate of Registration.

16. So far as the contention of Mr. Vaidyanathan, the learned senior counsel appeared for the petitioner in the transferred case that consultation with the Registration Committee is a precondition for exercise of power under sub-section (2) and such consultation being not there, the issuance of notifications is bad we are of the considered opinion that undoubtedly before the sub-section (2) of Section 27 can be exercised by the Central Government is duty bound we have consultation with the Registration Committee. But in the case in hand having examined the counter-affidavits filed on behalf of the different Ministries of the Central Government that there has been due and substandard consultation with the Registration Committee which is apparent in the notification of December 1994 itself , ordinance then there has been further study in the matter and committees of experts have been constituted who have gone into the matter and on the basis of reports submitted by such experts committee ultimately the Central Government was to take the final decision, it is not possible to hold that there has been no consultation with the Registration Committee before exercising of power under sub-section (2) of Section 27. Contention of Mr. Vaidyanathan, the learned Senior Council on this scope, therefore must be rejected. Before we part with this case, and having examined the different provisions of the Insecticides Act 1968 we find that once a substance is specified in the Schedule as contemplated under Section 3 (e) (i) then there is no power for canceling the Registration Certificate issued in respect of the same substance even if on scientific study it appears that the substance in question is grossly detrimental to the

human health. This is a lacuna in the legislation itself, and therefore steps should be taken for appropriate amendment to the legislation. In the net result, therefore, writ petition is disposed with the observations made earlier and the transferred cases are allowed to the extent stated above. There will be no order as to costs.

Order accordingly.

Ashok Kumar Tumberia v. Hardwar Development Authority, Hardwar
AIR 1997 Allahabad 220
Civil Misc. Writ Petition No. 1115 of 1994, D/-7-1-1997
Ravi S. Dhavan and V.P. Goel, JJ.

U.P. Urban Planning and Development Act (Presidential Act. 11 of 1973), S. 32 - Illegal construction – Levy of compounding fee – Validity – Writ petition filed, challenging levy was devoid of all details as to what was petitioner's title on land and whether construction was made by him violating law governing urban habitat – If petitioner had violated street alignment, such illegalities cannot be cured by levying compounding fee – Action of authorities in being silent spectator of such construction and thereafter levying compounding fee – Improper – Matter remanded to local administration to make through inquiry into matter.

Constitution of India, Art. 226.

Bandhu Mukti Morcha v. Union of India
AIR 1997 Supreme Court 2218
Writ Petition (Civil) Nos. 12125 of 1984 with 11643 of 1985, D/-21-2-1997
K. Ramswamy and S. Sagir Ahmed, JJ.

(A) Constitution of India, Art. 24 – Child Labour – Prohibition – various directions given to implement constitutional mandate in 1997 AIR SCW 407 - Need for their speedy implementation reiterated.

(Para 12)

(B) Constitution of India Art. 28 - Child Labour – prohibition – enveloping Principles and policy for progressive elimination of children below age of 14 years in various employment – Supreme Court directed govt. of India to convene meeting of concern ministers of respective state govt. and their principle secretaries holding concerned departments.

In the instant case the Supreme Court directed the Government of India to convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Departments, to evolve the principles and policies for progressive elimination of employment of the children below the age of 14

years in all employment governed by the respective enactments mentioned in 1997 AIR SCW 407 to evolve such steps consistent with the scheme laid down in that decision to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organized or unorganized labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; apart education periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of the Supreme Court.

(Para 13)

Cases Referred:	**Chronological Paras**
1997 AIR SCW 407: (1996) 6 SCC 756	12, 13
1993 AIR SCW 863: (1993) 1 SCC 645: AIR 1993 SC 2178	9
1991 AIR SCW 879: (1991)2 SCC 716	9

ORDER: - This writ petition under Article 32 of the Constitution has been filed by way of public interest litigation seeking issue of a writ of mandamus directing the Government to take steps to stop employment of children in Carpet Industry in the State of Uttar Pradesh; to appoint a Committee to investigate into their conditions of employment; and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years and directing the respondents to give them facilities like education, health, sanitation, nutritious food, etc.

2. The main contention of the petitioner-group is that employment of the children in any industry or in a hazardous industry, is violative of Article 24 of the Constitution and derogatory to the mandates contained in Articles 39 (e) and (f) and 45 of the Constitution read with the Preamble. Pursuant to the filing of the writ petition, this Court appointed Prem Bhai and others to visit factories manufacturing carpets and to submit their findings as to whether any number of children below the age of 14 years is working in the carpet industry etc. The Commissioner submitted his preliminary report. Subsequently, by Order dated August 1, 1991, this Court appointed a Committee consisting of Shri J. P. Vergese, Ms. Gyansudha Mishra and Dr. K. P. Raju to go around Mirzapur area and other places where carpets are being weaved to find out whether children are being exploited and to submit a comprehensive report. In furtherance thereof, a comprehensive report was submitted on November 18, 1991. The matter was heard and arguments were concluded. The judgment was reserved by proceedings dated October 18, 1994. Since the judgment could not be delivered, the matter was directed to the posted before a Bench consisting of S. Saghir Ahmad, J. We have heard the counsel on both sides.

3. The primary contention by the petitioner on behalf of the children below the age of 14 years is that the employment of children by various carpet weavers in Varanasi, Mirzapur, Jaunpur and Allahabad area is violative of Article 24. The report of the Committee discloses the enormity of the problem of exploitation to which the children are subjected. Children ranging between 5 to 12 years having been kidnapped from the Village Chhichhori (Patna Block, District Palamau in Bihar) in January and February,

1984 in three batches and were taken to village Bilwari in Mirzapur District of U. P. for being engaged in carpet weaving centres. They are forced to work all the day. Virtually, they are being treated as slaves and are subjected to physical torture revealed by the presence of marks of violence on their person. The Commission/Committee visited 42 villages and found in all 884 looms engaging 42% of the work force with the children below the age of 14 years. The total number of children are 369; 95% of them are of tender age ranging between 6 to 11 years and most of them belong to the Scheduled Castes and Scheduled Tribes. Despite persuasion, they could not be released and continue to languish under bondage. The Commission visited several villages, personally contacted the parents of the children in different places and found that the children were taken against their wishes and are wrongfully forced to work as bonded labour in the carpet industries. They have furnished the list of the children whom they contacted and the list of the carpet industries whereat the children were found engaged. The question, therefore, is : Whether the employment of the children below the age of 14 years is violative of Article 24 and whether the omission on the part of the State to provide welfare facilities and opportunities deprives them of the constitutional mandates contained in Articles 45, 39 (e) and (f), 21, 14 etc.?

4. Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to the humanity. Mankind has best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children signifies eternal optimism in the human being and always provides the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physical and mentally - the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development. Dr. Bhim Rao Ambedkar, was for ahead of his time in his wisdom projected these rights in the Directive Principles including the children as beneficiaries. Their deprivation has deleterious effect on the efficacy of the democracy and the rule of law.

5. Article 39 (e) of the Constitution enjoins that the State shall direct its policy towards securing the health and strength of workers, men and women; and the children of tender age will not be abused; the citizens should not be forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) enjoins that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 mandates that the State shall endeavour to provide free and compulsory

education for all children until they complete the age of 14 years. The period of ten years provided therein has lost its relevance since as on date, more than 78 million out of 405 million children, 78% of them are employed between the age of 5 to 14 years without any basic and elementary education, health, access to nutrient food and leisure. Article 24 of the Constitution prohibits employment of the children in factories etc. so that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 21 mandates that no person shall be deprived of his life or personal liberty except according to the "procedure established by law" which this Court has interpreted to mean "due process of law". The bane of the poverty is the root of the child labour and they are being subjected to deprivation of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have, without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone, in the matter of right to health, well being, education and social protection. Article 51-A enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of inquiry and to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievement. Unless facilities and opportunities are provided to the children, in particular handicapped by social, economic, physical or mental disabilities, the nation stands to lose the human resources and good citizens. Education eradicates illiteracy a means to economic empowerment and opportunity to life of culture. Article 26 (1) of Universal Declaration of Human Rights assures that everyone has the right to education which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available and higher education shall equally be accessible to all on the basis of merit. Education enables development of human personality and strengthens the respect for human rights and fundamental freedoms. It promotes understanding, tolerance and friendship among people. It is, therefore, the duty of the State to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

6. Due to poverty, children and youth are subjected to many visible and invisible sufferings and disabilities, in particular, health, intellectual and social degradation and deprivation. The Convention of the Rights of the Child which was ratified by the Government of India on November 20, 1989 recognizes the rights of the child for full and harmonious development of his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and understanding. The child should be fully prepared to live an individual life in society. Article 3 provides that in all action concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. Article 27 (1) provides that the State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 28 provides thus:

> "1. State Parties recognize the right of the child to education, and with a view to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods in this regard. Particular account shall be taken of the needs of developing countries."

7. Article 31 (1) recognizes the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Article 32 (1) which is material for the purpose of this case reads as under:

"1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments. States Parties shall in particular

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

8. Article 36 states that State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. No doubt, the Government, while ratifying the Convention with a reservation of progressive implementation of the governance, reminded itself of the obligations undertaken there under, but they do not absolve the State in its fundamental governance of the imperatives of Directive Principles of the Constitution, particularly, Articles 45, 39 (e) and (f), 46 read with the Preamble, Articles 21, 23 and 24 of the Constitution rendering socio-economic justice to the child and their empowerment, full growth of their personality - socially, educationally and culturally - with a right to leisure and opportunity for development of the spirit of reform, inquiry, humanism and scientific temper to improve excellence - individually and collectively.

9. In Maharashtra State Board of Secondary and Higher Education v. K. S. Gandhi, (1991) 2 SCC 716: (1991 AIR SCW 879), right to education at the secondary stage was held to be a fundamental right. In J. P. Unnikrishnana v. State of Andhra Pradesh, (1993) 1 SCC 645: (1993 AIR SCW 863) a Constitution Bench had held education upto the age of 14 years to be a fundamental right; right to health has been held to be a fundamental right; right to potable water has been held to be a fundamental right; meaningful right to life has been held to be a fundamental right. The child is equally entitled to all these fundamental rights. It would, therefore, be incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary. As stated earlier, their employment - either forced or voluntary - is occasioned due to economic necessity; exploitation of their childhood due to poverty, in particular, the poor and the deprived sections of the society, is detrimental to democracy and social stability, unity and integrity of the nation.

10. Various welfare enactments made by the Parliament and the appropriate State Legislature are only teasing illusions and a promise of unreality unless they are effectively implemented and make the right to life to the child driven to labour a reality, meaningful and happy. Article 24 of the Constitution prohibits employment of the child below the age of 14 years in any factory or mine or in any other hazardous employment, but it is a hard reality that due to poverty child is driven to be employed in a factory, mine or hazardous employment. Pragmatic, realistic and constructive steps and actions are required to be taken to enable the Child belonging to poor, weaker sections, Dalit and Tribes and minorities, enjoy the childhood and develop its full blossomed personality - educationally, intellectually and culturally - with a spirit of inquiry, reform and enjoyment of leisure. The child labour, therefore, must be eradicated through well-planned, poverty-focused alleviation, development and imposition of trade actions in employment of the children etc. Total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc. Therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must

begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

11. Illiteracy has many adverse effects in a democracy governed by rule of law. A free educated citizen could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform. Therefore, education is compulsory. Primary education to the children, in particular, to the child from poor, weaker sections, Dalits and Tribes and minorities is mandatory. The basic education and employment-oriented vocational education should be imparted so as to empower the children with these segments of the society to retrieve them from poverty and, thus develop basic abilities, skills and capabilities to live meaningful life for economic and social empowerment. Compulsory education, therefore, to these children is one of the principal means and primary duty of the State for stability of the democracy' social integration and to eliminate social tensions.

12. In M. C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756: (1997 AIR SCW 407), this Court has considered the constitutional perspectives of the abolition of the child labour and the child below 14 years of age in the notorious Sivakasi match industries. It has mentioned in para 12 of the judgment the number of total workers and the child workers employed in the respective industries in the country. It has surveyed various enactments which prohibit employment of the child; the details thereof are not necessary to be reiterated. In para 27, it has noted the causes for failure to implement the constitutional mandate and has given various directions in that behalf. We, therefore, reiterate the directions given therein as *feasible inevitable.* We are respectfully agreeing with them and reiterate the need for their speedy implementation.

13. We are of the view that a direction needs to be given that the Government of India would convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Departments, to evolve the principles of (and) policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in M. C. Mehta's case (1997 AIR SCW 407) to evolve such steps consistent with the scheme laid down in M. C. Mehta's case, to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organized or unorganized labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical report of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court.

14. Shri Rakesh Dwivedi, learned Additional Advocate General of U. P. and Shri B. B. Singh, learned counsel for the State of Bihar, have taken notice on behalf of the States of Uttar Pradesh and Bihar respectively. They are directed to obtain the copy of the judgment and send the same to the respective States and to ensure implementation of

directions issued by this Court from time to time to implement the welfare measures envisaged in the above orders until the principles and policies to the evolved in the afore-directed conference and implemented throughout the country.

15. Post this matter after three months.

16. The writ petitions are accordingly, disposed of subject to the above directions.

Order accordingly.

Buffalo Traders Welfare Association v. Maneka Gandhi
1997 ELD 37
Interlocutory Application Nos. 2 & 3 in Ciivl Appeal No. 3769 & 3774 of 1996, decided on 30-11-1996.
Kuldip Singh & B.L. Hansaria, JJ.

Hazardous/Noxious Industries – Slaughter House – Need of the consumer and the environment – Directions issued.

HELD

It cannot be disputed that the slaughter house is being run under highly polluted environment. With a view to keep balance between the need of the people of Delhi and the environment, we direct as under:

(1) We permit the Idgah Slaughter House to function till June 30, 1997 on the following conditions:

(a) Goats/he goats/sheep numbering 2000 per day shall be permitted to be slaughtered in the premises, no other animals shall be slaughtered.

(b) Buffaloes (any sex), cows, bulls (i.e. large animals) shall not be permitted to be slaughtered as their slaughter generates more pollution. The buffalo section is the most polluted section in the slaughter house. We reiterate that except 2000 (two thousand only) goats/he goats/sheep no other animals to be slaughtered in the premises. The buffalo section of the slaughter house shall be closed with immediate effect.

(c) The slaughter house shall be kept environmentally clean by the MCD.

(2) The Central Pollution Control Board shall visit the slaughter house every two months till June 30, 1997 and file report in this Court indicating the environmental status of the premises.

(3) The animal market shall not be permitted to function near the slaughter house. Holding the animals market in the crowded part of the city is environmentally hazardous and cannot be permitted.

(4) The Deputy Commissioner of Police shall stop the holding of the market in the vicinity of the slaughter house. The meat sellers/butchers may bring the animals to the slaughter house in an environmentally clean manner and take meat back in similar way. No market should be permitted in the area.

(5) The Municipal Corporation of Delhi shall stop all illegal slaughtering in Quasebpura area near Idgah or any other part of Delhi. The Commissioner, Municipal Corporation, Delhi shall take necessary steps to stop the illegal slaughtering in all parts of Delhi. If necessary, police help be taken in this respect.

(6) We make it clear that heavy pollution fine shall be imposed by this court on polluters indulging in illegal slaughtering. Even the MCD shall be liable to pollution fine if the slaughter house is not kept environmentally clean. The staff-in-charge of the slaughter house may personally be liable to pay the fine.

(7) Municipal Corporation of Delhi shall take steps on war-footing to construct the modern slaughter house on the alternative land already acquired by the Corporation. We make it clear that the Idgah Slaughter House would not be permitted to continue at the present site beyond June 30, 1997.

(Para 10)

JUDGEMENT

B.L. Hansaria, J.:- 1. These two applications relate to Idgah Slaughter House, Delhi. The common prayer in both of them is to hold that the order dated July 8, 1996 passed in IA No. 22 connected with WP (Civil No. 4677 of 1985) does not have the effect of modifying and/or setting aside the order dated 19.2.1996 passed in the connected Civil Appeals, by which interim order of *status quo* was passed, while granting special leave. As the order of *status quo* is in conflict with the order passed in the writ petition, a clarification has also bee sought that notwithstanding the later order, the order of *status quo* would continue to remain in operation.

2. The order in the writ petition related not only to Idgah Slaughter House, but to 168 industries, of which the Slaughter House is one. By that order it was held that all the 168 named industries are "Hazardous/noxious" and, therefore, a direction was given that these industries shall stop functioning and operating in the city of Delhi with effect from November 30, 1996. Direction No. (8) stated that the closure order shall be unconditional by adding that "even if the relocation of industries is not complete they shall stop functioning in Delhi with effect from November 30, 1996".

3. As the aforesaid order is relatable to 168 industries, it has to be seen whether any exception can be made insofar as the Slaughter House is concerned to permit it to operate and function beyond November 30, 1996. It is worth pointing out that when the Interlocutory Application in the Writ Petition was being heard, nobody had appeared on behalf of the Slaughter House, despite ample opportunities having been given. This apart, perusal of the order dated July 8, 1996 shows that had come to be passed after this Court was satisfied beyond doubt regarding hazardous nature of the Slaughter House, because

of what was found by Central Pollution Control Board, Delhi Pollution Control Committee and a Special Committee constituted by this Court.

4. Further, insofar as the Slaughter House is concerned, a Division Bench of Delhi High Court had, as early as 1.10.1992, by its judgement in CW Nos. 2267/90, 158/91 and 130/92, directed, *inter alia*, that the Slaughter House shall be closed with effect from December 31, 1993 or from any earlier date which may be fixed by the Court keeping in view the facts and circumstances which may arise before that date. The Delhi High Court came to be seized with another petition on the same subject filed by Maneka Gandhi, who had initially approached this Court by making a grievance regarding the "unhygienic, inhuman and horrible conditions prevalent at Idgah Slaughter House of Delhi". This Court directed the High Court to dispose of the petition. By judgement dated 27th January, 1995 in Civil Writ No. 2961/92 another Division Bench, *inter alia*, ordered for closure of Slaughter House on or before 31.12.1995. The aforesaid two appeals have challenged the later judgement of Delhi High Court in which, while granting special leave, *status quo* order reading as below was passed:

> "Our attention is drawn to the minutes of the meeting dated 14.2.1996 which state that the consensus between the authorities and parties concerned was that there was no place available in or around Delhi to which Slaughter House could be shifted. Having regard to this unambiguous statement the matters shall have to be fully heard.
>
> Special leave granted. The appeals re-expedited. Liberty is given to the parties to move the Hon'ble Chief Justice for the purpose of early hearing. In the meantime, *status quo* shall be maintained."

5. A perusal of the *status quo* order leaves nothing to doubt that it is founded on the consensus regarding no place being available in or around Delhi to which Slaughter House could be shifted. This consensus is reflected in Minutes of the Meeting dated 14.2.1996. We have perused the same. It shows that in the meeting 35 persons were present and the participants showed their concern about "illegal slaughtering in different localities" but because on non-availability of alternative place, modernization of the Slaughter House was agreed to. Now, insofar as availability of some other place in and around Delhi is concerned, because of the sustained efforts made by this Court from 16th September onwards, an area of 55 acres has been made available and possession of the same has also since been reportedly delivered. Thus, the basis of passing the status quo order no longer exists.

6. Mrs. Dholakia and Mr. Nariman, learned Senior Councils appearing for the applicants have nevertheless contended that to take care of the difficulty which the consumers would face if the Slaughter House would be closed as directed, it should be permitted to function at least upto the period when alternative arrangement for slaughtering is made at the new site. Mr. Nariman read out to us the order passed by this Court on May 18, 1994 in SLP (C) No. 7790-9101 of 1994 in which questions were raised as to what would happen when thousands of workers would be thrown on the street jobless and how the meat requirements of a large city would be met? It was submitted by Mrs. Dholakia that

if the Slaughter House would be closed, unhygienic meat would be supplied to the consumers which would be more hazardous.

7. Insofar as the workers are concerned, it may be pointed out that due attention has been paid, inter alia, to their continuity of service and payment with full wages till the closure and restarting of all the industries, as would appear from Direction (9) as contained in the order of July 8, 1990, relevant part of which reads as below:

> "(9) The workmen employed in the above-mentioned 168 industries shall be entitled to the rights and benefited as directed here under:
>
> (a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.
>
> (b) The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service."

8. As regards the consumers, we are of the view that they would not face much of the problem. It has been stated in para 19 of the impugned judgement that hygienic and fresh meat in adequate quantity can be brought from the nearby slaughter houses as purely temporary measure. As the cattle which are slaughtered are brought from outside, according to us, there should be no difficulty in bringing the meat, instead of the animals themselves.

9. As to the argument that closure of the slaughter houses should see unhygienic meat in the market, we should like to observe that this apprehension does not seem justified because there are licensed slaughter houses near Delhi. It is worth pointing out that when the Idgah Slaughter House had remained closed for nearly three months in 1994, because of the strike by butchers, there is nothing on record to show that the consumers had to remain satisfied by eating unhygienic meat. The availability of the meat also did not get adversely affected.

10. In the aforesaid premises, though the interlocutory applications are liable to be dismissed, but the consideration which is weighing with us in not dismissing the same altogether is the interest of large number of consumers in the territory of Delhi. This is the only industry of its type in the territory. There being no other slaughter house near at hand to cater the needs of the residents of Delhi, some hardship is likely to be caused to the meat-eaters. At the same time the interests of environment and ecology cannot be ignored. It cannot be disputed that the slaughter house is being run under highly polluted environment. With a view to keep balance between the need of the people of Delhi and the environment, we direct as under:

(1) We permit the Idgah Slaughter House to function till June 30, 1997 on the following conditions:

(i) Goats/he goats/sheep numbering 2000 per day shall be permitted to be slaughtered in the premises, no other animals shall be slaughtered.

(ii) Buffaloes (any sex), cows, bulls (i.e. large animals) shall not be permitted to be slaughtered as their slaughter generate more pollution. The buffalo section is the most polluted section in the slaughter house. We reiterate that except 2000 (two thousand only) goats/he goats/sheep no other animals to be slaughtered in the premises. The buffalo section of the slaughter house shall be closed with immediate effect.

(iii) The slaughter house shall be kept environmentally clean by the MCD.

(2) The Central Pollution Control Board shall visit the slaughter house every two months till June 30, 1997 and file report in this Court indicating the environmental status of the premises.

(3) The animal market shall not be permitted to function near the slaughter house. Holding the animals market in the crowded part of the city is environmentally hazardous and cannot be permitted.

(4) The Deputy Commissioner of Police shall stop the holding of the market in the vicinity of the slaughter house. The meat sellers/butchers may bring the animals to the slaughter house in an environmentally clean manner and take the meat back in similar way. No market should be permitted in the area.

(5) The Municipal Corporation of Delhi shall stop all illegal slaughtering in Quasebpura area near Idgah or any other part of Delhi. The Commissioner, Municipal Corporation, Delhi shall take necessary steps to stop the illegal slaughtering in all parts of Delhi. If necessary, Police help be taken in this respect.

(6) We make it clear that heavy pollution fine shall be imposed by this court on polluters indulging in illegal slaughtering. Even the MCD shall be liable to pollution fine if the slaughter house is not kept environmentally clean. The staff-in-charge of the slaughter house may personally be liable to pay the fine.

(7) Municipal Corporation of Delhi shall take steps on war-footing to construct the modern slaughter house on the alternative land already acquired by the Corporation. We make it clear that the Idgah Slaughter House would not be permitted to continue at the present site beyond June 30, 1997.

The Interlocutory Applications are disposed of accordingly.

Buffalo Traders Welfare Association v. Union of India
1997 ELD 42
Order D/-17-1-1997 in Interlocutory Application Nos. 4, 5, & 6 in Civil Appeal No. 3769/96 & 3774/96
S.P. Bharucha and K. Venkataswami, JJ.

Pollution – Idgah Slaughter House – Closure of – Conflict between order dated 19-2-1996 passed by this bench and orders dated 8-7-96, 6-8-96 and 30-11-96 (read together) passed by a bench of two other learned Judges – Which order should prevail – Court order that papers be placed before the learned Chief Justice for requisite orders.

Buffalo Traders Welfare Association v. Union of India
1997 ELD 43
Order D/-3-10-1996 in Interlocutory Application No. 2 in Civil Appeal No. 3769/96
Kuldip Singh, S. Saghir Ahmad, JJ.

Slaughter House in Delhi – New sites suggested for Delhi Slaughter House relocation – Court directs that the various sites be inspected by the various authorities and representatives of the Meat Traders Association in order to enable them to find out the suitability and preference.

Centre for Environmental Law WWF-India v. Union of India
1997 ELD 44
Interlocutory Application No. 2 in Writ Petition (Civil) No. 337/95 D/-22-8-1197
S.C. Agarwal and G.T. Nanavati, JJ.

Wildlife Protection Act – Appointment of Wildlife Wardens – Directions issued.
(Para 3)

Wildlife Protection Act – Sec. 21 – All State Govts. directed to issue proclamation within two months – Complete the process of determination of rights within one year.

Wildlife Protection Act – Section 26-A – Denotification of Sanctuaries – All State Govts. ordered that before placing the proposal for denotification before the legislature – To refer the proposal the Indian Board of Wildlife for its opinion.
(Para 5)

Wildlife Protection Act – Direction to all Governments to ensure that forest guards are provided with modern arms, equipment etc.
(Para 6)

Citizen & Inhabitants of Municipal Ward No. 15, Gwalior v. Municipal Corporation, Gwalior
AIR 1997 Madhya Pradesh 33 (Gwalior Bench)
Writ Petition No. 640 of 1992, D/-14-12-1995
D. M. Dharmadhikari and Fakhruddin, JJ.

Constitution of India, Art. 226 – Public Interest Litigation – Locus standi – Maintenance of sanitation and proper living conditions in locality – Petition filed by members of Housing Societies in representative capacity – to safeguard interest of all citizens and residents of locality – cannot be rejected on the ground that it is private grievance of individual members of Housing Societies and not a Public Interest litigation.

Constitution of India, Art. 226 – Powers of Court – Maintenance of sanitation and proper living conditions of locality – Petition in that regard – Failure of societies and its members and the authorities of Corporation in their statutory and contractual obligations – Public at large and residents of locality in particular, cannot be allowed to suffer the insanitary conditions for an indefinite period of time – High Court in interest of justice issued the direction.

Dr. P. Navin Kumar v. The Bombay Municipal Corporation
1997 ELD 461
Writ Petition Nos. 619 with 761 of 1992, decided on 10 and 11-9-1996
M.B. Shah, and J.N. Patel, JJ.

(A) Bombay Municipal Corporation (3 of 1888), S. 252 – Public health – Construction of toilet block near "Gateway of India" – Facility also provided to prevent nuisance arising because of unauthorized use of open space to answer nature calls by visitors to monument – Toilet blocks to be constructed on existing road, 350 feet away from monument – Not Violative of Coastal Regulation Zones I and II – said resolution being passed in 1991, not violative of Regulation 67 of Heritage Regulations for Greater Bombay, 1995.

Environment (Protection) Rules, 1986, R. 5(3).

Maharashtra Regional and Town Planning Act (37 of 1966), S. 158.

(Paras 8, 12, 19, 20)

(B) Constitution of India, Art. 226 – Bombay Municipal Corporation Act (3 of 1888), S. 252 – *Malafide* – Public health – Municipal Corporation seeking construction of new toilet blocks near "Gateway of India" – Existing toilet blocks in shaded area near hotel owned by respondent who undertook to beautify area of "Gate-way of India" were misused by antisocial elements – Not used by tourists – Thereby nuisance created in vicinity of "Gateway of India"- Decision as to removal of existing toilet blocks and to construct new one – Cannot be said to be taken to

oblige respondent hotel owner especially when respondent has no objection even if the existing toilet block is properly maintained.

(Paras 21, 22)

G. R. Simon v. Union of India
AIR 1997 Delhi 301 (Full Bench)
Civil Writ Petitions Nos. 2750 of 1986 with 3586, 819 and 437 etc. of 1987 and 207 of 1989, D/-20-3-1997
M. Jagannadha Rao, C. J., Anil Dev Singh and Manmohan Sarin, JJ.

Wild Life (Protection) Act (53 of 1972), S. 61, Chap. VA (as introduced in 1986) – Preservation of wild life – Banning trade/business in animal skins and articles made therefrom – Each and every animal plays role in maintaining the ecological balance – It cannot be said that certain animals have no role to play or are detrimental to human life – Protection and preservation of Wild Life was in public interest – Provisions of Chapter VA, introduced by Amending Act of 1986 are valid and *intra vires*.

Wild Life (Protection) Act (53 of 1972), S. 61, Chap. VA (as introduced in 1986) – Preservation of wild life – Banning trade/business in animal skins and articles made therefrom – Failure of traders to dispose of their stocks within period provided under Act – Moreover they have not availed opportunity to sell for period of nearly six years during which operation of provisions of Act was stayed by court – Neither State nor Bharat Leather Corporation and State Trading Corporation are under any legal obligation to buy stocks of the petitioners in acceptance of one time sale proposition advanced by petitioners – Stocks therefore liable to be dealt with in accordance with provision of Act.

M/s. Gateway Hotels and Gateway Resorts Ltd. v.Nagarahole Budakattu Hakku Sttapana Samithi
1997 ELD 53
Civil Appeal No. 3372 of 1997 (Arising out of Special Leave Petition (Civil) No. 9341/97), decided on 6-5-1997
J. S. Verma, B.N. Kirpal and S.P. Kurdukar, JJ.

National Park – Construction of a hotel in the Nagarahole National Park – Disposing the appeal, court permits the appellant to water-proofing and lay the tiles on the wooden roof of the seven cottages and the roofing of eight other cottages at the appellant's own risk under the supervision of the Chief Wildlife Warden or any person authorised by him in this behalf.

ORDER

1. Leave granted.

2. Mr. F.S. Nariman, learned senior counsel appearing for the appellant made it very clear that the only grievance of the appellant is confined to the rejection of I.A. No. 2 by the High Court by its order dated 15th April, 1997 and not to any part of the main judgment dated 11th April, 1997. Mr. Nariman submits that the purpose of filing I.A. No. 2/97 was to seek permission for preservation of the existing structure in the manner indicated therein, namely, "by water proofing and laying the tiles on the wooden roof of the seven cottages and roofing of eight cottages at its own risk". The learned counsel further submits that permission be granted to the appellant only to this extent for preservation of the existing structure on conditions as may be appropriate.

3. Having heard Mr. F. S. Nariman appearing for the appellant and Dr. Dhawan, appearing for the respondent, permit the appellant to do water proofing, laying the tiles on the wooden roof of seven cottages and roofing of eight other cottages at the appellant's own risk under supervision of the Chief Wildlife Warden or any person authorised by him in this behalf.

4. This order is in substitution of the Court's order dated 15th April, 1997 in I.A. No. 2/97 as well as the material to this effect in the main judgement.

5. The appeal is disposed of accordingly. No costs.

Gopi Aqua Farms v. Union of India
with
Kharekuran Macimar Sarvodaya Shakari Sanstha Ltd. v. Union of India
and
Tamil Nadu Aqua Culturists Federation v. Union of India
AIR 1997 Supreme Court 3519
Writ Petition (Civil) Nos.107 with 108 and 140 of 1997, D/-29-7-1997
Suhas C. Sen and S.P. Kurdukar. JJ.

Constitution of India, Art. 141 - Environment (Protection) Act (29 of 1986), S. 3 - Civil P.C (5 of 1908), O.I.R 8 - Binding Precedents - Shrimp Culture Industry - Setting up of with in prohibited area – and in ecology fragile Coastal area – Decision of Supreme Court as to (AIR 1997 SC 811) rendered after giving widest publicity - It was public interest litigation and large number of Aqua Culture Farms all over India along coast line appeared - special care was taken to notify Individual Aqua farms by directing state govt. and union territories to issue notices and give widest publicity – Few person cannot say that they were unaware of the proceedings and so should be heard all over again - judgments binds all petitioners who are not parties in earlier case - principle of O.I.R. 8 cannot invoked.

Hamid Khan v. State of M. P.
AIR 1997 Madhya Pradesh 191
Writ Petition No. 1441 of 1996, D/-30-10-1996
A. K. Mathur, C. J. and S. K. Kulshrestha, J.

Constitution of India, Art. 226, 47, 21 – Public Interest Litigation – Right to life – Supply of polluted drinking water to villages – Water containing excessive fluoride contents – Thousands of persons suffering from bone diseases due to consumption of such polluted water – Failure of State to take proper precaution to provide proper drinking water to citizens – State could be said to have failed in discharge of its responsibility under Art. 47 – High Court directed State Govt. to give free medical treatment to such affected persons including surgical treatment along with compensation as specified.

(Para 8)

Cases Referred: **Chronological Paras**

AIR 1991 SC 420: 1991 AIR SCW 121 6

A. K. MATHUR, C. J.:- This is a public interest litigation filed by one Hamid Khan, who is a practising Advocate of Mandla for the apathy of the State Government, or rather a gross negligence on the part of the State Government in not taking proper measures before supplying drinking water from hand pumps, which has resulted in colossal damage to the population of Mandla District.

2. The hand-pumps which have been sunk by the State Government for supply of drinking water had excessive fluoride contents and on account of that, thousand of persons who consumed water have suffered major set-back in their life either in terms of deformity of various nature, like skeletal fluorosis or dental fluorosis. Therefore, this cause has been brought by a public spirited Advocate before this Court and notices were issued to the respondents.

3. In their return, the respondents have pointed out that the matter came to the light that water of certain tube-wells had excessive fluoride which has caused great damage to the population by way of deformities in hands, legs and dental problem and immediate measures were taken for sealing of these tube-wells and certain medical facilities were provided to the affected persons. It is pointed out that District Mandla comprises 13, 269 sq. kilometres and its population is about 12,91,000. According to the census of 1991, Mandla District has total number of 2160 rural villages. It is pointed out that for the last 25 years, Public Health Engineering Department of Madhya Pradesh, with the help of Central Government Rural Development Department, is providing drinking water by drilling tube-wells in the villages of Mandla District. It is alleged that before drinking water is supplied, quality of water is to be tested and certain guidelines are prescribed for testing of water. But in all those guidelines, no fluoride test has been provided and therefore, such fluoride test was not undertaken. When adverse reports were received, then an enquiry was conducted and the Assistant Surgeon posted at Primary Health Centre, Mohania Patpara in District Mandla submitted a report to the Chief Medical

Officer Mandla on 10-2-1995 and on that basis a team of experts consisting of Child Specialist and Orthopaedic Specialist headed by Chief Medical and Health Officer Mandla was deputed and it was found that 29 children were suffering from bone diseases and were having deformity in legs. The team of experts also examined their eating habits as well as drinking water and some treatment was given. Thereafter, the Chief Medical and Health Officer vide his letter date 30th March, 1995 to I.C.M.R. Jabalpur reported this matter and the I.C.M.R. deputed a team of experts headed by Dr. Tapas Chakma who visited the village on 10th May, 1995 to 17th May 1995 and took water of five hand-pumps of village Talaipani and in that, it was found that fluoride contents were at a high level of 10 mg. per litre. The team of experts recommended that these hand-pumps should be immediately closed and alternative arrangement for drinking water should be made. It was also found that water contained excessive fluoride. Consequently, hand-pumps were closed of the said village Talaipani. The Executive Engineer, P.H.E. Mandla in the meanwhile also sent a sample of water to the Pollution Control Board, Jabalpur and the Pollution Control Board submitted its report that fluoride contents in the water were 0.96 mg. per litre which is a normal content and was not abnormal. After receipt of this report, again two experts were sent and the two experts advised the State to continue treatment of the affected children.

4. Water samples were also sent to the State P.H.E. Laboratory Bhopal on 13-6-1995 and tested on 15-06-1995 and samples contained fluoride in excess of 8.00 mg. per litre. Certain steps were taken by the Medical Department for necessary treatment of affected children. It is submitted in the additional return that after finding excessive fluoride contents in the drinking water of particular village, a survey was undertaken of the whole of the district and it is pointed out that in all 6155 tube-wells have been dug in district Mandla, out of which 536 have been found to be affected by high contents of fluoride and these 538 hand pumps are located in 335 villages of District Mandla. Out of a foresaid 538 hand pumps, the worst affected people are located in eight villages, namely, Tilaipani, Kudiya, Barbaspur, Longapal, Manot, Lawer, Bilgada and Hirapur. It is pointed out that after these tube-wells were found to contain excessive fluoride, all the tube-wells were closed down.

5. Survey of affected tube-wells definitely shows that before these tube-wells were commissioned, the respondents did not undertake the fluoride test of water and according to them, as per the earlier guidelines, fluoride test was not advised. When reports regarding deformities of affected persons were received, then survey was undertaken in order to find out the cause for the same. It was found that the water of hand pumps had excessive fluoride.

6. Under Art. 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water. State in present case has failed to discharge its primary responsibility. It is also covered by Art. 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water, as has been held by their Lordships of the Hon'ble Supreme Court in the case of Subhash

Kumar v. State of Bihar AIR 1991 SC 420: (1991 AIR SCW 121) that a right to life includes right to live properly and have the benefit of all natural resources i.e. unpolluted air and water. It was observed at page 424 (of AIR):

> "Right to live is a fundamental right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have resource to Art. 32 of the Constitution for removing the pollution of water or Air which may be detrimental to the quality of life."

Therefore, it was the duty of the State towards every citizen of India to provide pure drinking water. In the present case, it is the State which is responsible for not taking proper precaution to provide proper drinking water to the citizens.

7. Shri Trivedi, learned counsel for the petitioner submitted that those officers who are responsible, should be dealt with strictly and enquiry should be ordered against them. We would have done that, but in view of the fact that this kind of malady was not detected earlier and according to the guidelines laid down water fluoride test was not provided. Therefore, we cannot haul them up for lack of guidance. Be that as it may, it is still the duty of the State to see that whatever best remedy can be provided to them should be made available at the expense of the State. In the present case, when the matter came up before this Court notices were given to other side, returns have been filed and lists of persons who have suffered skeletal disease and dental disease have been given.

8. Today, Collector of Manda District along with Dr. H. K. T. Naza, Reader in Orthopaedics and Director, Artificial Limb Fitting Centre, Govt. Medical College, Jabalpur, and Dr. L.P. Mathur, Director of Health Services (sic). They have submitted a report which is marked as Annexure-A. Annexure B is list of persons of village Tilaipani. This list Annexure A contains the names of persons who are suffering from skeletal fluorosis or dental flourosis, i. e. deformity either in hands or legs. There are various persons – some are minor children some major and some females who are suffering from this deformity. Therefore, it is directed that persons given in list Annexure A shall be given free medical treatment, whether, it be by way of surgery or by way of callipers and shoes. In case surgery is required, then, the same shall be undertaken at the expense of the State and each person whose surgery is done shall be paid Rs. 3,000/- (three thousand) over and above free medical treatment at the expense of the State. If these persons even after surgery, require necessary artificial appliances like limbs or callipers, the same should be provided. Persons in whose case surgery is not necessary and callipers and other artificial appliances can make them work comfortably in their life, then the same shall be provided at the expense of the State, i.e. free of cost. List Annexure-B submitted by I. G. M. R. contains the names of certain persons of various villages who suffered from skeletal fluorosis, and dental fluorosis. This list should also be examined by the authorities concerned and if persons given in the list are not common, then these person should be given same treatment as is to be given to persons mentioned above in Annexure-A. List C is of persons who were found to be suffering from dental

fluorosis, which runs in 500 names of various age groups i. e. children as well as grown up male and female children. It is pointed out that so far as dental fluorosis is concerned, it is not a major set-back and some persons who are having cavities on account of drinking of excessive fluoride water can be given treatment. Such persons should also be given treatment free of costs. Each of such persons will also be entitled to compensation of Rs. 200/- (two hundred).

9. Shri Trivedi, learned counsel for the petitioner has also pointed out that in some of the villages, survey has not taken place and he has given list of those villages i.e., Mohgaon, Beejagaon, Mewada, Tumegaon, Umardihi, Dithori, Dungaria, Deori and Chiceli. If survey has not been done in these villages, then the Collector, Mandla, shall see that proper survey is done of these villages and if persons are found to be suffering from the aforesaid diseases, same treatment should be given to them, as directed above in regard to lists Annexures A. B and C. Shri Trivedi, learned counsel has further pointed out that some of the victims of various villages, as given by him in the list of victims of skeletal diseases and dental diseases, particularly of villages Hirapur and Lakma Dungaria have not been given treatment. The collector shall look into the matter and if those persons are left out and have not been given treatment, same treatment as directed above for persons mentioned in lists A to C be given to them. Collector of the District Mandla shall also see that if some of the tube-wells which contain excessive fluoride in the water are still functioning, they should be immediately closed down and immediate steps for alternative arrangement for drinking water should be taken.

10. Now, so far as the question of finances is concerned, the same shall be worked out by the Collector and the State Government shall sanction the amount which shall be placed at the disposal of the Collector. It would be the responsibility of the Collector, Director Medical and Health and Dr. H. K. T. Raza, Reader in Orthopaedics and Director of Artificial Limb Fitting Centre, Govt. Medical College, Jabalpur, that there is no shortage of finances in implementing the order of this Court. The Collector, Director, Medical and Health, Dr. H. K. T. Raza, and Dr. Bajpai are directed to see that free Medical treatment is made available to the persons and financial difficulty is not raised in the way of providing treatment to these persons. The State Govt. shall release the amount as may be necessary in addition to the amount already released and placed at the disposal of the Collector Mandla. The whole exercise should be done in phases if not possible to be undertaken simultaneously, so that all people could get proper treatment in the due course of time. The whole exercise should as far as possible be completed within a period of one year. The petition is accordingly disposed off.

We record our appreciation for Shri Hamid Khan Advocate of Mandla and Shri Umesh Trivedi, Advocate for assisting this Court and for bringing this public cause.

Order accordingly.

Indian Council for Enviro legal Action v. Union of India
1997 ELD 54
Interlocutory Application No. 2 in Writ Petition (Civil) No. 1056/90, decided on 27-1-1997
A.M. Ahmadi, and Sujata V. Manohar, JJ.

Pollution - Pursuant to Court's order of 29-11-1996 affidavit filed by Pollution Control Board showing the nature of pollution caused by 40 more Industries - Court issues notice to 37 industries which were stated to be polluting Industries - Court also permits certain industries to treat effluents in their own ETPs instead of sending their waste to the CETP - Court issues notice to CETP, which according to the report of the District Judge, was itself a major contributor to pollution.

ORDER

1. On 29-11-1996 we passed an order that an affidavit should be filed indicating how many of the 40 industries mentioned in the earlier affidavit were responsible for pollution. The Environmental Engineer of the A.P. Pollution Control Board has filed an affidavit and has appended thereto a statement showing the nature of pollution by each of these 40 industries. From the statement it appears clear that Industries Nos. 3, 10 and 11 are not causing any pollution, the first does not discharge any industrial effluent whatsoever whereas the other two have provided full-fledged ETPs and are treating their effluents in their own ETPs and thereafter using the water for the purposes of irrigating in their own land. Therefore, barring industries at Serial Nos. 3, 10 and 11, notices will go to the remaining 37 industries to show cause why action for discharge of effluents harmful to agriculture and livestock should not be taken. The notices may be served through the A.P. Pollution Control Board.

2. The Report of the learned District Judge dated 23.10.1996 is exhaustive and it indicates the extent of pollution hazards to agriculture and livestock which takes place on account of the discharge of effluents by the industries located in that area. Some of the industries have been contending that even though they have their own ETPs they are being compelled to use CETP, the capacity whereof is limited and as a result thereof the effluents not brought below the tolerance level are discharged for which they are being blamed. M/s. Asian Paints (India) Ltd. and M/s. Standard Organics have their own ETPs which have the capacity to treat their effluents and bringing them below the tolerance level before discharge. In addition thereto, M/s. Reliance Cellulose Products Ltd., Sri Saibaba Cellulose Pvt. Ltd., Bhagyanagar Oil Refineries Ltd., Neuland Laboratories Ltd. and M/s. Asian Paints (India) Ltd. have been mentioned in the Report of the District Judge.

3. Out of these industries, so far as M/s. Standard Organics is concerned the Report of the District Judge shows that the TSS was 1569 and beyond its capacity. The learned counsel for the said industry states that they are trying to expand their capacity but till they do so they cannot be exonerated. So far as the other industries are concerned, in view of the Report of the learned District Judge we direct that they may be permitted to treat their effluents at their own ETPs under supervision of the Pollution Board so

that the load on PETL also described as CETL can be reduced since it is not able to take the full load. However, the Pollution Board will keep strict vigilance on these industries so that the effluents discharged after treatment at their plants are below the tolerance level. So far as M/s. Voltas Ltd. is concerned the learned District Judge has stated in his Report that it has discharged effluents which were not treated and brought below the tolerance level. Mr. Salve, the learned counsel for the said Company, has explained that this was on account of excessive rain on 4-9-1996 and as a result the effluent had escaped by overflow but they have taken care to ensure that even in such an eventuality it does not escape. The Pollution Board will inspect the factory and satisfy itself whether the Company had taken sufficient steps to safeguard against the escape of untreated effluents even in such an eventuality.

4. The grievance made by some of the industries is that the compensation fixed by the State Government which the concerned industries are required to pay has not been based on the extent of pollution caused by these industries. A guideline needs to be given in this behalf. We think it appropriate that the learned District Judge, who has furnished a Report, should work out the guidelines on the basis of which the compensation may be determined and recovered from the defaulting industries. The guidelines so fixed by the District Judge may be conveyed to the State Government and the State Government may determine the compensation in conformity therewith. The industries will pay the compensation as determined and if on account of the guidelines there is a redetermination which takes place and surplus payment is made that may be adjusted. The learned counsel for M/s. VBC Ferro Alloys and M/s. Hindustan Fluorocarbons Ltd. point out that the said companies are not discharging any effluents and that is also the statement made by the Pollution Board. We have taken note of the same and the notices so far as they are concerned would stand discharged.

5. While concluding the Report the learned District Judge has pointed out that PETL (also described as CETL) is by itself a major contributor for pollution. It seems that it has undertaken the responsibility of treating pollutants beyond its capacity. That is the reason why we have permitted some of the industries which have their own ETPs to use them rather than make them to send their effluents for treatment of PETL. Unfortunately, PETL also contracted to treat the pollutants of industries from Karnataka when its capacity was limited. The Report says that a small partially commissioned only CETP for 128 industries is causing havoc. The industries have no individual pollution control devices and those which have them have not put them into operation. The next result is that the pollution of staggering dimension is taking place causing untold miseries to innocent rural humanity. The learned counsel for A.P. Pollution Control Board states that they have issued notices to PETL and PETL has assured that they would remedy the situation by the end of March, 1997. It is necessary to look into this matter. We, therefore, direct notices to issue to PETL. The PETL will place all the relevant facts before this Court and explain why action should not be taken against it for discharging untreated effluents into the streams which are main source of water supply to the residents of several down stream villages. All the notices hereinbefore mentioned shall be returnable within four weeks.

Kamini Jaiswal, Advocate v. Union of India
1997 ELD 56
Decided on 4-3-1997
A.M. Ahmadi, Sujata V. Manohar and K.T. Thomas, JJ.

Hazardous – Alleging unsafe pipes laid down by GAIL & ONGC as they are potentially hazardous – Held after considering detailed status reports about diverse aspects of maintenance of pipeline network and streamlining of procedures evolved – no further action is now required and no directions are called for.

M. C. Mehta v. Union of India
1997 ELD 66
A.M. Ahmadi, K. Ramaswamy and N. Venkatachala, JJ.

Environment – Lead Free Petrol – Pollution – Directions given.

ORDER

1. The Additional Director, Ministry of Environment and Forests, Government of India, Dr. Shyam Lal, had filed a detailed affidavit dated 7.2.1994 along with two annexures indicating the schedule of supply of unleaded petrol to metropolitan cities of the country and stated that the 1995 - Policy Note focusing on the air pollution in metropolitan cities was prepared which covered various issues of control and abatement of pollution in metropolitan cities including that from automobiles. It was also stated that the said note was approved by the Committee of Secretaries and various measures were identified to be taken by different ministries. The details of those measures were given in Annexure-II to the affidavit. In Annexure-I appended to the affidavit, the possibility of moving unleaded petrol from BRPL to Delhi so that about 10 per cent of the demand of unleaded petrol in Delhi could be met was indicated. There was also a note to the effect that for the balance 90 per cent of Delhi supplies the level of lead content could be brought down to 0.15 g/1 by 30th April, 1994 instead of the earlier commitment of December 1994. We enquired of the learned counsel for the Union of India regarding the progress made in this behalf since more than three months from April 1994 had elapsed. The learned counsel for the Union of India, Shri Goswami, was unable to enlighten us on the progress made in this behalf.

2. It is most unfortunate that the concerned officers have not thought it necessary to instruct the counsel about the progress of the matters as per the time schedule, they themselves had evolved. In fact, this Court accepted the statement made in the affidavit at their face value and did not intervene with the time schedule so that the concerned ministry is able to achieve the targets as per the time schedule worked out by them. This Court had hoped that a solemn statement made before this Court by a high ranking officer of the level of Additional Director of Ministry of Environment in a sworn affidavit will be strictly and scrupulously adhered to. Mr. Goswami, the learned Standing Counsel for the Union of India, and Mr. Reddy, learned A.S.G. who appeared on the last occasion and

whom we called to Court today, state that a week's time may be given to enable this Court to place on record the progress made as per the affidavit of Dr. Shyam Lal. Unfortunately no responsible officer from the concerned ministry has bothered to attend the Court to inform the learned counsel of the progress. It is a sad commentary that such a casual approach is being shown to a matter of deep concern to this Court as well as the citizen of the country. The extent of pollution in Delhi and its consequences are well-known to everyone. We do hope that on the next occasion senior officers of the Department of Environment will be before this Court to inform this Court of the action taken on the time schedule indicated in the annexures to the affidavit of Dr. Shyam Lal and we will not be compelled to take action for non-compliance of the solemn assurances given to this Court.

3. Let the matters come up on 19.8.1994

M. C. Mehta v.Union of India
1997 ELD 71
A.M. Ahmadi, K. Ramaswamy and N. Venkatachala, JJ.

Environment - Lead Free Petrol - Pollution - Further directions given.

ORDER

1. Pursuant to our order dated 12.8.94 the Additional Director in the Ministry of Environment and Forest, Government of India, has filed an affidavit indicating the action taken in response to the earlier order passed by this Court from time to time. According to this Affidavit it is stated that introduction of petrol with a maximum lead content of 0.15 g/l at all outlets in four Metropolitan Cities of Delhi, Bombay, Calcutta and Madras by December, 1994 has since been implemented. It is stated that the lead content is petrol sold in all the retail outlets of the aforesaid four metros now has a maximum lead content of 0.15 g/l since June, 1994. In view of this statement we find that the first part of the direction is complied with. It was also stated earlier in point of time and re-stated in the latest affidavit that by December, 1996 the entire country would be supplied petrol with a maximum lead content 0.15 g/l. Now that it has been possible to supply petrol with a maximum lead content of 0.15 g/l in four metros, we think that the time is ripe to extend the scheme for supply of petrol with that lead content to other areas in the country. Since in the estimation of the concerned Ministry this may be possible by December, 1996 we accept the time limit instead of rushing them and direct that the concerned Ministry will ensure the supply of petrol with a maximum lead content of 0.15 g/l in the entire country by December, 1996. As far as lead free petrol is concerned the deponent states that it was decided to introduce the same from April, 1995 in a few selected retail outlets in the aforesaid four metros to cater to the requirement of new petrol driven vehicles fitted with catalytic converters. New vehicles fitted with catalytic converters should be available by April, 1995. We, therefore, direct that lead free petrol

should be supplied at few selected outlets in the aforesaid four metros latest by April 1995.

2. Mr. Mehta then drew our attention to a note on introduction of lead free petrol appended to office memorandum dated 8.5.94 of the Ministry of Environment and Forest. We find therefrom that certain major decisions were taken by the said Ministry in consultation with all those who were present at the meeting of 17th June, 1994. A copy of the note indicating the decisions taken may be supplied by Mr. Mehta to Mr. Reddy since he had not taken necessary instructions in that behalf. That may be done before 7th November, 1994 on which date this matter will come up. In the meantime, it must be realized that the manufacturer must also be put to notice that they would have to equip the new vehicles with catalytic converters so that they can be plied on lead-free petrol.

3. On an earlier occasion when these matters came up before this Court it was suggested that to begin with of Government vehicles and public undertaking vehicles including public transport vehicles could be equipped with CNG cylinders with necessary modification in the vehicles to avoid pollution which is hazardous to the health of the people living in highly polluted cities like Delhi and the other metros in the country. Mr. Reddy states that he would require some further time to obtain instructions in that behalf. At the same time Mr. Reddy is aware that certain vehicles in the city were converted and equipped with CNG kits and the cost thereof was not abnormal. Since Mr. Reddy has not received complete instructions in that behalf we do not pass orders in that connection today but would postpone the matter to 7.11.94. By that date the instructions on that point and in all the related issues should be complete so that we may be able to give appropriate directions in the connection also. Let the matter come up on 7th November, 1994.

M. C. Mehta v. Union of India
1997 ELD 73
A. M. Ahmadi, K.S. Paripoornan and G. T. Nanavati, JJ.

Environment - Lead Free Petrol - Pollution - Further directions given.

ORDER

1. Pursuant to this Court's order passed on the earlier occasion, arrangements have been made to supply unleaded petrol with effect from 1st April, 1995 through few selected retail outlets in the four metropolitan cities of Delhi, Bombay, Calcutta and Madras. In all 154 retail outlets in the aforesaid four cities are proposed to be provided for to begin with and there would be a periodical increase in the number of outlets depending on the demand situation year-wise from 1995-96 and onwards. The Ministry of Petroleum and Natural Gas has assured that the number of retail outlets selling unleaded petrol would be progressively increased according to the demand. So far as the suggestion made in the order of 21st October, 1994 is concerned, we are told that the Government of India has

obtained the views of the various departments and in all 37 departments have responded. We are further told that there are certain inherent problems in carrying out the suggestion of converting all Government vehicles to CNG, but the details of the problems have not been indicated. As a first step, cars of Government offices located in the proximity of existing five CNG retail outlets could be converted in a phased manner. We would like to know the details of the problems so that we are able to appreciate the same and apply our mind with a view to determining whether or not the proposal to convert all Government vehicles to CNG can be implemented without loss of time. We feel that this step would help in reducing the vehicular pollution in this city to some extent. Additionally, the supply of lead free petrol with effect from 1st April, 1995 would also contribute in the reduction of the pollution in this city. But, much more has to be done. Learned counsel appearing on behalf of the Industries has also assured that sufficient number of cars, which could run on unleaded petrol, would be sold in the four metropolitan cities so that there is sufficient demand for unleaded petrol. In order that we may be apprised of the problem in regard to the conversion to CNG, we would like that the concerned officer from the concerned Ministry should be present in Court tomorrow to enable us to pass further orders.

2. Let the matter come up tomorrow.

M. C. Mehta v. Union of India
1997 ELD 74
Writ Petition (Civil) No.13029/85 with Writ Petition (Civil) No. 9300/82, decided on 9-2-1996
A.M. Ahmadi and Sujata V Manohar, JJ.

Environment - Lead Free Petrol - Pollution - Further directions given.

ORDER

1. Mr. C.V.S. Rao, counsel for the UOI, is present and he has been informed that the Secretary of the concerned Departments should give a Report as to the further development in regard to the opening up of lead-free petrol outlets, reduction in the lead content in petrol all over the country and sulphur in the diesel as well as the installation of CNG stations and kits.

2. Adjourned to 14.2.1996.

M. C. Mehta v. Union of India
1997 ELD 74
A.M. Ahmadi, S.P. Bharucha and B.N. Kirpal, JJ.

Environment - Lead Free Petrol - Pollution - Further directions given.

ORDER

1. By our order dated 21.10.94 we had taken note of the decisions taken by the Ministry of Environment and Forests in regard to the supply of lead free petrol and incidental

matters. Thereafter by a subsequent order dated 28.3.95 after dealing with the question regarding the total number of outlets supplying lead free petrol to be set up in the four Metropolitan and surrounding areas, we pursued the suggestion made on 21.10.94 in regard the conversion of Government Cars belonging to various departments to CNG with a view to reducing pollution. In regard to that suggestion we were told that the Government of India had obtained views of various departments and in all 37 departments had responded. We do not know how many departments did not respond. We were at that time told that there were certain inherent difficulties in converting all Government vehicles to CNG but the details of the problem had not been indicted. As a first step it was thought that Government vehicles located in the proximity of existing 5 CNG retail outlets could switch over to CNG. We had also desired to know the details of the problems in regard to the conversion of Government vehicles to CNG. In the submissions made by Mr. Mehta in the connection he had produced Annexure 'I' (page 441) which indicated that the question of conversion of Government vehicles was considered by the Ministry and it was felt that since the time needed for conversion is hardly two or three days per car the Government vehicles of the 37 departments which had responded, totalling 1260, could be converted in a phased manner at the rate of 30 cars per month. This schedule has, however, not been adhered to and, therefore, it has become necessary for us to take a serious view of the matter since the Government has not taken steps to keep to that schedule even though the Court had accepted their estimate. From the affidavit that has been filed in this connection we find that only 97 cars have been thus far converted whereas by now according to the schedule 720 cars should have completed the process of conversion. By our order dated 14.2.96 we referred to the earlier orders and thereafter noted the fact that the initial difficulty of securing the kit no more stares in our face. Our attention was drawn to a letter dated 16.1.96 which gave the indication that the existing cars could be equipped with CNG kit. The difficulty of procuring the kit therefore was totally eliminated. The second difficulty regarding the setting up of a Mother Station for the compressor has also been attended to because the DDA has now provided the land for the Mother Compressor. We were also told today in the course of the hearing that the cost of conversion to the CNG is higher than the cost of equipping the old vehicles with a catalytic converter. It would be for the Government to take a decision whether the cars can be fitted with catalytic converters or CNG depending on the age of the vehicle, its condition etc. In the circumstances stated above we direct as follows.

2. All the concerned Ministries of the Government of India and offices under those Ministries in Delhi will have their old cars fitted with catalytic converter or with CNG kits latest by the end of August 1996. If cars cannot be fitted with a catalytic converter or a CNG kit on account of weak compression or for any other reason they should be scrapped. Needless to say that the Court had shown indulgence in the matter of fitting the cars with CNG kits and the Government was expected to complete this exercise by the end of April, 1996 according to their own schedule in relation to 720 cars but instead they have done so for a meager 97 cars. All these 720 cars should have by this date been equipped with CNG kits. Since we were told that catalytic converter would be more economical, we have left the option with the concerned Ministry. We have also been told,

that these catalytic converters are easily available. As regard the other 540 cars out of 1260 which were to be equipped with CNG kits falling within phase 3, we were told that the exercise would be completed by October, 1996. We direct that they either fit them with CNG kits or catalytic converters by that date and if they cannot be so fitted they should be scrapped. The basic idea is that the Government of India should be a model user of vehicles so that others may follow suit. If the total number of cars used by the Ministries and Offices subordinate thereto are more than 1260, the additional cars shall also be subjected to the outer limit of October, 1996. We must impress upon the Secretary, Ministry of Surface Transport as well as the Secretary, Ministry of Environment to coordinate and ensure that the time schedule is strictly complied with. If there is any delay or breach in the time schedule the concerned Secretaries of the two Ministries will be held responsible for the same. The learned ASG appearing on behalf of the Union of India will communicate this order to both the Secretaries or their successors in office to ensure compliance. We will not brook any delay.

3. Mr. Sorabjee appearing for the Association of Indian Automobiles Manufacturers says that any assistance needed in this behalf from the manufacturers will be readily available. Let the matter come up immediately after vacation.

M. C Mehta v. Union of India
1997 ELD 76
A.M. Ahmadi, Sujata V. Manohar and K. Venkataswami, JJ.

Environment - Lead Free Petrol - Pollution - Further Directions given for two/ three wheelers.

ORDER

1. The question regarding the prevention of pollution caused by two wheelers and three wheelers was discussed on an earlier occasion. The Association of Automobiles Manufacturers had then indicated that a converter would be necessary to avoid pollution caused by leaded petrol. However, on a further examination they have now stated in the affidavit filed in this behalf that even without a catalytic converter it would be possible to avoid pollution caused by leaded petrol if the users/owners and drivers of two wheelers and three wheelers switch over to unleaded petrol. We are given to understand that no change in the mechanism of the vehicles is required for this change over and the vehicles can run on unleaded petrol without any difficulty whatsoever. This has been specifically adverted to in their affidavit dated 9th September, 1996.

2 . We have enquired of Mr. P.P Malhotra, the learned counsel for the Union of India and he too confirms that the two wheelers and three wheelers can be run on unleaded petrol without there being any need or requirement to change the engine or the mechanism of the said vehicles. We have also been told that the price of the leaded petrol and the unleaded petrol is the same and that here are sufficient outlets in the Metropolis

and the quantity of unleaded petrol supply to the outlets is also sufficient to cater to the needs of the users/owners of scooters/mopeds/motor cycles and auto rickshaws. On an earlier occasion we were informed that the total number of two wheelers in the city of Delhi is around 15.88 lakhs and the total number of three wheelers is a little less than 75,000. Conscious of the requirement to cater to the needs of these number of vehicles in Delhi alone, we enquired of learned counsel for the Union of India whether there are sufficient outlets and if yes, whether the quantity of unleaded petrol that would be sufficient to cater to the additional need of petrol that would be required by these two wheelers and three wheelers. We were assured that the number of outlets is sufficient and the quantity of unleaded petrol supplied to them would also be sufficient to take this additional load of supply for two wheelers and three wheelers. In view of this statement made before us we do not see any difficulty in issuing a direction to the users/owners of these two wheelers and three wheelers to change over to unleaded petrol.

3. At this stage Mr. Malhotra, learned counsel for the Union of India, states that when he answered the question regarding the quantity of supply in the affirmative the impression was that this direction would apply to new vehicles already on road. We do not see any reason why large number of vehicles which are already on the road should not be directed to switch over to unleaded petrol because they are the ones that are responsible for the present level of vehicular pollution in the Metropolitan cities in India. However, Mr. Malhotra states that it would be the endeavour of the Union of India to ensure adequate supply but he needs sometime to obtain instructions in this behalf.

4. Let these matters be listed after a week to enable Mr. Malhotra to make positive statement in this behalf.

M. C. Mehta v. Union of India
1997 ELD 77
A.M. Ahmadi and Sujata V. Manohar, JJ.

Environment - Lead Free Petrol - Pollution - Further Directions given for two/ three wheelers.

ORDER

1. On the last occasion when this matter came up for hearing it was suggested on behalf of the manufacturers of two/three wheelers that it would be easy to switch over to lead free petrol as that would not require any change in the engine of two/three wheelers. We had asked the Government to examine this proposal. Mr. Reddy, the learned ASG has drawn our attention to a Report of the House of Commons, which had examined this suggestion and they observed:

"We are firmly of the view that, as a general proposition, catalytic converters used with unleaded petrol potentially offer the best technological approach to reducing emission, provided that the equipment is in good working order".

Proceeding further that body observed:

"We are sufficiently alarmed by the evidence about the environmental impact of using unleaded petrol in non-catalysed cars that we urge the Government to carry out an immediate investigation into whether unleaded petrol should continue to be used in cars not fitted with a catalytic converter and we recommend that the findings should be made public soon as possible".

2. The issue was also examined by the Central Pollution Control Board and that body also came to the conclusion that the proposal to use unleaded petrol in two/three wheelers will help in the control of lead pollution. However, along side it, it is also desirable to use catalytic converters to contain the emission of volatile organic compounds including benzene and other aromatics. It, therefore, recommends that along with unleaded petrol such vehicle should also be fitted with catalytic converters, so that emissions of all harmful pollutants are minimized. In view of this report of the Central Pollution Control Board which falls with the observations of the House of Commons made in the Session of 1993-94, we are *prima facie* of the view that the changeover to lead free petrol without a catalytic converter would not be environment friendly. The issue, therefore, requires further examination with a view to ascertaining if it would be possible to switch over to lead free petrol and if catalytic converters could be provided at a reasonable price to existing as well as vehicles to be manufactured hereafter.

3. The Saikia Committee, while dealing with the question regarding pollution caused by two/three wheelers in its 25th bi-monthly report forwarded to this Court considered the option of use of propane by such vehicles to reduce pollution caused by them. Of course this report is not a unanimous report because we find that out of 5 members, two did not sign the report. We enquired of the learned ASG if the Government had examined the proposal of use of propane in two/three wheelers and he stated that there the problem is of availability and if propane is diverted for use by such vehicles, there may be shortage as the same is also used for the manufacture of LPG which is largely in demand for domestic purposes. We would like the Union of India to file an affidavit on the question of use of propane in two/three wheelers and if the quantity available in the country is not sufficient and even if sufficient it cannot be diverted in sufficient quantity for use by vehicles, the feasibility of importing the same if the import is ultimately likely to work out as cost effective. We would also like the Government of India to examine the report submitted by the Saikia Committee referred to earlier to collect and collate the information on this proposal and place it before this Court. This may be done on the premise that the alternative suggested by the Commission of the use of propane is environment friendly alternative. If there is any doubt in that behalf the same may be

communicated to this Court separately but that should not hold up the examination of the proposal from the point of view of it being environment friendly. Let the affidavit be filed within four weeks.

4. On the Question of switching over to (s/c) converters so far as Government cars are concerned we had granted time up to the end of October, 1996. The learned ASG informs us that out of the total 1954 vehicles used by the Government in different offices 419 have been converted to CNG mode and 139 have been fitted with catalytic converters. 275 vehicles have already been scrapped. He further states that after this Court's order the Government came to the conclusion that between the two options of CNG and catalytic converters the former was found to be better option both from the point of view of environment and of cost and, therefore, the decision was taken to convert remaining Government vehicles to the CNG mode. However, according to him only 133 kits are presently available. The Government is expecting one consignment by the end of November, 1996 but that would not suffice to provide all the vehicles with CNG mode. He, therefore, prays that time may be further extended up to the end of March, 1997 to enable the Government to convert all the remaining cars to CNG mode. He further states that the criteria for scrapping vehicles has been changed which would enable the Government to scrap a large number of vehicles and thereby reduce the total number of vehicles to be converted to CNG mode. Taking all these factors into consideration we extend the time up to December, 1996. We would impress upon the Government that it should import a large number of CNG kits to ensure that the entire process is completed by the end of December, 1996. Mr. Reddy the learned ASG also informs this Court that in counting the total number of vehicles, vehicles belonging to the military as well as certain imported vehicles sparingly used for foreign dignitaries have been excluded. We have taken note thereof.

5. As far as Delhi Administration is concerned, list the matter after Dussehra Holidays.

M. C. Mehta v. Union of India
1997 ELD 79
A.M. Ahmadi and Sujata V. Manohar, JJ.

Environment - Lead Free Petrol - Pollution - Further Directions given.

ORDER

M/s. G & T Resources Worldwide (hereinafter called the `company') has filed I.A.No. 6/96 and has proposed that they are prepared to experiment at their entire cost the use of propane in two stroke engines. The learned counsel for the Company states that an experiment was carried out in Canada on a two stroke vehicle taken to Canada from India by the use of propane and it was found that after further experimentation it may be

possible to effectively use propane on two stroke vehicles without fear of pollution. The Saikia Committee has also recommended the use of propane on two stroke vehicles with a micro-processor unit which would ensure that no pollution is caused by the use of propane. Mr. Dave for the Company states that the use of micro-processor unit would be considered at the second stage if it is found feasible to use propane. The first stage would be to experiment the use of propane on two stroke vehicles by using propane conversion kits. If the experiment succeeds it would be possible to import micro-processor units, if required. He further states that the propane converter unit have also to be imported from Canada and the Company already is in the process of importing a few such kits if the necessary permission is granted by the Government of India to experiment the use of propane on two stroke vehicles. Of course, propane would have to be supplied by GAIL to the Company and the Company would make safety arrangements to store propane during the experiment period. The Government of India can also associate in the experiment along with GAIL so that the after effects of the use of propane on two stroke vehicles may be assessed by them also. If this experiment succeeds the Company would be willing to import micro-processor units if they are needed to ensure that no pollution takes place by the use of propane so that unburnt propane is not discharged in the atmosphere. Unless an experiment is undertaken as a pilot project it may not be possible to ascertain whether it would be possible to switch over to propane so far as two stroke vehicles are concerned without the fear of causing pollution. There is no doubt that the use of propane is thought of with a view of overcoming the present problem of pollution caused by the use of petro-cum-oil in two stroke engines. There should not be substitution of pollution by propane in place of pollution caused by petro-cum-oil used in two stroke engines. But without undertaking an experiment it would not be possible to ascertain if the propane could be an eco-friendly substitute for petro-cum-oil. We are, therefore, of the view that the Government of India and GAIL should facilitate the company to undertake the experiment which would help in ascertaining whether propane could be available alternative to petro-cum-oil which is causing pollution at present. We, therefore, recommend that the Government of India and GAIL will grant such permissions for import as well as for the use of propane on earmarked two-wheelers and three-wheelers during the experimental period and if the experiment is found to be successful, further attempt for importing the required gadgets in bulk could be undertaken. We were told that the company is even interested in setting up a unit for manufacturing the gadgets in collaboration with a Canadian Company so that their easy supply becomes possible. The Company has already indicated to the Government of India its willingness to carry out the entire experiment at their cost and the area of assistance expected from the Government of India. We would, therefore, like the Government of India and all Authorities/Undertakings of the Government of India to extend assistance to the Company subject to such conditions as to safety requirement as may be necessary to carry out the experiment in India. The State Government (NCT, Delhi) has already shown their willingness to assist in the experiment and have shown willingness to extend such assistance as is required to enable the Company to carry out the experiment. I.A. No. 6/96 will stand adjourned for the present till the report of the experiment is received. We make it clear that the Government of India as well as GAIL will be entitled to appoint an expert so that they may be able to report on the experiment to the Court at a later date and the

Company will permit them to monitor the experiment. The Company will experiment the use of propane on 50 three-wheelers and 50 two wheelers and will report back in about four month. The Saikia Committee would also be kept informed about the developments and they may also participate in the project, if so desired.

2. So far as the Delhi Administration is concerned we enquired of the learned counsel whether or not their vehicles are fitted with catalytic converters or are run on CNG. The learned counsel states that out of a total of 560 vehicles about 141 are running on catalytic converters. We would expect the Delhi Administration to convert the rest of the vehicles either by fitting them with catalytic converters or CNG cylinders within two months from today.

3. We enquired of the learned ASG about the increase in the number of CNG outlets and lead free petrol outlets in Delhi and on Highways. He was able to give some information but we would like that he puts the same on affidavit by tomorrow.

I.A. No. 7/96:

4. Let the Union of India file its response to the I.A. within three weeks.

5. List the matter after Christmas holidays.

M.C. Mehta v. Union of India
1997 ELD 81
A.M. Ahmadi, Sujata V. Manohar and G.B. Pattanaik, JJ.

Environment - Lead Free Petrol - Pollution - Further Directions given.

1. The Twenty-Fifth Bi-monthly Report is signed by the Chairman and two Members, the third Member and the Convenor Secretary have not signed the Report. We are told that they have signed dissenting note but they are not on the file. Let the dissenting note also be placed on record.

2. The further affidavit filed on behalf of the Government discloses the increase in lead free petrol outlets. The learned ASG states that efforts are on to further increase the outlets particularly in the Delhi and Bombay Sectors. He states that in the Chennai and Calcutta Sectors the demand for lead free petrol is limited and would verify from the registration of new cars if it is on account of people going in for diesel-run cars rather than purchasing petrol-run cars. He may have the matter examined at an early date. So far as the progress report on CNG activities in Delhi is concerned we find that there is a dispensing retail outlet a Bhatia Service Station which could service about 200 cars but the February 1996 Report shows that it has serviced nil. On inquiry, the learned ASG states that, that is because the outlet has not been functioning for want of permission from NDMC in regard to putting up of shed, etc. The learned counsel for the NDMC is not

present and, therefore, it is not possible for us to ascertain why the required permission has not been granted thus far. We would like NDMC to clarify this position by filing an affidavit within the next two weeks. Similar is the position in regard to Gymkhana Service Station. The NDMC should also clarify the position in regard to this Service Station as well.

3. There is also a grievance in regard to on-line Compressor which requires about 32 KW power for running the motor but the supply is actually inadequate and consequently the voltage remains low. Mr. Maheshwari, the learned counsel for DESU, states that he would inquire into the matter and inform the Court of the actual position by the next date of hearing.

4. The MCD will also explain in the difficulty pointed out in para 7.2 of the affidavit. Mr. Reddy seeks time to file the affidavit in regard to conversion. He may do so within that time. The MCD may also file the affidavit within two weeks.

5. List the matter thereafter.

M. C. Mehta v. Union of India
1997 ELD 82
Sujata V. Manohar and M. Jagannadha Rao, JJ.

Environment - Lead Free Petrol - Pollution - Increase in outlets - Directions given.

ORDER

1. Learned counsel for the Delhi Transport Corporation states that they had offered certain alternative sites for installation of the tanks for the project concerning the use of propane for three wheelers and connected facilities. He further states that there should be no difficulty on their part in handling over the alternative sites. In view of this statement, no further directions are necessary at this stage in connection with the sites selected for the purpose.

2. At the request of learned counsel for G.R. Resources, the period for reporting on the experiment relating to the use of propane on 50 three-wheelers under order dated December 9, 1996 is extended for a further period of four months.

3. Adjourned for four weeks since the affidavit on behalf of the Ministry Environment has been handed over only this morning.

4. I.As 8 and 9 of 1997 be placed on board after four weeks.

M. C. Mehta v. Union of India
1997 ELD 106
Writ Petitoin (Civil) No. 13029/85 with Writ Petitoin (Civil) No. 9300/82, Writ Petitoin (Civil) No. 939/96; decided on 14-2-1997
A.M. Ahmadi, CJI., S.C. Sen and Sujata V. Manohar, JJ.

Environment – Pollution in Delhi – Catalytic converter for diesel trucks and buses Court issues certain directions.

ORDER

1. In the 25th Bi-Monthly Report of the Committee, Paragraph 25.23, it is mentioned that while the Committee was in Canada they learn that there could be a Catalytic Converter for diesel trucks and buses. At present the sulphur content in the diesel has been brought down to 0.5% pursuant to the earlier order passed by this Court. The question for this Court for examining was whether it could be brought down further to protect the environment. It is very this point of view that the Committee also examined the question regarding the installation of catalytic converters in heavy vehicles plying on diesel. One of the members of the Committee representing the Automobile Industry had, however, filed his dissenting notes stating that these catalytic converters were not available in the country and has to be imported for which certain experimentations are necessary. Mr. Reddy, the learned counsel for the Union of India states that the Union of India will examine this proposal of the Committee and will, thereafter, file a proper affidavit explaining whether or not it is feasible to fit the existing or future manufactured heavy vehicles with such catalytic converters. He states that he may be given four weeks time to have the matter examined by the Government of India.

2. As far as two stroke engine vehicles are concerned we have already given directions earlier in point of time for carrying out experiments on the use of propane and we are told that the exercise is in progress. Mr. Reddy, however, states that as far as the Government is concerned the Company carrying out the experiment has not involved the Government and the GAIL as yet but he has no grievance to make at this stage because he states that he hopes they would be associated with the exercise.

3. With reference to our order 8.3.96 the learned counsel for the NDMC states that he was not present on that date because NDMC is not a party and had no intimation to be present at the hearing. He states that so far as Gymkhana Service Station is concerned permission has already been granted. So far as Bhatia Service Station is concerned certain particulars have been sought from the proprietors but they have not been received as yet. These have been outlined in paragraph 4 of their affidavit dated 6th February, 1997. Learned counsel also states that as soon as the particulars are given the matter would be processed without loss of time. He also complains that some illegal construction has been carried out by M/s Bhatia Service Station. It will thus be seen that so far as NDMC is concerned it has granted permission in one case and is awaiting clarification in the other

and counsel states that as soon as the clarification is received the matter will be examined forthwith and appropriate steps will be taken.

4. Counsel for MCD states that for the land required for CNG Station in Sarai Kalen Khan, the requirements of the Master Plan have to be adhered to and if the land falls within the Master Plan the terms and conditions imposed in that behalf to be respected. In that context the contention is that for setting up of CNG Station and allotment of land. There are some difficulties. However, counsel for the DDA states that he will get the matter examined and file an affidavit in that behalf. Counsel for DDA states that they have already changed the user and the communicated the same to MCD. However, counsel for MCD states that they have not yet received any such communication, nor have they been informed of the outcome of the Technical Committee Meeting held on 4.2.1997. Counsel for DDA states that he will file and affidavit and clarify the position within a week's time.

5. Let the matters come up after four weeks.

M. C. Mehta v. Union of India
1997 ELD 148
A.M. Ahmadi and N.P.Singh, JJ.

Environment – Lead Free Petrol – Pollution – Further direction given.

ORDER

1. It appears that during the pendency of the present proceedings, the Committee headed by Mr. Justice Saikia has submitted as many as 13 interim reports making various recommendations. Mr. Goswami the learned senior Counsel appearing, on behalf of the Ministry of Environment in the Government of India states that the ministry would like to submit its response to the various recommendations made by the Committee because it has reservations in regard to certain recommendations. It would, therefore, like the Ministry of Environment to prepare a Table, Column (1) whereof would state the number of the interim report, Column (2) could contain the recommendations made by the Committee, Column (3) would state briefly the response of the Ministry of Environment and Column (4) would be reserved for remarks by the petitioner M.C. Mehta. The table may be prepared within six weeks from today and copy served on Mr. M.C. Mehta. Mehta will complete Column (4) of the Table with his remarks and present the same to the Court so that the Court is able to appreciate the points of view of the Committee, the Ministry of Environment as well as Mr. M.C. Mehta, the petitioner herein. The counsel for the Union of India will furnish to Mr. Mehta sufficient number of copies of the Table to enable him to complete the fourth column and present the table to the Court as well as return completed copies to the learned counsel for the Union of India. This he may do within four weeks after he has received the Table from the counsel for the Union of India. We do hope that having regard to the seriousness of the problem of environmental

pollution every party will show a sense of urgency in the matter and will strictly adhere to the time-schedule so that this Court may be able to deal with the matter effectively immediately after the summer vacation.

2. Let the petitions come up in the first week of August, 1995.

M.C. Mehta v. Union of India
1997 ELD 83
Writ Petition (Civil) No. 13381/84; decided on 25-4-1997
M.K. Mukherjee and S. Saghir Ahmad, JJ.

Public Interest Litigation - Pollution - Taj Area - Court earlier had granted permission for holding of Yanni's music concert on certain conditions - Court issues further directions.

ORDER

1. I.A. Nos. 40-41/97
I.A. Nos. 40-41/97 are rejected.
I.A. No. 28/97

2. I.A. No. 28/97 is rejected.
I.A.No. 38/97

3. When this application is taken up for hearing our attention is drawn to two reports prepared and submitted by NEERI relating to impact of Yanni's music concert on Taj Mahal. The reports indicate that they were prepared in compliance with the order of this Court dated March 18, 1997. Under the said order and Court had constituted a Committee, of which an officer of NEERI was to be a member, to submit a report on the above matter and not NEERI alone. Indeed, the Committee has submitted the report which is on record. The Registry is therefore directed to return the reports submitted by NEERI to Mr. R. C. Dikshit, one of their scientists, who is personally present. As regards the report of the Committee the learned counsel for the parties submit that they have not been supplied with copies thereof and hence they are unable to comment thereupon. Registry is directed to serve copies of the same to the concerned parties and to list this application for hearing on 1-5-1997.

I.A. No. 37/97

4. In view of the averments made in the affidavit filed on behalf of the applicants on April 22, 1997 and the letter dated April 11, 1997 addressed to Agra Founders Association by National Metallurgical Laboratory (NML), Jamshedpur (copy of which is annexed to the affidavit, wherein the latter has indicated the status of Coke less Cupola technology available to it, we direct that a notice issue calling upon NML to appear before this Court on 1.5.1997 and apprise us of the above matter. Dasti permitted.

M.C. Mehta v. Union of India
1997 ELD 87
Writ Petition (Civil) No. 13381/84, decided on 22-11-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Pollution - Agra Region - Court makes certain observations on progress made in the control of pollution.

ORDER

Item 'A'

1. List on November 26, 1996

Item 'B'

2. Mathura Refinery has placed on record the milestone scheduled for Mathura Refinery for 50 bedded hospital project. The project commenced on October 1 1996. It is stated that all the six stages of the hospital indicated in the schedule shall be completed by August 30, 1999. By and large, we agree with the schedule. We direct that the construction of the hospital shall be complete by December 31, 1998 and the hospital shall be commissioned fully thereafter within 3 months. By April l, 1999 the hospital should be admitting and treating patients of the area. We direct the Mathura Refinery to keep on filing the progress report after every 4 months.

Item C

3. Pursuant to this Court's order dated October 29, 1996 regarding brick-klin operators, Mr. Pradeep Mishra states that the matter is being examined at the level of the U.P. Government. Mr. Mishra further states all the thermal power stations have been directed to supply fly-ash free of charge to the brick-klin owners.

4. Pursuant to this Court's order dated November 1, 1996, an affidavit has been filed by R. N. Paliwal, Special Secretary, Department of Urban Development, Government of U.P, Lucknow. It is stated that as desired by this Court, the matter regarding garbage disposal and cleanliness of the city of Agra was considered by the Secretary, Department of Urban Development, Chief Secretary, State of U.P. and the Governor of U.P. In the affidavit, 14 measures adopted in doing the needful have been listed. It is stated that one Manoj Singh has been appointed as Mukhya Nagar Nigam Adhikari, Agra and a Special Committee has been appointed to look into the matter.

5. We direct the Central Pollution Control Board to send an inspection team to Agra and file report in this respect within 10 days.

6. To come up on December 3, 1996.

M. C. Mehta v. Union of India
1997 ELD 96
Writ Petition (Civil) No. 13381/84, decided on 3-10-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Taj Trapezium Zone - Court issues further directions.

ORDER

Office Report dt. 1.10.96

Item 'A'

1. Pursuant to this Court's Order dated September 4, 1996 Mr. P. K. Sharan, Deputy Superintending Archaeologist, Archaeological Survey of India Agra, Circle, Agra has filed an affidavit. Para 3 of this affidavit is as under:

> "That almost whole of Agra district and parts of Mathura, Aligarh, Etah, Ferozabad districts of U.P. and a part of Bharatpur district of Rajasthan fall within Taj Trapezium Zone. A list of centrally protected monuments located within Taj Trapezium Zone is submitted herewith as Annexure No. 1. Among these monuments, namely, Taj Mahal, Agra Fort and Fatehpur Sikri are also designated as World Heritage Monuments. It is pertinent to mention here that A.S.I. protects monuments of National importance and not significant monuments."

2. Annexure 'I' to the affidavit is a list of the centrally protected monuments located within Taj Trapezium. This Court's order dated May 10, 1996 shall operate in respect of the monuments which are listed in Annexure 'I'. Registry to give a copy of Annexure 'I' to the learned counsel for the brick kiln owners for their information and necessary records.

3. Mr. Pradeep Misra, learned counsel for the State of UP states that the matter concerning rehabilitating the brick kiln owners is under consideration of the Government. He further states that regarding the disposal of fly ash instructions have already been issued by the UP Government. He shall place on record an affidavit regarding the scheme to rehabilitate the brick kiln operators. He shall also file a copy of the instructions regarding the fly ash within three weeks from today. To come up on 24th October 1996.

Item 'B'

4. Pursuant to this Court's order dated August 7, 1996 August 13, 1996 and September 12, 1996 regarding shifting of various shops/emporia from within the Taj premises, Mr. Satendra Singh Yadav, Public Relation Officer, Agra Development Authority, Agra has filed an affidavit dated October 3, 1996. In para 2 of the affidavit, the details of the sites available for the seven shops/emporia have been given. It is agreed by the learned counsel that the allotment of the space for relocation at the alternative site shall be done by way of draw of lots between them. This shall be done within one week from today.

The allottees shall take over the possession within one week thereafter. All the allottees shall stop functioning at their present location on or before December 31, 1996. The Archaeological Survey of India shall take over possession of the area from the allottees on or before December 31, 1996. All allottees may remove their fixtures installed by them without damaging any part of Taj premises.

5. The Agra Development Authority has already framed Taj Beautification Plan. Mr. Satish Chandra states that there is further scope of modification in the said plan. The allottees may approach the Agra Development Authority and indicate their requirement of land which is needed by them for permanently setting up their establishments within the 'plan' area. We have no doubt that the Authority shall consider the matter sympathetically.

6. The Archaeological Survey of India shall file the compliance report by the first week of January, 1997. We make it clear that the ASI shall not permit any shopping complex to come up within the Taj premises and also within 200 metres outside and around the premises.

Item 'C'

7. Learned counsel for Mathura Refinery states that the Refinery was under the impression that this matter is to be listed on October 8, 1996 and he is not in a position to assist the Court properly. To come up on October 8, 1996. Learned counsel stated that he would file a short affidavit indicating the details of the time schedule within which the hospital and the mobile dispensaries are to be made operative. To come up on 8th October, 1996.

M. C. Mehta v. Union of India
1997 ELD 100
Writ Petition (Civil) No. 13381/84, decided on 25-9-1996
Kuldip Singh And S. Saghir Ahmad, JJ.

Taj Trapezium - Court earlier had directed continuous supply of electricity and better security - Court records it satisfaction on the grant of additional money for electricity and also measures undertaken to provide security to the Taj Trapezium.

ORDER

Item 'A' of the Office Report dt. 23.9.1996

1. Pursuant to this Court's order dated September 4, 1996 with regard to continuous supply of electricity in the city of Agra, learned counsel appearing for the Ministry of Power has placed on record a letter dated September 19, 1996 addressed to the Chief Secretary, Government of Uttar Pradesh by Mr. K. M. Lal, Adviser (SP), Planning Commission, New Delhi. The letter states that keeping in view the order of this Court dated September 4, 1996, the Planning Commission has agreed for additional provision

of Rs. 90 crore for power sector transmission and distribution in order to implement the order of this Court for the protection of Taj Trapezium.

2. The amount having been supplied, nothing more is required to be done towards supplying funds for the projects. We direct the Secretary, Energy, Government of Uttar Pradesh and the UP Electricity Board through its Chairman to go ahead with the project and complete the same within the time schedule as already indicated by them in this Court. A responsible officer of the UP Electricity Board shall file an affidavit indicating the progress made in this respect before October 30, 1996.

3. List the matter on 31st October, 1996.

Item 'B'

New Item 'Vandalism at the Taj and the Fort'

4. Pursuant to this Court's order dated August 7, 1996 and September 4, 1996, an affidavit has been filed by Mr. P. K. Sharan, Deputy Superintending Archaeologist, on behalf of the Director General, Archaeological Survey of India. It is stated that several measures which are being undertaken to provide security to the Taj Trapezium have been indicated in the affidavit. Nothing more need to be done in this matter. This is closed.

M.C. Mehta v. Union of India
1997 ELD 144
Kuldip Singh and S. Saghir Ahmad, JJ.

Environment – Taj Mahal – Notification Prohibiting construction within 200 mts of a protected monument is prohibited – Court issues consequential directions regarding Mathura Refinery, brick kiln operators and other constructions within 200 m. of Taj Mahal.

ORDER

W.P. (C) 13381/84

Office Report

Item A

1. Pursuant to this Court's order dated Oct. 24, 1996 the concerned officers are present in Court. Mr. K.N. Bhatt, Addl. Solicitor General appearing for the Union of India and for the Planning Commission states that the matter is likely to be discussed between the Planning Commission and the Union of India. He seeks short adjournment.

2. To come up on 18th Nov. 96.

Item B.

3. Pursuant to this Court's order dated October 8, 1996 Mr. J.L. Raina, Executive Director, Mathura Refinery has filed an affidavit dated October 29, 96. Operative part of the affidavit is as under:

> "..... That after visiting various, sites a plot of land admeasuring about 5 acres bearing. Khasra No. 170 at Village Navada on the National Highway No. 2 about 3 kms. From the Refinery Township towards Delhi on the outskirts of Mathura Town was found to be suitable and has, therefore been selected for the setting up of the hospital. This site was selected in consultation with the District Administration. The title verification and other formalities are being carried out. The owners of the said land have also expressed their willingness to sell the said land to the IOC. The District Administration has assured full co-operation in getting the said land transferred in favour of the IOC as early as possible. As things stand today, the said land is expected to be transferred to IOC by the end of November, 1996. In case the Refinery faces any problem in acquiring the said land it will approach this Hon'ble Court for appropriate directions and relief.
>
> It may further be mentioned that M/s Hospital Services Consultancy Corporation (India) Ltd., a Government of India Enterprise has been awarded the job of preparing the project report. The Mathura Refinery is taking all appropriate steps to complete the project in the shortest possible time....."

4. Mr. Reddy, Addl. Solicitor General appearing for the Oil Corporation Ltd. states that a short affidavit indicating the time schedule within which the 50-bed hospital is to be constructed and commissioned shall be filed in this Court within three weeks.

5. To come on 18th Nov. 1996.

Item C

6. Mr. Sehgal, Learned Counsel for the State of U.P. States that the matter of rehabilitation of the brick kiln operators is under consideration of the Govt. He states that four departments are involved and the matter is being examined. So far as utilization of fly ash is concerned Mr. Sehgal states that an affidavit shall be filed within two weeks.

7. Adjourned for 18th Nov., 1996 at 2 p.m.

Item D

8. Pursuant to this Court dated 10th April, 1996 Mr. Sehgal appearing for the State of U.P. states that the construction of by-pass is ahead of schedule. We appreciate the statement made on behalf of the State of U.P.

9. To come up on 16th Dec., 1996.

10. This Court on August 7, 1996 passed the following order:

> "..... Mr. M.C. Mehta on April 15, 1996 placed on record Notification No. So 1764 dt. June 16, 1972 which was issued under Rule 32 of the Ancient Monuments &

Archaeological Sites and Remains Rules, 1959 whereunder construction within 200-m. of a protected monument is prohibited. By the order dt. April 15, 1996, we stayed all construction within 200-m. of Taj Mahal. One of the construction which is being done within the 200 m. of Taj Mahal is a Police Station. There may be some other encroachers occupying this area. We direct that all those who are occupying any part of land within 200-m. of Taj Mahal shall be removed from that area, by force, if necessary within three months from today. We direct the police authorities to demolish all the construction made by them within 200-m. of Taj Mahal. We direct the District Magistrate/Collector and the Supdt. of Police of Agra to have this area vacate and hand it over to the Archaeological Survey of India. We are informed that within the area of 200-m. there is an ancient mosque. The mosque which has a boundary area, shall not be touched. Any construction within the boundary wall of the mosque shall also not to be touched....."

Agra Cant Constituency, U.P. is personally present in the Court. He states that there are large number of constructions including religious constructions within 200 mts. area of Taj Mahal. According to him most of the construction area is not illegal and the occupants are not encroachers. Mr. Agarwal, Counsel appearing for some of the residents and occupants has also supported Mr. Mehra.

11. Mr. Sehgal, Learned Counsel for the States of U.P. States that the constructions which were made after 16th June, 1992 are in the process of demolition. He further states that so far as other construction are concerned the matter is being examined by the U.P. Govt. and necessary applications, if necessary, shall be moved in this Court for appropriate orders.

M.C. Mehta v. Union of India
1997 ELD 84
Writ Petition (Civil) No.3727/85, decided on 10-10-1997
Kuldip Singh and S. Saghir Ahmad, JJ.

Patratu thermal Power Station - Monitoring of pollution control devices - Court transfers the matter to Patna High Court.

ORDER

Writ Petition (Civil) No. 3727/85
Reg: M/s. Patratu Thermal Power Station

1. This Court has been monitoring the construction of the pollution control devices by the Patratu Thermal Power Station. Various orders passed by this Court from February 9, 1993 to August 22, 1996 (XVI orders) have been reproduced in the office report dated August 27, 1996. Thereafter this Court passed detailed order on September 18, 1996. On September 25, 1996 Mr. R.P. Yadav, Chairman, Bihar Electricity Board and Mr. Kashori Prasad, General Manager, Thermal Power Station, Patratu were personally present in Court. They assured this Court and gave an undertaking that the pollution control

measures shall be completed and put into operation in accordance with the time schedule already filed in this Court. The matter stands adjourned to December 3, 1996.

2. Since the time schedule for construction of Pollution Control Devices had already been filed by the authorities, what remains to be done is to monitor the matter for some more time. We are of the view that the High Court at Patna would be in a better position to monitor the construction of the pollution control devices by the Industry. We, therefore, transfer this matter to Patna High Court to be treated as a writ petition under Article 226 of the Constitution of India and be dealt with in accordance with law. The Registry of the High Court shall inform the parties to appear before the High Court on December 3, 1996 the date already fixed by this Court.

3. The side issue in this matter is the rehabilitation of the ousters from the land which has been acquired for the purpose of construction of fly ash ponds. The High Court may look into this aspect while monitoring the matter.

4. The Registry to send all the necessary papers along with all our order to the Patna High Court within one week from today.

5. The issue regarding M/s. Patratu Thermal Power Station is disposed of.

Transfer Case (C) Nos. 4 and 5/94:

6. The transferred cases may also be sent back to the High Court to be dealt with in accordance with law. The same are disposed of accordingly.

M.C. Mehta v. Union of India
1997 ELD 86
Writ Petition (Civil) No. 3727 of 1985, decided on 22-11-1996
Kuldip Singh and S. Saghir Ahmed, JJ.

Hazardous industries in West Bengal - Court issues directions regarding the status report already filed.

ORDER

1. The West Bengal pollution Control Board has placed on record status report by way of an affidavit of Mr. Biswajit Mukherjee. So far as M/s. Bengal Paper Mills, M/s. Birla Jute & Industries Ltd. M/s. Shaw Wallace & Co. Ltd. and M/s. Metal and Steel Factory, Ichapur are concerned, they have met the prescribed minimum standards as indicated in the report.

2. So far as M/s. Birla Carbide and Gases, Village & Post Birlapur is concerned, the report indicates that they have not yet fully installed the pollution control devices. This Court by the order dated April 12, 1996 directed the industry to set up the pollution control devices in every respect within four weeks from that date. Learned Counsel for

the industry states that since the last inspection by the Board it has been done. The Board may inspect the industry and file a report within 10 days. List this matter on December 2, 1996.

3. So far as M/s. Eastern Railway is concerned, the work regarding Howrah Railway Station is progressing in accordance with the schedule. However, the following three units of the Railway have not set up the necessary pollution control system.

1. Lijuah Workshop situated at Lijuah, Howrah under Eastern Railway.
2. Kanchapara Workshop situated at Kanchapara under Eastern Railway.
3. Kharagpur, Workshop situated at Kharagpur, Midnapore under S. E. Railway.

4. Issue notice to the General Manger, Eastern Railway and South Eastern Railway, returnable on December 2, 1996, indicating why pollution fine be not imposed on them. Notice be severed through the West Bengal Pollution Control Board.

5. So far as M/s. ISCO, Burnpur Works, P.O.-Burnpur, District-Burdwan, West Bengal is concerned, it is stated in the report that the industry has commissioned air pollution control system peremptorily and the results of the gaseous emissions of different stacks have also met the norms, save and except Coke Oven Battery No. 10. We direct that the said Coke Oven Battery shall not be commissioned or put into operation without prior permission of the West Bengal Pollution Control Board.

6. The contempt notices issued to the officers of this company are discharged.

7. Pursuant to this Court's order dated August 6, 1996 it is stated that M/s. Hindustan Fertiliser Corporation Ltd., Durgapur Unit is operating on oil. Although the particulate matters are under control because of change of fuel from coal to oil, so far as other gases being emitted by the industry are concerned, the West Bengal Pollution Control Board has not done the inspection. The Board may do it without one week and place the report on the record of this Court before December 2, 1996. List the matter on December 2, 1996. Meanwhile, Mr. Dutta states that he would file revised schedule regarding construction/completion of the permanent pollution control devices.

8. The matter regarding thermal power plants in the West Bengal be also listed on December 2, 1996.

9. The matter regarding Nagrik Manch be listed on 26.11.1996.

10. Statute report regarding sugar mills to the extent that UP Pollution board can manage be placed on record by 6th December, 1996. List the matter regarding sugar mills in the State of UP be listed on December 6, 1996.

M.C. Mehta v. Union of India
1997 ELD 95
Writ Petition (Civil) No. 3727/85, decided on 25-9-1996
Kuldip Singh And S. Saghir Ahmad, JJ.

Patralu Power station in Bihar – Courts direct the Thermal Station to file an affidavit that all pollution control measures have been put into operations.

ORDER

1. Pursuant to this Court's order dated September 18, 1996, Mr. R.P. Yadav, Chairman of the Bihar Electricity Board and Mr. Kishori Prasad, General Manager, Thermal Power Station, Patralu are present in Court. They have assured us and undertaken that the pollution control measure as indicated by them earlier before this Court shall be completed and put into operation in accordance with the time schedule indicated by them. We direct the Thermal Power Station to file an affidavit of a responsible officer before November 30, 1996 indicating the progress made in the execution of the project.

2. List the matter on 3rd December, 1996.

M.C. Mehta v. Union of India
1997 ELD 95
Interlocutory Appilcation No. 18 & 22 in Writ Petition (Civil) No. 4677/85, decided on 8-10-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Ridge Area – Court directs the Ridge Management Board to file an affidavit clearly stating whether the construction of the Polo ground by the Army authorities is being made on the ridge area or in the area outside the ridge.

ORDER

1. Learned Counsel for the Ridge Management Board states that he would file an affidavit clearly stating whether the construction of the Polo ground by the Army authorities is being made on the ridge area or in the area outside the ridge. A detailed affidavit shall be filed by 11th October, 1996.

2. To come up on 11th October, 1996.

M.C. Mehta v. Union of India
1997 ELD 146
Writ Petition (Civil) No. 3727, 4677/85, 327/90 & 725/94
Kuldip Singh and S. Saghir Ahmed, JJ.

Environment- Construction of Sewage Treatment Plants in Uttar Pradesh, Bihar and West Bengal in respect of cities situated on the bank of river Ganga- Directions given.

ORDER

1. The total fine amount collected from time to time may be deposited in a Bank as fixed deposit for a further period of 30 days. Meanwhile we have requested Ld. Attorney General and also Mr. M.C. Mehta to examine as to how this money is to be utilised.

2. To be listed on 19.11.1996.

Construction of Sewage Treatment Plants (STPs) in three states i. e. U.P., Bihar & West Bengal.

3. An affidavit dated Oct. 8, 1996 has been filed by Mr. Bhag Singh on behalf of National River Conservation Directorate, Ministry of environment & Forest. we have heard Ld. Attorney General and Mr. Mehta. We have suggested to the Ld. Attorney General that a nodal agency/ authority may be constituted to supervise the construction and completion of the STPs in respect of sewerage and house- hold waste generated in the cities situated on the bank of River Ganga. We have further suggested that a technical authority like, NEERI may also be instructed to have the construction of the projects examined from time to time and the progress report submitted to the Govt. of India and to this Court. The Ld. Attorney General states that he would have the matter examined and come back to this Court within two weeks.

Adjourned for 19th Nov., 96 at 2. p.m.

W.P. (C) No. 327/90

4. This Court on Jan.19, 1995 passed the following order regarding the Gomti component or Ganga Action Plan:

> "---- Mr. Vinay Shankar has referred to the second affidavit filed by Mr. Bhag Singh, on Sept. 26, 1994, and has invited our attention to internal page 39 of the affidavit wherein the Gomti component of Ganga Action Plan (Phase ii) has been referred to so far as costs estimates are concerned. Three cities have been picked up under the Gomti component viz. Lucknow, Sultanpur and Jaunpur. About 64 crores of rupees which are to be received as aid from the Great Britain (Overseas Development Administration of U.K.) according to the present estimate are likely to be spent on the various projects detailed in the affidavit in the three cities. On our suggestion, Mr. Vinay Shankar has been agreed that he would place before this Court, by way of an affidavit, various phases regarding completion of interception/ diversion and setting up and completion of sewage treatment plant in the city of Lucknow for our consideration. After examining the affidavit, appropriate directions regarding the spending the money out of the aid received in respect of the various stages of the projects shall be issued."

5. It seems nothing has been done thereafter. Mr. Panjwani states that due to paucity of time the Central Pollution Control Board has not been able to complete the inspection of all the industries. He may do so before the reopening of the Court after Diwali vacations. We further direct the State of U.P. and the U.P. Jal Nigam to give its response regarding

setting up of the Sewage Treatment Plant in the three cities mentioned above and selected as a part of the Gomti component of the Ganga Action Plan. The affidavit shall be filed within two weeks.

6. To come up on 19th November, 1996.

M.C. Mehta v. Union of India
1997 ELD 88
Interlocutory Application No. 22 in Writ Petition (Civil) No. 4677 of 1985, decided on 10-10-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Hazardous industries in Delhi – Hot Mix Plants – Court orders closure of 43 Hot Mix Plants and also issues certain other consequential directions including one year wages to workers as shifting bonus.

ORDER

Regarding Hot Mix Plants:

1. This Court by the Order dated March, 13, 1996 directed the Central Pollution Control Board (the Board) to issue show cause notices to the Hot Mix Plants located in Delhi as to why they be not relocated. The Board issued notices dated March 26, 1996 to the Hot Mix Plants. Copy of the notice has been placed on the record. After consideration the replies/objections filed by 36 Hot Mix Plants located in Delhi, the Expert Committee of the Board came to the following conclusion:

> "The process emissions from Hot Mix Plants contain particulate matter and sulphur dioxide besides Poly Aromatic Hydrocarbons, most of which are proven carcinogens. Therefore, the expert Committee of CPCB has categorized Hot Mix Plants as hazardous industry (Ha–Category). As per Master Plan 2001, all hazardous/noxious industries should be shifted out of the UT of Delhi.
>
> Most of the Hot Mix Plants belonging to Govt. as well as private sectors are located near residential areas and therefore, such installations pose severe health risks to inhabitants nearby (Lal Kuan, Rangpuri, Mehrauli, Khyalla).The general housekeeping of most of the Hot Mix Plants is poor with no concern for environmental protection. The admission data of a Hot Mix Plant equipped with pollution control device and the ambient air quality data near the hot mix plant, as reported, speak of severe pollution due to particulate matter beyond prescribed limit.
>
> Regarding the question of temperature fall of Hot Mix during transportation to long distances, it is the considered opinion of the Expert Committee that even if Hot Mix Plants are located outside Delhi, except during severe winter, the quality of mix is not expected to fall if the desired temperature of the Hot Mix containers is

maintained. Therefore, relocation of Hot Mix Plant will not pose any service problem."

2. The Board has further placed on record the analysis report regarding extent of pollution created by each of the Hot Mix Plants. .....

3. It is obvious from the analysis report that the emission of particulate matters in respect of these Hot Mix Plants is 679 mg and 829 mg respectively. The permissible limit under the Environment Protection Rules is 150 mg. The Hot Mix Plants having been categorized as hazardous industries (Ha) under the Master Plan 2001, have to be relocated. For the reasons given by this Court in Interlocutory Application No. 22 in Writ Petition (C) No. 4677 of 1985- M.C.Mehta v. Union of India and ors. decided on July 8, 1996, we hold that the following 43 Hot Mix Plants, beings 'H' category industries, cannot operate in the city of Delhi .....

4. We, therefore, hold and direct as under:-

(1) The above listed 43 Hot Mix Plants cannot be permitted to operate and function in the Delhi. These Hot Mix Plants may relocate/ shift themselves any other industrial estate in the NCR. We direct that the 43 Hot Mix Plants listed above shall stop functioning and operating in the city of Delhi with effect from February 28, 1997. These Hot Mix Plants shall close down and stop functioning in Delhi with effect from the said date.

(2) The concerned Deputy Commissioner of Police shall, as directed by us, effect the closure of the above Hot Mix Plants with effect from February 28, 1997 and file compliance report in this Court within 15 days thereafter.

(3) The National Capital Region Planning Board shall render all assistance to the Hot Mix Plants in the process of relocation. This direction shall go to the Board through its secretary. The National Capital Territory, Delhi administration, through its Chief Secretary and Secretary, Industries' and the State of Haryana through its Chief Secretary and Secretary, Industries and the state of Uttar Pradesh through its Chief Secretary and Secretary, Industries, shall provide all assistance, help and necessary facilities to the Hot Mix Plants which intend to relocate themselves in the industrial estates situated in their respective territories.

(4) The allotment of plots, construction of factory, buildings, etc. and issuance of any licences/permissions etc. shall be expedited and granted on priority basis.

(5) In order to facilitate shifting of Hot Mix Plants from Delhi, all the four States constituting the NCR shall set up unified single agency consisting of all the participating States to act as a nodal agency to sort out all the problems of such Hot Mix Plants. The single window facility shall be set four States is through the within one month from today. This direction to the four States is through the Chief Secretaries of the concerned States. The Registry shall convey this direction separately to the Chief Secretaries also with a copy of this judgment.

We make it clear that no further time shall be allowed to set up the single window facility.

(6) The use of the land which would become available on account of shifting/relocation of the Hot Mix Plants shall be permitted in terms of the orders of this Court dated may 10, 1996 in I.A. No. 22 in writ petition (C) 40677/85.

(7) The shifting Hot Mix Plants on their relocation in the new industrial estates shall be given incentives in terms of the provisions of the Master Plan and also the incentives which are normally extended to new Hot Mix Plants in new industrial estates.

(8) The closure order with effect from February 28, 1997 shall be unconditional. Even if the relocation Hot Mix Plants is not complete they shall stop functioning in Delhi with effect from February 28,1997.

(9) The workmen employed in the above mentioned 43 Hot Mix Plants shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the Hot Mix Plant is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the Hot Mix Plants in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the Hot Mix Plant shall be given one year's wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the Hot Mix Plants which fail to relocate and the workmen who are not willing to shift along with the relocated Hot Mix Plants, shall be deemed to have been in retrenched with effect from February 28,1997 provided they have been in continuous service (as defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in the Hot Mix Plants concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The 'shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before March 31, 1997.

(f) The gratuity amount payable to any workmen shall be paid in addition.

M. C. Mehta v. Union of India
1997 ELD 97
Interlocutory Application No. 18 & 22 in Writ Petiiton (Civil) No. 4677/85, decided on 3-10-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Environment – 28 Industrial Areas in Delhi – Installation of CETPs – Court monitors the progress made in the installation of CETPs and issues further consequential directions.

ORDER

I.A. No. 22:

1. This Court is monitoring the construction of CETPs in respect of 28 industrial areas in Delhi for the last about one year. Pursuant to this Court's order dated September 11, 1996 Mr. Ganga Das, Principal Secretary and Commissioner, Department of Industries, Government of N. C. T. of Delhi has filed a short affidavit dated October 1, 1996. It is stated in para 1 of the affidavit that:

> "pursuant to the orders of this Hon'ble Court dated 11-9-1996, the Government of Delhi will provide Rs. 22.5 crore as its contribution for the construction CETPs in the Capital. The amount shall be released in terms of the directions of this Hon'ble Court.

2. Mr. Malhotra has placed on record the affidavit by Dr. Shyam Lal, Director in the Ministry of Environment and Forests. The affidavit is dated October 1, 1996. The operative part of the affidavit is as under:-

> "3. According to the Scheme, a maximum amount of Rs. 50 lakh per CETP or 25% of the cost of CETP, whichever is less, could be made available as Central subsidy subject to the matching grant made available by the State Government. An administrative decision has already been taken to raise the Central subsidy from Rs. 50 lakh to Rs. 1.00 crore. As such, Central Government would be in a position to sanction a total of Rs. 15 crore for fifteen CETPs to be set up by the Government of Delhi/DPCC. An amount of Rs. 3.00 crore is available as per the Budget Estimates of MOEF for the financial year 1996-97, which is being revised to Rs. 18 crore and the matter is under consideration from financial angle for re-appropriation purposes.

Out of the available funds of Rs. 2.80 crore as the first instalment for the construction of CETPs has been issued on 1.10.1996 (Annexure-1).

The remaining amount would be released after the necessary re-appropriation is done from financial angle as also depending upon the progress of work."

3. It is obvious from what is stated in the affidavit of Dr. Shyam Lal that Government of India has sanctioned Rs. 15 crore for the 15 CETPs to be set up by the Government of Delhi and DPCC. We make it clear that there are 28 industrial estates which are to be provided with the CETPs. Initially 28 CETPs were to be constructed and in that eventuality the Government of India's contribution (Rs. 1.00 crore for one CETP) would have come to RS. 28 crore. NEERI has devised the whole project in such a way that instead of 28 CETPs, 15 CETPs are being set up to cater the need of all the 28 industrial estates. In this view of the matter, even on the basis of the policy of the Government of India, it is required to contribute the total amount of Rs. 22.5 crore. Mr. Malhotra, learned counsel appearing for the Union of India, has very fairly stated that the matter is under consideration and the Union of India shall finally sanction to Rs . 22.5 crore to meet the requirement of the project. We have no doubt that the Government of India would be in a position to contribute Rs. 22.5 crore towards the project-costs.

4. Dr. Singhvi, appearing for the IDBI, has again brought to our notice the cumbersome procedure which is required to be followed by the industries before they are entitled to the benefit of the loan to be advanced by the IDBI. We have considered this aspect in various earlier orders passed by this Court. Be that as it may, Dr. Singhvi has brought to our notice the five requirements under the scheme. He states that industries must form societies, the efficacy of the treatment plant should be certified by the authority, financial analysis to be done, unit wise contribution has to be indicated and accounting parameters including D.S.C.R/D.E.R. are to be indicated. It is clear from the record that all the requirements of IDBI have already been substantially complied with. A comprehensive NEERI report is already on record. A copy of the report ha already been given to IDBI for ready reference. The position regarding the capital cost in respect of each CEPT as indicated by NEERI is as under: ....

5. So far as the objections of IDBI are concerned, the NEERI report meets all the objections. The details indicated above show that societies in 12 industrial areas have already been constituted and the remaining three areas in the process. The capital cost has also been indicated. The treatment plant efficacy and the financial analysis have been given in detail by the NEERI in this report. So far as unit wise contribution is concerned, NEERI is in the process of finalizing it and it shall be placed on the record shortly.

6. We request, Mr. Kaushal to get in touch with Dr. Khanna, Director, NEERI on telephone and find out within how much time the necessary report would be ready. For further directions to be listed on 8th October, 1996 at 2.00 p.m.

M.C. Mehta v. Union of India
1997 ELD 101
Interlocutory Application No. 18 & 22 in Writ Petition (Civil) No. 4677/85, decided on 25-9-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Delhi Area – Court records progress made in regard to water resources, industries running in residential areas of Delhi/New Delhi and schools and places of religious worship existing in the ridge area in Delhi.

ORDER

(A)1. A. 32: Reg. Ground Water Level

1. Pursuant to this Court order dated September 4, 1996 NEERI has placed on record its examination report under the heading "Water Resource Management in India: Present Status and Solution Paradigm". A copy of the report has been given to the learned counsel for the Union of India. We direct the Government of India through Ministry of Water Resources to give its response to the NEERI report and in particular paragraph 4. 1, 4.2, 4.4, 4.5, 6 and 7.

2. To come up on 9th October, 1996.

(B) I.A.22: Reg. Industries running in residential areas of Delhi/New Delhi.

3. Mr. Kaushal, learned counsel for the NCT, Delhi Administration states that the process of screening the industries which are running in the residential areas of Delhi is almost complete. He states that the data is being complied. He further states that he would be in a position to place a clear position in this Court within a week.

4. To come up on 9th October, 1996.

(C) Reg. Hot Mix Plants

5. To come up on 27th September, 1996

I.A.18:

(D) D.I. Khan Senior Secondary School.

6. Pursuant to this Court's order dated September, 1996, Mr. Khanduri, Secretary of the Ridge Management Board has submitted his report regarding the D.I. Khan Senior Secondary School. The report is as under:-

> "In pursuance of the above directions, spot inspection was carried out, after informing the Management of the School as per direction of this Hon'ble Court. The additional area allotted to the school in 1966 was got marked on the ground. It will be worthwhile to mention that this additional area of about 2 acres is in shape of a rectangle, having length of 345 feet and width of 255 feet. Thus the area in additional land works out of 8625 sq. yards, which is less than two acres.

A field sketch of the area (not to the scale) is attached with this report. It will be seen that a small nala passes through this land and cuts it into two unequal halves. On inspection it was observed that this smaller half, which is in shape of a triangle and has an area of 2415 sq. yards, is part of the natural forest, and is not being used by the school for playground or any other purpose. The area has rocky outcrop and merges with the ridge forest. However, the another half which is in shape of a Trapezium and has the balance area of 6210 sq. yards is being used by the school for playgrounds, of Basketball, Kabaddi etc. it is more or less flat with very less slope and therefore this area merges with the original area of 4.5 acre. In fact the land and its land use of this part of the additional area is in no way different than the unbuilt area of the original land pf 4.5 acre, and it is difficult to separate the two on visual inspection."

7. We have heard learned counsel for the school. We direct the school to retain possession of 6210 sq. yds as indicated by Mr. Khanduri in the field sketch attached with the report. The remaining area which has been marked as 'B' in the sketch shall be taken over by the Ridge Management Board and added to the ridge. The Ridge Management Board shall take over this area within one month, fence it and plant the trees, if necessary.

(E) Harcourt Butler School

8. Regarding Harcourt Butler School, Mr. N. N. Goswami states that area measuring 3 acres was allotted to the school. He has placed the copy of the lease deed along with the report. A copy of the lease deed is given to the learned counsel for the Ridge Management Board. We direct Mr. Khanduri to inspect the school area and file a report indicating how much area in excess of the allotment is under the possession of the school. This may be done within two weeks.

9. To come up on 9th October, 1996.

(F) Reg. Religious Institutions.

10. This Court by the order dated July 26, 1996 requested three senior lawyers of this Court namely Mr. Kapil Sibal and Mr. Arun Jaitley and Mr. Krishan Mahajan, to visit the ridge area, contact the managements of various religious institutions in possession of he ridge area and find out whether any area can be retrieved by agreement. We have two reports before us. One by Mr. Kapil Sibal and Mr. Arun Jaitley and the other by Mr. Krishan Mahajan. Mr. Krishnan Mahajan has by the large agreed with the other report except Item 7 "Encroachment by Baba Asa Ram Ji". Copies of these two reports be given to Mr. Kanduri, Secretary, Ridge Management Board. Mr. Kanduri along with Mr. B. L. Nimesh, L & D. O. and Mr. US Joily, D.D.A shall contact the management of these religious institutions and hand over copies of the reports to them. So far as Sacha Sauda Gurudwara is concerned, Sibal report has suggested two alternatives. We propose to accept the first alternative. Mr. Khanduri and party shall contact the Delhi Gurudwara Prabandhak Committee and apprise the Committee of the report. Mr. Kanduri shall after consulting the Committee, advise this Court regarding the action to be taken is this respect. So far as Dera Baba Asa Ram Ji is concerned, we propose that the area comprising the temple, the trees and some reasonable area around the complex be left to

the management and the remaining area to be taken over from the Dera. Mr. Khanduri shall discuss the matter with management by bringing the two reports to its notice. Report to be filed before the next hearing.

11. To come up on 9th October, 1996.

Reg. Petrol Pumps

12. List on 1st October, 1996.

M. C. Mehta v. Union of India
1997 ELD 103
Interlocutory Application No. 18 & 22 in Writ Petition (Civil) No. 4677/85, decided on 25-9-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Delhi - Pollution - Hazardous, Noxious, Heavy and Large Industries in Delhi Closure and relocation - Court issues further direction in furtherance of its order dated May 10, 1996.

ORDER

In the Matter of:

1. This Interlocutory Application for directions has been filed by the Union of India. Mr. Altaf Ahmad, learned Additional Solicitor General has raised the following contentions:

(1) The directions given by this Court in the order dated May 10, 1996 in I. A. No. 22 regarding land-use-utilisation of land available as a result of shifting/relocation closure of hazardous/noxious/heavy/large industries from Delhi are applicable to those industries also which are not relocating and are simply closing themselves.

(2) The industries which are not locating and intend to start new conforming industry/activity shall not be permitted to that unless they protect the workmen and seek permission to set up the industry from the Government and the Pollution Control Board/Committee. They shall have to obtain fresh electric and water connections.

(3) The package of compensation proposed for the workmen employed in the industries which are not relocating and are closing down is inadequate and need to be enhanced.

(4) That the workmen who have not been provided residential accommodation by the employers be permitted to continue to occupy the same till accommodation is provided/made available at the relocated site. Such workmen employed with

the industries which are not relocating should also be permitted to stay for a reasonable time.

2. So far as the first contention is concerned, learned Additional Solicitor General has taken us through the order of this Court in I.A. No. 22, dated May 10, 1996 regarding land - use along with the order dated July 8, 1996 regarding relocation of 168 industries. The intention of this Court is clear that the order regarding land re-use was both for relocating industries as well as those which decide to close down and not to relocate. The learned counsel for the industries have not disputed this interpretation. We, therefore, accept the contention of learned Additional Solicitor General. Nothing more need to be said on this point.

3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The exiting hazardous industries having been closed. What remains is the plot, super-structure and the workmen. The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained. Even fresh electric connection and water connection shall have to be applied and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/water/electric connections the authorities shall expedite in dealing with the applications.

4. So far as the third contention of the learned Additional Solicitor General is concerned, we may refer to direction No. 9(d) of the order dated July 8, 1996 which is as under:

> "The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 30.11.1996 provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation".

5. We have heard Mr. Rajinder Sachhar, Mr. Jitender Sharma, and other learned counsel appearing for the workman. We have also heard Mr. Deepankar Gupta, Mr. Shanti Bhushan and other learned counsel for the Industries.

6. We are of the view that the compensation provided in the above quoted direction is on the lower side in the facts and circumstances of the situation. We may mention that during the long period of about 3 years, when this Court has been monitoring the matter pertaining to the shifting of hazardous industries from the city of Delhi, the objective in view was to re-locate all the industries so that the development of the industries as well as the environment and the interests of the workmen are safeguarded. It is no doubt correct

that some of the industries have opted to relocate, but there are many who have not till date taken any steps towards relocation. Mr. Deepankar Gupta, learned counsel appearing for M/s. Birla Textile has stated that for various reasons including financial, the industry has decided not to relocate and as such it would have to retrench approximately 2,800 workmen. Similarly, Mr. Shanti Bhushan states that the industry he represents is dependent on peculiar location. According to him the industry shall have to be closed. On our suggestion, learned counsel state that the industries shall have a fresh look into the matter. We would appreciate in the interest of development of the industry, these big industrialists take a decision to relocate, specially when all the facilities regarding land etc., are being offered to them. Anyway, this is a matter which concerns the industries. Keeping in view all the facts and circumstances of this case, we are of the view that the interest of the workmen would be met if we substitute the words "one year's wages" in the last line of direction 9(d) quoted above with "six years' wages". The net result would be that the workmen referred to in direction 9(d) shall be paid in addition, six years wages as additional compensation in place of one year's wages as initially directed by us.

7. We, however, clarify the six years' wages as modified by us shall only be payable to workmen of those industries which are not relocating and which have closed down. The workmen of industries who refuse to be relocated along with the relocating industries shall be entitled to one year's wages as additional compensation as originally directed.

8. We further direct that the workmen who are occupying the residential quarters provided by the employer shall continue to occupy till the accommodation is provided or made available at the site if the industry is relocated.

9. So far as closing industries are concerned the workmen shall entitle to remain in the quarters for a period of 1/2 year. In case the industry wants to compensate them in lieu of occupation of quarters, they shall pay a sum of Rs. 20,000 (Rs. Twenty thousand) to each of the workmen for asking them for immediate vacation. The enhanced compensation under the modified direction No. 9(d) be paid by April 30, 1997. It would be open to the Management to pay the amount in instalments. But the total amount must be paid before April 30, 1997.

10. We are informed that the `window' procedure and other directions regarding providing facilities and incentives are not being expedited by the Delhi Administration. We direct all the authorities concerned to comply with directions and monitor the status expeditiously.

11. The industries which are closed and have been sealed by the authorities shall be unsealed so that the machinery etc., can be removed. They shall not, however, be permitted to function.

12. The application is disposed of with the above directions.

M.C. Mehta v.Union of India
1997 ELD 149
Interlocutory Application No. 29 in Writ Petition (Civil) No. 4677 of 1985, decided on 11-10-1996
Kuldip Singh, N.P. Singh and S. Saghir Ahmad, JJ.

Constitution of India - Arts. 21, 47, 48-A. 51-A (g) and 32 - Ecology - Greenbelt - Duty to protect and improve forests, lakes, wildlife etc. - Principle of Sustainable Development and Precautionary Principle reiterated - Banning of construction activities within the radius of 1 km from tourist resorts of Badkhal Lake and Surajkund in State of Haryana, questioned as being arbitrary, discriminatory and not based on technical reasons -Directions issued - Environment Protection Act, 1986.

HELD

The "Precautionary Principle" has been accepted as a part of the law of the land, Articles 21, 27, 48-A, and 51-A (g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

(Para 10)

Vellore Citizens 'Welfare Forum v. Union of India, (1996) 5 SCC 647: JT (1996) 7 SC 375; Rural Litigation and Entitlement Kendra v. State of U.P. 1986 Supp. SCC 517; (1987) I SCR 641; M.C. Mehta v. Union of India, (1987) 4 SCC 463, relied on A.D.M. v. Shivakant Shukla, (1976) 2 SCC 521: AIR 1976 SC 1207; Jolly George Varghese v. Bank of Cochin, (1980) 2 SSC 360: AIR 1980 SC 470; Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey. (1984) 2 SCC 534: 1984 SSC (Cri) 313 AIR 1984 SC 667, cited.

The functioning of ecosystem and the environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. Two expert opinions on the record - by the Central Pollution Control Board and by the NEERI make it clear that the large-scale construction activity in the close vicinity of the two lakes, is bound to cause adverse impact on the local ecology, NEERI has recommended green belt at one km radius all around the two lakes.

(In clarification of Direction 4 of the Supreme Court in its order dated 10.5.1996, the Court issued suitable directions]

M.C. 'Mehta v. Union of India. (1996) 8 SCC 462, clarified

Chronological List of Cases Cited

1. (1996) 8 SCC 462, M.C. Mehta v. Union of India
2. (1996) 5 SCC 647: JT (1996) 7 SC 375, Velour Citizens 'Welfare Forum v. Union of India
3. (1987) 4 SCC 463, M.C. Mehta v. Union of India
4. 1986 Supp SCC 517: (1987): SCR 641, Rural Litigation and Entitlement Kendra v. State of U.P.
5. (1984) 2 SCC 534: 1984 SCC (Cri) 313: AIR 1984 SC 667, Gramophone Co. of India Ltd v. Birendra Bahadur Pandey
6. (1980) 2 SCC 360: AIR 1980 SC 470, Jolly George Varghese v. Bank of Cochin
7. (1976) 2 Sec 521: AIR 1976 SC 1207, A.D.M. v. Shivakant Shukla

ORDER

1. This Court by the order dated 10-5-1996 in M.C. Mehta v. Union of India dealt with the question whether - to preserve environment and control pollution - mining operations should be stopped within the radius of 5 kms from the tourist resorts of Badkhal Lake and Surajkund in the State of Haryana. The Court gave five directions in the said order; direction 4 is in the following terms:

> "further direct that no construction of any type shall be permitted now onwards within 5 km. radius of the Badkhal Lake and Surajkund. All open areas shall be converted into green belts."

The Haryana Pollution Control Board (the Board) has noticed the ambient Air Quality Standards by the notification dated 11-4-1994. The notification fixed limiting standards of pollution in respect of sensitive areas, industrial areas and residential areas. The standards for sensitive areas are stringent than the standards prescribed for industrial and residential areas. The Board has recommended that the area of 5 kms around the periphery of a centre of tourism be notified as "sensitive area". With a view to control pollution and save environment in the vicinity of Badkhal and Surajkund, the above quoted direction was issued.

2. The Municipal Corporation, Faridabad, Haryana Urban Development Authority and builders having interest in the area have approached this Court for modification/ clarification of the above-quoted direction. It is contended by learned counsel appearing for the parties that in the said area of 5 kms buildings are under construction, plots have been allotted/sold under various development schemes and the plot-holders have even started construction. According to the learned counsel vested rights of several persons are likely to be adversely affected causing huge financial loss to them.

3. Although the direction specifically says "no construction..... now onwards..." and as such the areas which are already under construction would obviously be excluded from the direction but in order to allay the apprehensions of the property-owners in the area, we are of the view that it is necessary to clarify the above direction.

4. Mr. Kapil Sibal, appearing for the Municipal Corporation, Faridabad has taken lot of pains in having the area surveyed and plans prepared with a view to find out as to how best the direction of this Court regarding development of 200 mts green belt at one km radius all around the boundaries of the two lakes can be implemented. Mr. Sibal and Mr. Harish Salve have placed on record two plans showing the proposed green belts around Badkhal Lake and Surajkund. The plan in respect of Badkhal is marked Ex. A. Along with the Plan the detail of the Khasra Nos. on which green belt is to be developed has been given which is marked as Ex. A/1. Similarly, the plan regarding Surajkund is marked as Ex. B. and the details of Khasra Nos. is marked as Ex. B/1. It is agreed by all the parties that the green belt as proposed in Ex. A and Ex. B. shall be developed in the two areas.

5. This Court by the order dated 13-9-1966 in IA No. 18 (WP) (C) No. 4677 of (1985) has directed the Central Government to constitute an authority (the Authority) under Section 3(3) of the Environment (Protection) Act, 1986. The said Authority shall have the jurisdiction over the National Capital Region as defined under the National Capital Region Planning Act, 1955. It is thus obvious that the area of Badkhal and Surajkund, with which we are concerned, comes within the jurisdiction of the said authority.

6. Mr. Shanti Bhushan, learned Senior Advocate, appearing for some of the builders had vehemently contended that banning construction within one km radius from Badkhal and Surajkund is arbitrary. According to him it is not based on technical reasons. He has referred to the directions issued by the Government of India under the Environment Protection Act and has contended that the construction can at the most be banned with 200 to 500 metres as was done by the Government of India in the coastal areas. He has also contended that restriction on construction only in the areas surrounding Surajkund and Badkhal lakes is hit by Article 14 of the Constitution of India as it is not being extended to other lakes in the country. We do not agree with Mr. Shanti Bhushan. The functioning of ecosystems and the status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourists resorts almost next door to the capital city of Delhi. We have on record the Inspection Report in respect of these lakes by the National Environmental Engineering Research Institute (NEERI) dated 20-4-1996 indicating the surroundings, geological features, land use and soil types and archaeological significance of the areas surrounding the lakes. According to the report Surajkund lake impounds water from rain and natural springs. Badkhal Lake is an impoundment formed due to the construction of an eastern dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types as explained in the report show that the Badkhal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large-scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.

7. The two expert opinions on the record - by the Central Pollution Control Board and by the NEERI - leave no doubt on our mind that the large-scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended green belt at one km radius all around the two lakes. Annexures A and B, however, show that the area within the green belt is much lesser than one km radius as suggested by the NEERI.

8. This Court in Vellore Citizens' Welfare Forum v. Union of India elaborately discussed the concept of "sustainable development" which has been accepted as part of the law of the land. It would be useful to quote the relevant part: (SCC pp. 657-60, Paras 10, 11, 14 and 15)

> "The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer. In the international sphere 'Sustainable Development' as a concept came to be known for the first time in the Stockholm Declaration of 1972.... During the two decades from Stockholm to Rio 'Sustainable Development' has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within - the carrying capacity of the supporting ecosystems. 'Sustainable Development' as defined by the Brundtland Report means 'Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs'.
>
> ... We are, however, of the view that 'The Precautionary Principle' and 'The Polluter Pays' principle are essential features of 'Sustainable Development'. The 'Precautionary Principle' -in the context of the municipal law-means:
>
> (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the cause of environmental degradation.
>
> (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
>
> (iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country .

Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to

Justice H.R. Khanna's opinion in A.D.M. v. Shivakant Shukla, Jolly Geo be Varghese case and Gramophone Co. case."

9. This Court in Rural Litigation and Entitlement Kendra v. State of U.P. (sic) held as under:

> "The consequence of this order made by us would be that the lessee of limestone quarries would be thrown out of business. These would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them, to their cattle, homes and agriculture and undue affectation of air, water and environment".

10. In M.C. Mehta v. Union of India' this Court held as under:

> "The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like in industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public.
>
> Life, public health and ecology have priority over unemployment and loss of revenue problem".

The "Precautionary Principle" has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51-A(g) of the Constitution of India a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

11. In clarification of direction 4 quoted above; we order and direct as under:

1. No construction of any type shall be permitted, now onwards, within the green belt area as shown in Ex. A and Ex. B. The environment and ecology of this area shall be protected and preserved by all concerned. A very small area may be permitted, if it is of utmost necessity, for recreational and tourism purposes The said permission shall be granted with the prior approval of "the Authority", the Central Pollution Control Board and the Haryana Pollution Control Board.

2. No construction of any type shall be permitted, now onwards, in the areas outside the green belt (as shown in Ex. A and Ex. B) up to one km radius of the Badhkal Lake and Surajkund (one km to be measured from the respective lakes). This direction shall, however, not apply to the plots already sold/allotted prior to 10-5-1996 in the developed areas. If any unallotted plots in the said area are still available, those may be sold with the prior approval of 'the Authority'. Any person owning land in the area may construct a residential house for his personal use and benefit. The construction of the said plots, however, can only be permitted up to two and a half storeys (ground, first floor and second half floor) subject so the Building Bye laws/Rules operating in the area. The residents of the villages, if any, within this area may extend/reconstruct their houses for personal use but the said construction shall not be permitted beyond two and a half storeys subject to building Bye-laws/Rules. Any building/house/commercial premises already under construction on the basis of the sanctioned plan, prior to 10-5-1996 shall not be affected by this direction.

3. All constructions which are permitted under directions 1 and 2 above shall have the clearance of "the Authority", the Central Pollution Control Board and the Haryana Pollution Control Board before "occupation certificates" are issued in respect of these buildings by the authorities concerned.

4. All development schemes, and the plans for all types of buildings in the area from one km to 5 km radius of the Badkhal Lake and Surajkund (Excluding Delhi areas) shall have prior approval of the Central Pollution Control Board and the Haryana Pollution Control Board.

M. C. Mehta v. Kamal Nath
(1997) 1 Supreme Court Cases 388
Writ Petition (Civil) No. 182 of 1996; D/-13-12-1996
Kuldip Singh & S. Saghir JJ.

KULDIP SINGH, J. –

1. This Court took notice of the news item appearing in the Indian Express dated 25-2-1996 under the caption - "Kamal Nath dares the mighty Beas to keep his dreams afloat". The relevant part of the news item is as under:

> "Kamal Nath's family has direct links with a private company, Span Motels Private Limited, which owns a resort - Span Resorts - for tourists in Kullu-Manali Valley. The problem is with another ambitious venture floated by the same company - Span Club. The club represents Kamal Nath's dream of having a house on the bank of the Beas in the shadow of the snow-chapped Zanskar Range. The club was built after encroaching upon 27 bighas and 12 bighas of land, including substantial forest land,

in 1990. The land was later regularised and leased out to the company on 11-4-1994. The regularisation was done when Mr. Kamal Nath was Minister of Environment and Forests .... The swollen Beas changed its course and engulfed the Span Club and the adjoining lawns, washing it away.

For almost five months now, the Span Resorts management has been moving bulldozers and earth-movers to turn the course of the Beas for a second time.

The heavy earth-mover has been used to block the flow of the river just 500 metres upstream. The bulldozers are creating a new channel to divert the river to at least one kilometre downstream. The tractor-trolleys move earth and boulders to shore up the embankment surrounding Span Resorts for laying a lawn. According to the Span Resorts management, the entire reclaiming operation should be over by March 31 and is likely to cost over a crore of rupees.

Three private companies - one each from Chandigarh, Mandi and Kullu - have moved in one heavy earth-mover (hired at the rate of Rs. 2000 per hour), four earth-movers and four bulldozers (rates varying from Rs. 650 to Rs. 850 each per hour) and 35 tractor-trolleys. A security ring has been thrown all around. ... Another worrying thought is that of the river eating into the mountains, leading to landslides which are an occasional occurrence in this area. Last September, these caused floods in the Beas and property estimated to be worth Rs. 105 crores was destroyed .... Once they succeed in diverting the river, the Span management plans to go in for landscaping the reclaimed land. But as of today, they are not so sure. Even they confess the river may just return.

'Mr. Kamal Nath was here for a short while two-three months ago. He came, saw what was going on and left. I suppose he knows what he is doing', says another executive.

The District Administration pleads helplessness. Rivers and forest land, officials point out, are not under their jurisdiction. Only the Kullu Conservator of Forests or the District Forest Officer can intervene in this case.

But who is going to bell the country's former Environment and Forest Minister?

Interestingly, a query faxed to Kamal Nath for his views on these developments fetched a reply from Mr. S. Mukerji, President of the Span Motels Private Limited.

Admitting that the Nath family had 'business interests' in the company since 1981, he said, 'the company is managed by a team of professional managers and Mr. Kamal Nath is not involved in the management activity of the company'.

'The Board comprises professionals, some of whom are friends and relatives of the Nath family', Mr. Mukerji said. He expressed surprise that a reference had been made to Rangri and Chakki villagers 'since these villagers are at least 2/3 kilometres away and not even on the river side'.

He said the Span Club was 'not for the exclusive use of any one individual'. 'We would like to emphasize that we are only "restoring the river" to its original and natural course and are restoring our land and of those of neighbouring villagers similarly affected by the flood.'

He maintained that “Mr. Kamal Nath has definitely not been to Span Resorts in the last two moths and in fact, to the best of my knowledge, has not travelled to Kullu valley for quite some time now. ... In any case, we had never 'blocked' any channel in the vicinity of Span.”

2. Mr. Kamal Nath filed one-page counter-affidavit dated 8-6-1996. Paras 1 and 3 of the counter are as under:

"I say that I have been wrongly arrayed as a respondent in the above petition inasmuch as I have no right, title or interest in the property known as 'Span Resorts' owned by 'Span Motels Private Limited'.

I further say that the allegations made in the press reports based on which this Hon'ble Court was pleased to issue notice are highly exaggerated, erroneous, mala fide, mischievous and have been published only to harm and malign the reputation of this respondent."

3. On behalf of Span Motels Private Limited (the Motel), Mr. Banwari Lal Mathur, its Executive Director, filed counter-affidavit. Paras 2 and 3 of the counter are as under:

"I say that Mr. Kamal Nath who has been arrayed as Respondent 1 in the above writ petition has no right, title or interest in the property known as SPAN RESORTS owned by Span Motels Pvt. Ltd. or in the lands leased out to the said company by the State of Himachal Pradesh.

I say that the shareholding of SPAN MOTELS PVT. LTD. is as under:

No. of Shares held Share-holding Mrs. Leela Nath 32,560 42EMC Projects Pvt. Ltd. 14,700 19SHAKA Properties Pvt. Ltd. 15,000 19SHAKA Estate & Finance Pvt. Ltd. 15,000 19Capt. Alok Chandola 250 01 ---------- 77,510 100 ----------

4. It was not disputed before us by Mr. Harish Salve, learned counsel appearing for Mr. Kamal Nath, that almost all the shares in the Motel are owned by the family of Mr. Kamal Nath. We do not wish to comment on the averment made on oath by Mr. Kamal Nath that he has "no right, title or interest in the property known as Span Resorts owned by Span Motels Private Limited".

5. Mr. B. L. Mathur filed an additional counter-affidavit dated 3-7-1996 on behalf of the Motel. The counter-affidavit mentioned above states that government land measuring 40 bighas 3 biswas situated alongside Kullu-Manali Road on the bank of River Beas was granted on lease to the Motel for a period of 99 years with effect from 1-10-1972 to 1-10-2071. The lessee was granted permission to enter and occupy the said area for the purpose of putting up a Motel and for installing ancillaries in due course as may be

subsequently approved by the lessor. We may refer to paras 6 and 7 of the lease deed dated 29-9-1972 which are as under:

> "The lessee shall not dig deep pits of trenches in the said land, which may lead to the danger of erosion and shall make good the lessor defects caused by their acts of defaults within one month of notice by the lessor.
>
> In the event of said land being required by lesser for any other purpose, whatsoever the lessor will be entitled to terminate this lease at any time by giving six months' notice in writing to the lessee and the lessee shall not be entitled to any compensation whatsoever on account of such termination."

6. The current management (Shri Kamal Nath's family) took over the Motel in the year 1981. Fresh lease was signed on 29-11-1981. The new lease was for the same period from 1972 to 2071. Paras 4 and 5 of the additional affidavit are as under:

> "I say that the Motel commenced operations in 1975. There are over 800 trees in this area of 40 bighas. The Motel has two clusters with 8 dwelling units of 3 rooms each. The rooms are nowhere near the river - the distance between the cluster of rooms and the beginning of the river basin is about 10 metres - actually the river is another 30 metres therefrom. Thus, the effective distance between the edges of the river the cluster of rooms is 40 metres.
>
> I say that in the peak of the flood, the river did not come closer than 10 metres to the rooms and did not, therefore, pose any danger to the rooms, particularly there are no problems qua rooms as the rooms are on a higher level - at least 5-7 metres at their closest point."

Along with the additional affidavit the correspondence between the Motel and the Government has been annexed. In a letter dated 19-10-1988 addressed to the Chief Minister, Himachal Pradesh, the Motel gave details of the flood-damage during the year 1988 and finally requested the Government for the following steps:

> "Further it is imperative that the Government take immediate steps to stop erosion of the land under lease to us. It would appear that strong concrete blackened retaining walls will be necessary to be placed at appropriate points to protect the landmass around us."

7. The Motel addressed letter dated 30-8-1989 to the Divisional Forest Officer, Kullu. The relevant part of the letter is as under:

> "When we acquired our land on lease, there were no clear demarcations of the surrounding areas and boundaries. These has existed a stretch of waste and 'banjar' (Class III) forest land in a longitudinal strip along the river bank measuring about 22.2 bighas, contiguous and adjacent to our leased land. Over the years, and especially after the sever flood erosion last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed

this entire waste and 'banjar' area, beautified and landscaped it, planted ornamental, fruiting and varied forest trees extensively such that it blends with our estate and with the surrounding flora and environment in a harmonious manner. A revenue map along with all Revenue Department records covering this area is forwarded enclosed herewith for your reference and perusal.

We are aware that in accordance with the Forest Conservation Act of 1980, the use of forest land by private agency even for natural development and afforestation scheme, requires alternative matching compensatory afforestation land areas to be surrendered by the concerned party, after due approval of the Government. In view of this statutory precondition, we wish to submit that we can immediately surrender to the Government nearly 28 bighas and 13 biswas of private agricultural cultivated land located at Village MAJHACH, (Burua), MANALI, in exchange for the above-mentioned 22.2 bighas of Class III banjar forest land adjoining our land in Village Baragran Bihal, which we request for transfer to our company in lieu of the land we are willing to surrender. The specific revenue maps and records concerning this area of land at Village Majhach, are also enclosed herewith for your kind perusal."

It is obvious from the contents of the letter quoted above that the Motel had encroached upon an additional area of 22.2 bighas adjoining to the leasehold area. Apart from that the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river banks. The Motel was keen to have the encroached land by way of exchange/lease. A request to that effect was repeated in the letter dated 12-9-1989 addressed to the Divisional Forest Officer, Kullu. The Motel again repeated its request for lease of the additional land by the letter dated 9-7-1991. The said letter further stated as under:

"We would also like to mention that the banjar land adjoining our hotel, referred to in para 1 above, lies along the bank of River Beas which erodes it every year. About ten years ago almost 4 bighas of this land were washed away and the on-flowing water has posed a serious threat to our hotel buildings and adjoining area. To protect our property we were compelled to erect deep protection embankments along the banjar land in question at huge cost the details of which will be sent to you shortly. If our proposal is accepted for the exchange of land it will become possible for us to take further steps to protect this land."

8. The Division Forest Officer, Kullu sent reply dated 12-1-1993 which stated as under: "In this connection it is intimated that at present we are not having funds to put crates and spurs along the river side near our hotel to check the soil erosion, as indicated in your letter referred to above. In order to protect your property from the damage, you can carry out such works at your level, subject to the condition that the ownership of the land would vest with Forest Department and the Department would not be liable to pay any amount incurred for the purpose by you at a later stage and you would not claim any right on government property."

The above-quoted letter can be of no consequence because mush before the said letter the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along

the river bank. This is obvious from the contents of the letter dated 30-8-1989 (quoted above).

9. The Motel addressed a letter dated 21-6-1993 to the Chief Secretary, Himachal Pradesh wherein it is clearly stated that the adjoining land measuring 22 bighas and 3 biswas had been reclaimed by the Motel. The relevant part of the letter is as under:

> "Adjoining our Resort and contiguous to our leased land is a stretch of Class III - banjar forest land in a longitudinal strip along the river bank measuring 22 bighas and 3 biswas. This was a stony piece of land and used to get flooded every year during monsoons and often got washed away and reduced in size by river erosion year by year. This land was reclaimed by us and protected by an embankment and filling from the river side."

The said letter further states as under:

> "Similarly on the river side part of our leased land there used to be floods and erosion every year. If we would have let this continue, the leased land would have also got reduced every year. In order to protect our leased land and to save damage to our hotel property, we at our own considerable expense and cost built stone and wire-mesh-crated embankment all along the river bank. This not only protected our hotel land but also the forest land .....
>
> In 1988 there were severe floods when every portion of leased land got washed away. It became imperative for us at considerable expense to build an embankment on the river front along the leased property. In order to build an embankment on the river front along the leased property the washed away area and part of the river bank had to be filled at huge cost. Once the river bed and the washed away area was filled, the choice before us was either to put soil on it and grow grass and trees to secure it or let it remain unsecured and aesthetically displeasing. We chose the former. As a result of land-filling and embankment our leased area when measured will obviously show an increase. The increase is not an encroachment but reclamation with the objective of protecting the leased property."

10. In the letter dated 7-8-1993 addressed to the Divisional Forest Officer, the Motel again asked for lease of adjoining area. The relevant part of the letter is as under:

> "We had explained in our previous letters dated 21-6-1993 and 23-7-1993 (copies of which have been sent to you with our letter dated 5-8-1993) the circumstances under which we had to spend enormous sum of money in protecting and reclaiming the forest land adjoining our Resort. It had become necessary for us to undertake this reclamation and protection work by filling the land from the river bed, constructing embankments, retaining walls and crating etc. in order to protect the land leased by the Government to our Span Resort and property thereon but we were unable to complete the entire work as we were restrained from carrying on with the work under undue allegations of encroachment on the forest land .....

In order to expedite the process of commencing protection work on an urgent basis on the forest land, we propose that the forest land be given to us on long lease conterminous with the lease of the land granted by the Government for our Span Resorts. This could be done by a supplementary lease as it is imperative to save the land under the original lease.

All we have done is to reclaim and protect the land from erosion by constructing crates, retaining walls and embankments along River Beas by investing huge amounts which unfortunately have all been washed away due to floods and now requires reconstruction to save the forest land and our adjoining property from total destruction."

11. The Government of India, Ministry of Environment and Forests by the letter dated 24-11-1993 addressed to the Secretary, Forest, Government of Himachal Pradesh, Shimla conveyed its prior approval in terms of Section 2 of the Forest (Conservation) Act, 1980 for leasing to the Motel 27 bighas and 12 biswas of forest land adjoining to the land already on lease with the Motel. A lease deed dated 11-4-1994 regarding the said land was executed between the Himachal Government and the Motel. The additional affidavit filed by the Motel refers to the prior approval granted by the Government of India as under:

"In the Ministry of Environment and Forests, the proposal was cleared by the Secretary and forwarded to the Forest Advisory Committee bypassing the Minister concerned. The Forest Advisory Committee cleared the proposal subject to severe restrictions - and also certain restrictions which are not normally imposed in such cases. The proposal was then cleared at the level of the Prime Minister and by a letter of 24-11-1993, approval was communicated to the State Government and SMPL."

12. It may be mentioned that Mr. Kamal Nath was the Minister-in-charge, Department of Environment and Forests at the relevant time. What is sought to be conveyed by the above-quoted paragraph is that Mr. Kamal Nath did not deal with the file. The correspondence between the Motel and the Himachal Government referred to and quoted by us shows that from 1988 the Motel had been writing to the Government for the exchange/lease of the additional forest land. It is only in November 1993 when Mr. Kamal Nath was the Minister, in charge of the Department that the clearance was given by the Government of India and the lease was granted. Surely it cannot be a coincidence.

13. This Court took notice of the news item - quoted above - because the facts disclosed therein, if true, would be a serious act of environmental-degradation on the part of the Motel. It is not disputed that in September 1995 the swollen Beas engulfed some part of the land in possession of the Motel. The news item stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to

save the Motel from future floods. In the counter-affidavit filed by the Motel, the allegations in the news item have been dealt with in the following manner:

> "(l) If the works were not conducted by the Company, it would in future eventually cause damage to both banks of the river, under natural flow conditions.
>
> (m) By dredging the river, depth has been provided to the river channel thus enhancing its capacity to cope with large volume of water.
>
> (n) The wire crates have been put on both banks of the river. This has been done to strengthen and protect the banks from erosion and NOT as any form of river diversion. It is not necessary to divert the river because simply providing greater depth and removing debris deposits enhances the capacity of the river to accommodate greater water flow.
>
> (o) I further state that the nearly 200 metres of wire crates which have been put on the left bank of the river (the river bank on the opposite side of SPAN) is in the interest of the community and nearby residents/villages. This left bank crating protects the hillside where RANGRI, CHAKKI and NAGGAR are located.
>
> (s) After the floods, it was observed, that the boulders and rubble deposits were obstructing and hindering the flow of the river and thus, it was the common concern of the Company as well as of the Panchayat of Village BARAGRAN BIHAL to carry out dredging measures to provide free flow of the river water.
>
> (t) Accordingly alleviation measures conducted by the Company and the villagers of BARAGRAN BIHAL were as under:
>
> (ii) Strengthening of both banks with wire crates: Wire crates are the common method of protection of bank erosion. Accordingly wire crates were put along the opposite side (left bank) to protect the landslide of the hillside wire on which Village RANGRI is perched, Wire crating was also put on the Resort side of the river (right bank) to strengthen and protect the bank against erosion. All the wire crating runs along the river flow and not as an obstruction or for any diversion.

* * *##

(w) It is further submitted that whereas the report mischievously refers to villagers of Rangri, Chakki and Naggar nowhere does it take into account the very real problems of villagers of Baragran Bihal which is located immediately on the right bank near the SPAN Resort who were seriously affected by the floods. Chakki, Rangri and Naggar villages have not at all been affected by the floods and there is no remote possibility of these villages being affected due to the flood-protection works conducted by the Company."

In the additional affidavit filed by the Motel the facts pleaded are as under:

"(ii) it had become necessary for them to undertake this reclamation and protection work by filling the land from river bed, constructing embankments, retaining walls and crates,

etc. in order to protect the land leased by the Government to the Resort and the property thereon.

* * *##

(vii) The forest land which is susceptible to heavy river erosion by floods involves high cost for its protection from getting washed away every year and would be protected by construction of embankments and filling from the river side by the Company. .... local community of Kullu and Manali and surrounding villages will benefit."

14. Mr. G. D. Khachi, Under Secretary (Revenue), Government of Himachal Pradesh in the counter-affidavit filed in this Court stated as under:

> "(iii) That subsequently, a piece of land measuring 21-09 bighas was encroached by M/s. Span Motels. On coming to the notice of the Government of such encroachment, the Government of Himachal Pradesh in Revenue Department took action and reportedly got the encroached land vacated, and the possession of which has been taken over by the Forest Department.

That on 21-22 July, 1922, the then Chief Secretary to the Government of Himachal Pradesh visited the site who drew the inference that M/s. Span Motels Ltd. were still using the encroached land. The copy of note on inspection of the then Chief Secretary is annexed as R-1.

That immediately on receipt of the recommendations of the then Chief Secretary (Annexure R-I), the Department of Forest started working at the site but in the meantime, it was decided to lease out a piece of land measuring 27-12 bighas which includes the said encroached land measuring 21-09 bighas. The lease granted by the Government of Himachal Pradesh in Revenue Department vide letter No. Rev. D(G) 6-53/93, dated 5-4-1994 is annexed as Annexure R-II after obtaining the approval of Government of India, Ministry of Environment and Forest, New Delhi vide letter No. 9-116/93-ROC, dated 24-11-1993 (copy annexed as Annexure R-III) for the purpose of protecting earlier leased land.

That the developmental activities which was being undertaken by M/s. Span Motels Ltd. came to the knowledge of the Government from the news item which appeared in the Press and field officers of all the departments concerned took an exercise to carry out the inspection and reported the matter to the Government."

15. C. P. Sujaya, Financial Commissioner-cum-Secretary (Irrigation and Public Health), Government of Himachal Pradesh in her counter-affidavit filed in this Court, inter alia, stated as under:

> "Admitted to the extent that the Span Resorts management had deployed heavy earth-moving machinery to reclaim their land and to divert/channelise the course of river to its course which it was following prior to 1995 floods by dredging and raising of earthen and wire-crated embankments.

The flow of river has been changed/diverted by dredging/raising of wire-crated embankments and creating channel from a point u/s of Span Resorts to d/s of Span Resorts. The approximate length of channel is about 1000 metres.

Admitted to the extent that Villages Rangri and Chakki are located on left bank of River Beas. However, channelization of river has been done slightly away from the toe of foothills except for the last about 500 metres where it is running along the foothills.

The hill on which Villages Rangri and Chakki are situated consists of small boulders embedded in sandy strata and is quite fragile/unstable in nature. Therefore, this reach of river is prone to landslides in the normal course also. However, it is feared that flow of river along the foothills may hasten/aggravate the process of landslides. The Span Management has provided wire-crated embankment in a reach of about 90 metres on left bank and about 270 metres on right bank to channelise the flow and also to reclaim part of land on right bank of River Beas.

Admitted to the extent that the diversion/channelization of river has been done to restore it to its course or pre-1995 floods and in doing so, by raising the earthen and wire-crated embankments, some land of villagers situated on right bank of River Beas has also been reclaimed along with land of Span Resort."

16. This Court by the order dated 6-5-1996 directed the Central Pollution Control Board (the Board) through its Member Secretary to inspect the environments around the area in possession of the Motel and file a report. This Court further ordered as under:

"Meanwhile we direct that no construction of any type or no interference in any manner with the flow of the river or with the embankment of the river shall be made by the Span management."

17. Pursuant to this Court's order dated 6-5-1996 the Board filed its report along with the affidavit of Dr. S. P. Chakrabarti, Member Secretary of the Board. It is stated in the affidavit that a team comprising Dr. Bharat Singh, Former Vice-Chancellor and Professor Emeritus, University of Roorkee, Dr. S. K. Ghosh, Senior Scientist and former head, Division of Plant Pathology (NF), Kerala Forest Research Institute, Peechi, Trichur and Dr. S. P. Chakrabarti, Member Secretary, Board was constituted. The team inspected the area and prepared the report. Para 4.2 of the report gives details of the construction done by the Motel prior to 1995 floods. The relevant part of the paragraph is as under:

"To protect the newly-acquired land, SMPL took a number of measures which include construction of the following as shown in Fig. 2:

(a) 8 nos. studs of concrete blocks 8 m long and 20 m apart on the eastern face of the club island on the upstream side,

(b) 150 m long stepped wall also on the eastern face of club island on the downstream side,

(c) A 2 m high bar of concrete blocks at the entry at the spill channel, and

(d) Additional 8 nos. studs also 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the SMPL.

While (a) & (b) were aimed at protecting the club island from the main current, (c) was to discourage larger inflow into the spill channel. Item (d) was meant to protect the main resort land of SMPL if heavy flow comes into the spill channel.

The works executed in 1993 were bank protection works, and were not of a nature so as to change the regime or the course of river. A medium flood again occurred in 1994. Partly due to the protection works, no appreciable damage occurred during this flood. The main current still continues on the left bank."

18. The happening of events in the vicinity of the Motel during the 1995 flood and the steps taken by the Motel have been stated in the report as under:

"A big slip occurred on the hillside on the left bank, at a distance about 200 m upstream from the point where division into main and spill channels was occurring, on the afternoon of September 4, 1995. This partially blocked the main left side channel which was relatively narrow at this location. This presumably triggered the major change of course in the river, diverting the major portion of the flow into spill channel towards the right and almost over the entire land area of the club island. The entire club building and the plantation as well as the protection works built in 1993 were washed away. Heavy debris was deposited on this land. Damage occurred on the right bank also but the buildings of the main SMPL resort remained more or less unaffected. A large hotel and many buildings on the right bank, almost adjacent to SMPL in the downstream were also washed away. The bars of blocks at the upstream end of the spill channel as well as most of the studs on this channel were also washed away. Some remnants of five downstream studs could be seen at the time of the visit. After the passage of 1995 flood, SMPL have taken further steps to protect their property as shown in Fig. 3. These are as follows:

1. The left side channel (the main channel), which had become less active, has been dredged to increase its capacity. Wire crate revetments (A, B, & C) on both banks of this channel have been made to direct the flow through this channel. These revetments and earth restoration work done would curtail the entry of water into the right side relief/spill channel which had developed into the main channel during the flood. A relatively small channel (the relief/spill channel) still exists and carries very little flow. Bulk of the flow is now going into the left bank channel.

On the left bank, there are steep unstable slopes at higher elevations left after the slides during the flood. These are likely to slip in any case, and if so happens, may block the left channel again. This land belongs to some villagers from Rangri. The left bank channel is again sub-dividing into two streams (D) and the small stream is flowing close to the toe of the hills for a distance of about 500 to 600 m before it turns towards midstream. Some

of the dredged material is piled on the right bank and some on the divide between the main channel and the subsidiary channel on the left. Slips can be seen in this reach of 500-600 m even now, and erosion at toe may aggravate sliding tendency. SMPL has also put 190 m wire crates (C) as protection against erosion of this bank, which may be helpful up to moderate flood conditions.

The dredging and channelisation of the left bank channel, though aimed at protecting SMPL land, should normally keep high intensity of flow away from both banks in moderate floods. This should thus not be a cause of concern. In high floods, the water would spill or spread beyond this channel. Due to restriction of entry in the right relief/spill channel, though the works may not withstand a high flood, there may be a tendency for more flow towards the left bank. However, the river is presently in a highly unstable regime after the 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future."

The conclusion given by the inspecting team in the report are as under:

> "6.4 M/s. Span Motels Private Limited had taken some flood-control measures at the immediate upstream by construction of wire crates (Fig. 3) on both sides (A, B and C) and also dredged the main channel of the river by blasting the big boulders and removing the debris. The flood-control measures, taken by them on the right bank of the main channel and at the mouth of relief channel after the 1993 flood, were also washed off. There is no sign of any boundary of the premises of the newly-acquired land.
>
> 6.5. The mouth of the natural relief/spill channel has been blocked by construction of wire crate and dumping of boulders (A & B). The area has almost been levelled. Although a little discharge was observed due to seepage through boulders and flowing through the remnants of the relief channel to the downstream, the channel is blocked by a stonewall across the channel (F) at the downstream of M/s. SMPL by a private property owner who has even constructed two wells (E) on the bed of the channel. This indicates the intention of the occupiers of the right bank properties in the concerned stretch in favour of filling up of the natural spill/relief channel.
>
> 6.6. M/s. Span Motels has not consulted any Flood Control Expert as it appeared from the way of construction of the wire crate. No proper revetment was done while crating. As such, these crating may not last long.
>
> 6.7. In the process of channelising the main course, the main stream has been divided into two, one of which goes very near to the left bank (G) because of which fresh land slip in future is not ruled out.
>
> 6.8. The relief channel is supposed to be the government land. Construction of any sort to block the natural flow of water is illegal and no permission has been taken from the department concerned.
>
> 6.9. The lease agreement of 1994 had the clause for protection of the land but it should have been done not by blocking the flood spill/relief channel.

6.10. Relief channel is the shortest path between the two bends. Any future slip on left bank due to training of discharge at its foot may cause flood on the right bank where the leasehold land (1994) exists.

6.11. No new construction should be allowed in this flood-prone area except flood-protection measures. No economic activity should be undertaken in the aforementioned stretch.

6.12. Since newly-acquired land of M/s. SMPL is located on the flood plain sandwiched between the main channel and the relief/spill channel, the land may be de-leased and the Forest Department take care of plantation in the area after adequate flood-control measures are taken by the Irrigation Department. This is necessitated in view of the fact that the left bank opposite SMPL is very steep (almost vertical) and is subjected to potential threat of land slip to block the channel and cause change of course of the river flow again.

6.13. Even if land slips occur, the impact will be local, limited only to the stretch of Beas River near SMPL.

6.14. The river is presently in a highly unstable regime after 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future. A long-term planning for flood control in Kullu Valley needs to be taken up immediately with the advice of an organisation having expertise in the field, and permanent measures shall be taken to protect the area so that recurrence of such a heavy flood is mitigated permanently."

19. On a careful examination of the counter-affidavits filed by the parties, the report placed on record by the Board and other materials placed on record, the following facts are established:

1. The leasehold area in possession of the Motel is a part of the protected forest land owned by the State Government.

2. The forest land measuring 27 bighas and 12 biswas leased to the Motel by the lease deed dated 11-4-1994 is situated on the right bank of the river and is separated from the Motel by a natural relief/spill channel of the river.

3. A wooden bridge on the spill channel connects the main Motel land and the land acquired under the 1994 lease deed.

4. 22.2 bighas out of the land leased to the Motel in 1994 was encroached upon by the Motel in the years 1988/89.

5. Prior to the 1995 floods the Motel constructed 8 studs of concrete blocks 8 m long and 20 m apart on the upstream bank of the river, 150 m long stepped wall on the downstream side of the river and 2 m high bar of concrete blocks at the entry of the spill channel and additional 8 studs 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the Motel.

6. After the 1995 floods the Motel has dredged the left side channel (the main channel) of the river to increase its capacity. Wire crate revetments on both banks of the main channel of river have been made to direct the flow through the said channel. This has been done with a view to curtail the entry of water into the right side relief/spill channel.

7. The Motel has constructed 190 m wire crates on the bank of the river (upstream). The dredged material is piled up on the banks of the river. The dredging and channelising of the left bank has been done on a large scale with a view to keep high intensity of flow away from the Motel.

8. The dredging of the main channel of river was done by blasting the big boulders and removing the debris.

9. The mouth of the natural relief/spill channel has been blocked by wire crates and dumping of boulders.

10. The construction work was not done under expert advice.

11. The construction work undertaken by the Motel for channelising the main course has divided the main stream into two, one of which goes very near to the left bank because of which, according to the report, fresh land slip in future cannot be ruled out.

20. The report further indicates that the relief channel being part of the natural flow of the river no construction of any sort could be made to block the said flow. According to the report no permission whatsoever was sought for the construction done by the Motel. The Board in its report has further opined that the clause in the lease agreement for protection of land did not permit the Motel to block the flood spill/relief channel of the river. The report categorically states that no new construction should be allowed in this flood-prone area and no economic activities should be permitted in the said stretch. It has been finally recommended by the inspection team that the land acquired by the Motel under the 1994 lease deed is located on the flood plain, sandwiched between the main channel and the relief/spill channel and as such it should be de-leased so that the Forest Department may take care of the plantation in the area and also preserve the ecologically fragile area of River Beas.

21. Mr. Harish Salve vehemently contended that whatever construction activity was done by the Motel was on the land under its possession and on the area around, if any, was done with a view to protect the leasehold land from floods. According to him the Divisional Forest Officer by the letter dated 12-1-1993 - quoted above - permitted the Motel to carry out the necessary works subject to the conditions that the department would not be liable to pay any amount incurred for the said purpose by the Motel. We do not agree. It is obvious from the correspondence between the Motel and the Government, referred to by us, that much before the letter of the Divisional Forest Officer dated 12-1-1993, the Motel had made various constructions on the surrounding area and on the banks of the river. In the letter dated 30-8-1989 addressed to the Divisional Forest Officer, Kullu - quoted above - the Motel management admitted that "over the years, and

especially after the severe flood erosion last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and banjar area". The "Banjar area" referred to in the letter was the adjoining area admeasuring 22.2 bighas which was not on lease with the Motel at that time. The admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. We have no hesitation in holding that the Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river.

22. The forest lands which have been given on lease to the Motel by the State Government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of River Beas where the Motel is located mostly comes under forest, the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.

23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

> "Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.
>
> '[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not

> forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.'

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

> 'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, ploughed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability and certain types of ecologically important resources - for example, wetlands and riparian forests - can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our, laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institution."

24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bears a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by every one in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan - proponent of the Modern Public Trust Doctrine - in an erudite

article "Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

> "The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways, and running water - 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

> "These types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

26. The American law on the subject is primarily based on the decision of the United States Supreme Court in Illinois Central Railroad Co. v. People of the State of Illinois [146 US 387: 36 Ed 1018 (1892)]. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands - a mile strip along the shores of Lake Michigan extending one mile out from the shoreline - to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust - for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the

Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in Illinois Central [146 US 387: 36 Ed 1018 (1892)] "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

27. In Gould v. Greylock Reservation Commission [350 Mass 410 (1966)] the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statue creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock and Aerial Tramway and certain other facilities and it authorised the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is an under:

> "The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands an of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit."

Professor Sax's comments on the above-quoted paragraph from Gould decision are as under:

> "It hardly seems surprising, then, that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State's authority to change the use of a certain tract of land .... Gould, like Illinois Central, was concerned with the most over sort of imposition on the public interest: commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem - that concerning projects which clearly have some public justification. Such cases arise when, for examples, a highway department seeks to take a piece of parkland or to fill a wetland."

28. In Sacco V. Development of Public Works [532 Mass 670], the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court the statutory power inadequate and held as under:

> "the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for .... is to preserve such land so that they may be enjoyed by the people for recreational purposes."

29. In Robbins v. Deptt. of Public Works [244 NE 2d 577], the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "wetlands of considerable natural beauty .... often used for nature study and recreation" for highway use.

30. Professor Sax in the article (Michigan Law Review) refers to Priewev v. Wisconsin State Land and Improvement Co. [93 Wis 534 (1996)], Crawford County Lever and Drainage Distt. No. 1 [182 Wis 404], City of Milwaukee v. State [193 Wis 423], State v. Public Service Commission [275 Wis 112] and opines that "the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State".

31. Professor Sax stated the scope of the public trust doctrine in the following words:

> "If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private lands in a State where governmental permits are required."

32. We may at this stage refer to the judgment of the Supreme Court of California in National Audubon Society v. Superior Court of Alpine County [33 Cal 3d 419]. The case is popularly known as "the Mono Lake case". Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (sic) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing

into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperilled. The plaintiff - environmentalist - using the public trust doctrine - filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge's request for clarification of the State's public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

> "'By the law of nature these things are common to mankind - the air, running water, the sea and consequently the shores of the sea.' (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them as trustee of public trust for the benefit of the people.'"

The Court explained the purpose of the public trust as under:

> "The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in Marks v. Whitney [6 Cal 3d 251], '[p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses - navigation, commerce and fishing - did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that '[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is not burdened with an outmoded classification favouring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands - a use encompassed within the tidelands trust - is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favourably affect the scenery and climate of the area.'
>
> Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a 'fishery' under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological - the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under Marks v. Whitney [6 Cal 3d 251], it is clear that protection of these values is among the purposes of the public trust."

The Court summed up the powers of the State as trustee in the following words:

> "Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect

the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rate cases when the abandonment of that right is consistent with the purposes of the trust ....."

The Supreme Court of California, inter alia, reached the following conclusion:

"The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of the State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson, 14 U. C. Davis L. Rev. 233, 256-57/; Robie, Some Reflections on Environmental considerations in Water Rights Administration, 2 Ecology L. Q. 695, 710-711 (1972); Comment, 33 Hastings L. J. 653, 654.) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see United Plainsmen v. N.D. State Water Cons. Comm'n [247 NW 2d 457 (ND 1976] at pp. 462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust."

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case [33 Cal 3d 419] clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case [33 Cal 3d 419] to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In Phillips Petroleum Co. v. Mississippi [108 Sct 791 (1988)] the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case [108 SCC 791 (1988)] assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by

nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislate and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

36. Coming to the facts of the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed. Even the Board in its report has recommended de-leasing of the said area.

37. This Court in Vellore Citizens' Welfare Forum v. Union of India [(1996) 5 SCC 647: JT (1996) 7 SC 375) explained the "Precautionary Principle" and "Polluters Pays Principle" as under: (SCC pp. 658-59, paras 11-13)

"Some of the salient principles of 'Sustainable Development', as culled out from Brundtland Report and other international documents, and Inter-Generational Equity. Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that 'the Precautionary Principle' and 'the Polluter Pays Principle' are essential features of 'Sustainable Development'. The 'Precautionary Principle' - in the context of the municipal law means:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as reason for postponing measures to prevent environmental degradation.

(iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

'The Polluter Pays Principle' has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India [(1996) 3 SCC 212: JT (1996) 2 SC 196]. The Court observed: (SCC p. 246, para 65)

'..... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'.

The Court ruled that: (SCC p. 246, para 65)

'.... Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on'.

Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land."

38. It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts.

39. We, therefore, order and direct as under:

1. The public trust doctrine, as discussed by in this judgment is a part of the law of the land.

2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated 24-11-1993 and the lease deed dated 11-4-1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions.

3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.

4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

5. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated 29-9-1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in the Board shall take action in accordance with law.

8. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report by 17-12-1996. To be listed on 18-12-1996.

40. The writ petition is disposed of except for limited purpose indicated above.

M. C. Mehta v. Union of India
1997(2) Supreme Court Cases 411
Kuldip Singh and S. Saghir Ahmad, JJ.

Kuldip Singh, J.- This petition – public interest – under Article 32 of the Constitution of India was initially directed against the tanneries located in the city of Kanpur. This Court by the order dated 22/9/1987 (M. C Mehta v. Union of India) (Kanpur Tanneries) issued various directions in relation to the Kanpur tanneries. While monitoring the said directions, the scope of the petition was enlarged and the industries located in various

cities on the banks of River Ganga were called upon to stop discharging untreated effluent into the river. In this judgment we are concerned with the tanneries located at Tangra, Tiljala, Topsia and Pagla Danga the four adjoining areas in the eastern fringe of the city of Calcutta (the Calcutta tanneries). These areas accommodated about 550 tanneries. According to the examination report dated 30/9/1995 by the National Environmental Engineering Research Institute (NEERI), ninety percent of the Calcutta tanneries use chrome based tanning process, while the remaining utilise vegetable tanning process. The present status of the four tannery cluster in Calcutta, according to the NEERI Report, is as under:

> *"It was observed by the inspection team that no appropriate waste water drainage and collection systems are available in any of the tannery clusters. The untreated waste water flows through open drains causing serious environmental, health and hygiene problems. Also, no waste water treatment facilities exist in any of the four tannery clusters."*

The observations by the NEERI team regarding the Calcutta tanneries in the report are as under:

> *"Tannery units are located in highly congested habitations, offering little or no scope for future expansion, modernisation or installation of ETP(s).*
>
> *Tannery units are located in thickly populated residential areas.*
>
> *Surroundings of the tanneries are extremely unhygienic due to discharge of untreated effluents in open drains, stagnation of wastewater in low-lying areas around the tannery units, and accumulation of solid waste in tanneries."*

It is thus obvious that the Calcutta tanneries have all along been operating in extreme unhygienic conditions and are discharging highly toxic effluents all over the areas. This Court on the basis of the material on the record in Kanpur tanneries' order observed as under regarding the noxious nature of the tannery effluent:

> *"It should be remembered that the effluent discharged from a tannery is ten times more noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks."*

Needless to say that the State of West Bengal and the West Bengal Pollution Control Board (the Board) are wholly remiss in the performance of their statutory obligations to control pollution and stop environmental degradation.

2. On 19/2/1993 the State Government informed this Court that the Calcutta tanneries were being shifted from their present location and the new location would be fully equipped with pollution control devices. This Court gave three month's time to the State Government to take appropriate steps in that direction. The State Government by way of an application sought extension of time for the shifting of the Calcutta tanneries. This Court considered the application on 13/8/1993 and passed the following order:

"The State of West Bengal has moved an application for extension of time for the shifting of over 500 tanneries functioning on the bank of River Ganges. This Court by its order dated February 19, 1993 gave three month's time to the State of West Bengal to take appropriate steps. The relevant part of the order is as under:

As regard the industries in Group 'D' Part II of Annexure 'A', the State Government is said to be taking steps for shifting these industries from the place where they are presently located to another place and to erect a common effluent plant for them in the new place. In that view of the matter, the State of West Bengal shall take appropriate steps within a period of three months."

We see no ground to grant 3 years' time to the State of West Bengal. We direct the West Bengal Pollution Control Board to publish a general notice in the daily paper which is popular in the said area consecutively for 3 days directing the tanneries to shift their place of working within three months from the date of publication of the notice or in the alternative set up effluent treatment plants to the satisfaction of the Board. It shall be clearly stated in the notice that in the event of failure the functioning of the industry at present place shall be stopped. The Board shall also issue individual notices to all the industries within two weeks from the receipt of this order.

"We are prima facie of the view that the Government of West Bengal cannot back out from its obligation of providing an alternative place of working to these tanneries in case they wish to shift their place of functioning. We direct the Secretary, Small- Scale Industries, Government of West Bengal to personally present in this Court on 24/9/1993 with a proposal regarding the alternative land or appropriate compensation to be paid to each of the industries."

This Court on 24/9/1993 directed the Board to examine the possibility of setting up of common effluent treatment plants for the Calcutta tanneries in the four areas. The Board was further directed to indicate the cost which was likely to be incurred in the setting up of the project. The Calcutta tanneries likely to be incurred in the setting up of the project. The Calcutta tanneries were directed to approach NEERI for the preparation of the projects. Pursuant to the directions of this Court, the Board filed affidavit dated 5/10/1993 in this Court. It is stated in the said affidavit that the Calcutta tanneries "are operating for a considerable period of time with no regard to environmental pollution control---- virtually shifting of the tanneries from the present location to another place and construction of common effluent treatment plants, is the only practicable solution to control the environmental degradation as a whole". The relevant part of the affidavit is as under:

"3. As per the order of the Hon'ble Supreme Court dated 24th September, 1993, Technical Officers of the Board have examined the possibility of setting up of a common Effluent Treatment Plant for the tanneries situated in Tiljala, Topsia and Tangra area which are located in the eastern fringe of Calcutta.

A layout map indicating the location of the tanneries in Tiljala, Tagnra and Topsia area along with a diagram mentioning the number of tanneries in such areas are also enclosed herewith collectively and marked as Annexure 'A'.

It reveals from the inspection that adequate space is not available in Tiljala, Tangra and Topsia area for construction of common effluent treatment plant.

In this connection it can be mentioned that tanneries situated at Tiljala, Tangra and Topsia area are operating for a considerable period of time with no regard to environment pollution control.

After the enactment of the Water (Prevention and Control of Pollution) Act, 1974 in the State of West Bengal, tanneries of the said locality never applied for consent to the State Pollution Control Board. Only in the year 1989, more than one hundred tanneries applied for consent to the State Board after long persuasion.

Considering their practical problem, State Board issued consent under the Water (Prevention and Control of Pollution) Act, 1974, to the tanneries for six months only in the year 1989 with a condition that within the validity period of consent i.e. within 6(six) months, the said tanneries will construct primary effluent treatment plant and submit a scheme of secondary effluent treatment plant. But unfortunately none of the tanneries situated in the said area constructed or have taken any steps for construction of effluent treatment plant.

Therefore, State Board issued legal notice to the tanneries in the year 1992. Show-cause notices were also issued by the State Board asking *why their factory may not be directed to be closed for not putting up the* right *type of effluent treatment plant as per the order of the Hon'ble Supreme Court dated 1/12/1992.*

Subsequently more than 275 tanneries applied for consent to the State Board but in view of the Hon'ble Supreme Court's order dated 19th February , 1993, 'consent' was not granted to any of the tanneries. Moreover tanneries of the said area were directed to submit an undertaking in the court stamp paper that they are willing to move to any place as fixed up by the Government of West Bengal.

Accordingly, more than 280 tanneries submitted their undertaking in 'court stamp paper' that they are willing to move to any place as fixed up by the Government of West Bengal from their present location.

5. That, due to the existence of the tanneries without having any treatment facilities in Tangra, Tiljala and Topsia area, environmental degradation in such areas and their surroundings are extremely alarming. *Virtually shifting of the tanneries from the present location to another place and construction of common effluent treatment plant, is the only practicable solution to control the environmental degradation as a whole."*

3. That matter came up for further consideration on 15/10/1993. This Court agreed with the above- quoted opinion of the Board and came to the conclusion that the only viable

solution was to relocate the Calcutta tanneries. This Court further passed the following order:

> "Mr. Satendra Nath Ghose, Secretary, Department of Cottage and Small- Scale Industries, Government of West Bengal has stated in his affidavit dated September1993 that the Government of West Bengal has already identified 507.27 acres of land to be acquired for setting up the tanneries' complex. He has further stated that on technical advice, the Government is thinking of having a bigger project and as such the acquisition proceeding in respect of above said land has not been initiated.
>
> Along with the affidavit a Notification dated July 28, 1992 has been annexed. By the said Notification a monitoring Committee for the integrated leather complex to be set up in the District of South 24- Parganas has been constituted. The Committee consists of 19 members including the Minister-in- charge, Cottage and Small- Scale Industries, Minister- in- charge, Sunderbans Development Board, Secretary, Cottage and Small- Scale Industries, Secretary, Commerce and Industries Department, Secretary to the Chief Minister of West Bengal, the Secretary, Irrigation and Waterways Department, Secretary, Environment Department, Secretary, Public Health Engineering and various other highly- placed officers connected with the project. Thereafter the Deputy Secretary to the Government of West Bengal in the Department of Land and Land Revenue addressed a letter dated July 13, 1993 to the Collector of South 24- Parganas informing him that a decision has been taken on the Government level to acquire the land measuring 507.27 acres in mouzas Karaldanga and others, P.S. Bhangor in the District of South 24- Parganas for the integrated leather complex under the provisions of the West Bengal Land Requisition and Acquisition Act, 1948(the Act) as a special case. By another letter dated 23/8/1993, the Governor of West Bengal has accorded sanction of Rs. 60 lakhs for meeting the acquisition expenses towards acquisition of land measuring 507.27 acres, under the above- mentioned Act.

It is, thus obvious that the West Bengal Government have already taken steps to acquire 507.27 acres of land for the tanneries' complex. There is no reason why the plan should not go ahead and be completed within a reasonable time. We direct the Minister-in-charge, Cottage and Small- Scale Industries Department, who is the Chairman of the Committee, to proceed with the project in accordance with the following time-schedule.

(1) The Committee shall entrust the project to a technical authority like the National Environmental and Engineering Research Institute or any other equally competent authority for preparing a project in this respect. The expenditure for getting the project prepared shall be met by the west Bengal Government. The project should be prepared on war-footing and be prepared within a period of two months of the receipt of this order.

(2) The procedure for acquiring the land measuring 507.27 acres under the Act shall be commenced within one month from the receipt of this order and shall be completed expeditiously.

(3) After the acquisition proceeding are completed and land is taken in possession, the State Government shall get the land developed through the authorities under the control of the State Government. This shall be done within three months thereafter

As at present we give the above directions to the Monitoring Committee. The Secretary, Department of Cottage and Small-Scale Industries shall keep on sending the progress report to this Court after every four weeks. After the above- quoted steps are completed in accordance with the schedule given by us, further directions in this respect shall be given. We make it clear that any violation of this order shall attract the provision of the Contempt of Courts Act".

4. While examining the progress made in the execution of the project in terms of the above- quoted directions, this Court on 25/2/1994 passed the following order:

"We directed the Minister- in- charge, Cottage and Small- Scale Industries Department, Chairman, of the Committee to proceed with the project on war-footing and have the project report prepared within the period of two months from 14/10/1993. We have been informed by the learned counsel appearing for the State of West Bengal that a preliminary report has been received from the Central Leather Research Institute, Madras, but the design and estimate are yet to be received. We are of the view of that the project is not being executed in accordance with the time-schedule directed by this Court. We request and direct Mr. Probir Sen Gupta, Minister- in- charge, Cottage and Small- Scale Industries to file an affidavit in this regard within two weeks explaining the progress in the project and also the reasons, if any, why the time – schedule fixed by this Court is not being followed. We make it clear that the affidavit should be filed in this Court on or before 15- 3-1994. We further direct the Minister- in –charge to depute a responsible officer to be present in this Court on the date when we take up the affidavit for consideration."

5. Pursuant to the above- quoted order of this Court, Probir Sen Gupta, Minister- in charge, Department of Cottage and Small- Scale Industries, Government of West Bengal filed an affidavit in his capacity as the Chairman of the Monitoring Committee set up by the state Government by the Notification dated 28/7/1992 to monitor the new integrated leather complex. The affidavit stated as under:-

"... ...About 1000 acres of land has already been acquired and possession taken for setting up the Calcutta Leather Complex. It is stated by the learned counsel appearing for the minister that the Calcutta Leather Complex includes the tanneries and all other allied leather industries. It is stated that the Project Report in respect of the complex has been received from the Central Leather Research Institute, Madras. We are of the view that the development of the complex should be done in a phased manner. Top priority has to be given to the tanneries which are to be shifted

from Calcutta to the new complex. The Project which has been prepared by the Calcutta Leather Research (in short CLRI) relates to the tanneries as well as other allied industries to be set up at the new complex. We direct the State of West Bengal to take up that part of the project for implementation in the first instance which relates to the tanneries. While doing so, if any technical difficulty arises, the state of West Bengal may immediately approach the CLRI through its deputy Director, Dr. Mariappan, to render the advice asked for within two weeks of the receipt of the requisition. Of course, the institute shall be entitled to its normal fees for rendering the advice.

Meanwhile, we direct the State of West Bengal to assess the need of each of the tanneries either directly or through the Association(the learned Counsel) has informed us that an Association is in the process of being formed regarding the extent of land and other facilities required by them. This is to be done within four weeks from today and a report be filed in this Court. We further direct the state of West Bengal to take into hand the development of the acquired area either directly or through the association. Copy of the order be sent to the West Bengal Government and to the minister personally."

This Court took up the matter for further monitoring on 29/7/1994. Jyotirmoy Ghosh, Joint Secretary, Department of Cottage and Small- Scale Industries, Government of West Bengal, had filed an affidavit indicating the progress made in the relocation of Calcutta tanneries. After examining the contents of the affidavit this Court passed the following order:

"We are prima facie satisfied that no steps at all have been taken by the Government of West Bengal to comply with our orders reproduced above. We issue notice returnable on 19/8/1994 to (through speed post/fax) Mr. Probir Sen Gupta, minister-in- charge, Department of Cottage and Small- Scale Industries, Government of West Bengal, and Mr. Jyotirmoy Ghose, Joint Secretary, Department of Cottage and Small- Scale Industries, Government of West Bengal to Show cause why contempt proceedings be not instituted against them. Meanwhile, we give them opportunity to file further affidavit showing compliance, if any, of this Court's orders made by the State of West Bengal."

6. This Court on 9/9/1994 considered the affidavit filed by Probir Sen Gupta, Minister-in-charge and by Jyotirmoy Ghose, Joint Secretary respectively of the State of West Bengal. After hearing Mr. N.N. Gooptu learned Advocate General, State of West Bengal, this Court passed the following order:

"We are prima facie satisfied that there has been no effort on the part of the West Bengal Government to comply with the directions given by this Court. Despite our finding, we restrain ourselves and refrain from issuing contempt notice to the Minister and the Joint Secretary at this stage.

We reiterate our earlier direction given on April 15, 1994 and except the State Government to comply with the same fully within a period of 8 weeks from today.

During the course of arguments, we have given sufficient indication to the learned Advocate General as to how the state of West Bengal is to proceed in this matter. We indicate that the State Government shall issue individual notices to each of the tanneries indicating that as per this Court's order, all the tanneries have to be shifted from their existing place of work to the place which has already been acquired by the state Government. They shall be asked to give their requirements regarding land, financial assistance and any other assistance which they need within the specified period. The State Government shall also indicate thereafter by a public notice the mode of transferring the land and the mode of payment of the price by the tanneries. Meanwhile, the State Government shall take immediate steps to develop the land in the sense that it shall start working on the sewage system, waterworks, electricity and other amenities and construction work which is to be done. We make it clear that we have only indicated some of the steps which are necessary in the process of shifting the tanneries from their present place of work. It is for the State Government to have a detailed scheme prepared and have the project completed within a phased manner.

Mr. Harish N. Salve, learned Senior Counsel appearing for the Tanneries' Association has very fairly stated that they have no objection in shifting to the new place provided all the facilities are given to them by the State Government. He further states that the main difficulty in their way is the setting up of an effluent treatment plant. The State Government shall have an estimate prepared immediately regarding the expenditure and the time it is going to take in setting up the ETP. We shall thereafter apply our mind to find out the way to pool financial sources from the State Government, Central Government and the tanneries themselves."

7. On 20/2/1995 this Court was informed that the estimated cost of the land in the new complex would be rupees 860.00 per sq. m. The learned counsel appearing for the Calcutta tanneries, however, contended that the price suggested was on the higher side. Various suggestions for reducing the cost of land were considered and finally the Court passed the following order:

"Mr. Ajoy Sinha, Principal Secretary to the Government of West Bengal and Secretary, Department of Cottage and Small-Scale Industries have filed two affidavits dated 7-2-1995 and 16-2-1995 on behalf of the State of West Bengal in Tanneries Matter. The affidavits be taken on record.

We have heard Mr. M.C. Mehta, Mr. Dilip Sinha and Mr. G. Ramaswamy. Mr. Ajoy Sinha, has annexed copy of the Notice dated January 10, 1995 served on all the tanneries along with the affidavit dated February 7, 1995. It has been mentioned in para VI of the notice that the estimated cost of the land in new complex would be Rs. 860.00 per sq m. It is further stated that this has been worked out on the basis of the total estimate of the cost, which according to the State Government, comes to about Rs. 130 crores.

Mr. G. Ramaswamy, learned Senior counsel appearing for the tanneries has informed us that during the course of discussion between the representatives of the

tanneries and the government officials, it was disclosed that cost of the common effluent treatment plant to be set up at the new complex would come to about Rs. 65 crores. The Coordinating Committee of the Calcutta tanneries has, in its letter dated 15/2/1995, informed the government that they are willing to shift to the new complex. The main objection raised by the tanneries is that the price as Rs. 860.00 per sq.m.is excessive and very much on the higher side. We have no doubt that the Government must have fixed the price per. Sq.m. on 'no profit no loss' basis.

We are of the view, that the amount of Rs. 65 crores, to be spent on the construction of the common effluent treatment plant, should initially be funded by the Government or from some other source provided by the Government. After the treatment plant is constructed and the tanneries are shifted to the new complex an ' effluent charge' can be levied on the tanneries for reimbursing the amount spent on the common effluent treatment plan in a phased manner. This arrangement can bring down the initial cost to be incurred by the tanneries.

We issue notice to the Government of West Bengal through Department of Industries, Ministry of Environment and Forests- Union Government, The Ganga project Directorate and the State Pollution Control Board. These authorities shall give their reaction to our suggestion within a period of two weeks from today. Affidavits shall be filed by all these authorities within ten days from today. Registry to send copies of this order to all the above- mentioned authorities within two days be speed post."

8. Pursuant to the order dated 29/2/1995, the Ganga Project, directorate and Ministry of Environment and Forests filed affidavit wherein it was stated that " the amounts provided under the plan are for specific items of works approved by the Central Ganga Authority. Under the circumstances, it may not be feasible to divert earmarked funds for other purposes." On 24/2/ 1995 this Court passed the following order:

"We are of the view that the Ministry of Environment and Forests be requested to reconsider the matter and also the allocations it has made for various projects under the Ganga Action plan and include if possible the Tanneries' Project in West Bengal in the Plan to be executed in the near future. The Ministry must find out a way to fund the Tanneries' Project as suggested by this Court in the order dated February 20, 1995. We adjourn the matter for three weeks to enable the Ministry and the Ganga Project Directorate to the reconsider the whole matter and file a fresh affidavit in this Court within the above period. Copy of this order may be sent to the Ministry of Environment and Forests and to the Ganga Project Directorate."

9. Pursuant to the above- quoted order of this Court, Bhag Singh, Deputy Secretary, Ganga Project Directorate filed affidavit dated 6/4/1995. Para 6 of the affidavit stated as under:

"It is now submitted that in view of the above observations of the Supreme Court, the Ganga Project Directorate in the Ministry of Environment and Forests will prepare a scheme of common effluent treatment plant in West Bengal and move for its inclusion in Phase II of Ganga action Plan. It is further submitted that this scheme like other

schemes under Ganga Action Plan, Phase II will have to be funded by the Centre and the State Government on 50: 50 basis. The proposal for the scheme will be called from the State Government of West Bengal and after due examination will be submitted for the approval of Expenditure Finance Committee, the Planning Commission and the Cabinet Committee on Economic Affairs."

10. Agreeing with the Ganga Project Directorate that project would be included in the Ganga Action Plan, Phase II, this Court on 7/4/1995 passed the following order:

"we agree with the Ministry of Environment and Forests that the project of setting up of common effluent treatment plant for about 540 tanneries, to be relocated, be included under Ganga Action Plan, Phase II. Mr. Gooptu, learned Advocate General, appearing for the State of West Bengal, very fairly states that it would be possible for the State of West Bengal to meet 50% of the cost of the project. He further states that the State will arrange the funds either from its own sources or from financial institutions or other sources. Therefore, it is agreed by all that the project of setting up of common effluent treatment plan shall be undertaken under the Ganga Action Plan, Phase II and its total cost of Rs. 65 crores shall be meet 50% by the Ganga Project Directorate and the remaining 50% by the State Government in the manner indicated by the learned Advocate General. We reiterate that after the treatment plat is constructed and the tanneries are shifted to the new complex, 'effluent charge' shall be levied on the tanneries for reimbursing the amount spent on the common effluent treatment plants in a phased manner. Needless to say that the money collected in that manner shall be divided half and half by the State of West Bengal and the Ministry of Environment and Forests. We direct the State of West Bengal through the Department of Cottage and Small-Scale Industries to prepare and send the project for setting up of common effluent treatment plant for the tanneries to the Ganga Project Directorate within one month from the receipt of this order. The Ganga Project Directorate shall thereafter examine the project within two weeks and send the same for approval of expenditure to the Finance Committee of the Planning Commission and the Cabinet Committee on Economic Affairs. We request the Finance Committee, Planning Commission and the Cabinet Committee on Economic affairs to expedite the sanctioning *of the project as and when it is received by these authorities.*

Mr. Gooptu, learned Advocate General, states that the total cost of the project has been estimated at Rs. 158 crores. He further states that the price of the land at Rs. 860.00 per sq.m. was determined on the basis of the estimated cost of the Leather Complex. Since Rs. 65 crores are now being spent by the Ganga Project Directorate and the State of West Bengal, the total price for the purpose of market value has to be reduced. After doing this exercise, all present agree that the price comes to Rs.600 per sq.m.

We direct the State of West Bengal to go ahead with the relocation of tanneries from the present sites to the new complex by offering the plots to the individual tanneries at Rs. 600 per sq.m. The State of *West Bengal shall keep in mind the requirements of each of the tanneries so far as the area is concerned, but in no case the area lesser than the area already occupied by the tanneries shall be offered to them.*

The State of West Bengal shall issue public notices offering land in the new complex to the tanneries at Rs. 600 per sq. m. We direct the West Bengal pollution Control Board to issue individual notices to all the tanneries informing them that the land is being offered by the State of West Bengal in the new complex. The Board shall further inform the tanneries that all necessary amenities and facilities necessary for setting up of tanneries in the new complex, shall be provided. The Board shall indicate in the notices that the offer of the State Government for purchase of plots in the new complex shall be accepted within two weeks of the receipt of the notices. We make it clear that the tanneries who fail to avail the opportunity offered by the State of West Bengal to shift to the new complex shall be liable to be closed without any further notice. Mr. Gooptu, learned Advocate General, states that the plots shall be offered to those tanneries who will deposit 25% of the total purchase price at the rate of Rs.600 per sq.m.

The State of West Bengal to file an affidavit by 21st April, 1995 giving the progress made pursuant to this order.

A copy of this order be sent to all the authorities concerned. We make it clear right at this stage that the area vacated by the tanneries shall be maintained as a green area in any form at the discretion of the State Government.

11. Pursuant to the above-quoted order, the Board issued notices to all the Calcutta tanneries. The Board also issued public notices in four newspapers namely, The Statesman (English), The Telegraph (English), Aajkal (Bengali) and Ganashakti (Bengali). The notices served on the tanneries and published in the newspapers stated that all the Calcutta tanneries should approach the State Government for allotment of plots in the new integrated leather complex by 15/5/1995 failing which such tanneries shall be liable to be closed without any further reference. The affidavit dated 3/5/1995 filed by the Board further stated that "it is an admitted position that all the tanneries are still operating without any pollution control devices and without any statutory permission from the State Board, except few units which might have been closed for financial or other reasons". This Court on 21/4/1995 passed the following order:

> *"Pursuant to this Court's order dated April 7, 1995, an affidavit has been filed by Mr. Jyotirmoy Ghosh, Joint Secretary in the Department of Cottage and Small-Scale Industries, Government of West Bengal. Mr. N.N. Gooptu, learned Advocate General has further explained the various contests of the affidavit to us. We are satisfied that the Government of West Bengal is complying with the different directions issued by us in our order dated April 7th , 1995.*
>
> *M. R. Mohan, learned Senior Counsel appearing for the West Bengal Pollution Control Board, states that pursuant to this Court's order dated April 7, 1995 individual notices have been issued to all the tanneries to be relocated.*
>
> *The learned counsel for the tanneries have brought to our notice that some of the tannery owners are residing within the tannery premises. The learned counsel further contends that after the tanneries are relocated, the residence part of the premises may be permitted to remain with them. This matter shall be examined at a*

later stage. Meanwhile, we direct the Labour Commissioner, Calcutta, to depute inspectors to have a survey of the area and find out as to how many tannery- owners are actually residing within the tannery premises and file a report in this case. The report shall also indicate the actual area occupied for the purpose of residence."

On 10/5/1995, Mr. Ghosh, learned counsel appearing for the Calcutta tanneries, sought extension of the time for depositing 25% of the price of the land. The amount was to be deposited by 15/5/1995. The time was extended up to 31/5/1995. This Court on 14/7/1995 passed the following order:

"Pursuant to this Court's order dated February 20, 1995, April 7, 1995, April 21, 1995 and May 10, 1995, the State of West Bengal was required to file a report in this Court giving the progress made in this respect. The detailed report has been not yet been placed on record. We direct the State Government through the Advocate General, who is present in the Court to file a detailed report indicating the area and its situation which has been remarked for the relocation of the tanneries, and the notice/ offer which is made to the tanneries by way of publication or any other method and all other steps which the State Government has taken in this respect in pursuance of our orders. This may be done within two weeks from today. It is stated by Mr.N.N. Gooptu, learned Advocate General that none of the tanneries have come forward to deposit 25% of the price or is willing to buy the land. We make it clear that the tanneries which are not cooperating with this court and the State Government shall ultimately be liable to be closed unconditionally.

We give notice to these tanneries through their counsel, who are present in the Court, to show cause as to why, in view of their conduct, they be not closed forthwith. Arguments on the report filed by the State and the notice issued to the tanneries shall be heard on 11th August 1995. The State shall also place on record the inspectors' report. Meanwhile, we further give liberty to the tanneries to accept the offer in terms of the advertisement and deposit 25% of the price of the land with an application for condonation of delay within three weeks which will be considered by this Court.

Mr. Ashok Sen, Mr. G. Ramaswamy, Mr. A.K. Ganguli, Mr. D.V. Shegal and Ms. Harvinder Choudhary, learned counsel appearing for the tanneries have stated that the Government has issued certain instructions indicating that the tanneries need not shift from the present place. Mr. N.N. Gooptu, learned Advocate General may take notice of these instructions, if any, and clarify the position by way of an affidavit."

12. On 11/8/1995, Mr. Shanti Bhushan, learned counsel appearing for about 208 Calcutta tanneries of Chinese origin, stated that it was technically feasible to set up a common effluent treatment plant within the area where the tanneries were situated. It was further stated that the tanneries were prepared to meet the cost of the project. Although the Board had repeatedly stated before this Court that the setting up of the common effluent treatment plant / plants at the existing tanneries' complexes was not possible but despite that this court gave liberty to Mr. Shanti Bhushan to file a short affidavit indicating the

details of the project. Thereafter the matter came up for further consideration on 5/9/1995 when this Court passed the following order:

"The tanners in the city of Calcutta are primarily located in four areas called Tangra, Tiljala, Topsia and Pagla Danga. Mr. Shanti Bhushan, learned counsel appearing for about 208 tanneries situated in Tangra has invited our attention to a project for setting up of common ETP which the said tanners have got prepared from KROFTA Engineering Ltd, Chandigarh. It is stated that KROFTA are the specialists in designing projects for setting up of effluent treatment plants particularly pertaining to tanneries. Mr. Shanti Bhushan states that the project is likely to cost about Rs. 5 crores. The total amount shall be pooled by the tanners themselves. Even the land which will be required for the project will be purchased and utilised by the tanners themselves. According to Mr. Shati Bhushan the plant can be set up at the existing location in Tangra where according to him sufficient land is available. It is not possible for us to say whether the project as prepared by KROFTA is viable and feasible, keeping in view the location where the tanneries are situated. It is suggested by Mr. Shanti Bhushan that NEERI may asked to have a second look at the project prepared by KROFTA. We request Dr. P. Khanna, Director of the NEERI to appoint a team of experts to visit the spot and examine the project prepared by KROFTA. We wish to know specifically as to whether the project is viable and feasible and can be constructed on the existing location without interfering with the normal life of the residents in that area and whether the project is capable of collecting pollution and odour in totality It may also be examined whether the project caters for the primary as well as secondary stages of the effluent treatment. NEERI team may also have the viewpoint of KROFTA Engineering which can also come on the date on which the NEERI team proposes to visit. The West Bengal Pollution Control Board and the West Bengal Government may also be constructed by the NEERI and KROFTA. The NEERI may inform the time and date of its visit to the following advocates:

1. *Mr. Ashok Sen,Sr. Adv.,*
   19, Teen Murti lane,
   New Delhi.

2. *Mr. Shanti Bhushan, Sr. Adv.,*
   Res. B-16, Sector 14, Nodia.
   Off. C-67, Sector, 14, Nodia.
   Ch. 412, lawyers Chambers.
   Delhi High Court, New Delhi

3. *Mr. G. Ramaswamy, Sr. Adv.,*
   Res. A-7, Sector 14, Nodia.
   Off. E-210, Greater Kailash,
   New Delhi

4. *Mr. N. N. Gooptu*
Advocate General,
State of West Bengal.

5. *Mr. Mahesh Chander Mehta,*
Res. 3, Ring Road,
Lajpat Nagar IV, New Delhi
Off. 5, Anand Lok, New Delhi

Since we are already in the process of hearing final arguments there is an urgency in the matter we request Mr. P. Khanna to have the matter examined and file a report within three weeks from the receipt of this order. Mr. Imtiaz Ahmed, learned counsel will file three copies of the project report along with one copy of the brochure pertaining to KROFTA. The Registry shall send by speed post/ fax one copy of the same to NEERI along with this order.

The expenses of the NEERI shall be borne by Mr. Shanti Bhushan's clients.

We make it clear that other tanneries which are located in Tiljala, Topsia and Pagla Danga may, if they have joint project like that of Tangra, the same be placed before the visiting team of NEERI for their inspection and report."

This Court has been monitoring this petition for a long time primarily with a view to control pollution and save the environment. In the process the Calcutta tanneries have been extended all possible help to relocate themselves to the new complex. Despite repeated reports by the Board that the Calcutta tanneries were/are discharging highly noxious effluent and are polluting the land and the river, this Court did not order the closure of the tanneries because they agreed before this Court and had given clear undertaking that they would relocate to the new complex. In spite of all the efforts made by this Court to provide every possible facility to the Calcutta tanneries to shift to the new complex they remained wholly no-cooperative. With a view to control the pollution generated by the Calcutta tanneries this court in the order quoted above agreed to examine the proposal regarding setting up of common effluent treatment plants at the existing areas where the tanneries are operating. This court directed NEERI to examine the feasibility of the projects. NEERI submitted its report dated 30-9-1995. The report indicates that a four- member team inspected the existing sites of tanners' clusters and examined the issues relating to the proposed common effluent treatment plants and their locations at Tangra, Tiljala, Topsia and Pagla Danga in Calcutta. The conclusions reached by the NEERI are as under:

"5.0 Conclusions

On review of the proposed CETP schemes for tannery wastewater management at Tangra, Tiljala and Topsia by M/s KROFTA Engineering Ltd. Chandigar and M/s BOC, Calcutta at Pagla Danga, and after detailed discussions with the consultants, the inspection team notes that:

The proposed schemes are neither scientifically sound, nor can be constructed on the existing locations without interfering with the normal life of the residents in above-mentioned areas.

The proposed CEFT schemes are not capable of treating the wastewater laden with high total dissolved solids, chromium and control pollution and odour in totality at the tannery clusters at Tangra, Tiljala, Topsia and Pagla Danga."

The proposed designs have little scientific basis, and do not consider the industry-specific requirements of effective wastewater treatment in tannery clusters at Tangra, Tiljala Topsia and Pagla Danga."

In view of categorical findings of the NEERI and also several reports by the Board there is no possibility of setting up of common effluent treatment plants at the existing locations of the Calcutta tanneries. In the facts and circumstances, discussed in the judgement, we have no hesitation in holding that the Calcutta tanneries shall have to be relocated from their present locations.

13. We may at this stage deal with the contention raised by the learned counsel for the Calcutta tanneries that the site where the new leather complex is being set up is a part of the wetland. Pursuant to this Court's order dated 14-7-1995 Ajoy Sinha, Principal Secretary and Secretary, Department of Cottage and Small Industries, Government of West Bengal filed affidavit dated 29-7-1995. Para 7(d) of the affidavit is as under:

"It is further submitted that the said area is clearly outside the boundaries of the wetland area as claimed by petitioners in Or. No. 2851 of 1992 in the Court of Mr. Justice Umesh Chandra Banerjee in the Calcutta High Court. This will appear from the map and report submitted by the Collector, South 24- Parganas which are annexed hereto and marked Letters 'C' and "C-1' respectively."

Along with the affidavit the Principal Secretary has annexed letter dated 12-7-1995 from District Magistrate, South 24- Parganas, addressed to the Principal Secretary. The operative part of the letter is as under:

"Kindly recall your verbal instruction in the matter indicated above. A sketch map has been prepared on the Thana map showing the location of 'wetland' as show in Annexure 'C' of the case referred above as also the location of the proposed Calcutta Leather Complex. It is evident from the sketch plan enclosed herewith that eastern boundary of the 'wetland' falls to the West and is beyond the boundary of the proposed Calcutta Leather Complex site. The technical report prepared by the surveyor is also enclosed herewith.

Incidentally, it may be mentioned that the bherries mentioned in the writ petition are situated within the boundary of Annexure 'C' of the writ petition of the case mentioned above.

It, therefore, shows that the area of the proposed Calcutta Leather Complex does not fall within the area of the wetland."

14. The Technical Report by the surveyor indicating that the new leather complex does not fall within the area of the wetland has also been attached along with the affidavit of the Principal Secretary. The site plan enclosed with the affidavit clearly shows that the leather complex is outside the boundary of the wetland. No material to the contrary has been placed on record by the Calcutta tanneries. We, therefore, reject the contention of the learned counsel that the new leather complex is a part of the wetland.

15. As a result of the monitoring done by this Court towards relocation of the Calcutta tanneries the following steps to facilitate the relocation have been undertaken:

(1) The State Government has acquired and taken possession of the land for setting up of the new tanneries complex.

(2) The State Government has repeatedly offered plots to the Calcutta tanneries in the new complex but they have not as yet accepted the offers.

(3) 25% of the land price in the new complex was to be deposited by 15-5-1995 but despite extension asked by the Calcutta tanneries and granted by this Court the money has not been deposited.

(4) The price of land in the new complex was fixed at Rs. 860 per sq. m. At the asking of the tanneries the price has been reduced to Rs. 600 per sq. m. by the High Court.

(5) The State Government is ready and willing to extend all the concessions and benefit necessary in the process of relocation.

(6) A very large number of Calcutta tanneries are operating without setting up of the pollution control devices. Highly noxious and poisonous effluents discharged on the surrounding areas and in the river.

(7) The NEERI and the Board have authoritatively opined that common effluent treatment plants cannot be constructed at the sites where the Calcutta tanneries are at present operating.

16. The Calcutta tanneries are even otherwise operating in violation of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act). Sections 2 (dd), (e), (j), (k), 24(1)(a), 25(1)(2) and 26 of the Water Act are as under:

> "2(dd) outlet includes any conduit pipe or channel, open or closed carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;
>
> (e) 'pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial,

agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;

(j) 'stream' includes-

(i) river;
(ii) water course (whether flowing or for the time being dry);
(iii) inland water (whether natural or artificial);
(iv) Sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage.

17. Prohibition on use of stream or well for disposal or polluting matter, etc-1 Subject to the provisions of this section-

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land;

18. Restriction on new outlets and new discharges – [(1) Subject to the provisions of this section , no person shall , without the previous consent of the State Board-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of water.

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the state Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

19. *Provisions regarding existing discharge of sewage or trade effluent*-Where immediately before the commencement of this Act any person was discharging any

sewage or trade effluent into a [stream or well or sewage or on land], the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub- section(2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette."

It is obvious from the provisions of the Water Act reproduced above that in terms of Section 26, the Calcutta tanneries are under an obligation to obtain consent from the Board before they are permitted to discharge the trade effluent into a stream or on land. According to the affidavits filed by the Board very large number of Calcutta tanneries have not obtained the consent required under the Water Act. Such tanneries are liable to be prosecuted under the Water Act.

20. The Calcutta tanneries are also violating the mandatory provisions of the Environment (Protection) Act, 1986. We direct the Board to examine individual cases and take necessary action against the defaulting tanneries in accordance with law.

21. This Court in *Vellore Citizens' Welfare Forum Vs. Union of India*, explained the "Precautionary Principal" and " Polluter Pays Principal" as under :(SCC p. 658, paras 11-13)

> *"Some of the silent principles of 'Sustainable Development', as culled out from Brundtland Report and other international documents, are inter- Generational Equity. Use and conservation of Natural Resources, Environmental protection, the Precautionary Principal, Polluter Pays Principal, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that 'The Precautionary Principal' and 'the Polluter Pays Principal' are essential features of 'Sustainable Development'. The 'Precautionary Principal'- in the context of the municipal law- means:*
>
> *(i) Environmental measures- by the State Government and the statutory authorities- must anticipate, prevent and attack the causes of environmental degradation.*
>
> *(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
>
> *(iii) The 'Onus of proof' is on the actor or the developer/ industrialist to show that his action is environmentally benign.*

'The Polluter Pays Principal' has been held to be a sound principal by this Court in India Council for Enviro- Legal Action Vs. Union of India. The Court observed: (SCC p. 246, para 65)

> *---- we are of the opinion that any principal evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'.*

The Court ruled that :(SCC p. 246, para 65)

> *---once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on'.*
>
> *Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays Principal' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.*
>
> *The Precautionary Principle and the Polluter Pays Principal have been accepted as part of the law of the land."*

22. It is thus settled by this Court that one who pollutes the environment must pay to reserve the damage caused by his acts.

23. We, therefore, order and direct as under:-

> *(1) The Calcutta tanners operating in Tangra, Tiljala, Topsia and Pagla Danga areas in the eastern fringe of the city of Calcutta (about 550 in number) shall relocate themselves from their present location and shift to the new leather complex set up by the West Bengal Government. The tanneries which decline to relocate shall not be permitted to function at the present sites.*
>
> *(2) The Calcutta tanneries shall deposit 25% of the price of the land before 28-2-1997 with the authority concerned. The subsequent instalments shall be paid in accordance with the terms of the allotment letters issued by the State Government.*
>
> *(3) The tanneries who fail to deposit 25% of the price of the land as directed by us above shall be closed on 15-4-1997.*
>
> *(4) The Board shall issue public notice in two English and two Bengali newspapers for two consecutive days by 31-12-1996 directing the Calcutta tanneries to deposit 25% of the land price before the authority named therein by 28-02-1997. It shall also be stated in the public notice that the tanneries failing to deposit the amount shall be closed on 15-4-1997.*
>
> *(5) The Board shall prepare a list of the tanneries which decline/ fail to deposit 25% of the land price by 28-2-1997 and send the same to the Superintendent of*

Police and Deputy Commissioner of the areas concerned. The Superintendent of Police/the Deputy Commissioner concerned shall close all the tanneries who fail/ decline to deposit 25% of the land price. The said tanneries shall be closed on 15-4-1997.

(6) All the Calcutta tanneries who deposit 25% of the land price shall be permitted to function at the present sites provided they keep on depositing the subsequent instalments in accordance with the terms of the allotment letter.

(7) The State Government shall hand over the possession of the plots allotted to the tanneries before 15-4-1997.

(8) The State Government shall render all assistance to the tanneries in the process of relocation. The construction of the tannery buildings, issuance of any licences/permissions etc. shall be expedited and granted on priority basis.

(9) In order to facilitate shifting of the tanneries the State Government shall set up unified single agency consisting of all the departments concerned to act as a nodal agency to sort out all the problems. The single window facility shall be set up by 31-1-1997. We make it clear that no further time shall be allowed to the State Government to set up the single window facility.

(10) The use of the land which would become available on account of shifting / relocation/ closure of the tanneries shall be permitted for green purposes. While framing the scheme the State Government may keep in view for its guidance the order of this Court in M.C. Mehta v. Union of India relating to the shifting of Delhi industries. The shifting tanneries on their relocation in the new leather complex shall be given incentives which are normally extended to new industries in new industrial estates.

(11) The tanneries which are not closed on 15-04-1997 must relocate and shift to the new leather complex on or before 30-9-1997.

(12) All the Calcutta tanneries shall stop functioning at the present sites on 30/9/1997. The closure order with effect from 30/9/1997 shall be unconditional. Even if the relocation of tanneries is not complete they shall stop functioning at the present sites with effect from 30/9/1997.

(13) We direct the Deputy Commissioner/ Superintendent of Police of the area concerned to close all the tanneries operating in Tangra, Tiljala, Topsia and Pagla Danga areas of the city of Calcutta by 30/9/1997. No tannery shall function or operate in these areas after 30/9/1997.

(14) The State Government shall appoint an Authority/ Commissioner who with the help of Board and other expert opinion and after giving opportunity to the polluting tanneries concerned assess the loss to the ecology/ environment in the affected areas.

(15) The said authority shall further determine the compensation to be recovered from the polluter- tanneries as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

(16) The amount of compensation shall be deposited with the Collector /District Magistrate of the area concerned. In the event of non-deposit the Collector/ District Magistrate shall recover the amount from the polluter- tanneries, if necessary, as arrears of land revenue. A tannery may have set up the necessary pollution control device at present, but it shall be liable to pay for the past pollution generated by the said tannery which has resulted in the environmental degradation and suffering to the residents of the area.

(17) We impose pollution fine of Rs. 10,000 each on all the tanneries in the four areas of Tangra, Tiljala, Topsia and Panla Danga. The fine shall be paid before 28/2/1997 in the office of the Collector/District Magistrate concerned.

(18) We direct the Collector/ District Magistrate of the area concerned to recover the fines from the tanneries.

(19) The compensation amount recovered from the polluting tanneries and the amount of fine recovered from the tanneries shall be deposited under a separate head called " Environment Protection Fund" and shall be utilised for restoring the damaged environment and ecology. The pollution fine also liable to be recovered as arrears of land revenue. The tanneries which failed to deposit the amount of Rs. 10,000 by 15/3/1997 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.

(20) The State Government in consultation with the expert bodies like NEERI, Central Pollution Control Board and the Board shall frame scheme/ schemes for reserving the damages caused to the ecology and environment by pollution. The scheme/ schemes so framed shall be executed by the State Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government.

(21) The workmen employed in the Calcutta tanneries shall be entitled to the rights and benefits as indicated hereunder:

- *(a) The workmen shall have continuity of employment at the new place where the tannery is shifted. The terms and conditions of their employment shall not be altered to their detriment.*
- *(b) The period between the closure of the tannery at the present site and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.*
- *(c) All those workmen who agree to shift with the tanneries shall be given one year's wages as "shifting bonus" to help them settle at the new location.*

(d) *The workmen employed in the tanneries which fail to relocate shall be deemed to have been retrenched with effect from 15/4/1997 and 30/9/1997 respectively keeping in view the closure dates of the respective tanneries provided they were in continuous service for a period of one year as defined in Section 25-B of the Industrial Disputes Act, 1947. These workmen shall also be paid in addition six years' wages as addition compensation.*

(e) *The workmen who are not willing to shift with the relocated Industries shall be deemed to have been retrenched under similar circumstances as the workmen in (d) above but they shall be paid only one year's wages as addition compensation.*

(f) *The shifting bonus and the compensation payable to the workmen in terms of this judgment shall be paid by 31/5/1997 by the tanneries which close on 15/4/1997 and by 15/11/1997 by the other tanneries closing on 30/9/1997.*

(g) *The gratuity amount payable to any workmen shall be in addition.*

24. We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this court to monitor these matters any further. We are of the view that the Calcutta High Court would be in a better position to monitor these matters hereinafter. The "Green Bench" is already functioning in the Calcutta High Court. We direct the Registry of this Court to send the relevant records, orders, documents, etc., pertaining to the Calcutta tanneries to the Calcutta High Court before 10/1/1997. The High Court shall treat this matter as a petition under Article 226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We make it clear that it will be open to the High Court to pass any appropriate order/ orders keeping in view the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary. The matter pertaining the Calcutta tanneries is disposed of with costs which we quantify as Rs. 25,000.

M.C. Mehta v. Union of India
(1997) 11 Supreme Court Cases 312
Kuldip Singh and S. Saghir Ahmad, JJ.

ORDER

1. This Court on 20-3-1996 took notice of the news item under the caption "*Falling Groundwater Level Threatens City",* appearing in the *Indian Express* of 18-3-1996. This Court issued notice to the Central Groundwater Board and the Delhi Pollution Control Committee. The news item was brought to the notice of this Court by Mr. M.C. Mehta, Advocate. On 3-4-1996, this Court issued notice to the Municipal Corporation of Delhi and the Delhi Waterworks and Sewerage Disposal Undertaking.

2. Dr. P.C. Chaturvedi, Scientist 'D' (Director), Central Groundwater Board, filed an affidavit pursuant to this Court's order. He stated in the affidavit that during the years from 1962 onwards, the water levels in the country are declining. So much so, during the years 1971-83, the fall in water level was from 4m to 8m in the National Capital Territory. There was a further fall of water level from 4m to more than 8m during the period 1983-85. One of the reasons stated in the affidavit for the decline of water level was the enhanced pumpage. Keeping in view the facts stated by Dr. Chaturvedi, this Court issued notice to the Union of India through the Secretary, Ministry of water Resources and to the Government of NCT, Delhi, through its Chief Secretary. Various authorities have filed affidavits indicating the factual position regarding the fall of water levels in the country.

3. This Court by the order dated 4-9-1996, requested Dr. P. Khanna, Director, NEERI, to have the matter examined at the Institute level by experts in the field and to file a report in this Court. The NEERI was asked to give suggestions and recommendations for checking further decline of underground report dated 23-9-1996 regarding "Water Resources Management in India, Present Status and Solution Paradigm". Mr. Arun Kumar, Additional Secretary, Ministry of Water Resources, filed an affidavit dated 24-10-1996, commenting on the NEERI Report and also indicating an overall picture of the declining water levels in the country and also the various schemes and activities undertaken by various Departments of Government of India to monitor the groundwater. The relevant paragraphs of the affidavit are as under:

> "4.2 *It may be pointed out that the main reason for gradual decline in the level of groundwater in certain areas of the country is over-exploitation. Presently the control being exercised in the country for regulating groundwater development is in the form of indirect administrative measures being adopted by institutional finance agencies who by and large insist on technical clearance of the schemes from authorized groundwater departments of respective states. These departments in turn look into the various aspects of groundwater availability. Another control imposed by the institutional agencies, availing financing facilities from National Bank for Agriculture and Rural Development is by way of prescribing spacing criteria between the groundwater structures. Yet another method of indirect control is by way of denial of power connections for the pump-sets financed through loans from banks. However, in the absence of any law, the administrative measures do not prevent affluent farmers from constructing wells in critical areas. An affluent farmer with his large capital investment can construct a high capacity well which affects shallow wells in the neighbourhood. In order to arrest the depleting trend and to avoid indiscriminatory withdrawal of groundwater, the Government of India had circulated a Model Bill to the States/Union Territories in 1970 to help them to bring out suitable legislation on the lines of the Model Bill to regulated and control the development of groundwater in their respective areas.*
>
> *5. This para outlines the need for regulation and extraction of groundwater and lays emphasis on integrated water resources management including regulation*

on land use and proposed agriculture practices, human settlement patterns, etc. The number of overexploited blocks mentioned as more than 120 may have to be corrected as 231 blocks, 6 mandals and 12 taluks. As regards problems of degraded lands, the Department of Agriculture and Cooperation implements schemes for reclamation of degraded land, namely, alkaline, sodic lands and saline soils. According to estimates, 8.53 million ha of the country is suffering from water-logging, 3.58 million ha is under alkalinity and 5.50 million ha area is saline and under coastal salinity. For treatment of alkaline soil a centrally sponsored scheme of Reclamation of Alkaline Soil is being implemented in the country covering the states of Haryana, Punjab, U.P., M.P., Gujarat and Rajasthan. Besides, there is a World Bank-funded project with an outlay of Rs 313 crores for reclamation of sodic land in the state of U.P. Additionally, an EEC-funded project for reclamation of alkaline soil is under implementation in the States of U.P. and Bihar."

4. This Court on 21-11-1996 passed the following order :

"We have heard learned counsel for quite some time. We have also assisted by Mr. I.B. Karan, Deputy Secretary, Ministry of Water Resources, Government of India. Mr. N. Kitto, Director, Central Groundwater Board and Mr. S.B. Singh, In-charge, Delhi State Unit, Central Groundwater Board are also present. We have considered various suggestions for the purpose of controlling/regulating the underground water resources. One of the suggestions under consideration is to accept the NEERI recommendation and constitute an Authority under Section 3(3) of the Environment (Protection) Act, 1986. The purpose can only be achieved if it can be done on all-India basis. Mr. I.B. Karan states that he would prepare a note keeping in view the proceedings of this Court today, consult the authorities concerned and come back to this Court on 28th November, 1996. Adjourned to 28th November, 1996."

This Court on 5-12-1996 passed the following order:

"Pursuant to this Court order dated November 21, 1996, Mr. Arun Kumar, Additional Secretary, Ministry of Water Resources, Government of India, has filed affidavit dated November 27, 1996. It is stated that because of the reasons given in the affidavit it would not be possible to have a workable mechanism by appointing authorities under Section 3(3) of the Environment (Protection) Act, 1986 (the Act). We do not wish to comment on the stand taken in the affidavit. We are prima facie of the view that the Act being an Act made by Parliament under Entry 13 List I read with Article 253 of the Constitution of India. it has an overriding effect. It is not necessary for us to go into this question.

Mr. Mehta has placed before us organizational chart which shows that the Central Groundwater Board has its officer almost all over the country. The Board consists of a Chairman, four Members, Director – Administration and a Finance & Accounts Officer. The Board has Regional Directorates spread all over the country. Each region has further functional capacity of the Central,

Groundwater Board, we are of the view that the Central Government may consider issuing a notification constituting the Board itself as an Authority under Section 3(3) of the Act. With the notification designating the Board as an authority under the Act, it would have all the statutory powers under the Act and it would be in a position to have effective control all over India. Needless to say that any Institution/Department constituted by the State Government can independently function in its own field with the cooperation and under the guidance of the organization set up by the Central Groundwater Board. Learned counsel states that he would have the response of the secretary, Ministry of Water Resources by the next date of hearing."

5. Mr. Arun Kumar, Additional Secretary, Ministry of –Water Resources, Government of India, has filed affidavit dated 9-12-1996. It is stated in the affidavit that the suggestion to declare Central Groundwater Board as an Authority under the Environment (Protection) Act, 1986 (the Act) for the purpose of regulating and control of groundwater development has been considered by the Ministry of Water Resources and it has been decided to comply with the suggestions made by this Court. It has further been stated in the affidavit that the organizational presence of the Board in the country is not so extensive or adequate to undertake the additional burden desired by this Court. It is stated that the regulation and control of groundwater is the responsibility of the State Government, as water is a State subject. Keeping the present organizational status of the Board, it is stated that the Board will have to be expanded and strengthened adequately to enable it to discharge its added responsibilities. The exact infrastructure for this purpose will have to be worked out. The affidavit further states that the Central Groundwater Board will collaborate and coordinate with the State authorities in the regulation and control of groundwater development.

6. The NEERI in paras 6 and 7 of its report has given hololological approach to Water Resource Management, which is reproduced hereunder:

"6. Hololological Approach to Water Resources Management – The salient features of the hololological approach of Water Resources Management are presented in Fig. 1, and include:

Sustainable solutions to water-resource and land-use problems through appropriate technological interventions, and supply and demand management options.

Regulation on exploitation through legislation and effective administration with focus on water conservation, recycle/reuse, restrictions to ensure equitability in water availability and pragmatic land use.

Regulation by education, i.e., by creating awareness amongst the people to enable their participation and traditional knowledge in sustainable water resource management.

Management of water resources to achieve overall aspirational goal of sustainable development warrants legal interventions based on the principle of

inter and intergenerational equity, the precautionary principle, conservation of natural resources and environmental protection. There is thus adequate reason to take recourse to the Sections 3, 4 and 5 of the Environment (Protection) Act, 1986 for implementing hololological approach to water resources management.

In order to address the complex issues in water resources management it is prudent that the Central Government considers constituting an authority under the Environment (Protection) Act, 1986 and confers on this authority all the powers necessary to deal with the situation created by the depletion of groundwater levels, dwindling surface water resources, deterioration of surface and groundwater quality and haphazard land use. The authority should be headed by a retired (sic) with expertise in the field of hydrology, hydrogeology, information technology.

7. Recommendations : A Central Water Resource Management Authority, with the composition as delineated in Section 6 above, with mandate for coordination and implementation of all activities of planning, development, allocation, implementation, research and monitoring of all water resources need to be established to promote intra and inter-generational equity, as also to operationalise the precautionary principle in sustainable water resource management. All the States need to constitute similar authorities with functions in the State as of the Central Authority. The mandate of the authority needs to include the following:

To prepare medium and long-term national use plans inter alia including agricultural practices, human settlement patterns and industrial topology in consultation with Ministries/Departments concerned based on the regional water supportive capacity;

To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National Agricultural Water Use Policy to encourage judicious use of water resources. To keep under review ground water laves and quality, and surface water quantity to devise and implement pragmatic strategies at plan and programme levels; ;

To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers;

To ensure techno-economic feasibility and to implement programmes on reuse of appropriately treated sewage for agriculture, reuse of industrial waste waters as industrial process water, use of treated sewage in social forestry and public parks in municipal areas and reuse of treated wastewater in new housing complexes for non-consumptive usages;

To protect, conserve and augment traditional water retaining structures;

To protect, conserve and augment natural and manmade wetlands in the country;

To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi arid regions;

To promote and implement modern and traditional water harvesting technologies to ensure minimal expenditure in groundwater harnessing;

To design and implement programmes to arrest alarming rates of decline in snowline in the country;

To ensure catchment area treatment, including construction of check dams, contour bundling, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins;

To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988;

To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource;

To ensure community participation with a view to harnessing traditional knowledge at all stages in the hololological approach to water resource management."

7. Mr. M.C. Mehta and Mr. Ranjit Kumar, learned counsel assisting us in this matter have vehemently contended that, keeping in view the declining level of underground water all over the country, it is necessary to regulate withdrawal of the underground water. It is no doubt correct that there are legislations in some of the States to regulate the water resources development, but by and large, the underground water is being exploited all over the country without any regulations. It has, therefore, been rightly suggested by NEERI in its Report that an Authority under the Act be constituted with the powers necessary to deal with the situation created by the depletion of the groundwater levels, dwindling surface water resources, deterioration of surface and groundwater quality and haphazard land use.

8. We therefore, order and direct as under.

9. The Central Government in the Ministry of Environment and Forest shall constitute the Central Groundwater Board as an Authority under Section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of groundwater management and development. The Central Government shall confer on the Authority the power to give directions under Section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section (2) of Section 3 of the Act.

10. We make it clear that the Board having been constituted an Authority under Section 3(3) of the Act, it can resort to the penal provisions contained in Sections 15 to 21 of the Act.

11. It has been stated by Dr. P.C. Chaturvedi and Mr. Arun Kumar in their respective affidavits that enhanced and unregulated pumpage of the water is primarily for the decline in the water levels of the country.

12. The main object for the constitution of the Board as an Authority is the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country. We have no doubt that the Authority so constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. This aspect may be taken up by the Authority on an urgent basis.

13. .....

14. .....

M. C. Mehta v. Union of India
AIR 1997 Supreme Court 734
Writ Petition (Civil) No. 13381 of 1984 D/-30-12-1996
Kuldip Singh and Faizan Uddin, JJ.

(A) Constitution of India, Arts. 21, 48-A, 51-A, 47 - Environmental protection - Precautionary principle - Taj Mahal - Degradation due to pollution - Emissions generated by Coke/coal using industries in Taj trapezium found to be main polluters - Directions issued to 292 industries located and operating in Agra to change-over within fixed time schedule to natural gas as industrial fuel or stop functioning with coal/coke and get relocated - Industries not applying for gas or relocation to stop functioning with coal/coke from 30-4-97.

(Paras 27, 28, 29)

(B) Constitution of India, Arts. 21, 48-A, 32 - Environmental Pollution - Ancient monument - Taj Mahal - Degradation due to pollution – Relocation of industries using coke/coal - Directions as to time schedule for relocation and facilities to be given to relocating industries.

The industries, out of the 292 industries listed, which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation (UPSIDC)/Government before February 28, 1997 for allotment of alternative plots in the industrial estates outside Taj Trapezium (TTZ). The Corporation/Government shall finally decide and allot alternative plots, before March 31, 1997, to the industries that are seeking relocation. The relocating industries shall set up their respective units in the new industrial estates outside TTZ. The relocating industries shall not function and operate in TTZ beyond December 31, 1997. The closure by December 31, 1997 is unconditional and irrespective of the fact whether the new unit outside TTZ is completely set up or not. The Deputy Commissioner, Agra and the Superintendent (Police), Agra shall effect the closure of all the industries on December 31, 1997 that are to be relocated by that date. The U.P. State Government/Corporation

shall render all assistance to the industries in the process of relocation. The allotment of plots, construction of factory buildings, etc. and issuance of any license/permissions, etc., shall be expedited and granted on priority basis. In order to facilitate shifting of industries from TTZ, the State Government and all other authorities shall set up unified single agency consisting of all the departments concerned to act as a nodal agency to sort out all the problems of such industries. The shifting industries on the relocations in the new industrial estates shall be given incentives in terms of the provisions of the Agra Master Plan and also the incentives that are normally extended to new industries in new industrial estates.

(Para 29)

(C) Constitution of India, Arts. 21, 48-A, 32 - Environmental protection - Ancient monument, Taj Mahal - Degradation by pollution - Relocation/closure of listed coke/coal using industries directed - Rights and benefits of workmen employed in such industries - Additional compensation of six years wages to employees of industries which are closed - Shifting bonus to employee who agree to shift with industry.

Industrial Disputes Act (14 of 1947), Ss. 25-B, 25 FFF.

The workmen employed in 292 listed coke/coal using industries located in Agra which are directed to be relocated or closed to prevent degradation to Taj Mahal shall be entitled to following rights and benefits: -

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year's wages as 'shifting bonus' to help them settle at the new location. The said bonus shall be paid before January 31, 1998.

(d) The workmen employed in the industries who do not intend to relocate/obtain natural gas and opt for closure, shall be deemed to have been retrenched by May 31, 1997, provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F (b) of the Industrial Disputes Act. These workmen shall also be paid, in addition, six years wages as additional compensation.

(e) The compensation payable to the workmen in terms of this judgment shall be paid by the management within two months of the retrenchment.

(f) The gratuity amount payable to any workman shall be paid in addition.

(Para 29)

Cases Referred: **Chronological Paras**

1996 AIR SCW 1069: (1996) 2 JT (SC) 196	26
1996 AIR SCW 3399: (1996) 7 JT (SC) 375	26

KULDIPSINGH, J.:- Taj Mahal - The Taj - is the "King Emperor" amongst the World Wonders. The Taj is the final achievement and acme of the Mughal Art. It represents the most refined aesthetic values. It is a fantasy lie grandeur. It is the perfect culmination and artistic interplay of the architects' skill and the jewellers' inspiration. The marble-in-lay walls of the Taj are amongst the most outstanding examples of decorative workmanship. The elegant symmetry of its exterior and the aerial grace of its domes and minarets impress the beholder in a manner never to be forgotten. It stands out as one of the most priceless national monument, of surpassing beauty and worth, a glorious tribute to man's achievement in Architecture and Engineering.

2. Lord Roberts in his work "Forty one years in India" describes The Taj as under: -

> "Neither words nor could pencil give to the most imaginative reader the slightest idea of all the satisfying beauty and purity of this glorious conception. To those who have not seen it, I would say, Go to India; the Taj alone is well worth the journey".

3. A poet describes The Taj as under: -

> "It is too pure, too holy to be the work of human hands. Angels must have brought it from heaven and a glass case should be thrown over it to preserve it from each breath of air".

Sammuel Smith in his Book about The Taj explains the impact as under: -

> "We stood spell-bound for a few minutes at this lovely apparition; it hardly seems of the earth. It is more like a dream of Celestial beauty, no words can describe it. We felt that all previous sights were damned in comparison. No such effect is produced by the first view of St. Peter's or Milan or Cologne Cathedrals. They are all majestic, but this is enchantment itself. So perfect is its form that all other structures seem clumsy".

4. The Taj is threatened with deterioration and damaged not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction. A private sector preservation organisation called "World Monuments Fund" (American Express Company) has published a list of 100 most endangered sites (1996) in the World. The Taj has been included in the list by stating as under: -

> "The Taj Mahal-Agra-India"
>
> The Taj Mahal, Marble Tomb for Mumtaz Mahal, wife of Emperor Shah Jahan, is considered the epitome of Mughal monumental domed tombs set in a garden. The environment of Agra is today beset with problems relating to the inadequacy of its urban infrastructure for transportation, water and electricity. The densest pollution

near the Taj Mahal is caused by residential fuel combustion, diesel trains and buses, and back-up generators. Construction of the proposed Agra Ring Road and Bypass that would divert the estimated daily 6,50,000 tons of trans-India truck traffic awaits financing. Strict controls on industrial pollution established in 1982 are being intensively enforced following a 1993 Supreme Court Order. The Asian Development Bank's proposed $ 300 million loan to the Indian government to finance infrastructure improvements would provide the opportunity to solve the chronic problems. Agra contains three World Heritage Sites including the Taj Mahal".

According to the petitioner, the foundries, chemical/hazardous industries and the refinery at Mathura are the major sources of damage to the Taj. The Sulphur dioxide emitted by the Mathura Refinery and the industries when combined with Oxygen- with the aid of moisture-in the atmosphere forms sulphuric acid called "Acid rain" which has a corroding effect on the gleaming white marble. Industrial/Refinery emissions, brick-kilns, vehicular traffic and generator-sets are primarily responsible for polluting the ambient air around Taj Trapezium (TTZ). The petition states that the white marble has yellowed and blackened in places. It is inside The Taj that the decay is more apparent. Yellow pallor pervades the entire monument. In places the yellow hue is magnified by ugly brown and black spots. Fungal deterioration is worst in the inner chamber where the original graves of Shah-Jahan and Mumtaz Mahal lie. According to the petitioner The Taj a monument of international repute - is on its way to degradation due to atmospheric pollution and it is imperative that preventive steps are taken and soon. The petitioner has finally sought appropriate directions to the authorities concerned to take immediate steps to stop air pollution in the TTZ and save The Taj.

5. The Report of the Expert Committee Called "Report on Environmental Impact of Mathura Refinery" (Varadharajan Committee) published by the Government of India in 1978 has been annexed along with the Writ Petition. Para 4.1 of the conclusions therein is as under: -

"There is substantial level of pollution of sulphur dioxide and particulate matter in the Agra region. The possible sources are all coal users consisting of two Power Plants, a number of small industries mainly foundries (approximately 250) and a Railway shunting Yard. As far as suspended particulate matters are concerned, because of use of coal, contribution will be substantial. Even though the total amount of emission of sulphur dioxide from these sources may be small, on account of their proximity to the monuments, their contribution to the air quality of the zone will be considerably high".

Varadharajan Committee made, among others, the following recommendations:-

"Steps may be taken to ensure that no new industry including small industries or other units which can cause pollution are located north west of the Taj Mahal...Efforts may be made to relocate the existing small industries particularly the foundries, in an area south east of Agra beyond the Taj Mahal so that emissions from these industries will not be in the direction of the Monuments ... Similar

considerations may apply to large industries such as Fertilizer & Petrochemicals. Such industries which are likely to cause environmental pollution may not be located in the neighbourhood of the refinery. The committee further recommends that no large industry in the Agra region and its neighbourhood be established without conducting appropriate detailed studies to assess the environmental effect of such industries on the monuments. Location should be so chosen as to exclude any increase in environmental pollution in the area ... The Committee wishes to record its deep concern regarding the existing level of pollution in Agra. It recommends that an appropriate authority be created which could monitor emissions by industries as well as the air quality at Agra on a continuous basis. This authority should be vested with powers to direct industries causing pollution to limit the level of emission and specify such measures as are necessary to reduce the emission whenever the pollutant level at the monuments exceeds acceptable limits. The committee particularly desires that recommendations made in regard to reduction of existing pollution levels at Agra should be converted to a time-bound programme and should be implemented with utmost speed ...The committee also recommends that studies should be undertaken by competent agencies to explore the possibility of protecting the monuments by measures such as provision of a green belt around Agra in the region between Mathura and Agra ...Even though assurances have been obtained from IOC that adequate precautions would be taken to contain the pollution on account of using coal in the power plant, the Committee is of the opinion that till such time this problem is studied in depth and suitable technologies have been found to be satisfactorily in use elsewhere, the use of coal in the refinery power plant should be deferred".

The Central Board for the Prevention and Control of Water Pollution, New Delhi, published a report (Control of Urban Pollution Series CUPS/7/1981-82 under the title "Inventory and Assessment of Pollution Emission in and Around Agra-Mathura Region (Abridged)". The relevant findings are as under: -

"Industrial activities which are in operation in Agra city and its outskirts could be categorized as (i) Ferrous Metal Casting using Cupolas (Foundry); (ii) Ferrous-alloy and Non-Ferrous Castings using Crucibles, Rotary Furnaces etc.; (iii) Rubber Processing; (iv) Lime Oxidation and Pulverising; (v) Engineering; (vi) Chemical; and (vii) Brick and Refractory Kilns.

...The contribution of sulphur dioxide through emission primarily form the combustion from the fuels comprising hard coke, steam coal, wood and fuel oil is estimated as 3.64 tones per day from industrial activities in the Agra City and its outskirts (Table 5-3). The vehicular contribution as estimated from traffic census in 6 road crossings is only 65 kg a day or 0.065 tones a day and should be considered negligible for the present (Para 7.4)... The contribution of sulphur dioxide from the 5 recognized distinct discrete sources in tones per day are 2.28, 2.28, 1.36, 1.21 and 0.065 from (i) two thermal power stations, (ii) foundries, (iii) other industries in Agra (iv) two railway marshalling yards and (v) vehicular traffic respectively. Omitting contribution from vehicular traffic as because it is considered negligible,

the relative contributions from the other 4 distinct sources are 32, 32, 19 and 16.9 percent. With the elimination of the first and the fourth sources-by closing down the two thermal power station and replacing coal fired steam engines by diesel engines in the two railway marshalling yards-about 50 per cent (48.9 to be exact) cut down of sulphur dioxide emission is expected".

The National Environment Engineering Research Institute (NEERI) gave "Overview report" regarding status of air pollution around the Taj in 1990. Relevant part of the report is as under: -

"The sources of pollution, including small and medium scale industrial units, are scattered all around Taj Mahal. High air pollution load is thus pumped into the Taj air shed. Sudden rises in concentration level are often recorded in all directions in gaseous as well as particulate pollutant depending upon the local micro climatic conditions ... On four occasions during the five year air quality monitoring, the 4 hourly average values of S02 at Taj Mahal were observed to be higher than 300 ug/m3, i.e. 10 folds of the promulgated CPCB standard of 30 ug/m3 for sensitive areas. The values exceeded even the standard of 120 ug/m3 set for industrial zones. Statistical analysis of the recorded data indicates that 40% (cumulative percentage level) has crossed the standard set for sensitive receptors/zones...The SPM levels at Taj Mahal were invariably high (more than 200 ug/m3) and exceeded the national ambient air quality standard of 100 ug/m3 for SPM for sensitive locations barring a few days in monsoon months ...Another study during 1985-87 brought to fore that the overall status of the ambient air quality within the trapezium has significantly deteriorated over this period."

The Impact of the air quality on the Taj has been stated as under: -

"The rapid industrial development of Agra Mathura region has resulted in acidic emissions into the atmosphere at an alarming rate. This causes serious concern on the well being of Taj Mahal.... The gaseous pollutants being acidic in nature, significantly impact both the biotic as well as a biotic components of the ecosystem like plants and building material like marble and red stone".

This Court on January 8, 1993 passed the following order: -

"We have heard Mr. M. C. Mehta, the petitioner in person. According to him, the sources of pollution in Agra region as per the report of Central Pollution Control Board are Iron foundries, Ferro-alloyed industries, rubber processing, lime processing, engineering, chemical industry, brick refractory and vehicles. He further states that distant sources of pollution are the Mathura Refinery and Ferozabad Glass Industry. It is necessary to have a detailed survey done of the area to find out the actual industries and foundries which are working in the region. We direct the U.P. Pollution Control Board to get a survey done of the area and prepare a list of all the industries and foundries which are the sources of pollution in the area. The Pollution Board after having the survey done shall issue notices to all the foundries and industries in that region to satisfy the Board that necessary anti-pollution measures

have been undertaken by the said industries/foundries. The Pollution Board after doing this exercise shall submit a report to this Court on or before May 5, 1993. A copy of this order be sent to the Chairman and Secretary, U.P. Pollution Control Board for compliance and report as directed".

Pursuant to the above quoted order the U.P. Pollution Control Board (the Board) filed an affidavit dated May 3, 1993. It is stated in the affidavit that as per survey report finished by the Regional Office of the U.P. Board the industries of Agra Region were categorized as under: -

Nature of Industry		Number of Industry
(I)	Foundries	168
(II)	Rubber Factories	20
(III)	Engineering Industries	46
(IV)	Chemical and other Industries	55
(V)	Lime Kilns	03
(VI)	Refinery (situated at Mathura)	01
(VII)	Glass Industries (situated at Firozabad)	49
(VIII)	Brick Refractories and Poultries	09
(IX)	Bangle Industries (situated at Firozabad)	120
(X)	Block Glass Industries	40
	TOTAL	511

The affidavit further states that notices were issued to the aforesaid 511 industries/foundries as directed by this Court. Although Mathura Refinery is included in the list of 511 industries but we are not dealing with the list of 511 industries but we are not dealing with the refinery in this judgment. The Mathura Refinery is being dealt with separately. All the foundries/industries are represented before us through the National Chamber of Industries and Commerce, U.P., Agra, U.P. Chamber of Commerce and the Glass Industries Syndicate. Some of the individual industries have also been represented through their learned counsel.

6. This Court considered the affidavit filed by the Board and passed the following order on May 5, 1993: -

"Pursuant to this Court's order dated January 8, 1993, an affidavit has been filed by the U.P. Pollution Control Board. It has been stated therein that in terms of this Court's order dated January 8, 1993, notices have been issued by the Board to 511 industries in Agra region. The names and address of the said industries have been enclosed along with the affidavit. The industries are required to file their replies to the notices by May 5, 1993 (today)...We direct the U.P. Pollution Control Board to issue a public notice by getting the same published in two local news papers and two national newspapers calling upon all the 511 industries to install anti-pollution mechanism/affluent treatment plants if they have not already done so. All the 511 industries be called upon to file replies to the notices already issued by the Board within further time of eight weeks from the date of the publication of the notices in

the newspapers. This publication shall be done within two weeks from today. After the replies from the industries are received and processed by the Board, the Board may, if it so desires, inspect any of the industries in order to find out the correctness of the replies filed by the Industries. The matter be listed on August 10, 1993".

Pursuant to this Court's order (quoted above) the Board filed affidavit dated August 5, 1993 wherein it is stated that public notice was published in two local newspapers of Agra on May 17, 1993 and two National Newspapers on May 18, 1993 calling upon the industries to file their replies during the extended time. The affidavit states that all the listed industries were polluting industries and 507 out of them, had not even installed any air pollution control device. The 212 industries who did not respond to the notice and failed to take any step towards installing the pollution control devices were closed by the order dated August 27, 1993 with immediate effect. The closure order was to operate till the necessary pollution control devices were to be set up by the industries concerned.

7. Meanwhile, NEERI submitted its report dated October 16/18, 1993 regarding sulphur dioxide emission control measures at Mathura Refinery. Since the Mathura Refinery matter is being dealt with separately it is not necessary to go into the details of the report. Suffice it to say that apart from short-term strategy, the NEERI recommended the use of natural gas, setting up of Hydro cracking unit, improved sulphur Recovery Unit, Chemo biochemical Sulphur Recovery and the setting up of green belt around the refinery. The NERRI report examined in detail the decay mechanism and status of the Taj marble. How the deterioration of marble occurs, is stated by NEERI as under: -

> "The deterioration of marble occurs in two modes. In the first mode, weathering takes place if the marble is sheltered under domes and cornices, and protected form direct impact of rain. Here a crust is formed, which after some period, exfoliates due to mechanical stresses. In case of marble exposed to rain, gradual reduction of material occurs, as the reaction products are washed away by rainfall and fresh marble is exposed. The crusts are formed due to Sulphur Dioxide, but the cumulative effects of all pollutants are more damaging. It is also observed that trace metals present in fly ash and suspended particulate matter, e.g. Manganese, Iron and Vanadium act as catalysts for oxidation of Sulphur Dioxide, and in turn enhance degradation of marble calcite to gypsum".

The NEERI report indicates the air-pollution effect on The Taj in the following words: -

> "The Taj Mahal marble samples analyzed by NEERI in 1993 reveal that the black soot on certain protected surfaces contains 0.6% Calcium and traces of Sulphate. X-ray diffraction studies indicated that soot a quartz (Silicon Dioxide) are the major constituents of the black coating at Taj Mahal (Lal and Holden, ES & T, April 1981). The origin of soot can be traced back to the fuel consumption around the sensitive receptor, while quartz is derived from geo-crystal origin and causes surface abrasions. Soot in itself is not chemically destructive, but with tar it acts as a soiling agent. Absorption of the acidic gases is enhanced due to the presence of soot/smoky matter resulting in long term effects. Further, the presence of soot reduces the aesthetic value of the monument. Ambient air around Taj Mahal is polluted

primarily from point/line sources and has adverse impacts on building material by alternation of marble and sandstone structures at microcrystalline level. The earlier studies have revealed that the concentration of gaseous pollutants and SPM (predominantly soot and carbon particles) are relatively high during winter months due to the frequent inversion conditions restricting vertical dispersion. During monsoon seasons, suspended particles are washed away and this cycle of pollutant built-up and subsequent removal continues exposing fresh surface of the monument to the pollutants".

On November 19, 1993, this Court passed the following order: -

"On November 5, 1993, we suggested to Mr. N.N. Goswami, learned senior advocate, appearing on behalf of the Union of India to find out the possibility of providing Gas as a fuel to the Glass Industries and the Foundries around Agra. Mr. Goswami states that he is already in touch with the authorities concerned and needs little more time. We give him time till November 26, 1993. He must file concrete proposal before the next date of hearing. Meanwhile, we also issue Notice to the Secretary, Ministry of Petroleum, Govt of India and the Chairman, Gas Authority of India, returnable on November 26, 1993".

This Court on November 26, 1993 examined the affidavit filed by the Gas Authority of India Ltd. (GAIL) regarding supply of natural gas to the industries operating in TTZ and passed the following order: -

"Pursuant to this court's order dated November 19, 1993, Mr. R.P. Sharma, General Manager, Marketing and Planning, Gas Authority of India Ltd. has filed an affidavit dated November 25, 1993 Mr. Sharma is also present in Court. It has been stated in the affidavit and also orally by Mr. Sharma that without undertaking the detailed survey with regard to the assessment of demand and other technical requirements it would not be possible to proceed further in this matter.

Dr. Khanna, Director NEERI states that some sort of survey in this respect has already been done by the State of U.P. He further states that so far as Mathura Refinery is concerned, NEERI has done the survey under the directions of this Court. According to him, the work of doing further survey on behalf of the Gas Authority of India Ltd. can be undertaken by NEERI if the terms are suitable. Mr. R.P. Sharma, General Manager, Gas Authority of India Ltd. states that the Gas Authority shall send their terms of reference to the NEERI within ten days. Let this be done. Dr. Khanna states that they will respond to the terms within a week thereafter.

Mr. Pradeep Misra, learned counsel appearing on behalf of the U.P. State Pollution Control Board states that whatever data in this matter is available with the State of U.P. shall be supplied to NEERI within a week.

To be listed on December 17, 1993. We request Dr. Khanna, Director, NEERI and MR. R. P. Sharma, General Manager, Gas Authority of India Ltd. (or any other officer on his behalf) to be present in Court on December 17, 1993".

The NEERI in its project proposal dated December 19, 1993 regarding feasibility of utilization of natural gas as replacement of conventional fuel in the industrial sectors of Agra, Mathura and Firozabad stated as under: -

> "The Ministry of Environment and Forests (MEF), retained the National Environmental Engineering Research Institute (NEERI) in December 1992 to redefine the Taj Trapezium. The study was completed in July 1993. Stringent pollution control regulations have been stipulated by the Government of India but the industries within Agra area are not meeting the prescribed emission standards. One of the reasons is that the industries use coal and coke for their fuel requirements. Amongst the options proposed in the Air Environment Management Plant in Taj Trapezium report, NEERI has suggested change over to cleaner fuel like CNG for mitigation of air pollution in the region. As per the directives of the Hon'ble Supreme Court of India, NEERI proposed a study on techno-economic feasibility of utilization of compressed natural Gas (CNG) as a replacement of solid/liquid fuels (e.g., Coal, FO, LSHS etc.) in the industrial sectors of Agra, Mathura and Firozabad region, based on the Terms of Reference formulated by the Gas Authority of India Ltd. (GAIL).

The existing HBJ pipeline laid by GAIL for transmission and distribution of CNG from the Western Offshore Region passing through Gujarat, Madhya Pradesh, Rajasthan, Uttar Pradesh, Delhi and Haryana can be tapped to serve this sensitive area. Auraiya in Uttar Pradesh is the nearest possible tapping point which is at an approximate distance of 170 kilometres from Agra. Presently the total availability of CNG ex-Hazira is of the order of 20 MMSCMD, and is expected to increase to 38-39 MMSCMD in 1998-99 as projected by GAIL. Based on the existing energy demand, NEERI has projected approximately 1.00 MMSCMD CNG requirements for Agra, Mathura and Firozabad region.

The price of CNG at Auraiya (exclusive of taxes) range from Rs. 2500-2700/1000 m3 which will be further altered by Government of India after 1995 (GAIL's projection)".

8. This Court by the order dated February 11, 1994 asked the NEERI to examine the possibility of using propane or any other safe fuel instead of coal/coke by the industries in the TTZ. This Court also directed the UP State Industrial Development Corporation (the Corporation) to locate sufficient areas outside the TTZ to relocate the industries. The operative part of the order is as under: -

> "We requested Mr. V. R. Reddy learned Additional Solicitor General on January 14, 1994 to have discussion with the concerned authorities and assist us in probing the possibility of providing some safe fuel to the foundries and other industries situated in the Taj trapezium. We are thankful to Mr. Reddy for doing good job and placing before us various suggestions in that direction. Mr. Reddy has suggested that NEERI be asked to examine the possible effects of the use of Propane as a safe fuel from the point of view of atmospheric pollution. We accept the suggestion and request Dr. P. Khanna to examine the feasibility of propane as a possible alternative to the present fuel which is being used by the foundries and other industries in the Taj trapezium. This may be done within 2 weeks from today. Copy of this order be sent to the

Director, NEERI within 2 days from today. Government of India, Ministry of Environment shall pay the charges of NEERI in this respect.

We further direct the U.P. State Industrial Development Corporation through its Managing Director to locate sufficient landed area possibly outside the Taj trapezium where the foundries and other industries located within the Taj trapezium can be ultimately shifted. The Corporation shall also indicate the various incentives which the Government/UPSIDC (UP State Industrial Development Corporation) might offer to the shifting industries. The Managing Director of the UPSIDC shall file an affidavit before this Court on or before March 4, 1994 indicating the steps taken by the Corporation in this respect. We also direct the Gas Authority of India to indicate the price of Propane which they might have to ultimately supply to the industries within the Taj trapezium or the industries which are to be shifted from within the Taj trapezium. This may be done within 4 weeks from today. We place the statement of the outcome of discussion held by Mr. Reddy with the concerned authorities on record".

This Court on February 25, 1994 examined the issue relating to supply of natural gas to the Mathura Refinery and the industries in the TTZ and passed the following order: -

"With a view to save time and Red Tape we are of the view that it would be useful to have direct talk with the highest authorities who can take instant decision in the matter. We, therefore, request the Chairman of the Oil and Natural Gas Commission, the Chairman of the Indian Oil Corporation and the Chairman of the Gas Authority of India to be personally present in this Court on 8-3-1994 at 2.00 p.m.

We further direct the Secretary, Ministry of Petroleum, to depute a responsible officer to be present in the Court on 8-3-94 at 2 p.m."

The Corporation filed affidavit dated March 3, 1994 indicating the location/area of various industrial estates which were available for relocation of the industries from TTZ. After examining the contents of the affidavit, this Court on March 4, 1994 passed the following order: -

Mr. K. K. Venugopal, learned senior advocate appears for the U.P. State Industrial Corporation Limited. The Corporation has filed an affidavit wherein it is stated that the Corporation has 220 acres of developed land in industrial area, Kosi (Kotwa) where 151 plots are available for immediate allotment. It is further stated that undeveloped land measuring 330 acres is available in Salimpur in Aligarh District. Both these places are about 60/65 kms away from Agra and are outside the Taj environment Trapezium. It is also stated that 85 acres of undeveloped land is also available at Etah, which is about 80 kms away from Agra.

Before we issue any directions regarding the development of area or allotment of land to various industries, it is necessary to know the exact number of air polluting industries which are operating within the Taj Trapezium which are to be shifted outside the trapezium. Mr. Pradeep Misra, learned counsel for the U.P. State Pollution Control Board fairly states that he would direct the Board Secretariat to

prepare a list on the basis of their record and survey, and submit the same in this Court within a week from today.

Mr. S. K. Jain and Mr. Sanjay Parikh, Advocates have been appearing for various industries. They also undertake to get the information in this respect and give a list to the U.P. Pollution Control Board. We further direct the Secretary, Department of Industries, Government of Uttar Pradesh, to file/cause to file a list of all the air polluting industries within the Taj Trapezium in this Court within a week from today".

On March 8, 1994 the Chairman, General Managers and other officers of various commissions/corporations and departments were present in Court. After hearing them the Court passed the following order: -

"Pursuant to this Court's order dated February 25, 1994, Shri S.K. Manglik, Chairman and Managing Director, Oil and Natural Gas Commission along with Shri Atul Chandra, Group General Manager (Operation), Shri K. K. Kapur, Chairman and Managing Director, Gas Authority of India along with Shri R.P. Sharma, General Manager (Marketing) Shri B. K. Bakshi, Chairman and Managing Director, Indian Oil Corporation along with Shri A.P. Choudhary and Shri S. R. Shah, Joint Secretary, Ministry of Petroleum, are present in Court. We place on record our appreciation for having responded to our request.

We have discussed our viewpoint with Shri Manglik, Shri Kapur, Shri Shan and Shri Bakshi. We have requested them to file in this Court a note each with regard to the discussion we have had with them in the court. This may be done within five days".

When the matter came up for consideration on March 31, 1994, this Court while examining the question of relocating the industries, passed the following order: -

"... Mr. Venugopal, learned senior counsel appearing for the UPSIDC states that the UPSIDC would examine the demand of each of the industry and thereafter locate the requisite area outside the Taj Trapezium for shifting these industries. We propose to issue public/individual notices inviting objections/suggestions from the industries concerned. Mr. Venugopal states that he would prepare & file the format of the said notice. This matter to come up for further consideration on 8-4-94".

This Court on April 11, 1994 examined the NEERI report dated July, 1993. The Ministry of Environment and Forest retained NEERI in January, 1993 to undertake an extensive study with a view to redefining the TTZ (Taj Trapezium) and relenting the area management environmental plan. The NEERI submitted its final report to the Government of India in July, 1993. A copy of the report was placed on the record of this Court. The report was prepared under the guidance of Dr. P. Khanna, Director, NEERI and the project leaders were Dr. A. N. Agarwal and Dr. Mrs. Thakra. In addition, there was a team of about 30 scientists participating in the project. The NEERI in its report has found as a fact that the industries in the TTZ (districts of Agra, Mathura, Ferozabad and Bharatpur) are the main source of pollution causing damage to The Taj. The NEERI has suggested various measures for controlling the pollution in the area. One of the

suggestions made is the shifting of the polluting industries to an area outside the TTZ. The other notable recommendation is the setting up of the Green Belt Development Plan around The Taj to save it from the effect of pollution. Under the directions of this Court, the green belt as suggested by NEERI is already in the process of being planted/grown around The Taj. The matter is being processed separately.

9. This Court on April 11, 1994 after hearing learned counsel for the parties, passed the order indicating that as a first phase the industries situated in Agra be relocated out of TTZ. While the industries were being heard on the issue of relocation this Court on April 29, 1994 passed the following order:

> ".....Efforts are being made to free the prestigious Taj from pollution, if there is any, because of the industries located in and around Agra. It is further clear from our order that the basis of the action initiated by this Court is the NEERI's report which was submitted to the Government of India, in July, 1993.
>
> We are of the view that it would be in the interest of justice to have another investigation/report from a reputed technical/Engineering authority. Ministry of Environment and Forests, Government of India may examine this aspect and appoint an expert authority (from India or abroad) to undertake the survey of the Taj Trapezium Environmental Area and make a report regarding the source of pollution in the Trapezium and the measures to be adopted to control the same. The authority can also identify the polluting industries in the Taj Trapezium. We therefore, request Mr. Kamal Nath, Minister in charge, Ministry of Environment and Forests to personally look into this matter and identify the authority who is to be entrusted with this job. This must be done within three weeks from the receipt of this order. A responsible Officer of the Ministry shall file an affidavit in this Court within two weeks indicating the progress made by the Ministry in this respect. Registry to send copy of the above quoted order to the Secretary, Ministry of Environment and Forests and also to Mr. Kamal Nath, personally, within three days from today".

Pursuant to above quoted order, the Government of India, Ministry of Environment and Forests, by order dated May 18, 1994 appointed an expert committee under the chairmanship of Dr. S. Varadharajan.

10. Meanwhile, the Indian Oil Corporation placed on record its report on the feasibility study regarding the use of safe alternate fuel by the Mathura Refinery. The report suggested the use of natural gas as the most optimum fuel. Once the natural gas is brought to Mathura there would be no difficulty in providing the same to the other industries in TTZ and outside TTZ. This Court on August 5, 1994 passed the following order: -

> "Pursuant to this Court's order dated 31-3-1994 the Indian Oil Corporation has placed on record the final report on the feasibility study for using alternate fuel at Mathura Refinery. In the beginning of the Report summary along with Indian Oil Corporation's experience on the subject is given. The conclusion of the summary is as under:

> "Out of the various alternate fuels (viz. Natural Gas, Propane, LPG & Naphta) studied for use in process fired heaters and boilers in Mathura Refinery, Natural Gas in the most optimum fuel in view of wide international experience, safety & minimum implementation time frame. Other alternate fuels Propane, LPG Naphtha are valuable saleable products and therefore, scarcely used in the world as a fuel for process fired heaters. Liquid Naphtha forms vapour clouds from possible leakages from burner flanges on underside of fired heater. In view of this, it may not be prudent to recommend use of Naphtha in large size heaters (e.g. AVU furnaces) & boilers of Mathura Refinery with air pre-heaters".

The feasibility study report specifically suggests that natural gas is the most economical and appropriate alternate-fuel for the Mathura Refinery. The question for consideration is: By what method/route the natural gas is to reach Mathura and made available to the Refinery at Agra. The summary of the report in para 4.4 in this respect states as under: -

> "A new loop line of 36 inch diameter from Bijapur to Dadri is being laid by Gas Authority of India Limited (GAIL) under the Gas Rehabilitation and Expansion Project and is scheduled to be commissioned by June 1996. Supply of Natural Gas to Mathura Refinery will require laying a new 10 inch diameter 13 km long-branch line tapped off from the above expansion project at Shahpur. The proposed branch line to Mathura Refinery can be completed within the time schedule of commissioning the new loop line as above".

Mr. M. C. Mehta, the petitioner in-person herein has, however, suggested that instead of laying the pipe line form Bijapur to Dadri via Muthura, it would be economical and time saving exercise to lay down the lines from Auria or Babrala to Mathura. According to him, this would be in conformity to the Report already submitted by NEERI in this respect. He has further submitted that if the pipeline is drawn from Auria, it would also serve the industries at Ferozabad and Agra. Learned counsel for the Indian Oil Corporation states that he would place the suggestion before the experts of the Corporation and assist this Court on 8-8-1994. He may do so. Learned counsel for the Corporation may also ask a responsible officer, who can explain the whole situation to the Court, to be present in Court on 8-8-1994 at 2.00 p.m."

The matter came up for further consideration on August 8, 1994 when this Court passed the following order: -

> "Mr. B. B. Chakravarty, General Manager, Safety and Environment Protection, Indian Oil Corporation, is present before us. According to him the pipeline suggested by Mr. M. C. Mehta (from Auria to Mathura or from Babrala to Mathura) is not feasible. According to him the scheme of laying down the pipe line from Bijapur to Dadri via Mathura has already been sanctioned and is being implemented. He further states that apart from supplying gas to Dadri, the line when laid down, shall also be in a position to carry the supplies required for the Mathura Refinery.

In the final report dated July 12, 1994 submitted by the Indian Oil Corporation it has been stated that the new pipeline of 36" diameter from Babrala to Dadri is being laid under the Gas Rehabilitation and Expansion Project and is scheduled to be commissioned by June, 1996. It is further stated that a new 10" diameter 13 K.M. long-branch line tapped off from the above Expansion project would also be completed within the above time schedule. We direct the Gas Authority of India to file an affidavit through some responsible officer, within two weeks from the receipt of this order, showing the progress made till date in the project of laying down the pipe line from Babrala to Dadri. The affidavit shall also state as to whether it is possible to postpone the date of commissioning of the project from June, 1996 to December, 1995.

Copy of the order be sent to Gas Authority of India and the Indian Oil Corporation".

Pursuant to this Court's order dated October 21, 1994 the GAIL filed an affidavit indicating the progress regarding the laying of pipeline for the supply of natural gas to Mathura Refinery and the industries in the TTZ. It is stated in the affidavit that all efforts were being made to complete the project by December, 1996.

11. Vardharajan Committee submitted its report regarding preservation of Taj Mahal and Agra Monuments in two volumes. After hearing learned counsel for the parties this Court on August 3, 1995 passed the following order: -

"Vardharajan Committee appointed by the Ministry of Environment and Forest, Government of India has submitted its report regarding preservation of Taj Mahal and Agra Monuments in two volumes. Mr. M.C. Mehta and Mr. Krishan Mahajan have taken us through some parts of the report. There are now two major reports on the subject. There is a NEERI report to which we have referred to in our various orders from time to time. NEERI report was submitted sometime in July 1993. In its report, NEERI suggested that in order to preserve Taj it is necessary to re-locate various industries located in Taj Trapezium. The Vardharajan Committee Report now received also suggests the re-location of the industries situated in Taj Trapezium. The Vardharajan Committee has also given various other useful suggestions for improving the atmospheric environmental quality around Taj and also for preservation of Taj Mahal. It is the primary duty of the Government of India, Ministry of Environment and Forests to safeguard Taj Mahal from getting deteriorated. We direct the Ministry through Secretary, Ministry of Environment and Forests to examine the NEERI report and also the Vardharajan Report and indicate in positive terms the measures which the Ministry is intending to take to preserve the Taj Mahal.

We are further prima facie of the view that in view of the two reports (NEERI & Vardharajan), the polluting industries in Taj Trapezium shall have to be relocated. It cannot be done without there being positive assistance from the Ministry of Environment & Forests, Government of India and the State of Uttar Pradesh. We direct these two authorities to come out with re-allocation scheme so that all the polluting industries situated in Taj Trapezium are shifted to the new place in a

phased manner. Keeping in view the importance and urgency of the matter we request Mr. Kamal Nath, the Minister of Environment and Forests to personally look into the matter and have the response of the Ministry and the re-allocation scheme prepared within four weeks from the receipt of this order.

An affidavit of the Secretary, Ministry of Environment & Forests shall be filed in this Court within a period of four weeks".

Pursuant to the above quoted order, Additional Secretary in the National River Conservation Directorate, Ministry of Environment and Forests, New Delhi filed an affidavit before this Court. After examining the affidavit, this Court passed the following order: -

"Pursuant to the above quoted order an affidavit dated 3-8-95 has been filed by Sri Vishwanath Anand, Additional Secretary in the National River Conservation Directorate, Ministry of Environment and Forests, New Delhi. Various aspects have been dealt with in the said affidavit. So far the question of relocation of the industries from Taj Trapezium is concerned no positive stand has been indicated by the Ministry of Environment & Forest, Government of India. As indicated by us in our order quoted above two expert reports are before the Government of India. 'NEERI' gave its report as back as July, 1993 and Varadharajan Committee Report was submitted to the Government in April, 1995. Although this Court was prima facie of the view that the polluting industries in Taj Trapezium would have to be relocated but this Court finally left it to the Ministry of Environment and Forests to examine the two reports and give its response to this Court. We personally requested Mr. Kamal Nath the then Minister of Environment and Forests to examine the matter and have the scheme for re-location of industries from Taj Trapezium framed within the time indicated by this Court. Nothing positive has come before us. We have today discussed this aspect at length with learned Solicitor General Mr. Dipankar Gupta. Once again we request Mr. Rajesh Pilot, Minister of Environment and Forests, Government of India to have the two reports examined expeditiously. It is of utmost importance that the pollution in the Taj Trapezium be controlled. We want positive response from the Ministry".

12. There being no helpful response from the Government of India, we finally heard the matter at length for several days and are disposing off the issues raised before us by this judgment.

13. This Court on March 14, 1996 directed the GAIL, Indian Oil Corporation and the UP State Industrial Development Corporation to indicate the industrial areas outside the TTZ which would be connected with the gas supply network. The order passed was as under:

"Mr. Reddy, the learned Additional Solicitor General after consulting Mr. C. P. Jain, the Chief Environmental Manager, New Delhi has stated that mechanical process for bringing gas near Mathura Refinery shall be completed by December, 1996. He further stated that the commissioning would be done by January, 1997. We have on record the undertaking of the Gas Authority of India that while the pipeline is being

constructed the branch pipeline one for supplying gas to Mathura Refinery and to the industries shall also be completed side by side. We direct the Gas Authority of India, Indian Oil Corporation and the U.P. State Industrial Development Corporation to file an affidavit in this Court within two weeks of the receipt of this order indicating as to which of the industrial areas outside the Taj Trapezium would be connected with the gas supply network. We may mention that the PSCDC has already filed affidavit in this Court indicating various industrial Estates which can be developed outside the Taj Trapezium".

Pursuant to the above quoted order of this Court, the General Manager, GAIL filed affidavit dated April 2, 1996. After examining the contents of the affidavit this Court on April 10, 1996 passed the following order: -

"Pursuant to this Court's order dated March 14, 1996 Mr. P. C. Gupta, General Manager (Civil), Gas Authority of India has filed affidavit dated April 21, 1996. It is stated in the affidavit that the Ministry of Petroleum and Natural Gas has already allocated 0.60 MMSCMD for distribution to the industrial units in Agra and Ferozabad.

It is stated that as per the time schedule already filed in this Court, the two pipelines shall be completed by December, 1996. It is further stated that the quantity of gas as mentioned above is only for the purposes of supplying the same to the industries located within the Taj Trapezium. We have no doubt that while laying down the supply line within the city of Agra, the safety of Taj and also the people living in the city of Agra shall have to be taken into consideration. We are told that expertise in this respect is available with the GAIL. If necessary, the opinion of NEERI, which has been associated by this Court in Taj Trapezium matters, can also be obtained by the GAIL.

We have already heard arguments regarding relocation of industries from Taj Trapezium. Some of the industries which are not in a position to get gas connections or which are otherwise polluting may have to be relocated outside Taj Trapezium. The GAIL may also examine whether in the event of availability of more quantity of gas, the same can be supplied to the industries outside the Taj Trapezium which are located in the vicinity from where the gas pipe is passing.

Mr. Gupta has further stated that for the purposes of laying distribution network within the Taj Trapezium, GAIL is establishing a joint venture Company. However, pending formation of the joint venture Company, the required functions are being performed by GAIL. It is stated that GAIL had advertised comparative prices and heat equivalent of various fuels in the newspapers circulated in Agra and Ferozabad to enable the industries, who are prospective consumers of gas to evaluate the economics of conversion to gas. So far 214 parties from Agra and 364 parties from Ferozabad have responded. According to the affidavit these responses are being processed. Mr. Reddy, on our asking, states that he would have the matter examined and file an affidavit in this Court within two weeks indicating the time frame regarding the laying of distribution network within the Taj Trapezium. Mr. Reddy

further states that some land shall have to be required for the purpose of constructing city Gate Stations at Agra and Ferozabad. He states that the cooperation of the U.P. Government is required for acquiring the land. We direct the Collector, Agra as well as Collector, Ferozabad to render all assistance to GAIL in acquiring land for setting up the two stations for the public purposes".

This Court on September 12, 1996 passed the following order regarding the safety measures to be taken during the construction and operation of the gas network in the Taj Trapezium. The Court also recorded the undertaking by learned counsel for the industries that the industries in TTZ are taking steps to approach the Gas Authority of India for gas connections:

"Pursuant to this Court's order dated April 10, 1996 and subsequent order dated May 10, 1996, Mr. P. C. Gupta General Manager, Gas Authority of India has filed an affidavit. It is stated in the affidavit that necessary directions in the pipeline design, corrosion protection, protection during construction and during operations have been taken by the Gas Authority of India. It is for the Central Pollution Control Board or the State Pollution Control Board concerned to examine the legal position and do the needful, if anything is to be done under law. Mr. Gupta, in para 5 has further stated as under:

"However, in its endeavour GAIL has not received sufficient response from the industrialists in the City of Agra, where prospective industrial consumers of gas have not yet worked out how to convert the cupola furnaces to gas fired ones. Hence, GAIL apprehends that after it has undertaken provisioning such an expensive infrastructure exercise, it may not have enough consumers for the gas supplies in Agra at least during the near future of commencement of the supply. This Hon'ble Court may therefore, direct the prospective consumers to inform this Hon'ble Court of their willingness to convert to gas".

Mr. Sibal and Mr. Parekh, learned counsel appearing for most of the industries have informed us that the industries are taking steps to approach the GAIL for gas connection. Mr. Parekh further states that most of them have already done it. This is a matter between the industries and GAIL. It is for their benefits that industries should approach the GAIL for gas connection".

14. The NEERI submitted a Technical Report dated March 7, 1994 pertaining to "Issues Associated with Fuel Supply Alternatives for Industries in Agra Mathura Region". Paras 2.4 1 and para 3 of the Report are as under: -

"2.4 Safety Requirements

2.4.1 NG: The use of NG involves the defining of No Gas Zone for safe distribution. The new sites in Agra and Firozabad industries being identified by the Government of Uttar Pradesh shall minimize this hazard as the industrial estates shall be suitably designed for NG distribution.

The new industrial sites should preferably be out of the Taj Trapezium. The incentives for industries to shift to new industrial estates need to be established to ensure speedy implementation.

3.0 Summary

The various issues raised in this report pertaining to the fuel supply alternatives to the industries in Agra-Firozabad region and the Mathura Refinery, can be summarized as:

- Need for relocation of industries.
- Availability of cleaner fuel (present and future).
- Environmental benefits from alternate fuels.
- Safety considerations.

The recommendations are summarized hereunder:

- Shifting of small-scale polluting industries outside the Taj Trapezium on industrial estate sites to be identified by the Government of Uttar Pradesh.

- Provision of natural gas to the industries in Agra-Mathura region and Mathura Refinery".

15. Mr. M. C. Mehta, Mr. Kapil Sibal and other learned counsel representing the Agra-industries took us through the April- 1995 Varadharajan Committee Report. Relevant paragraphs of the Report are reproduced hereunder:

> "4.... the Expert Committee's recommendation that steps may be taken to ensure that no new industry, including small industries or other units, which can cause pollution are located north-west of the Taj Mahal, has been enforced. However, efforts to relocate existing small industries, particularly the foundries, in an area south-east of Agra beyond the Taj Mahal, have not been successful".

16. The Report clearly shows that the level of Suspended Particulate Matters (SPM) in the Taj Mahal area is high. The relevant part of the Report in this respect is as under: -

> "S. P. M. (Period 1981-1993)
>
> i. The level of SPM at Taj Mahal is generally quite high, the monthly mean values being above 200-micrograms/cubic meter for all the months during 1981-1985 except for the monsoon months.
>
> ii. There is an increasing trend in the monthly mean SPM concentrations from about 380-micrograms/ cubic meters to 620-micrograms/cubic meter during the period 1987-1991, and the trend reverses thereafter till 1993. There is a decrease in monthly means SPM levels from 620-micrograms/cubic meter in 1991 to about 425-micrograms/cubic meter in 1993.

17. Para 71 of the Report deals with the consumption of coal in the Agra areas. The relevant part is as under: -

"...These do cause pollution of the atmosphere. Industries in Agra are situated north west, north and north east of the Taj Mahal, several of them being located across the river. These are the major sources of concern as they are not far away, and much of the time winds blow from their location towards Taj Mahal".

18. Para 78 relating to the use of natural gas is as under: -

"...Natural gas distribution to industries in existing location in Agra would need installation of pipelines and meters. This may be expensive and in addition to ensure safety, an accidental leakage in pipeline network may lead to explosion and fires. It may however, be possible to use LPG or HSD with suitable precautions, after careful review".

19. Relevant part of para 79 is as under: -

"...NEERI Report dated March 7, 1994 on Fuel Supply alternatives (Annexure) suggests Natural Gas can be considered for use only in new industrial sites".

20. The industries in Agra have been dealt in paras 92, 93, 95 and 96 which are as under:

"92. Industries in Agra and Ferozabad have been asked to install APCD to reduce essentially SPM level in air emissions. UPPCB has the authority to monitor their performance to meet standards outlined for different industries by CPCB, noting their capacities. These regulations should be fully enforced. NEERI has suggested suitable sites in Agra and Ferozabad could be identified and developed as industrial estates with facilities separated from residential area. If such sites are developed, natural gas supply in the industrial estate would be possible with safety, and the industrial units could be shifted.

93. .....There is need for a single authority in such estates to co-ordinate all maintenance and repair work on electrical supply, telecommunications, water, sewage, drains, roads and construction. Any industrial estate in Agra with natural gas will have to be located at a substantial distance from monuments to ensure full safety.

95. When industrial units are relocated, it would be appropriate to modernize technology equipment and buildings. Most of the units will need very substantial financial assistance. The value of the present sites and their future use has to be determined. It would not be desirable to promote residential colonies and commercial establishment in such vacated areas as they may in turn add to the problems of water supply and atmospheric quality by excessive use of energy. Major changes of this nature would need a clear development planning strategy and resources, and will also take several years for implementation.

96. There is urgent need for quicker measures which could lead to better environment, especially in the Taj Mahal. For this purpose, it is necessary to effect overall reduction in coal/coke consumption by industries and others in Agra and in Taj Trapezium Zone generally. The present level of consumption of 129 metric

tonne per day by industry can be substantially reduced by new technology and by use of LPG and HSD of low sulphur. Stricter standards for emissions may be evolved when such technological and fuel changes are effected. Support for development of modifications in design and operation and demonstration should be provided. Some assistance to industries for adoption of these may be considered after careful examination of the costs and benefits to the industry and to society. All those industries not responding for action for feasible changes and contributing disproportionately to atmospheric pollution have to face action".

21. The Taj being a monument on the World Heritage List, the Government of India sought the expert advice through UNESCO on the structural and chemical preservation aspects of the monument. Accordingly, two experts, namely, Dr. Mentrizio Marbeilli and Dr. M. Larze Tabasso visited the Taj Mahal between January 17-30, 1987 to study the problems pertaining to the conservation of marble and sand stones in the Taj and recommended remedial measures. According to them the yellowish ness of the marble is due to (a) SPM and (b) dust fall impinging on the surface. Opinions of the Archaeological Survey of India and other scientists annexed to the Vardharajan Report unanimously say that the yellow shadow of the marble on different parts of The Taj including four minarets is mainly due to SPM and the dust fall impinging on the surface. The comments of the Archaeological Survey of India as noticed in the Varadharajan Report are as under:

"On the structural side, the Taj Mahal is in a sound state of preservation and the studies conducted so far also confirm the same. The only threat to the Taj Mahal is from the environmental pollution.

The Science wing of the ASI is continuously monitoring the level of suspended particulate matter, sulphur dioxide concentration and sulphation rate. The studies made in this regard show that suspended particulate matter level has been found to be higher than the maximum permissible level 100 kg/m3. This has imparted a yellowish appearance on the surface of the Taj Mahal."

22. After careful examination of the two Varadharajan Report (1978 and 1995) and the various NEERI Reports placed on record, we are of the view that there is no contradiction between the two sets of reports. In the 1978 Report, Varadharajan found substantial level of air pollution because of sulphur dioxide and SPM in the Agra region. The source, according to the report, was the coal-users including approximately 250 small industries mainly foundries. The excess of SPM was because of the use of coal. The Report specifically recommended in para 5.4 for the relocation of the existing small industries particularly the foundries. The 1995 Varadharajant Report clearly shows that the standard of atmospheric pollution is much higher than the 1981-85 period which according to the Report is also because of heavy traffic and operation of generating sets. NEERI report has clearly recommended the relocation of the industries from the TTZ.

23. This Court on April 11, 1994, passed the following order: -

"…. We are of the view that the shifting of the industries from the Taj Trapezium has to be made in a phased manner. NEERI's report indicates that the maximum

pollution to the ambient air around Taj Mahal is caused by the industries located in Agra. We, therefore, as a first phase, take up the industries situated in Agra for the purposes of the proposed shifting outside Taj Trapezium...

We, therefore, direct the U.P. State Pollution Control Board to issue Public Notice in the two national English Daily newspapers and also two vernacular newspapers for three consecutive days indicating that the Supreme Court of India is processing the proposal for shifting of the air polluting industries such as Foundries, Pit Furnaces, Rubber Sole, Chemical Refractory Brick, Engineering and Lime Processing from Agra to outside Taj Trapezium at a suitable place to be selected after hearing the parties including the industry owners. The individual industries shall be asked to supply the following information:

1. Name, Registration Number, Location and the ownership/status of the industry.
2. Total land/including built up area which is at present under the possession of the industry.
3. Nature/quantum of the fuel which is being used.
4. Number of the workers/other staff employed.
5. Total Capital investment/turnover of the industry.
6. Extent of the land required by the industry in the new industrial area outside the Taj Trapezium.
7. The product of the industry and the raw material used for such production.
8. The nature/extent of the alternate safe fuel, if required.
9. Financial assistance in the shape of loan etc., if required, and to what extent.

Apart from public Notice, individual Notices to all the industries which are situated in Agra shall also be served by the U.P. State Pollution Control Board, to the air polluting industries. We further direct the Union of India to have a gist of the above Public Notice announced on local television as well as on local Radio in Agra/Mathura for three consecutive days.

The publications of the Notice in the National Newspapers shall be got done by the U.P. Pollution Control Board on April 29-30, 1994 and May 1, 1994. Thereafter, the Notices shall be got published in the local newspapers on May 6, 7 and 8, 1994. The individual notices shall be served on the industries before May 8, 1994. The Union of India shall also have to broadcast notice as directed by us between May, 1 and May 10, 1994. Mr. N. N. Goswamy, learned senior counsel fairly states that he will prepare the gist of the notice and send it to the Government of India".

24. The chronology of the orders quoted by us in this judgment shows that this Court took cognizance of this matter in January 1993. There are four NEERI reports, two Varadharajan reports and several reports by the Board. After examining all the reports and taking into consideration other material on the record, we have no hesitation in holding that the industries in the TTZ are active contributors to the air pollution in the said area. NEERI and Varadharajan (1978) reports have specifically recommended the relocation of industries from the TTZ. Although the Board has placed on record list of

510 industries which are responsible for air pollution but in view of our order dated April 11, 1994 (quoted above), we are confining this order only to 292 industries located and operating in Agra.

25. The Taj, apart from being cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. This Court has monitored this petition for over three years with the sole object of preserving and protecting The Taj from deterioration and damage due to atmospheric and environmental pollution. It cannot be disputed that the use of coke/coal by the industries emits pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the eco-systems have to be protected. The pollution created as a consequence of development must commensurate with the carrying capacity of our eco-systems.

26. Various orders passed by this Court from time to time (quoted above) clearly indicate that the relocation of the industries from TTZ is to be restored to only if the natural gas which has been brought at the doorstep of TTZ is not acceptable/available by/to the industries as a substitute for coke/coal. The GAIL has already invited the industries in TTZ to apply for gas connections. Before us Mr. Kapil Sibal and Mr. Sanjay Parikh, learned counsel for the industries has clearly stated that all the industries would accept gas as an industrial-fuel. The industries operating in TTZ which are given gas connections to run the industries need not relocate. The whole purpose is to stop air pollution by banishing coke/coal from TTZ.

This Court in Vellore Citizens Welfare Forum v. Union of India (1996) 7 JT (SC) 375: (1996 AIR SCW 3399); has defined “the Precautionary Principle” and the “Polluter Pays principles” as under: - (At Pp. 3405-06 of AIR)

> "11... We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" in the context of the municipal law means:
>
> (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.
>
> (ii) Where there the threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
>
> (iii) The "Onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.
>
> 12. The “Polluter Pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India, (1996) 2 JT (SC) 196:

(1996 AIR SCW 1069). The Court observed, “We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country”. The Court ruled that “Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on”. Consequently the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas”. The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology.

13. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 221 of the Constitution of India guarantees protection of life and personal liberty. Arts. 47, 48A and 51A (g) of the Constitution are as under: -

> 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
>
> 48A. Protection and improvement of environment and safeguarding of forest and wildlife - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
>
> 51A(g). To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.
>
> Apart from the constitutional mandate to protect and improve the environment, there are plenty of post independence legislations on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. Also provides for restrictions on outlets and

discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the later part of this judgment.

14. In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle is part of the environmental law of the country".

27. Based on the reports of various technical authorities mentioned in this judgment, we have already reached the finding that the emissions generated by the coke/coal consuming industries are air pollutants and have damaging effect on the Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost. Not even one per cent chance can be taken when - human life apart - the preservation of a prestigious monument like The Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measures must anticipate, prevent and attack the causes of environmental degradation. The 'onus of proof' is on industry to show that its operation with the aid of coke/coal is environmentally benign. It is, rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of the ambient air.

28. We, therefore, hold that the above-mentioned 292 industries shall as per the schedule indicated hereunder changeover to the natural gas as an industrial-fuel. The industries which are not in a position to obtain gas connections for any reason shall stop functioning with the aid of coke/coal in the TTZ and may relocate themselves as per the directions given by us hereunder.

29. We order and direct as under: -

(1) The listed 292 industries shall approach/apply to the GAIL before February 15, 1997 for grant of industrial gas-connection.

(2) The industries which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation (UPSIDC)/Government before February 28, 1997 for allotment of alternative plots in the industrial estates outside TTZ.

(3) The GAIL shall take final decision in respect of all the applications for grant of gas connections by March 31, 1997 and communicate the allotment letters to the individual industries.

(4) Those industries which neither apply for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal in the TTZ with effect from April 30, 1997. Supply of coke/coal to these industries shall be

stopped forthwith. The District Magistrate and the Superintendent of Police shall have this order complied with.

(5) The GAIL shall commence supply of gas to the industries by June 30, 1997. As soon as the gas supply to an industry commences, the supply of coke/coal to the said industry shall be stopped with immediate effect.

(6) The Corporation/Government shall finally decide and allot alternative plots, before March 31, 1997, to the industries which are seeking relocation.

(7) The relocating industries shall set up their respective units in the new industrial estates outside TTZ. The relocating industries shall not function and operate in TTZ beyond December 31, 1997. The closure by December 31, 1997 is unconditional and irrespective of the fact whether the new unit outside TTZ is completely set up or not.

(8) The Deputy Commissioner, Agra and the Superintendent (Police), Agra shall effect the closure of all the industries on December 31, 1997 which are to be relocated by the date as directed by us.

(9) The U.P. State Government/Corporation shall render all assistance to the industries in the process of relocation. The allotment of plots, construction of factory buildings, etc., and issuance of any license/permissions, etc., shall be expedited and granted on priority basis.

(10) In order to facilitate shifting of industries from TTZ, the State Government and all other authorities shall set up unified single agency consisting of all the departments concerned to act as a model agency to sort out all the problems of such industries. The single window facility shall be set up by the U.P. State Government within one month from today. The Registry shall communicate this direction separately to the Chief Secretary, Secretary (Industries) and Chairman/Managing Director, UPSIDC along with a copy of this judgment. We make it clear that no further time shall be allowed to set up the single window facility.

(11) The State Government shall frame a scheme for the use of the land which would become available on account of shifting/relocation of the industries before June 30, 1997. The State Government may seek guidance in this respect from the order of this Court dated May 10, 1996 in I. A. No. 22 in Writ Petition (Civil) No. 4677 of 1985.

(12) The shifting industries on the relocation in the new industrial estates shall be given incentives in terms of the provisions of the Agra Master Plan and also the incentive that are normally extended to new industries in new industrial estates.

(13) The workmen employed in the abovementioned 292 industries shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year's wages as 'shifting bonus' to help them settle at the new location. The said bonus shall be paid before January 31, 1998.

(d) The workmen employed in the industries who do not intend to relocate/obtain natural gas and opt for closure, shall be deemed to have been retrenched by May 31, 1997, provided they have been in continuous service (as defined in S. 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F (b) of the Industrial Disputes Act. These workmen shall also be paid, in addition, six years' wages as additional compensation.

(e) The compensation payable to the workmen in terms of this judgment shall be paid by the management within two months of the retrenchment.

(f) The gratuity amount payable to any workmen shall be paid in addition.

30. Before parting with this judgment, we may indicate that the industries in the TTZ other than 292 industries shall be dealt with separately. We direct the Board to issue individual notices and also public notice to the remaining industries in the TTZ to apply for gas connection/relocation within one month of the notice by the Board. The Board shall issue notice within one month from toady. The matter to come up for further monitoring in this respect before this Court on April 4, 1997.

31. We may also indicate that this Court by order dated May 10, 1996 has stopped the operation of all the brick kilns in the TTZ with effect from August 15, 1996. This Court by order dated September 4, 1996 has directed that the fly ash produced in the process of the functioning of thermal plants may be supplied to the brick kilns for the construction of bricks. This would be a useful step to eliminate the pollution caused by the fly ash.

32. This Court is separately monitoring the following issues for controlling air pollution in TTZ:

(a) The setting up of hydro cracker unit and various other devices by the Mathura Refinery.

(b) The setting up of 50 bed hospital and two mobile dispensaries by the Mathura Refinery to provide medical aid to the people living in the surrounding areas (Court order dated August 7, 1996).

(c) Construction of Agra bypass to divert all the traffic that passes through the city. Under directions of this Court, 24 Kms' stretch of the bypass shall be completed by the end of December 1996 (Court order dated April 10, 1996).

(d) Additional amount of Rs. 99.54 crores sanctioned by the Planning Commission to be utilized by the State Government for the construction of electricity supply projects to ensure 100 per cent uninterrupted electricity to the TTZ. This is necessary to stop the operation of generating sets that are major source of air pollution in the TTZ (Court orders dated April 10, 1996, May 10, 1996, August 30, 1996 September 4, 1996, and September 10, 1996).

(e) The construction of Gokul Barrage, water supply work of Gokul Barrage, roads around Gokul Barrage, Agra Barrage and water supply of Agra Barrage, have also been undertaken on a time schedule basis to supply drinking water to the residents of Agra and to bring life into river Yamuna which is next to the Taj (Court order dated May 10, 1996 and August 30, 1996).

(f) Green belt as recommended by NEERI has been set up around Taj. Pursuant to continuous monitoring of this Court, the Green Belt has become a reality.

(g) This Court suggested to the planning Commission by order dated September 4, 1996 to consider sanctioning separate allocation for the city of Agra and the creation of separate cell under the control of Central Government to safeguard and preserve the Taj, the city of Agra and other national heritage monuments in the TT.

(h) All emporia and shop functioning within the Taj premises have been directed to be closed.

(i) Directions have been issued to the Government of India to decide the issue, pertaining to declaration of Agra as heritage city, within two months.

33. We are mentioning these issues dealt with by this Court because it may be necessary to monitor some of these matters to take them to a logical extent. This Court may look into these matters on April 4, 1997.

34. The issue relating to 292 industries is thus disposed off.

Order accordingly.

M.K. Sharma v. Bharat Electronics Ltd.
AIR 1997 Supreme Court 1792
Ranganath Misra and G.L. Oza, JJ:

RANGANATH MISRA, J.: This is an application under Art. 32 of the Constitution and the petitioners are the Bharat Electronics Employees Union and the Secretary of the Union, Bharat Heavy Electronics Limited is a public sector undertaking. The company has a factory at Ghaziabad and manufacture electronic components and equipment including integrated circuits. TV picture tubes and sophisticated Radars used by the

country's defence establishments. The respondent No. 1 has entered into technical collaboration with a French Firm, TCSF. Respondent No. 2 of the competent authority appointed under the Radiations Protection Rules, 1971 framed under the Atomic Energy Act by the Central Government. This writ application is confined to employees working in the transmitter assembly room of the factory. The petitioners have alleged that in course of their employment those of the employees who are made to work in the transmitter assembly room are exposed to the baneful effects of X-ray radiation. The ill effects of such exposure have been detailed in the writ petition. They have alleged that respondent No. 1 has not been following the rules and no care and attention has been devoted to the safety and protection of the employees in such sensitive place. They have further asked for a declaration that the failure of the respondent to provide adequate protection and adopt safety procedure has resulted in a violation of the transmitter assembly workers fundamental rights and they have become entitled to compensation. Several other reliefs were prayed for. This Court on May 5, 1991 directed medical examination of 68 workers who complained of exposure to X-ray radiation by the India Council of Medical Research and when it was reported that there was no facility for appropriate examination at that place, on July 21, 1986, the Court directed those 68 workers to be examined in convenient batches by the Bhaba Atomic Research Centre (hereinafter referred to as BARC). The said BARC also carried on a survey relating to radiological protection to respondent No. 1's installation and sent an interim report and later a detailed report has also has been received. The BARC has also made certain suggestions for future protection of the workers from exposure to radiation.

2. The Associate Director of Radiological Group in the BARC has filed an affidavit. Similarly respondent No. 1 through Wg. Cdr. K.S. Randhawa has also filed an affidavit. The affidavit of the Associate Director has been confined to the effect of exposure and an attempt has been made to provide certain scientific data related thereto. In the affidavit of Wg. Commander K.S. Randhawa, steps taken and safety measures taken at the factory of respondent No. 1 have been indicated. The Associate Director filed second affidavit along with the final report. The details of medical examination have also been placed on record. Respondent No. 1 has filed written submissions which have taken note of at the hearing of this writ petition.

3. The result of medical examination carried out shows that there is no clear proof of say injury or ill effect on the workers having the alleged exposure. It is, however, not disputed on either side that the evil effects take time to manifest and it is possible that even though no adverse effect is noticed now, on account of the exposure already suffered, the consequences may appear later. Mr. Nariman, appearing for the employer – Respondent No. 1-does not disown the responsibility to compensate the workmen in event of proof of ill effects directly flowing out of employment at a future date the only way which this aspect of the demand can be dealt with is to say that as and when any related ill effect is manifested, the aggrieved workman or workmen would be entitled to lodge claim for compensation but as these stands no order for compensation at this stage is warranted. Safety rules have been framed and respondent No. 1 has undertaken before us that the same would be strictly complied with. Now that a competent officer has been

appointed and is available at the spot, he will ensure that appropriate care and preventive steps are taken.

4. The respondent company has a system of film badges for measuring radiation absorbed during a month and the data which is collected on the basis of the aforesaid film badges would be regularly sent to the BARC for evaluation on monthly basis. The result of such analysis shall be duly publicised and would also be communicated to the petitioner union at reasonable intervals.

5. The respondent company has installed instantaneous measuring instrument near the transmitter to give immediate indication of radiation levels. In the event of fortuitous failure of the protective lead shields, the transmitter has the primary lead shield and also a secondary lead shield. All care will be taken to keep these in use.

6. The electrical inter-locking device will ensure that the transmitter is not commissioned to service without primary lead shield being in position.

7. Equally apprehensive of s-ray exposure are the officers who work in the sensitive areas of the factory. We direct the Union of India, respondent No. 3 to carry bi-annual checks by competent authority of strict compliance of safety devices.

8. In addition to all these, we are of the view that those of the officers and workers of the company who work within the sensitive portion of the factory should be covered by appropriate insurance over and above general insurance, if any, to which as workmen at large they may have become entitled. Every workman should be insured for a sum of Rs. One lakh and officers should be insured to the tune of Rs. Two lakhs. It would be open to the respondent to get into group insurance arrangements with the insurer in case it is possible, otherwise individual insurance policies will have to be taken. The cost for these insurance policies would be borne by respondent No. 1 as a related and necessary expenditure of business. The benefit of insurance cover should be made available in terms of this direction by 30th of June, 1987. There will be no order of costs.

Order accordingly.

Mr. Pillai v. Executive Officer, Pathiyoor Panchayat, Kayamkulam
AIR 1997 Kerala 162
Writ Petition No. 3520 of 1993, D/-31-1-1997
J. B. Koshy, J.

Environment Protection Act (29 of 1986), S. 3 – Pollution control – Cashew processing factory – Causing air pollution in surrounding area – Directions by Pollution Control Board to increase in diameter and height of circular chimney to drive away emissions, planting of trees at periphery of factory building and to

dispose of solid waste – Factory not obtained consent under Water (Prevention & Control of Pollution) Act, 1974 and as per the Air (Prevention and Control) Act, 1981 also – Disobedience of directions by factory – High Court directed Board and its authorities to see that factory shall not carry on its operation unless directions are carried out and consent is obtained under the Acts.

M/s Ambuga Petrochemicals Ltd. v. A. P. Pollution Control Board
AIR 1997 Andhra Pradesh 41
Writ Petition No. 7475 of 1996, D/-23-4-1996
B. Sudershan Reddy, J.

Water (Prevention and Control of Pollution) Act (6 of 1974), S. 33A – Water pollution – Effluents treatment plant of Industry was not in operation – Partially treated effluents discharged, joining in tank thereby causing water pollution in the tank resulting in danger to public life – Order by authorities directing closure of industry was not shockingly disproportionate and excessively severe.

M/s. Ivory Traders and Manufacturers Association v. Union of India
AIR 1997 Delhi 267
Civil Writ Petition No. 1016 of 1992 with Civil Writ Petition Nos. 1272, 1631, 1749 and 1303 of 1992 and 1964 of 1993, D/-20-3-1997
M. Jagannadha Rao, C.J., Anil Dev Singh and Manmohan Sarin, JJ.

(A) Wild Life (Protection) Act (53 of 1972) (as amended by Act 44 of 1991), Ss. 49B (1) (a) (ia), 49A (C) (iii), 49-C (7) - Trade of imported ivory and articles made therefrom - Imposition of ban thereon - Not unreasonable restriction on trade of ivory.

Constitution of India, Arts. 19 (1)(g), 14.

No citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported. Assuming trade in ivory to be a fundamental right granted under Article 19 (1)(g), the prohibition imposed thereon by the impugned Act is in public interest and in consonance with the moral claims embodied in Article 48A of the Constitution; and the ban on trade in imported ivory and articles made therefrom is not violative of Article 14 of the Constitution and does not suffer from any of the malafidies namely, unreasonableness, unfairness and arbitrariness.

(Para 53)

A law designed to abate extinction of an animal species is prima facie one enacted for the protection of public interest as it was enacted to preserve and protect the elephant from extinction. It was not only the perception of the Parliament but of the world community as well, the statistics clearly indicate the danger which the elephant species faced at the hands of man for his easy gains. Therefore, under the circumstance, it cannot be said that

the restriction imposed by the Amendment Act 44 of 1991 on trade of imported ivory and articles made therefrom was unreasonable, arbitrary, unfair or excessive. The State has the power to prohibit absolutely every form of activity in relation to killing or slaughtering of elephants including the sales of tusks or articles made therefrom as such form of activity is injurious to public interest.

(Paras 31, 32)

The State has taken the stand that the sale of Ivory by the dealers would encourage poaching and killing of elephants as the stocks which the petitioners hold presently will be replenished by further killings of elephants as Ivory fetches a very good price in the market. There is no fault in the stand taken by the State. Therefore, the ban imposed by the impugned legislation especially Section 49B (1) (a) (ia) r/w. Section 49A (C) (iii) and Section 19 (1) (g) of the Constitution. It is also not in contravention of Article 14 of the Constitution as the ban does not suffer from unreasonableness, arbitrariness and unfairness.

(Para 34)

(B) Wild Life (Protection) Act (53 of 1972), (as amended by Act 44 of 1991), Ss; 49B (1) (a) (ia), 49A (C) (iii), 49C (7) – Trade in ivory - Ban on - Business in animal species on verge of extinction - Being dangerous and pernicious not covered by Article 19 (1) (g) of Constitution.

Constitution of India, Art. 19 (1) (g).

The business which the petitioners in the instant case are pursuing is attended with danger to the community. Its evil effect is manifested by the depletion of the elephant population. The possession of an article made from Ivory has been declared as a crime. There is no fundamental right to carry on business in crime. The legislature has stepped in to eliminate the killing of Elephant. If the legislation in order to rectify the malady has made the possession of Ivory or articles made therefrom an offence, it cannot be said that the legislation violates Article 19 (i) (a) of the Constitution to carry on trade and business. Such a pernicious activity cannot be taken to be as business or trade in the sense in which it is used in Article 19 (1) (g) of the Constitution.

(Paras 39, 43)

(C) Wild Life (Protection) Act (53 of 1972), (as amended by Act 44 of 1991), Ss. 39 (1) (C), 49C (7), 51 (2) - Trade in imported ivory - Imposition of ban thereon - Primary object of Act is preservation of Elephant and not for utilization of property for public purpose - Thus Art. 300A of Constitution is not attracted.

Constitution of India, Art. 300A.

The legislation which provides for extinction of the ownership of a person in imported ivory is not a law for the purpose of acquisition and requisitioning of property by the State. Its primary object is the preservation of the elephant and not for utilization of the property for public purpose. This being so, Article 300A is not attracted.

(Para 60)

(D) Wild Life (Protection) Act (53 of 1972), (as amended by Act 44 of 1991), S. 49C (7) - Trade of imported ivory and articles made therefrom - Imposition of ban thereon - State need not pay compensation to petitioners for extinguishment of title of petitioners in imported ivory or articles made therefrom - State cannot also be directed to either buy the same or pay compensation for it.

(Para 62)

(E) Wild Life (Protection) Act (53 of 1972), (as amended by Act 44 of 1991), S. 49C (7) - Trade in imported ivory and articles made therefrom - Ban on - Exemption granted under World Convention to specimens that are personal or household effects - Does not to apply where owner acquires the specimens outside his State of usual residence and are being imported into the State.

(Para 64)

(F) Wild Life (Protection) Act (53 of 1972), (as amended by Act 44 of 1991), Ss. 49C (7), 57 - Trade of imported ivory and articles made therefore - Imposition of ban therefrom - Merely making the possession of imported ivory and articles made therefrom after the specified date an offence - Does not amount to creation of offence retroactively - Not hit by Art. 20 (1) of Constitution.

Constitution of India, Art 20 (1).

(Para 65)

(G) Wild Life (Protection) Act (53 of 1972), (as amended by Act 44 of 1991), S 49C (7) - Trade in imported ivory - Banning of - Enactment of provisions relating thereto - Does not amount to judicial determination by the Parliament, as the Parliament, having regard to the public interest and the treaty obligations enacted Amendment Act 44 of 1991.

Constitution of India, Art. 245

(Paras 65A, 66)

(H) Wild Life (Protection) Act (53 of 1972), as amended by Act (44 of 1991), S. 49B (1) (a) (ia) - Trade in imported ivory - Banning of - Words "ivory imported into India" in S. 49 (B) (1) (a) (ia) - Include all description of imported ivory, whether elephant ivory or mammoth ivory.

The words 'ivory imported into India' occurring in Section 49B (1) (a) (ia) would include all descriptions of imported ivory, whether elephant ivory or mammoth ivory. The impugned legislation falls within the power and competence of the Parliament as the same is meant to protect the Indian elephant. In order to achieve that purpose, the Parliament has undoubted power to deal with matters which effectuate the same. It can legislate with regard to all ancillary and subsidiary subjects including the imposition of ban on trade in imported ivory of all descriptions, whether drawn from mammoth or elephant, for the salutary purpose of the preservation of the Indian elephant.

(Paras 67, 70, 71)

It cannot be said that the mammoth ivory is not ivory in the sense in which it is used in the Act. In case the legislation was not to apply to mammoth ivory the Parliament would have made an exception in this regard. It cannot be attributed to the legislature that it was not aware of mammoth ivory found as fossils in large parts of the world.

(Para 69)

Cases Referred:	**Chronological Paras**
AIR 1996 SC 911: (1995) 1 SCC 574: 1995 AIR SCW 313	41
AIR 1995 SC 1770: 1995 AIR SCW 2774	42
AIR 1995 SC 2200: (1995) 1 SCC 501: 1995 AIR SCW 1593	45
AIR 1995 SC 2208: (1995) 3 SCC 196: 1995 AIR SCW 1606	58
AIR 1994 SC 205: 1994 Supp (1) SCC 160: 1993 AIR SCW 3645	30
1992 AIR SCW 1378: (1992) 3 SCC 336	45
AIR 1990 SC 1927	61
AIR 1989 SC 1: (1988) 4 SCC 655: 1989 Cri LJ 1005	21
AIR 1986 SC 1205	44
AIR 1984 Bom 366	54
AIR 1982 SC 1325	20
AIR 1981 SC 1863: 1981 Tax LR 2838	39
AIR 1980 SC 614: 1980 Tax LR 2294	41
AIR 1980 SC 1789	20
AIR 1979 SC 1628	20
AIR 1978 SC 597	20
AIR 1977 SC 722: 1977 Tax LR 1701	41
AIR 1977 SC 1825: (1977) 2 SCR 828	57
AIR 1976 SC 490: (1976) 2 SCC 310: 1976 Lab IC 395	48
AIR 1975 SC 360: 1975 Tax LR 1285	40
AIR 1975 SC 1121: (1975) 3 SCR 254: 1975 Tax LR 1569	40, 41
AIR 1975 SC 2299	65A
AIR 1974 SC 555: 1974 Lab IC 427	20
AIR 1973 SC 1461	33, 47
AIR 1972 SC 1816: (1972) 3 SCR 784: 1972 Tax LR 2298	40, 41
AIR 1972 SC 1863: (1973) 1 SCR 533	40
AIR 1970 SC 93	29
AIR 1970 SC 564	54
AIR 1970 SC 1157: (1969) 2 SCR 392	27, 56
AIR 1960 SC 430	26
AIR 1958 SC 398: 1958 SCR 1240	40
AIR 1958 SC 731	20
AIR 1957 SC 414	40
AIR 1957 SC 699	40
AIR 1954 SC 92: 1954 SCR 587	20, 54
AIR 1954 SC 220	39, 40
AIR 1954 SC 728	54
AIR 1952 SC 196: 1952 Cri LJ 966	20, 28

AIR 1951 SC 41: 1950 SCR 869	54
AIR 1951 SC 118: 1950 SCR 759	20, 32
AIR 1951 SC 318: 52 Cri LJ 1361	40
(1890) 34 Law Ed 620: 137 US 86, Crowley v. Christensen	39
280 US 384, Jesse W. Clarke v. Haberie Crystal Springs Brewing Co	59

ANIL DEV SINGH, J.:- There are two sets of writ petitions before us. In Civil Writ Petitions Nos. 1016/92, 1272/92, 1749/92, 1631/92, the petitioners challenge certain amendments carried out in the Wild Life (Protection) Act, 1972 by the Amendment Act No. 44 of 1991 whereby the trade in imported ivory and articles made therefrom have been banned. In Civil Writ Petitions Nos. 1303/92 and 1964/93 the grievance of the petitioners is that though they are not covered by the Wild Life (Protection) Act, 1972 and the Amendment Act No. 44 of 1991, the authorities are taking action against them for their being in possession of mammoth ivory and articles made therefrom. Besides, like Writ Petition No. 1016/92 etc. they also challenge the amendments carried out in the Wild Life (Protection) Act, 1972 by the Amendment Act No. 44 of 1991.

2. In so far as the first category of cases are concerned it will be convenient to deal with Writ Petition No. 1016/92 as the points raised in this writ petition and the other writ petitions, namely, CWP Nos. 1272/92, 1631/92 and 1749/92, are the same.

Writ Petition No. 1016/92:

3. The writ petitioners in this writ petition are mainly aggrieved by the ban imposed by the Wild Life (Protection) Amendment Act, 1991, on the trade in ivory derived from African elephant. It is asserted by them that they only deal with ivory imported before the coming into operation of Amendment Act No. 44 of 1991. It is claimed that the first petitioner is a Society registered under the Societies Registration Act, 1860 and is an Association of person connected with the trade and business of Ivory, including person manufacturing articles therefrom. The second petitioner to the fourteenth petitioner are dealers in ivory. They assert that they are carrying on business and trade in ivory including the manufacture of articles derived from ivory lawfully imported into India prior to the ban and are members of the first petitioner. The fourteenth petitioner also claims to be an artisan engaged in the business of carving raw ivory. The fifteenth petitioner too claims to be an artisan. Therefore they plead that they are persons affected by the Amendment Act.

4. As per the prayer clause of the writ petition, the petitioners challenge Sections 5 (i), 27 (b), 30 (i), (iii), 33 (b) (ii), 34, 35 and 37 of the Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991) (for short 'the Amendment Act') and the corresponding amendment/changes carried out in the Principal Act known as Wild Life (Protection) Act, 1972. These amendments changes have been effected: (1) in Section 2 (2); (2) by introduction of Clause (C) in sub-section (1) of Section 39; (3) by omission of Clause (ia); from sub-section (1) of Section 44; (4) by replacement of second proviso to Section 44; (5) by insertion of sub-clause (iii) in Clause (C) of Section 49A; (6) by introduction of sub-clause (ia) in Clause (a) of sub-section (1) of Section 49B; (7) in Section 49C (7); and (8) in Section 51 of the Principal Act. The petitioners find serious fault with Sections

49A (c) (iii) & 49B (1) (a) (ia) of the Principal Act as introduced by Sections 33 and 34 of the Amendment Act which have the effect of banning trade in ivory imported into India or articles derived there from. According to the petitioners such a ban is violation of Articles 19 (1) (g), 14 and 300A of the Constitution of India. The further grievance of the petitioners is that they cannot even retain the possession and control of the ivory lawfully imported by them and articles made or derived therefrom as the same has been made an offence under Section 51 of the Act read with Section 49C(2) thereof. According to the petitioners the ban is unreasonable, unfair and arbitrary.

Writ Petition Nos, 1303/92 and 1964/93:

5. The petitioner in Writ Petition No. 1303/92 is a dealer and manufacturer of jewellery. It is claimed that the petitioner imported part of his stock of mammoth ivory from Russia and part of it from Hong Kong for the purposes of his business. It is further asserted that ivory derived from mammoth, an extinct species of wild animal, and ivory derived from elephants cannot be treated at par or on the same footing as both are different from each other and can be distinguished. The petitioners in Writ Petition No. 1964/93 claim to be carvers of mammoth ivory.

6. In so far as the two instant petitions are concerned, the points raised in these writ petitions regarding the validity of the Amendment Act 44 of 1991 are similar to the other writ petitions mentioned above. However, the only point of distinction between these writ petitions and the other writ petitions is that the petitioners claim that mammoth ivory in which they are dealing in is not covered by the provisions of the Act. It is stated in the writ petitions that mammoth ivory is derived from an extinct species of elephant and actually it is a fossil ivory and cannot be considered to be ivory at all for the purposes of the Act. The petitioners, however, do not deny that mammoth ivory is imported from abroad.

7. Mr. D. D. Thakur, learned senior counsel appearing for the petitioners in C.W.P. Nos. 1016/92, 1272/92, 1631/92 and 1749/92 reiterated the challenge laid in the writ petitions to the constitutionality of the amendments effected in the Principal Act by the Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991) to the extent of the ban imposed on trade in imported ivory acquired prior to the Amendment Act No. 44 of 1991. Learned counsel contended that the restriction is unreasonable, unfair and arbitrary and violates the fundamental right of the petitioners under Articles 14 and 19 (1) (g) of the Constitution. Besides, it was submitted that the amendment Act extinguishes the title of the petitioners over the imported ivory lawfully acquired by them and articles made therefrom without making any provision for compensation therefrom. The point raised by the learned counsel with great emphasis was that the petitioner should be allowed to sell their stocks of ivory and products derived therefrom and the Government should buy the same. He also canvassed that reasons for not permitting the sale of imported ivory acquired prior to the ban has no nexus with the object sought to be achieved by the Act. He further submitted that there was no link between elephants in the remote forests of India and the sales of imported ivory or articles made therefrom in the show rooms of the petitioners in the cities. Learned counsel contended that the functionaries of the wild life

department of the concerned States can prevent illegal hunting of elephants and there is no good reason to ban the sale of imported ivory and articles made therefrom.

8. Dr. Singhvi appearing in Writ Petition No. 1303/92 and Dr. Rajeev Dhavan appearing in Writ Petition No.1964/93 reiterated the submissions made by the learned counsel in Writ Petitions Nos. 1016/92, 1272/92, 1631/92 and 1749/92. Besides, they submitted that the petitioners' trade only in imported fossil ivory and articles manufactured therefrom. They contended that the Parliament is not competent to legislate in regard to remnants of ivory belonging to long extinct Mammoth imported from abroad-and actually the Act does not deal with this kind of ivory at all. According to the learned counsel, the Act only covers elephant ivory and articles made therefrom. They further canvassed that Elephant ivory and Mammoth ivory are of different types and can be distinguished from each other. Learned counsel also submitted that since Mammoth ivory is outside the scope and ambit of the Act, the authorities created by the Act cannot ask the petitioners to comply with the provisions thereof and to hand over the stocks of Mammoth ivory and articles made therefrom to them. In a nutshell the submission of learned counsel is that the mammoth ivory in the possession of the petitioners is free from the provisions and restraints of the Act.

9. On the other hand, Mr. Madan Lokur, Learned counsel for the respondent/Union of India and Mr. Raj Panjwani, learned counsel for the World Wide Fund for Nature-India, submitted that the impugned legislation was enacted to provide protection to wild life and it must be viewed in that perspective. They further submitted that the necessity of protection and conservation of wild life is essential for the very existence of human life. According to the learned counsel trade in wild life is akin to trade in liquor or any other noxious trade and does not have the protection of either Article 14 or 19 (1) (g). According to the learned counsel, trade in wild life is antithetic to conservation and therefore, it is noxious and also existence of different life forms are dependent for their survival on each other, Mr. Lokur, learned counsel, pleaded that the restrictions were reasonable and necessary in public interest and the provision were meant to give effect to the directive principles of the State policy. He pointed out that since African elephant was included in Appendix "I" of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (for short 'CITES') with effect from January 18, 1990 member States including India prohibited internal and trans border trade in ivory. Commenting upon the legislative measures taken in this country, he pointed out that the Parliament in order to save the Indian Elephant and to give effect to the International treaty enacted the Amendment Act (Act No. 44 of 1991).

10. Learned counsel argued that the petitioners should have liquidated their stocks between 1989, when the African Elephant was proposed to be brought in Appendix 'I' of CITES and within six months of the passing of the Amendment Act 44 of 1991. He also submitted that as a result of the interim stay granted by this Court which was operative up to July 7, 1992, the petitioners had sufficient time to liquidate the stocks but they did not do so and on the contrary kept augmenting the same. He further canvassed that dealing in ivory imported from Africa cannot be claimed as a fundamental right. He vehemently contended that the traders in the garb of dealing in ivory imported from Africa or

mammoth ivory, had actually been dealing with Indian ivory which resulted in illegal killing of Indian Elephants with the result that their population has gone down and in order to arrest their further depletion it was necessary to bring about the present amendments. Mr. Lokur also highlighted the fact that the respondents do not admit that the petitioners had lawfully acquired the stocks of imported ivory.

11. Before examining the submissions of the learned counsel for the parties, at the threshold we will make a brief reference to the legislation which preceded the present one. We will also set up the provisions of the Amendment Act 44 of 1991 to the extent they are relevant, objects and reasons of the Principal Act and the Amendment Acts of 1986 and 1991 for the better understanding of the matter.

12. Birds were the first to get the attention of the British in India. The first legislation for protection of birds was enacted by the British in 1887 which was known as the Wild Birds Protection 1887 (Act No. X of 1887). However, the purpose of this Act was limited as it prohibited the possession or sale of only certain kinds of wild birds during the breeding season. This Act did not have the desired effect as killing of birds was not prohibited. As a consequence of wanton killing of birds and animals a more comprehensive legislation was needed. In order, to remedy the situation the British enacted a legislation called the Wild Birds and Animals (Protection) Act, 1921 (Act No VII of 1921). Section 3 of that Act empowered the Provincial Government to declare the whole year or any part thereof, what may be called as close time, during which specified kind of wild birds or animals would not be killed and it was made unlawful to capture to kill or sell or buy or possess any such bird or animal. Section 4 made contravention of S. 3 punishable with fine. In the year 1935 the Act was amended by the Wild Birds and Animals (Protection) Act No XXVII of 1935. By that Amendment Act, amongst other additions and alterations, section 11 was added by virtue of which the Provincial Government could declare any area to be a sanctuary for the birds or animals and their killing was made unlawful. Any violation of S. 11 was made punishable with fine. It is noteworthy that for the first time the concept of sanctuary was introduced in India but provisions of that Act also proved to be inadequate for protection of wild life and birds. For the next thirty-seven years nothing much was done to improve the situation. There was rapid depletion of wild life and birds and need was felt to enact a more comprehensive and effective legislation for protection of wild life. But there was a difficulty. The subject of wild life being a State subject falling in Entry 20, List 11 of Seventh Schedule of the Constitution there was no way for the Parliament to enact a law in regard to the aforesaid subject except by invoking the provisions of Art. 252 of the Constitution.

13. Having regard to the importance of the matter, the legislature of the State of Andhra Pradesh, Bihar, Gajarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal passed resolutions in pursuance of Art. 252 of the Constitution empowering the Parliament to pass the necessary legislation in regard to the protection of wild animals, birds and for all matters connected therewith. Thus armed with the resolutions, the Parliament enacted the Wild Life (Protection) Act, 1972. It came into effect from February 1, 1973. For the purpose of the present inquiry it will be

advantageous to refer to the Statement of Objects and Reasons of the Act, which reads as follows:-

> "The rapid decline of India's wild animals and birds one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912) has become completely outmoded. The existing State laws are not only out-dated but provide punishment which is not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relate to control of hunting and do not emphasize the other factors which are also prime reasons for the decline of India's wild life and products derived there from.
>
> 2. Having considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds for all matters connected therewith or ancillary and incidental thereto.
>
> 3. Legislation in respect of the aforesaid subject-matter is reliable to entry 20 of the State List in the Seventh Schedule to the Constitution, namely protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of Arts. 249 and 250 of the Constitution) resolution in pursuance of Art. 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh, and West Bengal have passed such resolutions.
>
> 4. The Bill seeks to -
>
> (a) constitute a Wild Life Advisory Board for each State;
> (b) regulate hunting of wild animals and birds;
> (c) lay down the procedure for declaring areas as Sanctuaries, National Parks, etc.
> (d) Regulate possession, acquisition, or transfer of, or trade in, wild animals, animal articles and trophies and taxidermy thereof;
> (e) provide penalties for contravention of the Act."

14. The working of the legislation proved inadequate in certain matters despite minor changes having been effected by the Amendment Act 23 of 1982. Major changes were effected in the Principal Act in 1986 by Wild Life (Protection) Amendment Act, 1986 (Act No 28 of 1986). It received the assent of the President on May 23, 1996 and was published in the Gazette of India dated May 26, 1986, Part II-S. 1, Ext. p. 1 (No. 33). The statement of objects and reasons of the Amendment Act of 1986 reads as follows:-

"The Wild Life (Protection) Act, 1972 provides for the protection of wild animals and birds and for matters connected therewith or ancillary thereto.

2. Under the scheme of the Act, trade or commerce in wild animals, animal articles and trophies within the Country is permissible and is regulated under Chapter V. Since there is hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have taken a heavy toll on our wild animals and birds. The stocks declared by the traders at the commencement of the Wild Life (Protection) Act, 1972 are still used as a cover for such illicit trade. Attempts to acquire the declared stocks of skins of some wild species have also not met with the desired success, mainly because most traders are not inclined to part with their stocks and thereby lose the ploy for illegal activities. It is, therefore, necessary to suitably amend the Act to prohibit trade in certain specified wild animals or their derivatives. It is, therefore, proposed to provide that no one will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives therefrom after a period of two months from the commencement of the amending Act or two months from the date on which a wild animal is included in Schedule I or Part II of Schedule II by notification issued under the provisions of the Act. All existing licenses for internal trade would be invalid thereafter. Further, no fresh licenses would be granted for internal trade on such wild animals or their derivatives in future. An exemption is being given to notified Government of India undertakings who can purchase stocks from licensees during the specified period of two months for manufacturing articles from them exclusively for export. The exemption at present available to dealers in ivory under the second proviso to S. 44 (1) is also being removed so as to enforce a total ban in dealing in Indian ivory and simultaneously to provide for some regulation over the manufacture and trade of articles made out of imported ivory.

3. The Bill seeks to achieve the above objects."

The amendment Act of 1986, inter alia, inserted Chapter VA in the Principal Act and also amended sections 44, 51 and 63 thereof.

15. Again by Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991), which received the assent of the President on September 20, 1991 and was published in the Gazette of India dated September 20, 1991, Part Z. 1 Ex. P. 1 (No. 6), extensive amendments were made in the Principal Act, it amended the title of the Principal Act so as to be called the Wild Animals, Birds and Plants (Protection) Act, 1972. It brought about Changes in sections 1, 2, 4. 6, 8, 12, 18, 19, 24, 33, 34, 35, 36, 36, 39, 40, 43, 44, 49, 49A, 49B, 49C, 50, 51, 54, 57, 59, 60, 61, 62, 63, 64, 66, Schedule II, Schedule III and Schedule IV of the Principal Act. Besides, it also made the following changes: -

(1) It substituted new section for Ss. 9, 29 and 55 of the Principal Act;
(2) It omitted Ss. 10 and 13 to 17 of the Principal Act;

(3) It inserted two new chapters, namely, Chapter IIIA and Chapter IVA, in the Principal Act; and
(4) It inserted new Schedule, namely, Schedule VI, in the Principal Act.

16. In order to appreciate the necessity to carry out the amendments in the Principal Act it would be advantageous to have an insight into the purposes of the Amendment Act. 1991 which is reflected in the Statement of Objects and Reasons of the Amendment Bill:-

> "The Wild Life (Protection) Act, 1972 provide for the protection of wild animals and birds.
>
> 2. In the implementation of the Act over 18 years, the need for amendment of certain provisions of the Act to bring them in line with the requirements of the present times has been felt. The Indian Board for wild life also endorsed the need for these amendments. Ministry of Environment and Forests has worked out the proposals for amendment of the Act on the basis of recommendations of the Standing Committee of Indian Board for Wild Life and various ministries of the government.
>
> 3. Poaching of wild animals and illegal trade of products derived therefrom, together with degradation and depletion of habitats have seriously affected wild life population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education, research, scientific management and captive breeding, would continue. It is being made mandatory for every transporters not to transport any wild life product without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government officers as well as individuals now can also file complaints in the courts for offences under the Act. It is also proposed to provide for appointment of honorary Wild Life Wardens and payment of rewards to persons helping in apprehension of offenders.
>
> 4. To curb large scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunization of livestock in and around National Parks and Sanctuaries.
>
> 5. Realizing the need to protect offshore marine flora and fauna, the provision of National Parks and Sanctuaries are proposed to be extended to the territorial waters. It is also being provided that while declaring any part of territorial waters as a sanctuary due precaution shall be taken to safeguard the occupational interests of local fishermen.
>
> 6. While making the provisions of the Act more effective and stringent, due regard has also been given to the rights of the local people, particularly the tribal. It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters no area can be declared a sanctuary unless the rights of the people have been settled. State Wildlife

Advisory Boards are also being made responsible for suggesting ways and means to harmonize the needs of tribal and the protection of wild life.

7. In the recent times, there has been a mushroom growth of zoos in India. Zoos, if managed properly, serve a useful role in the preservation of wild animals. So far there is no legislation dealing with zoos. Provisions are now being made for setting up of a Central Zoo Authority responsible for overseeing the functioning and development of zoos in the country. Only such zoos would be allowed to operate as are recognized and maintain animals in accordance with the norms and standards prescribed by the Zoo Authority. Activities causing disturbance to animals in a zoo are being made a punishable offence.

8. Over exploitation has endangered the survival of certain species of plants. Although the export of these plants and their derivatives is restricted under the provision of the export policy and the "Convention of International Trade in Endangered Species of Wild Fauna and Flora" to which India is a Party, yet there is no restriction on collection of these species from the wild. Provision to prohibit collection and exploitation of wild plants which are threatened with extinction, are being made. Cultivation and trade of such plants would, however, be permitted under license. The provisions, however, would not affect the collection of traditionally used plants for the bona fide personal use of the tribal.

9. It may be recalled that the Parties to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES), being greatly concerned by the decline in population of African elephant (sic) the import and export of African ivory for commercial purposes has been prohibited. As a result import of ivory would no longer be possible to meet the requirements of the domestic ivory trade. If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. With this point in view, the trade in African ivory within the country is proposed to be banned after giving due opportunity to ivory traders to dispose off their existing stock.

10. The existing legal provisions do not permit the collection of snake venom for producing life saving drugs from snakes like Cobra and Russel's Viper. This is causing hardship. It is, therefore, proposed to amend the Act to provide for extraction of or dealing in snake venom in a regulated manner.

11. The Bill seeks to achieve the aforesaid objects."

17. At this stage it will also be useful to set out below extracts from the statement of the Minister of State of Environment and Forests in the Lok Sabha which the made at floor of the House while moving the Bill:

"THE MINISTER OF STATE OF THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI KAMAL NATH):

I beg to move:

"That the Bill further to amend the Wild Life (Protection) Act, 1972 as passed by Rajya Sabha be taken into consideration."

…

Wildlife in our country has suffered serious depletion on account of pressures exerted by the rapid growth of population and the consumption oriented approach, regardless of the need to maintain essential bio-diversity and ecological process, balances, and life support systems which are so vital for land productivity, food security and human survival. Setting up a network of effectively managed National Park and Sanctuaries is the highest priority of Wildlife conservation. With this point in view, the provisions with regard to Management of Parks and Sanctuaries are being made more effective and stringent. Realizing the need to protect offshore marine flora and fauna, the legal provisions of National Parks and Sanctuaries are proposed to be extended to territorial waters as well.

As already mentioned, wildlife populations and habitats have degraded to a great extent under the pressure of human activities. We can no more afford to kill wild animals for the sake of pleasure of a few person, thus disrupting life forms and linkages vital for the preservation of bio-diversity. Wildlife is also in no position to bear the burden of capturing of wild animals for commercial purposes.

…

Poaching of wild animals and illegal trade, has over the years, taken serious dimensions because of the exponential rise in the price of wild animals and their products. The job of a poacher gets more and more lucrative as a particular species gets rarer. Therefore, proposals have been made in the Bill to make the penalties for various offices more deterrent. It is being made mandatory for every transporters not to accept any consignment of wildlife products without proper sanction from the authorized officers.

Population of Indian elephants, particularly in South India, are under serious thereat by ivory poachers. Although the trade in Indian ivory was banned in 1986, the trade in imported ivory gives an opportunity to unscrupulous ivory traders to legalize poached ivory in the name of imported ivory. With this point in view, the trade in African ivory is proposed to be banned after giving due opportunity to ivory traders to dispose off their existing stocks.

…

18. The amendments effected by the Wild Life (Protection) Amendment Act, 1991, in the Principal Act, which the petitioners challenge, read as under :-

5. Amendment of Section 2. - In section- of the Principal Act, -

(a) in Clause (2), the words "has been used, any (and) ivory imported into India and an article made therefrom" shall be substituted;

…

27. Amendment of Section 39 - In Section 39, of the Principal Act, in sub-section (1), the

(a) ...

(b) after clause (b), the following clauses shall be inserted, namely: -

"(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

shall be ... [ ]

30. Amendment of Section 44. - In Section 44 of the Principal Act, in sub-section (1). -

(i) in clause (a), sub-clause (ia) shall be omitted.

…

(iii) for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that noting in this sub-section shall apply to the dealers in tail feathers of peacock and articles made therefrom and the manufactures of such articles."

33. Amendment of Section 49A. - In Section 49A of the Principal Act. -

(a) ...

(b) in clause (c).—

(i) ...

(ii) after sub-section (ii), the following sub-clause shall be inserted, namely:-

"(iii) in relation to ivory imported into India or an article made from such ivory, the date of expiry of six months from the commencement of the Wild Life (Protection) Amendment Act, 1991."

34. Amendment in Section 49B - In Section 49B of the principal Act, sub-section (1), in clause (a), after sub-clause (i), the following sub-clause shall be inserted, namely :-

(ia) a dealer in ivory imported into India or articles made therefrom or a manufacturer of such articles; or".

35. Amendment of Section 49C. - In Section 49C of the principal Act, -

(a) in sub-section (1), in clause (a), after sub-section (iv), the following sub-clause shall be inserted, namely: -

"(v) ivory imported into India or article made therefrom;"

(b) in sub-section (7), for the words "any scheduled animal or a scheduled animal article", the words "any scheduled animal, or scheduled animal article or ivory imported into India or any article made therefrom."

37. Amendment of Section 51. - In Section 51 of the principal Act, -

(a) in sub-section (1), -

(i) for the brackets, words, figure and letter "(except Chapter VA)", the brackets, words, figures and letters" (except Chapter VA and Section 38J)", for the words "two year", the words "three years" and for the words "two thousand rupees", the words "twenty-five thousand rupees" shall be substituted;

(ii) in the first proviso, for the words, "relates to hunting in", the words, "relates to hunting in, or altering the boundaries of," for the words "six months", the words "one year" and for the words "five hundred rupees", the words "five thousand rupees" shall be substituted;

(iii) for the second proviso, the following proviso shall be substituted, namely: -

> "Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of imprisonment may extend to six years and shall not be less than two years and the amount of fine shall be less than ten thousand rupees.",

(b) after sub-section (1A), the following sub-section shall be inserted, namely: -

> "(1B) Any person who contravenes the provisions of Section 38J shall be punishable with imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or with both;

Provided that in the case of a second or subsequent offence, the term of imprisonment may extend to one year or the fine may extend to five thousand rupees."

(c) in sub-section (2), for the words "uncured trophy or meat", the words "uncured trophy, meat, ivory imported into India or an article made from such ivory any specified plant, or part or derivative thereof" shall be substituted;

(d) after sub-section (4), the following sub-section shall be inserted, namely:-

"(5) Nothing contained in S. 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such persons is under eighteen years of age.",

19. Taking into account the amendments, the Principal Act, in so far as it is relevant for the purposes of the present writ petitions, reads as follow:-

2. Definitions
In this Act, unless the context otherwise requires
…

(2) "animal article" means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of

such animal *[has been used and ivory imported into India and an article made therefrom.]

…

39. Wild animals, etc. to be Government property -

(1) Every

…

(c) "ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made there under has been committed :

…

shall be the property of the State Government and, where such animal is hunted in a Sanctuary or National Park declared by the Central Government, such animal or any article, trophy, uncured trophy or meat derived from such animal or any vehicle, vessel, weapon, trap, or tool used in such hunting, shall be the property of Central Government."

…

44. Dealings in trophy and animal articles without license prohibited

(1) Subject to the provisions of Chapter V-A, no person shall, except under, and in accordance with, a license granted under sub-section (4)

(a) commence or carry on the business as

(i) a manufacturer of, or dealer in, any animal article; or

(ia) **Omitted. [**The text of the omitted provision was as follows:-

"a manufacturer of, or dealer in, any article made of ivory imported into India."]

(ii) a taxidermist; or

(iii) a dealer in trophy or uncured trophy, or

(iv) a dealer in captive animal; or

(v) a dealer in meat; or

(b) .....

Provided that .....

(c) .....

…

"Provided further that nothing in this sub-section shall apply to the dealers in tail feathers of peacock and articles made therefrom and the manufacturers of such article."

49-A Definitions

In this Chapter

…

(c) "specified date" means

(i) and (ii) .....

(iii) in relation to ivory imported into India or an article made from such ivory, the date of expiry of six months from the commencement of the Wild Life (Protection) Amendment Act, 1991.

49-B. Prohibition of dealing in trophies, animal articles etc. derived from Scheduled animals.

(1) Subject to the other provision of this section, on and after the specified date, no person shall

(a) commence or carry on the business as

(1) .....

(ia) a dealer in ivory imported into India or articles made therefrom or a manufacturer of such articles or

(ii) .....

…

49-C. Declaration by dealers

(1) Every person carrying on the business or occupation referred to in sub-section (1) of Sec. 49-B Shall, within thirty days from the specified date, declare to the Chief Wildlife Warden or the authorized officer

(a) his stocks, if any, as at the end of the specified date of

(i) and (iv) .....

(v) ivory imported into India or article made there from.

(b) and (c) .....

(7) No person other than a person who has been issued a certified (copy) of ownership under sub-section (3) shall, on and after the specified date, keep under his control, sell or offer for sale or transfer to any person any scheduled imported into India or any article made there from.

51. Penalties

(1) Any person who contravenes any provision of this Act except Chapter VA and S. 38J or any rule or order made there under or who commits a breach of any of the conditions of any license or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twenty five thousand rupees, or with both.

Provided that where the offence committed in relation to any wild animal specified in Schedule I or Part II of Sch. II, or meat of any such animal, animal article, trophy, on uncured trophy derived from such animal or where offence relate to hunting or altering the boundaries of a sanctuary or a National Park, such offence shall be

punishable with imprisonment for a term which shall not be less than one year but may extend to six years and also with fine which shall not be less than five thousand rupees.

Provided further that in the case of a second or subsequent offence of the nature mentioned in this Sub-section, the term of imprisonment may extend to six years and shall not be less than two years and the amount of fine shall not be less than ten thousand rupees;

(1A) .....

(1B) Any person who contravenes the provisions of S. 38J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both;

Provided that in the case of a second or subsequent offence, the term of imprisonment may extend to one year or the fine may extend to five thousand rupees;

(2) When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant or part or derivative thereof in respect of which the offence has been committed, any trap, tool, vehicle, vessel, or weapon used in the commission of the said offence be forfeited to the State Government and that any licence or permit held by such person under the provisions of this Act, be cancelled.

…

(5) Nothing contained in S. 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such persons are under eighteen years of age."

20. Having referred to the legislation which preceded the Principal Act and having set out the objects and reasons of the Principal Act and the Amendment Acts of 1986 and 1991, we will like to notice the arguments of Mr. Takur, learned senior counsel, which are based on the principles adumbrated by the Supreme Court in various decisions. He submitted that the legislation can impose only reasonable restrictions on the fundamental rights of the people, including the right to trade and business, in public interest and the restrictions on trade which are arbitrary, unfair and unjust are violative of Art. 19 (1) (g) of the Constitution. Learned counsel cited the decision of the Supreme Court in Chintaman Rao v. State of Mahdya Pradesh, 1950 SCR 759 : (AIR 1951 SC 118), laying down that phase "reasonable restriction" occurring in Art. 19 (6) does not include limitations which are arbitrary or excessive in nature beyond what is required in the interest of the public, and the word "reasonable" implies a course which reason dictates. The learned counsel also cited decision of the Supreme Court in Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731; State of Madras v. V. G. Row, AIR 1952 SC 196; State

of West Bengal v. Subodh Gopal Bose, AIR 1954 SC 92, laying down the criteria on the basis of which reasonableness of a statute should be judged. He also submitted that it is ultimately for the court to determine whether the statute is reasonable or otherwise. Learned counsel pointed out that where the statute imposes restrictions on the fundamental rights of a citizen the onus to justify, the restriction is on the State. Mr Thakur also submitted that if the statue imposes restrictions on trade or business which are unfair, unreasonable and arbitrary, besides infringing Art. 19 (1) (g) of the Constitution, the same would also be violative of Art. 14 as well. In this connection, learned counsel relied upon the principles laid down by the Supreme Court in E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555; Ramana Dayaram Shetty v. The International Airport Authority of India, AIR 1979 SC 1628; Bachan Singh v. State of Punjab, AIR 1982 SC 1325; Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789; and Smt. Maneka Gandhi v. Union of India, AIR 1978 SC 597. If we may say so with respect, the propositions and principles brought to our notice by means of the above decisions are unassailable. However, we are adding a small caveat here to the extent that where the trade is pernicious and noxious it does not attract the protection of Art. 19 (1) (g).

Whether the ban imposed on trade of imported ivory and articles made therefrom under S. 49B (1) (a) (ia) read with S. 49A (c) (iii) and S. 49C (7) of the impugned legislation violates Art. 19 (1) (g) of the constitution?

21. The basic point which has been urged before us by various counsel revolves around the question whether the ban imposed on trade of imported ivory and articles made therefrom by the Amendment Act 44 of 1991 is reasonable as envisaged by Art. 19 (6). We will therefore, immediately embark upon this enquiry, first de hors the question whether the trade in imported ivory is pernicious and is not covered by Art. 19 (1) (g). In order to do that it will be necessary to keep in view the purpose of the Principal Act and the Amendment Act No. 44 of 1991. As already noticed, the Act is meant to protect and safeguard wild life. The Supreme Court in State of Bihar v. Murad Ali Khan (1988) 4 SSC 655: (AIR 1989 SC 1), had an occasion to notice the purpose of the Act. In this regard, the Supreme Court observed as follows (Para 4 of AIR)

"The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depredation inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilized man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he

cannot repair and cannot foresee". In his foreword to International Wild Life Law, H.R.H. Prince Philip, the Duke of Edinburgh said:

Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside, Sadly, perhaps, it is a great deal more complicated than that .....

..... As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow .....

There have been a series of international conventions for the preservation and protection of the environment. The United Nations General Assembly adopted on October 29, 1982 "The world charter for nature". The Charter declares the Awareness that:

(a) Making is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.

In the third century B. C. King Asoka issued a decree that "has a particularly contemporary ring" in the matters of preservation of wild life and environment. Towards the end of his reign, he wrote:

> Twenty-six years after my coronation, I declared that the following animals were not to be killed; parrots, mynas, the aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, thinoceroses ..... and all quadrupeds which are not useful or edible ..... Forests must not be burned.

Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is "a series of complex biotic communities of which a man is an interdependent part" and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the "civilized man" operating directly through excessive commercial hunting or, more disastrously, indirectly, through invading or destroying natural habitats."

Thus, it is obvious that the object of the principal Act was to arrest depletion of animal life so as to maintain the ecological balance which is necessary for welfare of humanity. Despite the coming into force of the principal Act, the provisions did not prove effective for protection of elephants. One of the reasons was that the 'elephant' was placed at item No. 13 in part 'I' of Schedule II of the Act. According to S. 9 (1) of the Act, as it originally stood, no person was authorized to hunt any wild animal specified in Schedule-I. According to clause 2 of S. 9 hunting of animals specified in Schedules II, III and IV were permitted in accordance with the conditions specified in a licence granted under

sub-section 5 of the Act. Since the 'elephant' was placed in part I of Schedule II of Act, the hunting of the same was possible under a licence. Thus the elephant had little or no chance of survival under the Act as it stood in its original form. On March 3, 1973, a significant International Convention known as Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) took place. The Convention resulted in an agreement between the member States, which was initially ratified by 10 countries and came into operation on July 1, 1975. As the Asian elephant was highly endangered specie, it was placed in Appendix I of the CITES. Appendix I includes all species threatened with extinction or which are or may be affected by trade. Trade in specimens of these species are subject to strict regulation in order not to endanger further the survival of these species and must be authorized in exceptional circumstances only. However, the African elephant was given place in appendix-III which, unlike appendix-I animals, did not enjoy immunity from being hunted and killed. The net effect of this was that while the hunting of the Asian Elephant was banned and international trade in Asian ivory was virtually prohibited, the African elephant could still be hunted. India signed the convention in July, 1974 and deposited the instrument of ratification, on July 20, 1976. India became a party to the convention from October 18, 1976. A major development took place when the Parliament in order to amend the Wild Life (Protection) Act, 1972, enacted on May 23, 1986 the Wild Life (Protection) Amendment Act, 1986 (Act No. 28 of 1986) whereby several changes were effected in the Principal Act, including insertion of Chapter VA. On October 24, 1986, keeping in view the depletion of elephant population and in accordance with CITES, the Central Government intervened under S. 61 (1) of the Principal Act and transferred the Indian elephant to Schedule-I and listed the same at Entry 12B thereof. This was a major step towards protecting Indian elephant as Schedule 'I' animals enjoy complete immunity from being hunted. The 'elephant' having been put in Schedule 'I' of the Act, the prohibition to kill the same came into force with immediate effect. As a result to this, trade and commerce in Indian elephants was totally banned. This step was not challenged by the petitioners. It may be pointed out that import of ivory was not banned but was allowed subject to requirement of licence under S. 44 of the Principal Act as amended by Act No. 28 of 1986. The African elephant like its Indian counterpart was also endangered and threatened by man and in order to save the species, in October, 1989 at the Lusanne CITES Meet, the African elephant was upgraded and included in Appendix 'I' of the CITES and after three months of its inclusion w.e.f. January 18, 1990 international trade in ivory was required to be banned. Almost all countries which are parties to the convention have given effect to it. The result of this was that virtually all international trade in ivory was prohibited with effect from the aforesaid date. In this country in order to bring the Principal Act in tune with the aforesaid development, the Amendment Act 44 of 1991 inserted sub-clause (ia) to S. 49B (1) (a) of the Principal Act as a result whereof the trade in "imported ivory" and articles made there from were completely prohibited from the "specified date". It may be noted that Legislature has used the words 'ivory imported into India' and not African ivory thus enlarging the area of operation of the Act. Now as to the meaning of the words "specified date", the Amendment Act through the insertion of sub-Cl. (iii) in Cl. (c) of Section 49A has provided that the 'specified date' in relation to ivory imported into India or an article made therefrom is the date six months from the Commencement of the Wild Life

(Protection) Act, 1991. That means, as per the above said provisions, dealers in imported ivory or articles made therefrom, or manufacturers of such articles were required to liquidate their stocks and stop all activities relating thereto within six months of the commencement of the Wild Life (Protection) Act, 1991, i.e. April 2, 1992 (date of commencement of the Act being October 2, 1992 + six months there from). The Union of India in its reply dated April 30, 1992 and additional affidavit dated September 12, 1995, has maintained that despite the ban on the killing of the Indian elephant its poaching continues and the traders are actually dealing in ivory extracted from Indian 'elephant' under the grab and facade of imported ivory resulting in the depletion of its population. Therefore, in order to stop the killing of Indian elephants, it was necessary to ban all trade in imported ivory. Above said additional affidavit gives the statistics of the elephant population in India in the early part of the 20th century and for the years 1977-78, 1985 & 1989 to 1993, which are as follows:

Year	**Number of Elephants**
Early part of 20th Century	2 lakhs
1977-78	20061-21091
1985	16560-21361
1989	17065-23270
1990	15500-17500
1991	15000-20000
1992	20000
1993	22796-28348

According to the aforesaid figures, it is apparent that the elephant population had considerably gone down after early part of the 20th Century. Additional affidavit also alludes to the differences between the Indian elephant and the African elephant. It is pointed out that unlike Africa, where both male and female elephants have trusks, in India only the male elephants possess tusks. It is also brought out that even among the males (bull elephants) all of them do not possess tuskers. As per the affidavit there are only 1,500 tuskers in the country as against 5,000 a decade back. If this position was allowed to prevail, the elephant would have become extinct in this part of the subcontinent. As already noticed, the Supreme Court in State of Bihar v. Murad Ali (supra) has referred to environmentalists conception of ecological balance in nature being based on the fundamental concept that nature is a series of complex biotic communities of which man is interdependent part, and a part should not be allowed to diminish the whole. Relationship between nature and man is inextricably linked. They are co-existing entities that partake of each other. To preserve different species is to preserve human life. But this single fact of life is difficult to be perceived by those who are living of and thriving on exploitation and destruction of nature. The 'elephant' is no exception to depredations of man. It is now endangered specie requiring not only protection from being hunted but also a chance to recoup its depleting members. In order to achieve this object, drastic steps for preservation of the elephant were undoubtedly required. The Parliament judged the situation and in its determination completely prohibited the trade in imported ivory and ivory articles. In order to effectuate the ban Sections 49B (1) (a) (ia) and 49C (7) read with Section 49A (1) (a) (iii) interdict a dealer in imported ivory or

articles made therefrom to keep under his control, sell or offer to sell or transfer to any person ivory imported into India or any article made therefrom on or after six months of the coming into force of the Amendment Act 44 of 1991. This was also in keeping with the global perception that the elephant must be saved from extinction. Learned Counsel for the petitioners submitted that the petitioners had lawfully acquired the ivory at the time when there was no ban. They invited our attention to the affidavits of the petitioners in this regard. At this stage it may be pointed our that Mr. Lokur during the course of the arguments vehemently denied the fact that the petitioners lawfully acquired the stocks of imported ivory either before the ban imposed by Amendment Act 44 of 1991 or the Lusanne meeting of CITES in 1989. He also canvassed that under the cover of ostensibly trading in imported ivory, the traders were laundering poached Indian ivory. Assuming for the sake of argument that the petitioners acquired imported ivory lawfully before the coming into force of the ban, that does not mean that the Parliament in its wisdom, keeping in view the aforesaid background, could not impose a ban on the sale of such ivory or articles made therefrom, after giving the dealers time for disposal of the stocks. In order to determine reasonableness of a restriction, which includes prohibition, regard must be had to the nature of the business, its capacity and potential to cause harm and damage to the collective interest and welfare of the community. While adjudging the reasonableness of the restriction it has also to be considered whether the restriction on trade and business is proportionate to and commensurate with the need for protection of public interest.

22. The test of reasonableness is not to be applied in vacuum but it must be applied in the context of the stark realities of life. The late must be directed to effectively remedy the problems and evils persisting in the society. It may be that in the past a situation may not have arisen calling for the passing of a law which is enacted in the contemporary times. March of law to make the life of people to be in harmony with environment cannot be thwarted and faulted on the material considerations of a few. Reasonableness of law cannot be worked out by a mathematical formula. What may have been unreasonable restriction yesterday may be more than reasonable today. Therefore, the criteria for determining the degree of restriction which would be considered reasonable is by no means fixed or static but must vary from age to age and is relatable to adjustments necessary to eliminate the dangers facing the community. The test of reasonableness has to be reviewed in the context of the enormity of the problem and the malady sought to be remedied by the legislation.

23. In the present case restriction undoubtedly imposes total ban on trade in ivory. The Central Government has pointed out in its counter-affidavit dated April 30, 1992 that there was serious problem to protect the Indian elephant as long as the traders were allowed to deal with the ivory, imported from abroad. It is also pointed out that in the circumstances it was necessary to strike at the root cause of poaching and remove the incentive to kill elephants by banning ivory trade altogether.

24. The Minister of State of Environment and Forest while moving the amendment bill in the Lok Sabha adverted to the fact that the population of Indian elephants, particularly in South India, was under serious threat by ivory poachers. Although the trade in Indian

ivory was banned in 1986, the trade in imported ivory was giving an opportunity to unscrupulous ivory traders to legalize poached ivory in the name of imported ivory. With this point in view, the trade in African ivory was proposed to be banned after giving due opportunity to ivory traders to dispose off their existing stocks. He also referred to the growing menace of poaching wild animals which had acquired serious dimensions because of exponential rise in the price of the wild animals and their products. Therefore in this scenario when virtually all international trade in ivory stood prohibited and Member States had given effect to the ban how trade in imported ivory could be permitted by India. The pressing need to preserve ecology and bio-diversity cannot be sacrificed to promote the self-interest of a few. Law enacted by Parliament to protect the Indian elephant, keeping in view the above said international convention, cannot be flawed as imposing unreasonable restraints. Surely, India cannot be a party to the decimation of the elephant. It is documented that some member countries have even burnt and destroyed tons of ivory in order to discourage ivory trade and to protect the elephant which is on the brink of extinction. If permission or exemption is given to traders to deal in pre-convention ivory or ivory imported before the coming into force of the Amendment Act 44 of 1991, the possibility of increased assault on Indian tuskers cannot be ruled out. In that event poached Indian ivory will enter the market masquerading as imported ivory, there being no visible distinction between the two. At this stage it will be advantageous to recall the objects and reasons of the Amendment Act of 1991 and the statement of the Minister of State of Environment and Forests in the Lok Sabha, the relevant portions whereof reads as follows :

> Objects and Reasons of the Amendment Act:
>
> "If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. With this point in view, the trade in African ivory within the country is proposed to be banned after giving due opportunity to ivory traders to dispose off their existing stock."

Statement of the Minister:

> "Poaching of wild animals and illegal trade has over the years, taken serious dimensions because of the exponential rise in the price of wild animals and their products. The job of a poacher gets more and more lucrative as a particular species gets rarer.

As a result of the high price of ivory in the market the work of poachers has been rendered highly lucrative. The magnitude of the problem would be evident from the fact that the tusker population in India has been reduced from 5000 to 1500 during the past one decade. This is proof enough of the fact that the Wild Life Departments of the states have not succeeded in tackling the problem. It is common knowledge that the officials of the Forest and Wild Life Departments of the State are not able to protect tree and wild life because of strong criminal syndicates of poachers. The same is true for other countries. Douglas H. Ohadwick, in his fascinating book “The Fate of the Elephant” has also spoken about this aspect of the matter thus:

" ..... As soon as CITES listed the African elephant on Appendix I of the Endangered Species List in 1990, prohibiting international trade in tusks, the market for them crashed. It has remained relatively minor ever since. Curtailed demand has kept the price of ivory down, which has in turn curtailed poaching.

Not that the whole bloody business has ceased. Though tusks bring but a fraction of their former price, they are still worth several months' wages to rural people in quite a few nations. According to various sources, the international black market for ivory is increasingly dominated by the same criminal syndicates running drugs and other contraband. They have the networks in 3 places; they more whatever is profitable."

25. It is very important to sound a clear message that it will no longer be remunerative to deal in ivory, not even for the purpose of one time sale. That is what the impugned legislation has done. It also needs to be driven home that the beauty of ivory and things created there from should not be the reason for the destruction of its source. The elephant with the tusker stands out any day to ivory curious adoring the mantel pieces of a few who can afford to buy them at fabulous prices unmindful of the virtual disappearance of a remarkable animal. This is a very heavy price to pay for satiating the aesthetic sense of a few persons. Trade and business at the cost of disrupting life forms and linkages necessary for the preservation of bio-diversity and ecology cannot be permitted even once. We therefore, reject the submission of the learned Counsel for the petitioners that there was no proximity between the elephants in the remote ivory or articles made therefrom in the show rooms of the petitioners in the city. We also reject the submission that the functionaries of the Wild Life Department of the States could prevent illegal hunting of elephants and there was no good reason to ban the sale of imported ivory and articles made therefrom. The Parliament understanding vastness of the problem and considering that it will be very difficult to prevent poaching of the Indian elephant, already on the verge of extinction, and the sales of Indian ivory under the guise of imported ivory without imposing the ban on trade in imported ivory cannot be faulted as the degree of harm in allowing the petitioners to continue with the ivory trade would have been much greater to the community as compared to the degree of harm to the individual interests of the petitioners by prohibiting the ivory trade. In the former case the petitioners would have benefited at the cost of the Society. Trade and property rights must yield to the collective good of the people.

26. Rights granted under Article 19 (1) are not absolute rights but are qualified rights and restriction including prohibition thereon can be imposed in public interest. There is high authority for the proposition that when it is reasonable in public interest, a trade could even be prohibited under Article 19 (6) and such a prohibition would not fall foul of Article 19 (1) (g). In Narender Kumar v. The Union of India, 1960 (2) SCR 375 : AIR 1960 SC 430, a question arose as to whether Non-Ferrous Metal Control Order, 1958 which was issued by the Government of India under Section 3 of the Essential Commodities Act, 1955, violated Article 19 (1) (g). The Court while interpreting the word 'restrictions' held as follows (Para 18 of AIR):

"It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws "inconsistent" with Art. 19 (1), or

"taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore, that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a 'fundamental right is in no case' saved, cannot therefore be accepted."

27. In State of Mahrasthra v. Mumbai Upnagar Gramodyog Sangh, 1969 (2) SCR 392: (AIR 1970 SC 1157), the Supreme Court while considering the scope of Art. 19 (1) (f) & (g) and 31 (1), (2) & (5) held that the power of the State of imposing reasonable restrictions carries within the power to prohibit or ban an activity or to acquire, dispose off property or to extinguish title of an owner in a commodity which is likely to involve grave injury to the health and wealth of the people. In that case, second respondent was an owner of a stable of milk-cattle at Andheri. The Legislature of the State of Maharashtra by Act 14 of 1961 amended inter alia Sections 367, 372 and 385 of the Bombay Municipal Corporation Act 3 of 1888. By virtue of the amendment, an owner of a carcass of a dead animal was to deposit it at the place appointed in that behalf by the Bombay Municipal Corporation. The Act empowers the Corporation to arrange the disposal of carcasses. The Municipal Corporation called upon the first respondent, carrying on the business of carcasses of dead animals and utilizing the product for industrial uses, to stop removing carcasses for 'K' Ward of the Corporation. Subsequently the Corporation also published a notification inviting the attention of the public at large to the provisions of Section 385 and other related provisions of the Act and warned the persons concerned that violations of the provisions was liable to result in the grant of a contract for the removal and disposal of carcasses under Section 385 of the Act in respect of the said ward and other wards to Harijan Workmen's Co-operative Labour Society Ltd. and declared that no other person or agency was authorized to remove and dispose off carcasses Respondents No. 1 and 2 feeling aggrieved, filed a writ petition in the High Court at Bombay for cancelling the Notification and for various other reliefs. The petition was dismissed and it was held that Section 366, 367 (c) and 385 of the Act were enacted for the promotion of public health and for the prevention of danger to the life of the community and in the larger interest of the public and that the restrictions upon the rights of the owners of the cattle and persons carrying on business in carcasses were not inconsistent with the fundamental rights guaranteed under Article 19 (1) (f) and (g) thereof. In appeal, the Letters Patent Bench modified the order of the learned Single Judge and declared Section 372 (g) and part of Section 385 of the Act invalid. The State of Maharashtra then preferred an appeal to the Apex Court. While setting aside the impugned judgment of the Letters Patent Bench of the Bombay High Court, the Supreme Court held that reasonableness of the restriction imposed upon the right must be evaluated in the light of the nature of the commodity and its capacity to be detrimental to the public weal. The Supreme Court in this regard held as follows (at pp. 1163, 1164 of AIR):

"The power of the State to impose reasonable restrictions may extend to prohibiting, acquisition, holding or disposal off a commodity if the commodity is likely to involve grave injury to the health or welfare of the people. In adjudging the reasonableness of restrictions imposed upon the holding or disposal off a carcass

which is noxious, maintenance of public health is the paramount consideration. Restriction imposed upon the right of an owner of a carcass to dispose it off in the manner indicated in the Act, being enacted solely in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercises of the right conferred by Art. 19 (1) (f) and (g) and the interests of a citizen in the exercise of his right to acquire, hold or dispose off his property or to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity. The law which compels the removal of the carcass expeditiously from the place where it is lying is not contended arbitrary or excessive. The law which compels removal to the appointed place and disposal of the carcass under the supervision of the Corporation to which is entrusted the power and duty to take steps to maintain the public health cannot also be regarded as arbitrary or excessive merely because the enforcement of the law involves some pecuniary loss to the citizen. We are unable to agree that by compelling disposal of carcasses by leaving to the owner of the carcass to dispose it in any manner he thinks fit, danger to the public health could be effectively avoided."

28. In State of Madras v. V. G. Rao, AIR 1952 SC 196 (at page 200), the Supreme Court while emphasizing that no abstract standard or general pattern of reasonableness can be laid down in all cases, indicated the following criteria for examining the reasonableness of the restrictions under Article 19 (i) (g): the nature of the right alleged to have been infringed, the underlined purpose of the restriction imposed, and the extent and urgency of evil sought to be remedied thereby".

29. Again in Mohd. Faruk v. State of Madhya Pradesh, AIR 1970 SC 93, stating the criteria of reasonableness, the Supreme Court held as follows:

"The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local—or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved."

30. In Systopic Laboratories Pvt. Ltd. v. Dr. Prem Gupta, 1994 Supp (1) SCC 160 : (AIR 1994 SC 205), the petitioner challenged the notification dated 3rd November, 1988 whereby a complete prohibition on the manufacture and sale of fixed doses of the

combination corticosteroids with any other drug for internal use was imposed. This prohibition was challenged as being unreasonably restrictive of the right of the petitioner to carry on its trade guaranteed under Article 19 (1) (g) of the Constitution. The Supreme Court considered the question in the light of the report of the Experts Committee which was of the opinion that the fixed doses combination of corticosteroids with any other drug should not be allowed because in the recommended upper doses limit the daily dose of corticosteroids often exceeds pharmacological limit for adrenocortical suppression. In this regard the Court observed as follows (page 26 of AIR):

> "It is, therefore, not possible to hold that the prohibition which has been imposed by the impugned Notification on the manufacture and sale of the drug in question impose an unreasonable restriction so as to violative of the right guaranteed under Article 19 (1) (g) of the Constitution."

31. As is apparent from the aforesaid decision of the Apex Court, the reasonableness of law imposing restriction must be considered in the back drop of the facts and circumstances under which it was enacted, the nature of evil that was sought to be remedied by such law, and the ratio of harm caused to a person or group of persons by the legislation as compared to the beneficial effect reasonably expected to result to the general public. The Court must also consider the question whether the restraint caused by the law was more than what was necessary in the interest of the general public. When so considered it is obvious that the provisions of the Amendment Act 44 of 1991 cannot be said to be imposing unreasonable restriction on the trade of the ivory.

32. A law designed to abate extinction of an animal species is *prima facie* one enacted for the protection of public interest as it was enacted to preserve and protect other elephant from extinction. It was not only the perception of the Parliament but of the world community as well, as reflected in the CITES, that the elephant must be protected from being wiped out from the face of the earth by excesses of man. Learned Counsel for the petitioners relied upon the decision of the Supreme Court in Chintaman Rao v. The State of Madhya Pradesh, 1950 SCR 759: (AIR 1957 SC 118), in support of his submission that total prohibition in trade of ivory is violative of Article 19 (1) (g). In that decision the validity of the Central provinces and Berar Regulation on Manufacture of Bidis (Agricultural Purposes) Act, totally prohibiting the manufacture of Bidis during agricultural seasons, was challenged. The State pleaded that the ban was necessary so that enough people could be available for agricultural purposes. The Supreme Court struck down the prohibition on the ground that the object of the statute was to provide a measure for the supply of adequate labour for agricultural purposes in Bidi Manufacturing areas of the province which could well have been achieved by legislation restraining the employment of agricultural labour. This decision is of no avail to the learned Counsel for the petitioners as in the instant case the situation was so grave that the purpose of the legislation could only be achieved by prohibiting the trade in ivory. The statistics pointed out above clearly indicate the danger which the elephant species faced at the hands of man for his easy gains. Therefore, under the circumstances, it cannot be said that the restriction imposed by the Amendment act 44 of 1991 was unreasonable, arbitrary, unfair, or excessive. The State has the power to prohibit absolutely every form of activity

in relation to killing or slaughtering of elephants including the sale of trunks or articles made therefrom as such form of activity is injurious to public interest.

33. Fifty years ago the urgency to preserve the elephant may not have been the upper most priority of human beings as at that point of time it was not on the brink of extinction as it is now. The criteria for determining the reasonableness of a restriction must not be measured with a fixed or a static yardstick. The yardstick must be elastic and flexible to suit the conditions prevailing at a given point of time. In His Holiness Kesavananda Bharati Siplilgalvaru v. State of Kerala, AIR 1973 SC 1461, the Supreme Court inter alia held that fundamental rights have no fixed content. Most of them are empty vessels into which each generation must pour its contents in the light of its experience.

34. Mr. Thakur, learned Senior Counsel, submitted that the State may be justified in imposing restriction on the killing of elephant but it cannot prohibit sale of tusks or articles made therefrom. He canvassed that the stocks which the petitioners have, should be allowed to be sold as such an activity or one time sale of stocks cannot come in the way of saving the elephant. We do not agree with the submission of learned Counsel for the petitioners. The State has taken the stand that the sale of ivory by the dealers would encourage poaching & killing of elephants as the stocks which the petitioners hold presently will be replenished by further killings of elephants as ivory fetches a very good price in the market. We do not find any fault with the stand taken by the respondents. Therefore, the ban imposed by the impugned legislation especially Section 49B (1) (a) (ia) r/w Section 49A (C) (iii) and Section 49C (7) thereof is not violative of Article 19 (1) (g) of the Constitution. It is also not in contravention of Article 14 of the Constitution as the ban does not suffer from unreasonableness, arbitrariness and unfairness.

35. Up to this stage we have considered the matter on the assumption that the right to trade in ivory and ivory articles is a fundamental right. Now we will consider whether such a trade is covered by Article 19 (1) (g). Whether trade in ivory is pernicious and not covered by Article 19 (1) (g) of the Constitution.

36. The trade in ivory (word 'ivory' is used in comprehensive sense including indigenous as well as imported ivory) is dangerous, subversive and pernicious as it has the potential to deplete the elephant population and to ultimately extinguish the same. It is well settled that trade which is pernicious can be totally banned without attracting Article 19 (1) (g) of the Constitution. There is a string of authority for the proposition that no citizen has any fundamental right guaranteed under Article 19 (1) (g) of the Constitution to carry on trade in any noxious and dangerous goods like intoxicating drugs or intoxicating liquors. Trade and business in intoxicating drugs or liquors is only one of the noxious types of enterprises. This category does not close with drugs & intoxicating liquors. What was not considered harmful at an earlier point of time may be discovered to be so later. Time has a way of changing norms. Several other activities being equally pernicious fall in this category too:

1. Gambling,
2. Prostitution,
3. Dealing in counterfeit coins or currency notes, etc.

37. Activities having a baneful effect on the ecology, human and animal life etc. occupy a central position in the in the above category. By virtue of Section 10 of the Constitution (42 Amendment) Act, 1976, Article 48A enjoins upon the State to protect and improve the environment and to safeguard the forests and the wild life of the country. Therefore, what is destructive of the environment, forest and wild life is contrary to the said directive principles of the State policy. Again by Section 11 of the Constitution (42 Amendment) Act, 1976, Article 51A was incorporated in the Constitution. This Article lays down the fundamental duties of the citizens. Clause (g) of Article 51A requires every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

38. It needs to be noticed that the Amendment Act 44 of 1991 has been enacted to carry out the mandate of the directive principles as enshrined in Article 48-A. The State has the power to completely prohibit a trade or business which has an adverse impact on the preservation of species of wild life which are on the verge of extinction both because it is inherently dangerous practice to destroy such animals in terms of ecology and also because of the directive principles contained in Articles 48A of the Constitution. When the legislature prohibits a pernicious, noxious or a dangerous trade or business it is in recognition of society's right of self protection.

39. Trading in animals close to being wiped out of existence and articles made from their bones, skins or other parts of their bodies, is a situation akin to dealing in any other noxious or pernicious trade e.g. intoxicating drugs. While the Parliament can impose ban on trading in endangered species or articles derived from them in furtherance of Art. 48A, it can prohibit trade in intoxicating drugs and liquors in compliance with mandate of Article 47. Courts have recognized that made or business in intoxicating drug and liquor is not a fundamental right as it is dangerous and noxious. Similarly on parity of reasoning business in animal species on the verge of extinction being dangerous and pernicious is, therefore, not covered by Article 19 (1) (g). The principle on the basis of which restriction can be imposed on the trade in intoxicating drugs or intoxicating liquors will also apply with equal force to trade in other pernicious and dangerous businesses and enterprises. In Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala, AIR 1981 SC 1863, the Supreme Court was dealing with Sections 12A, 12B, 14E and 14F 68A of Abkari Act, 1967 and Rules 13 & 16 of Kerala Rectified Spirit Rules, 1972. These provisions were enacted to ensure that rectified spirit was not misused under the pretext of being used for medicinal and toilet preparations containing alcohol. It was held that such regulations were a necessary concomitant of the police power of the State to regulate trade or business which is inherently dangerous to public health. The restrictions imposed by Section 12-B as to the alcoholic contents of medicinal and toilet preparations and the requirement that they shall not be manufactured except and in accordance with the terms and conditions of a licence granted by the commissioner were held to be reasonable restrictions within the meaning of Article 19 (6) of the Constitution. In that case the Supreme Court also negatived the contention that the impugned provisions were violative Article 19 (1) (g) of the Constitution on the ground that no citizen has any fundamental right guaranteed under Article 19 (1) (g) of the Constitution to carry on trade in noxious and dangerous intoxicating drugs or intoxicating liquors. In Cooverjee B.

Bharuch v. Excise Commissioner and the Chief Commissioner, Ajmer, AIR 1954 SC 220, the Supreme Court was dealing with a challenge to the auction sale of country liquor shop under Excise Regulation 1 of 1915. The question which fell for the determination of the Supreme Court was whether the provisions of the Excise Regulation and the auction rules were ultra vires since they purported to grant monopoly to trade in favour of few persons. The Excise Regulation, 1915 provided that the Chief Commissioner may lease to any person the right of manufacturing or of supplying or of selling by wholesale or retail country liquor or intoxicating drug within any special area. The Supreme Court held that the grant of a lease either by public auction or for a sum is regulatory in nature and law prohibiting or regulating trade in noxious or dangerous goods cannot be considered illegal. The Apex Court in that case cited with approval the following observations in Crowley's case (1890) 34 Law Ed. 620:

> "There is no inherent right in a citizen to sell intoxicating liquors by retail: it is not a privilege of citizen of the State or of a citizen of the United State. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rests in the discretion of the governing authority."

40. To the similar effect is the decision of the Supreme Court in The State of Assam v. Sristikar Dowerah, AIR 1957 SC 414, where it was held that no person had any absolute right to sell liquor. While holding so, the Supreme Court also took into consideration the purpose of the restriction imposed by the State. It found that the purpose of the restriction was to control and restrict the consumption of intoxicating liquor and such control and restriction were necessary for the preservation of public health and morals and to raise revenue. In The State Bombay v. F.N. Balsara, AIR 1951 SC 318, the Apex Court held that absolute prohibition of manufacture and sale of liquor is permissible as the concept of inherent right of a citizen to do business in such articles is antithetical to the powers of the State to enforce prohibition laws in respect of the liquor, the only exception being manufacture for the purpose of medicinal preparations. In State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699 the Supreme Court said that gambling could not be regarded as trade or business within the meaning of Article 19 (1) (f) and (g) and Article 301 of the Constitution. It also held that inherently vicious activities cannot be treated as entitling citizens to do business or trade in such activities. In Hari Shanker v. The Dy. Excise and Taxation Commissioner, 1975 (3) SCR 254: (AIR 1975 SC 1121), Chandrachud, J. (as His Lordship then was) considering the decision of five earlier Constitution Benches observed as follows:

> "In our opinion the true position governing dealings in intoxicants is stated and reflected in the Constitution Bench decision of this Court in the State of Bombay v. F. N. Balsara, 1951 SCR 682: (AIR 1951 SC 318), Coovergjee B. Bharucha v. The Excise Commr. and the Chief Commr., Ajmer, 1954 SCR 873 : (AIR 1954 SC 220), State of Assam v. A. N. Kidwai, Commr. of Hills Division and Appeals, Shillong, 1957 SCR 295 : (AIR 1957 SC 4147), Nagendra, Nath v. Commr. of Hills Division and Appeals, Assam, 1958 SCR 1240 : (AIR 1958 SC 398), Amar Chandra v.

Collector of Excise, Government of Tripura, (1973) 1 SCR 535 : (AIR 1972 SC 1863) and State of Bombay v. R.M.D. Chamarbughwala, 1957 SCR 874 : (AIR 1957 SC 699) as interpreted in State of Orissa v. Harinarayan Jaiswal (1972) 3 SCR 784: (AIR 1972 SC 1816) and Nashirwar v. State of Madhya Pradesh, Civil Appeals Nos. 1711- 1721 and1723 of 1974 decided on 27-1-94 : (AIR 1975 SC 360). There is no fundamental right to do trade or business in intoxicants. The State under its regulatory power, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession .....

These unanimous decisions of five Constitutional Benches uniformly emphasized after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilized communities."

41. In the State of U. P. v. Synthetics and Chemical Limited, AIR 1980 SC 614, the Supreme Court again relying upon the decisions in Har Shanker v. Dy. Excise and Taxation Commissioner, AIR 1975 SC 1121 (supra) and State of Orissa v. Hari Narayan Jaiswal, (1972) 3 SCR 784: (AIR 1975 SC 1121), held that the State has the exclusive right of manufacture and sale of intoxicating liquors. Obviously this decision of the Supreme Court proceeded on the basis that there is no fundamental right in a citizen to trade in or do business in intoxicants. To the same effect is the decision of the Supreme Court in Lakhan Lal etc. v. The State of Orissa, AIR 1977 SC 722. The Supreme Court again reiterated the position in Khoday Distilleries Ltd. v. State of Karnataka, (1993) 1 SCC 574 : (AIR 1996 SC 911) and held that a citizen has no fundamental right to undertake trade or business in liquor as a beverage and the same could be completely prohibited since such a trade is *res extra commercium*. It was further held that except when it is used and consumed for medicinal purposes, the State can completely prohibit the manufacture, sale possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47. It is also significant to note that the Supreme Court clearly held that to the list of noxious matters, new items can be added.

42. In M. J. Sivani v. State of Karnataka, AIR 1995 SC 1770, the Supreme Court was confronted with the question as to whether regulation of video games violates the fundamental right to trade or business or avocation guaranteed under Articles 19 (1) (g) and 21. While upholding the restrictions the Apex Court held that the aforesaid trade or business being attended with danger to the community could be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost. The Supreme Court spoke thus (paras 18, 19 and 20 of AIR).

"It is true that they have fundamental right to trade or business avocation but it is subject to control by Article 19 (6) which empowers to impose by law reasonable restriction on the exercise of the right in general public interest. In applying the test

or reasonableness, the broad criterion is whether the law strikes a proper balance between social controls on the one hand and the right of the individual on the other hand. The Court must take into account factors like nature of the right enshrined imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time. The Court cannot proceed on general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restrictions are imposed. In order to determine reasonableness of the restriction, regard must be had, as stated earlier, to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The State, with a view to prohibit illegal or immoral trade, business or injury to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade business. The nature of the business and its indelible effect on public interest etc., therefore, are important elements in deciding the reasonableness of the restriction. No one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost.

The Licensing Authority, therefore, is conferred with discretion to impose such restrictions by notification or Order having statutory force or conditions emanating therefrom as part thereof as are deemed appropriate to the trade or business or avocation by a licence or permit, as the case may be. Unregulated video game operation not only pose danger to public peace and order and safety; but the public will fall into prey of gaming where they always stand to lose playing in the games of chance. Unless one resorts to gaming regularly, one can hardly be reckoned to possess skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skill hardly assist a player to get extra tokens. Therefore, even when it is a game of mixed skill and chance it would be a gaming prohibited under the statute except by regulation. The restriction imposed, therefore, cannot be said to be arbitrary, unbridled or unanalysed. The guidance for exercising the discretion need not *ex facie* be found in the notification or orders. It could be gathered from the provisions of the Act or Rules and a total consideration of the relevant provisions in the notification or order or conditions of licence. The discretion conferred on the licensing Authority, the Commissioner or the District Magistrate, cannot be said to be arbitrary, unanalysed or without any guidelines. The regulations, therefore, are imposed in the public interest and the right under Article 19 (1) (g) is not violated.

It is true that the owner or person in charge of the video game, earn livelihood assured under Article 21 of the Constitution but no one has right to play with the credulity of the general public or the career of the young and impressive age school or college going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19 (2) of Constitution. Right to life under Art. 21 does

protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some of video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair nor unjust."

43. Undoubtedly the business which the petitioners in the instant case are pursuing is attended with danger to the community. Its evil effect is manifested by the depletion of the elephant population. The possession of an article made from ivory has been declared as a crime. There is no fundamental right to carry on business in crime. The legislature has stepped into eliminate the killing of elephant. If the legislation in order to rectify the malady has made the possession of ivory or articles made therefrom an offence, it cannot be said that the legislation violates Article 19 (i) (g) of the Constitution to carry on trade and business. Such a pernicious activity cannot be taken to be as business or trade in the sense in which it is used in Article 19 (1) (g) of the Constitution.

44. Once again we will assume for the sake or arguments that trade in such animals is fundamental right and the impugned legislation imposes fetters thereon but the fact remains that the impugned legislation is for effectuating the purpose of Article 48A. When the Legislature imposes restriction or prohibition or a ban to fulfil the mandate of the directive principles of the State policy, the restriction, prohibition or ban, is in the interests of the general public as the expression interest of the general public occurring in Art. 19 (6) is of a wide import including matters covered in Part IV of the Constitution. We are in this view supported by the decision of the Supreme Court in Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai, AIR 1986 SC 1205, where it was held as follows (para 19):

> The expression ‘in the interest of general public' is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

45. In Pappasam Labour Union v. Madura Coats Ltd., (1993) 1 SCC 501 (at page 513): (AIR 1995 SC 2200 at p. 2206) the Supreme Court relying upon its earlier decision in Minerva Mills case, (1992) 3 SCC 336: (1992 AIR SCW 1378) held that ordinarily any restriction imposed which has the effect of promoting or effectuating the directive principles can be presumed to be reasonable restriction in public interest.

46. Therefore, when a legislation imposes restriction on the right of a trader for giving effect to any of the provisions of Part IV of the Constitution, the restriction will be deemed to be in the interest of the general public.

47. Since directive principles are fundamental in the governance of the country they must be given primacy. They can be effective only when they are given priority and pre-eminence over the fundamental rights of a few in order to sub serve the common good of the people. If unbridled exercise of fundamental right results to the common detriment of the community at large, it can be restricted, abridged or prohibited in order to promote

common good of the people as envisioned by Part IV of the Constitution relating to the directive principles of the State policy. The Courts are bound to enforce the law made in furtherance of the directive principles of the State policy. The directive principles of the State policy have laid down the path for the country to follow in order to achieve its goals. Measures to preserve the elephant brought into effect by Act No. 44 of 1991 which being in consonance with moral claims embodied in Part IV of the Constitution cannot be allowed to yield to Article 19 (1) (g) and must be given priority. The Supreme Court in His Holiness Kesavananda Bharati Sripadagalaveru (AIR 1973 SC 1461) (supra) in regard to the importance of the directive principles observed as follows:

> "As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto themselves the Constitution and these basic rights are an essential feature of the Constitution; the Constitution was also enacted by the people to secure justice, political, social and economic. Therefore, moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being that the moral right embodied in Part IV are not specifically enforceable as against the State by a citizen in a Court of law in case the State fails to implement its duty but, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgement; curtailment, and even abrogation of these rights in circumstances not visualized by the Constitution-makers might became necessary; their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Part IV. Whether at a particular moment in the history of the nation, a particular Fundamental Right should have priority over the moral claim embodied in Part IV or must yield to them is a matter which must be left to be decided by each generation in the light of its experience and its values."

48. Again in State of Kerala v. N. M. Thomas, (1976) 2 SCC 310: (AIR 1976 SC 490), the Supreme Court held that the directive principles formed the fundamental feature and the conscience of the Constitution and the constitution enjoins upon the State to implement these directive principles.

49. Thus, it is clear that the directive principles are fundamental in the governance of the country and they can be effective if they are to prevail over fundamental rights in order to sub serve the common good. While most cherished freedoms and rights have been guaranteed, the Government has been laid under a solemn duty to give effect to the directive principles.

50. It was in fulfilment of this duty that the Principal Act and the Amendment Act 44 of 1991 have been enacted to conserve wild life. The destruction or depletion of the other form of life would create ecological imbalances endangering human life. No one can be given the privilege to endanger human life as that would violate Article 21 of Constitution. Basically, it is extremely essential for the survival of man to co-exist with nature and to preserve and protect wild life.

50A. As already seen, the directive principles of State policy are based upon moral principles and considerations. The protection of wild life has seeds in the history of time, and in the history of moral and ethical principles evolved by every society through various ages. A society which does not have ethical and moral values and fails to live in harmony with nature whither and perishes. The sooner this truth is realized the better it would be for the welfare of the people. It has come to us through centuries to show compassion towards animals and birds as all are considered to have come from the same source. Lord Krishna in the Bhagavad Geeta declared that 'SARVE YONISU AHAM BIJA PRADAHPITAH' which means that I am the father of all. The followers of the Geeta are steeped in the belief that event the leaves of the trees, the petals and the flowers have life and God pervades in them. This belief generated, nurtured and sustained by declarations of the Lord in the various Shlokas particularly in the following:

> Chapter VI Text 30 'Yo Mas Pas' Yati Sarvatra Sarvam ca mayi pas' yati Tasyaham no Prasan' yami sa ca me no pranasyati.
>
> Meaning
>
> He who sees me present in all beings, and all beings existing within me, never loses sight of me, and I never lose sight of him. (Translation as culled out from 'Bhagavad-Gita' published by Gita Press, Gorakhpur).
>
> Chapter X Text 8
>
> 'Aham Sarvasya Prabhavomattah sarvam pravartate iti matva bhajante mam budha bhava-samanvitah'.
>
> Meaning
>
> I am source of all creation and everything in the world moves because of me; knowing this the wise, full of devotion, constantly worship me. (Translation as culled out from 'The Bhagavad Gita' published by Gita Press, Gorakhpur). In various 'Ahadis' the killings of animals for pleasure is deprecated. Equally the mutilation of animals is decried.

51. The debates in the Parliament with regard to the Amendment Bill reflects the same views as have been expressed above. At this stage it will be convenient to set out the views of some of the Hon'ble Members:

> Shri Syed Shahabuddin : Mr. Deputy Speaker, Sir, I rise to support the Bill, I welcome it as a comprehensive legislation for the protection and conservation of our natural flora and fauna and I am happy that it is based primarily on the expert advice given by the National Board of Wild Life. I am particularly happy that plants have been included in the definition of wild life. I think it is indeed a fitting gesture in a country whose basic philosophy is unity of all forms of life. I recall not only the philosophy of Mahavir but also the fact that the great Scientist, Jagdish Chandra Bose was instrumental in establishing that plants too have life and for that, he had received the fellowship of the Royal Society.

Shri Sukhendu Khan: ..... People should be aware of the urgency of protecting wild life. This we can do through publicity, through some educative programme with the help of all kinds of Medias. In Sikkim we have seen that the teachings of Buddha were preached through media. In those teachings of Buddha the emphasis has always been to have love and kindness for animals and the trees. ....

Shri Ayub Khan: ..... Our religious books say that just as a man worships God, Similarly plants, trees also worship God. Some tresses are even worshiped; therefore it is inappropriate on the part of man to fell trees. The Hon. Minister has taken the responsibility to provide complete protection to them and I hope that he will get the rewards for it. I would call it a sacred deed. Most of the people grow 'Tulsi' in front of their houses .....

52. Apart from the beliefs which are personal to a person or society or people or section of people, it is now scientifically established that animals, trees, flora, fauna, insects, birds and human beings are linked with each other for their survival. Each species is indispensable for the preservation of ecology, which is necessary for our existence. Even a lowly earth worm in the soil has also a function to perform to help us survive. It makes the soil fertile which gives us our food and nourishment. The trees were venerated in the past and are still being venerated by some as being sacred. This is not without reason. The trees take carbon dioxide from the atmosphere and replace it by life giving oxygen. Man forgetting the grand design of nature in which every living organism or being has to do its bit, has assumed the role of plunderer and destroyer of ecology for his greed. Man has been killing animals for the satisfaction of his uncontrolled thirst for money or hunting animals for pleasure and sport. The addition is so immense that he is not bothered even about the survival of his progeny on this planet. The earth is a trust in the hands of the present generation for the posterity. Man has over exploited nature. The largest land animal, the elephant, is no exception. It has been used as a beast of burden, for hauling logs, employed in temples for various errands and in circuses. For all these it has been spiked and chinned. Its habitats are being destroyed. It has been hunted to the point of extinction. In our country, as already seen, the tuskers population has dropped to a mere 1500. When precepts lose their efficacy and are violated, legislation steps in for realizing the necessity to maintain orderly existence. It is in this context that the Amendment Act. No. 44 of 1991 assumes great importance for the survival of the elephants.

53. Having regard to the above discussion we hold that:

(1) no citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported;

(2) assuming trade in ivory to be a fundamental right granted under Article 19 (1) (g) the prohibition imposed thereon by the impugned Act is in public interest and in consonance with the moral claims embodied in Article 48A of the Constitution; and

(3) the ban on trade in imported ivory and articles made therefrom is not violative of Articles 14 of the Constitution and does not suffer from any of the maladies, namely unreasonableness, unfairness and arbitrariness.

Whether Sections 39 (1) (c) and 49C (7) read with Section 51 (2) of the impugned legislation are violative of Article 300A of the Constitution:

54. The next question for considerations is whether Section 39 (1) (c) and 49C (7) read with Section 51 (2) of the impugned legislation are void since they do not provide for payment of compensation to the owners on account of extinguishment of their title in the imported ivory or articles made there from. These provisions have already been extracted in the earlier portion of the judgment and it is not necessary to extract them again. In regard to these provisions it was contended that even after the Constitution (Forty-Fourth) Amendment Act, 1978 whereby Article 31 was deleted from Part IV of the Constitution w.e.f. June 20, 1979, a citizen cannot be deprived of his property without being paid compensation for the same in accordance with Article 300A, which is a reincarnation of Article 31. Learned Counsel referred to the decisions of the Supreme Court in Chiranjit Lal Chowdhuri v. The Union of India, 1950 SCR 869 : (AIR 1951 SC 41); The State of West Bengal v. Subhodh Gopal Bose, 1954 SCR 587 : (AIR 1954 SC 92); Saghir Ahmad v. State of U.P., AIR 1954 SC 728; Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564; and Basantibai Fakirchand Khetan v. State of Maharashtra, AIR 1984 Bombay 366. On the basis of these decisions, which were rendered in the context of Article 31 of the Constitution he submitted that the State has no police powers under the Constitution to acquire the property without payment of compensation. The submission of the learned Counsel does not arise in the facts and circumstances of the instant case and the above decisions have no application thereto.

55. The Amendment Act 44 of 1991 does not deal with the acquisition or requisitioning of the property for a public purpose. The right guaranteed by Article 300A of the Constitution relates to compulsory acquisition and requisitioning of property for a public purpose. None of the provisions of Chapter V-A deals with acquisition property for a public purpose. As already noticed, the object and purpose of the provisions are meant for providing protection to the elephant which is a threatened species.

56. In Mumbai Upnagar Gramodyog Sangh (AIR 1970 SC 1157) (supra) the Supreme Court also inter alia decided the question whether the impugned law was void because it did not provide for the compensation for the loss occasioned to the owner of the carcass resulting from the extinction of its title thereto. The Apex Court found that the law providing for extinction of ownership without making provision for payment of compensation to the owner of carcass and creation of interest in the Corporation in the carcass was not bad as such a law was not a law for acquisition of property for public purpose since its main objective was the destruction of carcass in public interest and not utilization of the property for a public purpose. In this regard, it was held as follows: -

> "Since the amendment by the Constitution (Fourth Amendment) Act, 1955, Clauses (2) & (2A) of Art. 31 deal with the acquisition or requisitioning of property - movable or immovable - for a public purpose. The protection of Clause (2) is

attracted only if there is acquisition or requisitioning of the property for a public purpose i.e. for using the property for some purpose which would be beneficial to the public. The right guaranteed by Art. 31 (2) is that property shall not be compulsorily acquired or requisitioned for a public purpose save by authority of law which provides for compensation for the property so acquired or requisitioned. The expression "acquired or requisitioned .... for a public purpose" means acquired or requisitioned for being appropriated to or used for a public purpose. But the law which provides for extinction of the ownership and creation of an interest in the Corporation for the purpose of disposal of the carcass is not a law for acquisition of property for a public purpose: its primary purpose is destruction of the carcass in the public interest, and not utilization of the property for a public purpose. The case would not, therefore, fall within the terms of Art: 31 (2). In any case the statute is squarely protected by Clause (5) (b) (ii) of Art. 31 and on that account the owner is not entitled to compensation for loss of his property. The words of Art. 31 (5) (b) (ii) are express and specific. Nothing in Clause (2) shall affect the provisions of any law which the State may hereafter make for the promotion of public health or the prevention of danger to life or property. If a law is enacted directly for the promotion of public health or for the prevention of danger to life or property, then notwithstanding that it may incidentally fall within the terms of Clause (2), no compensation is payable. Where the State acquires property and seeks to utilize it for promotion of public health or prevention of danger to life or property, the State is liable to pay compensation. But a law which prevents danger to life or property falls within the exemption under Clause (5) (b) (ii) even if thereby the interest of the owner in property is extinguished and interest in that property is vested in the State for destruction of the property."

57. Again in Fatehchand Himmatlal v. State of Maharashtra 1977 (2) SCR 828: (AIR 1977 SC 1825) where existing debts of some classes of indigents had been liquidated by Maharashtra Debt Relief Act. 1976 and the money lenders had been deprived of their loans while being forced to repay their lenders, the Supreme Court on the socio-economic considerations held that the law was reasonable even though it did not provide for compensation to the money lender.

58. Similarly in State of Gujarat v. Vora Saiyedbhai Kadarbhai, (1995) 3 SCC 196: (AIR 1995 SC 2208), the validity of Gujarat Rural Debtors Relief Act, 1976, which required the creditors to return to the debtors the properties pledged or mortgaged as security with them for their debts, was in question. Even in cases where the debts were scaled down enabling the debtors to pay the same in small instalments spread over a period of 10 years or more without interest, the Supreme Court, upholding the constitutionality of the legislation, held as follows (page 16 of AIR):

"Therefore, when we look at the provision in sub-section (2) Section 14 of the Act in the light of the observations of this Court made in Fatehchand and other decisions adverted to by us, we find that the Legislature of Gujarat which had a human problem of saving the poverty-stricken debtors from the clutches of non-institutional creditors, relieving them of their debts to the extent found necessary and getting

their properties returned from the creditors given as security for their debts, it was very much justified in introducing the provision in sub-section (2) of Section 14 of the Act, which enabled the debtors to get back their properties given as security, from the creditors for making use of them in their own way to eke out their livelihood, inasmuch as such provision cannot be considered as that not made in social interest by the Legislature for promoting social and moral progress of the community as a whole. Therefore, the High Court was wholly wrong in its view that the provision in sub-section (2) of Section 14 of the Act to the extent it made the creditors who were entitled to get the scaled down debts from certain debtors would have the effect of depriving the creditors of security for the debt, was an unreasonable restriction under Articles 19 (1) (f) and 19(1) (g) of the Constitution and that view called to be interfered with. As is observed by this Court in the judgements to which we have adverted, even if social legislation such as Debt Relief Legislation enacted by a Legislature are to make a few creditors victims of such legislation in one way or the other, the same cannot be regarded as an unreasonable restriction which cannot be imposed in respect of the rights exercisable by the citizens under Articles 19 (1) (f) and Articles 19 (1) (g) of the Constitution."

59. In Jesse W. Clarke v. Haberle Crystal Springs Brewing Company, 280 U. S. 384, it was held by the United States Supreme Court that when a noxious business is extinguished under the Constitution the owners cannot demand compensation from the State.

60. The above legislation which provides for extinction of the ownership of a person in imported ivory is not a law for the purpose of acquisition and requisitioning of property by the State. Its primary object is the preservation of the elephant and not for utilisations of the property for public purpose. This being so, article 300A is not attracted. At this stage we may point out that the State had sufficient authority to enact the impugned law in exercise of its sovereign powers as distinguished from police powers of the State.

61. In Synthetics & Chemicals Ltd. v. State of U.P., AIR 1990 SC 1927, the Supreme Court commented on the sovereign power of the State observed as follows (para 55):

"We would not like, however, to embark upon any theory of police because the Indian Constitution does not recognise police power as such. But we must recognise the exercise of sovereign power which gives the States sufficient authority to enact any law subject to the limitations of the Constitution to discharge its functions. Hence, the Indian Constitution as a sovereign State has power to legislate on all branches except to the limitation as to the division of power between the Centre and the States and also subject to the fundamental rights granted under the constitution. The Indian State, between the centre and the states has sovereign power. The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people. Sovereignty is difficult to define. This power of sovereignty is, however, subject to Constitutional limitations. This power, according to some Constitutional authority, is to the public what necessity is to the individual. Right to tax on levy imposts must be in accordance with the provisions of the Constitution."

62. Having regard to the above decisions it is not necessary for the State to pay compensation to the petitioners for extinguishment of title of the petitioners in imported ivory or article made therefrom. Since the state is not under any obligation to buy the stocks of the petitioners in acceptance of the one time sale proposition propounded by the petitioners, we cannot direct the State to either buy the same or pay compensation for it.

63. Mr. Thakur, learned counsel for the petitioners further submitted under Article VII (2) of the CITES, permission to export or re-export pre-convention stocks of ivory or articles created therefrom can be granted in case the management authority of the State for export or re-export is satisfied that the specimen was acquired before the provisions of the present convention, and, therefore, the total ban imposed by the Amendment Act 44 of 1991 on the trade of imported ivory goes beyond the CITES agreement. He also submitted that the reasons advanced in the counter affidavit for banning of the trade in imported ivory on the basis of the CITES agreement are not well founded and have no proximity with the objects sought to be achieved by the amendment.

64. We have given our earnest consideration to the submission of the learned Counsel but we are unable to agree with the same for the reason that the export or re-export of the specimen is also controlled by the provisions of Articles VIII and XIV of the CITES. As per Article VIII, the parties to the convention are required to take appropriate measures to enforce the provision of the present convention. The measures contemplated by Article VIII are as follows:

(1) to penalise trade in, or possession of such specimen, or both; and

(2) to provide for the confiscation or return to the State of export of such specimen.

As per Article XIV, the parties to the Convention are at liberty to adopt stricter domestic measures regarding the condition of trade, taking possession or transport of specimen or species included in Appendix I, II and III, or the complete prohibition thereof. At this stage, it will be convenient to set out Article XIV (1):

> "The provisions of the present Convention shall in no way affect the right of parties to adopt:
>
> (a) stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
>
> (b) domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III."

As contemplated by the above Article, a member State to the convention can completely prohibit the trade of species included in Appendix I, II & III of the CITES. This would depend upon the conditions prevailing in the countries of the respective parties. As is brought out in the affidavit of the respondents, the parties to the conviction have banned the trade in ivory. Besides, as per our reading of Article VII, it does not permit a buyer to acquire a specimen after the provisions of present convention came into force. If a

foreign tourist buys the specimen for his personal or household use after the coming into force of the convention from a seller who may have acquired the specimen before coming into force of the convention, the exemption under Article VII (2) will not apply in such a case. This interpretation accords with Clause 3 of Article VII. Under Clause 3 of Article VII exemption, inter alia, is given to specimens that are personal or household effects but this exemption is not to apply where the owner acquires the specimens outside his State of usual residence and are being imported into that State. Therefore, the above submission of the learned Counsel is not tenable and the same is rejected.

65. Mr. Thakur then submitted that the Parliament was not authorised to make possession of the imported ivory, which was lawfully acquired by the petitioners, as an offence under Section 52 read with Section 49C (7) of the Amendment Act 44 of 1991. Learned Counsel submitted that this amounted to creation of an offence retroactively which is hit by Article 20 (1) of the Constitution. We do not agree with the submission of the learned Counsel as the Legislature has not created any offence retroactively. At this stage it will be important to mention that the Asian elephant was included in Appendix I of the CITES in the year 1975 which meant that international trade in Asian ivory or articles made therefrom, was prohibited and as a consequence of it Indian ivory could be sold only in the domestic market. India being a signatory to CITES was also bound to ban trade in Indian ivory. The traders knew that such a ban was coming. India actually banned the trade in Indian ivory in 1986. The traders should have disposed off their stocks of Indian ivory from 1975 to 1986. As regards the African elephant it was proposed on October 18, 1989 to be included in Appendix-I of the CITES and was so included on January 18, 1990. Ivory traders were allowed to carry on cosmetic trade in imported ivory till the expiry of six months from the coming into force of the Amendment Act of 1991. Furthermore, as a result of interim stay granted by this Court the petitioners could dispose off their stocks by July 7, 1992. From the above it is clear that ivory traders were under a notice of the intending ban since 1989 and had sufficient time to dispose off their stocks of ivory in the domestic market. Though the statute gave six months time to the petitioners to liquidate the stocks from the specified date, the petitioners actually being under the protection of the Court's order could trade up to 7th July, 1991. It is significant to note that the Parliament has merely made the possession of imported ivory and articles made therefrom, after the specified date an offence. The petitioners are not being subjected to a penal law on account of their having imported ivory during the period when there was no ban in existence.

65A. Learned Counsel for the petitioners also submitted that the Parliament by imposing the ban took over the functions of the judiciary. Learned Counsel submitted that an organ of the State cannot take upon itself the function which has been assigned by the Constitution to the Courts. In support of his submission learned counsel relied upon the decision of the Supreme Court in Smt. Indira Nehru Gandhi v. Shri Raj Narain, AIR 1975 SC 2299. It is true that the Constitution has assigned demarcated areas of operation for the Legislature, judiciary and the executive. It is also true that legislation is the responsibility of the Legislature and adjudication is the function of the judiciary, while the executive is to provide governance and to implement the provisions of the Constitution and the laws and if any of the organs of the State travels beyond its assigned

sphere of activity, the same would be violative of the Constitution. But we fail to see how the legislature in enacting the Amendment Act 44 of 1991 assumed the role of the judiciary. The provisions relating to the banning of the trade in imported ivory does not amount to a judicial determination by the Parliament. The Parliament, as already pointed out above, having regard to the public interest and the treaty obligations enacted Amendment Act 44 of 1991. The principle laid by the Supreme Court in Smt. Indira Nehru Gandhi v. Shri Raj Narain (supra) in para 55 (3) at page 2435 is as follows:

> "It is true that there is no mention or vesting of judicial power, as such, in the Supreme Court by any Article of our Constitution, but, can it be denied that what vests in the Supreme Court and High Court is really judicial power? The Constitution undoubtedly specifically vested such power, that is to say power, which can properly be described as "judicial power", only in the Supreme Court and in the High Courts and not in any bodies or authorities whether executive or legislative functioning under the Constitution. Could such a vesting of power in Parliament have been omitted if it was the intention of the Constitution makers to clothe it also with any similar judicial authority or functions in any capacity whatsoever?"

66. There cannot be any quarrel with the principle laid down in the above decision, but the question is whether the Parliament has entrenched upon the sphere of activity of the judiciary. Our emphatic answer is in the negative.

67. The contentions of the learned Counsel for the petitioners in Writ Petition Nos. 1303/92 and 1964/93 that the impugned legislation does not apply to mammoth ivory as the same is not covered by the provision thereof and in any case the Parliament was not competent to legislate with regard to the subject of mammoth ivory, does not appeal to us. It is significant to note that Act 44 of 1991 inserted Clause (ia) in Section 49-B (a) (a) in the principal Act. As per this clause, no person can commence or carry on business as a dealer in ivory imported into India or articles made therefrom, or as manufacturer of such articles. It is also noteworthy that Sub-clause (ia) uses the words 'ivory imported into India.' These works have been designedly and deliberately used by the Legislature. The legislation was intended to cover all descriptions of ivory imported into India including mammoth ivory. This was to prevent Indian ivory from entering into the market under the pretext of mammoth ivory or African ivory. Once the mammoth ivory is shaped into an article or curio, it looks exactly like an article made form elephant ivory. This we can say on the basis of the articles shown to us in Court - both of mammoth ivory as well as elephant ivory. The respondent, Union of India, in its affidavit dated May 19, 1992 has also expressed the same difficulty in distinguishing between articles of mammoth ivory and elephant ivory. Para 4 of the affidavit reads as follows:

> "Superficially this may be so, but when an article is manufactured from ivory it is impossible to distinguish whether that article is manufactured from mammoth ivory or from elephant ivory. The petitioner is in no position to guarantee that no ivory derived illegally from Indian elephant would be sold in the grab of mammoth ivory because there is no method by which one can distinguish the article made from Indian ivory and mammoth African ivory ....."

68. Learned Counsel for the petitioners, however, took pains in pointing out to us certain distinguishing marks. But they were hardly visible to the naked eye. Dr. Singhvi also made us look at the base of the articles made from mammoth ivory and elephant ivory through a magnifying glass but that did not make any difference for us as we do not have the discerning eye and experience which an expert in this line may have. We are, however, conscious of the fact that by using a scanning electron microscope, one may be able to distinguish ancient tusks from modern ones as has been mentioned by Douglas H. Chadwick in his above said book. This is what he says:

> "Fortunately, scientists at the National Fish and Wildlife Forensics Laboratory in Ashland, Oregon, recently discovered a method to distinguish ancient tusks from modern once. Using a scanning electron microscope, they focus on the tooth's characteristic crosshatched patterns, called Schreger lines. These are formed by tiny denial tubules, which turn out to be twice as dense in mammoths and mastodons as in modern elephants. As a result the Schreger lines meet at angles of less than 90 degrees in the bygone species but more than 110 degrees in existing elephants, a minor but unmistakable difference. Forensic techniques can also distinguish proboscides ivory from that of hippos, wart hogs, and walruses. Conservationists hope that advances in chemical "fingerprinting" techniques will soon enable specialists to identify which particular elephant population a tusk came from, on the basis of DNA from tissues coating the base of the tooth."

69. When a buyer intends to buy a curio, he is not interested to know whether it was created from elephant ivory or mammoth ivory. An average buyer also does not have the expertise or the knowledge to distinguish between articles made from mammoth ivory and Indian ivory. To him the translucent whiteness of the ivory matters. He buys it purely on aesthetic considerations or as a statue symbol. To give permission to trade in Articles made from mammoth ivory would result in laundering of Indian ivory - a result which the legislation wants to prevent for the reason already explained above. Learned Counsel for the petitioner referred to certain correspondence with the Secretariat of the CITES in support of his contention that it is possible to identify mammoth ivory from the ivory of the Asian and African elephants. They may be so but the identification can be made by experts in the field or those who have experience in this line and not by a layman who sets out to buy an ivory article. Learned Counsel also invited our attention to page 753, Vol. 7 of the New Encyclopaedia Britannica, 15th Edition, and submitted that ivory which is drawn from mammoth, an extinct genus of elephants found as fossils in Pleistocene deposits over every continent except Australia and South Africa (Pleistocene epoth began 2,50,000 years ago and ended 10,000 years back) is fossil mammoth ivory and not ivory in the sense in which the same is used in the Act. We are unable to accept the submission that the mammoth ivory is not ivory in the sense in which it is used in the Act. In case the legislation was not to apply to mammoth ivory the Parliament would have made an exception in this regard. We cannot attribute to the Legislature that it was not award of mammoth ivory found as fossils in large parts of the world. In the Shorter Oxford Dictionary, the meaning of the ivory is given as under:

(i) The hard, white, elastic and find grain substance (being dentine of exceptional hardness) composing the main part of the tusks of the elephant, mammoth (fossil), ...

(ii) A substance resembling ivory or made in imitation of it.

70. Thus the words 'ivory imported into India' occurring in Section 49B (1) (a) (ia) would include all descriptions of imported ivory, whether elephant ivory or mammoth ivory.

71. We are also of the view that the impugned legislation falls within the power and competence of the Parliament as the same is meant to protect the Indian elephant. In order to achieve that purpose, the Parliament has undoubted power to deal with matters which effectuate the same. It can legislate with regard to all ancillary and subsidiary subjects including the imposition of ban on trade in imported ivory of all descriptions, whether drawn from mammoth or elephant, for the salutary purpose of the preservations of the Indian elephant.

72. For the foregoing reasons we do not find any merit in the writ petitions and the same are dismissed but without any order as to costs.

Petition dismissed.

Molvi Masood Ahmad v. State of J & K
1997 ELD 591
No. 68 of 1995, decided on 24-10-1996
G.D. Sharma, J.

Constitution of India Art. 226 – Powers of High Court – Petition seeking direction to authority provide facilities of drainage and road, uninterrupted electricity supply and potable drinking water to petitions – Such facilities are pre-requisite to sustain life – Any plea of financial inability or discriminatory treatment by authorities – Not allowable – Such human rights granted under part III of Constitution should be respected regardless of budgetary provisions – High Court directed authorities to provide amenities to petitioner within six months from date of order.

Constitution of J. & K., S. 103 (Paras, 8, 10)

Nagarahole Budakattu Hakku Sthapana Samithi v. State of Karnataka
AIR 1997 Karnataka 288
Writ Petition No. 31222 of 1996, D/- 20-1-1997
G. C. Bharuka, J.

(A) Wild Life Protection Act (53 of 1972), Ss. 20, 35(2) -Forest (Conservation) Act (69 of 1980), S. 2(iii) -Forest land - Assignment in favour of private Company by State Govt. - Creating right in the properties in question which forms a part of the "national park"-cum-"reserve forest" - prior approval of Central Govt. not

obtained - Such grant of lease would be void and cannot be acted upon by the company.

(Para 30)

(B) Constitution of India, Art. 226 - Locus standi - Assignment of Forest land to private company - Public interest litigation against - Question raised are of substantial public interest - Issue of locus standi of person placing relevant facts and materials before the Court become irrelevant.

(Para 31)

(C) Constitution of India, Art. 226 - Latches - Assignment of forest land to private company - Public interest litigation against - Delay in filing - Issues raised in petition are quite fundamental in nature affecting the wider public interest requiring maintenance of ecological balance and environmental requirements - As such Court cannot refuse to enter into the said issues on plea of latches which has been evolved to sub serve the equity and not defeat the same.

(Para 32)

Naihati Municipality v. Chinmoyee Mukherjee
1997 ELD 174
Civil Appeal No. 384 of 1983, decided on 6-8-1996
K. Ramaswamy and G.B. Pattanik, JJ.

Land Acquisition Act (1 of 1894), S. 6(1) – Land acquisition – Declaration – Quashing of – Public purpose – Resolution passed by municipality to acquire land for rehabilitation of hawkers – Funds collected from hawkers to meet cost of acquisition and deposited with Municipality – Amount would become part of municipal funds – Govt. had put restriction to use amount for rehabilitation of declaration under S. 6 on ground that final resolution not passed by Municipality directing commissioner to spend money from its funds and there is no public purpose for acquiring land – illegal.

(Para 2)

Narmada Bachao Andolan v. Union of India
1997 ELD 175
Writ Petition (Civil) No. 319/94, decided on 29-4-1997
A.S. Anand, S.P. Bharucha and K.S. Paripoornan, JJ.

Constitution – Article 262 – Award of the Narmada Water Dispute Tribunal – Whether this Court has jurisdiction to go into the matter arising out of the water dispute – Court directs that the matter may be referred to a Constitution Bench and that the papers be placed before the Hon'ble the Chief Justice for appropriate orders.

ORDER

1. Learned Attorney General has raised a preliminary objection based on Article 262 of the Constitution of India read with Section 11 of the Inter—State Water Disputes Act, 1956 to canvass that this Court has no jurisdiction to go into the matter arising out a water dispute. That question is squarely under consideration of a Constitution Bench in the Cauvery Water Dispute which matter stands adjourned to 15th July, 1997.

2. During the course of hearing arguments on the preliminary objections, Mr. P.P. Rao, learned senior Counsel, has drawn our attention to an order dated 8th April, 1993 made in Civil Appeal No. 2614 of 1983. State of Rajasthan v. State of Gujarat and others which reads:-

> The State of Rajasthan in this appeal has challenged the Narmada Water Disputes Tribunal's award. Mr. Nariman, learned senior counsel appearing for the State of Gujarat has raised a preliminary objection that in view of Article 262 (2) read with section 11 of the Inter-state Water Disputes act, 1956 this Court has no jurisdiction to go into the merits of the award given by the Tribunal constituted under the Inter-State Water Disputes Act. We are of the view that the question pertaining to the interpretation of Article 262 (2) be placed before the Constitution Bench for adjudication and decision. The order of the Hon'ble Chief Justice may be obtained in this respect in due course."

3. In our opinion it is, therefore, appropriate that the preliminary objection raised in these cases be also considered by the Constitution Bench hearing the Cauvery Water Dispute.

4. Let the cases the placed before the Hon'ble the Chief Justice for appropriate orders.

Narmada Bachao Andolan v. Union of India
1997 ELD 176
Writ Petition (Civil) No. 319/94, decided on 30-4-1997
A.S. Anand, S.P. Bharucha and K.S. Paripoornan, JJ.

Constitution – Article 262 – Award of the Narmada Water Dispute Tribunal – Relief and rehabilitation of affected persons – Counsel for the parties agreed that even though the question of jurisdiction has been referred to a Constitution Bench, the interlocutory application may be taken up for consideration.

ORDER

1. Learned counsel for the parties agree that this bench my take up for consideration I. As 5, 6 and 7, even though the question of jurisdiction has been referred to the Constitution Bench.

2. Learned counsel for the State of Gujarat submits that certain steps are still required to be undertaken by the State of Gujarat for the relief and rehabilitation of individual P.A.Fs. and that after those steps are taken an affidavit shall be filed in this court

regarding the same. Learned counsel prays that, therefore, consideration of I.A. No. 7 and the connected I.A.s. be deferred for the time being.

3. List for direction on 24th July, 1997 at 3.30 p.m.

National Mineral Development Corporation Ltd. v. State of Karnataka
1997 ELD 603
Writ Petition No. 5900 of 1997, decided on 14-7-1997
G.C. Bharuka K., J.

(A) Mines and Minerals (Regulation and Development) Act (67 of 1957), S. 8 - Mineral Concession Rules (1960), R. 24-A - Mining lease in forest land - Granted to Govt. owned Company - Renewal - Proposal sent by State Govt. - Central Govt. agreeing for approval for diversion of forest land under Forest Conservation Act subject to fulfilment of conditions - Compliance of, by Company - Report sent by Chief Conservator - According of prior approval by Central Govt. - Proper - Fact that compliance report was not sent by State Govt. - Not relevant.

Forest Conservation Act (65 of 1980), S. 2

(Para 31)

(B) Forest Conservation Act (69 of 1980), S. 2 - Diversion of forest land for mining - Approval of Central Govt. - Statutory guidelines framed by Central Govt. for effective compliance of statutory provisions - Guidelines issued by way of executive instructions cannot override statutory provisions nor any statutory order passed in violation of such guidelines can be held to be illegal, void or inoperative.

Constitution of India, Art. 73,

(Para 29)

(C) Mines and Minerals (Regulation and Development) Act (67 of 1957), S. 8 - Mineral Concession Rules (1960), R. 24-A - Mining in forest area - Renewal of lease - Prior approval accorded by Central Govt. - R. 24-A(6) comes into operation and lease shall be deemed to have been extended by further period till State Govt. passed order thereon - Deemed extension is based on statutory provisions and not on any order passed by State Govt.

Once the prior approval is accorded by the Central Government in terms of the Conservation Act for renewal of mining lease in forest area, then in respect of the applications pending for grant of renewal of mining leases, sub-rule (6) or Rule 24A of the Mineral Rules automatically comes into operation and the period of existing lease shall be deemed to have been extended by a further period till the State Government passed order thereon. Therefore, the deemed extension is based on the statutory provisions and not on any order passed by the State Government. It seems that the Central Government as a rule making authority was possibly compelled to incorporate such a

deeming provision in the Mineral Rules considering the necessity of continuation of mining operations and their experience of lethargy and inaction on the part of the State Governments in disposing of the applications for renewal of mining leases with expected expediency and speed. The said provision was found necessary to be incorporated despite the fact that under sub-rule (1) of Rule 24-A of the Mineral Rules it was made obligatory on the part of the lessees to file applications for renewal of mining leases at least twelve months before the expertly of their lease period.

Cases Refereed: **Chronological Paras**

AIR 1997 SC 1228:1997 AIR SCW 1263 (Para 34)
W.P (Civil) No. 202 of 1995, Dt. 12.12.96 9

ORDER

The present writ petition has been filed by a Government Company (hereinunder the 'Company') for issuance of writ of prohibition restraining the Government of Karnataka and its officers from interfering with its mining operations.

2. The Company is owned, managed and controlled by the Government of India with its 98.5% subscribed share capital. It is engaged in the business of mining in various minerals, more particular iron ore.

3. It is not in dispute that the company was granted a mining lease being ML. No. 839 for mining of iron ore over an area of 2013.35 hectares situated in Donimalai, Sandoor Taluka Bellary District. The said lease was granted by the Government of Karnataka under and in accordance with the provisions of Minor and Minerals (Regulation and Development) Act, 1957 and The Mineral Concession Rules, 1960 (hereinafter in short `Mineral Act' and `Mineral Rules' respectively). The lease was for period of 20 years communing from 4-11-1998. Therefore, it was to expire on 4-11-1988.

4. Before the expiry of the said lease as required under Rule 24A of the Mineral Rules the company made an application on 3-4-1987 for renewal thereof for another period of 10 years. Since for one or the other reason, the State Government did not dispose of the said renewal application, therefore, pursuant to the working permits granted to it but the State Government from time to time, the Company continued with the mining operations till up to 16-9-1992, but since thereafter the State Government refused to grant even the working permits, the Company filed a writ petition being W.P. No. 2764/92 before this Court, wherein interim orders dated 16/25-9-1992 were passed permitting the company to continue with the mining operations till further order. Copies of the said interim orders dt. 16-9-1992 and 25-9-1992 have been filed as Annexures `A' and `B'.

5. It appears that in the mean time the State Government under its letter No: AHFF 17 FFM 90 Dt. 11-4-1991 had sought the prior approval of the Central Government in order to renew the mining lease of the Company as required under Section 2 of the Forest (Conservation) Act, 1980 (in short the `Conservation Act'). Pursuant to the said request, 'the Central Government in Ministry of Environment and Forest under communication dt. 22-10-1992 (Annexure `B') intimated its agreement in principle to the State Government

for approval for diversion of 608.00 ha of forest land in the district of Bellary for renewal of mining lease as proposed subject to the following conditions:-

(i) The State Government should take immediate action for transfer and mutation of non-forest land equal to the area to be broken afresh, in favour of the State Forest Department.

(ii) The user agency will transfer in favour of the State Forest Department the cost of (a) compensatory afforestation for (i) above and (ii) penal compensatory afforestation over degraded forest land twice in extent to the area to be broken up afresh.

(iii) Funds for fencing, protection and generation of safety zone area and the cost of afforestation over one ana half times of the safety zone area in the degraded forest elsewhere, will be provided by user agency.

6. In para 3 of the said communication at Annexures `B', it was further observed by the Central Government that-

> "After receipt of compliance report on the fulfilment of the above conditions from the State Government, formal approval will be issued in this regard under Section 2 of the Forest (Conservation) Act, 1980. Transfer of forest land to user agency should not be effected by the State Government till formal order approving diversion of forest are issued by the Central Government."

7. It is matter of record that the Company being the `user agency' has already deposited the required cost assessed by the State Government for compensatory afforestation being Rs. 94,87,500/- at the rate of Rs. 25,000 per hectare area for raising compulsory plantation in the following manner:-

(1)	By D.D. No 071740 dt. 3-7-95 of Canara Bank, Bangalore, for raising compensatory plantation over 126.5 ha. of non-forest land (areas to be broken afresh).	Rs. 31,62,500.00
(2)	By D.D. No. 071739, dt. 3-7-95 of Canara Bank, Bangalore for raising compensatory plantation over double the extent on degraded forest land.	Rs. 63,25,000.00
	Total	**Rs. 94,87,500.00**

8. There after the principle Chief Conservator of Forest under his letter dated 25-1-1995 (Annexure `C') communicated to the Principal Secretary to the Government of Karnataka, Department of Forests, Ecology and Environment, that the Company has fulfilled the conditions stipulated by the Central Government under Annexure `B') and steps may be taken to move the Central Government for according final approval in terms of Section 2 of the Conservation Act, in order to facilitate renewal of the mining lease. It

appears that the copy of this letter was also directly sent to the Central Government. Accordingly, the Central Government under its letter dated 4-2-1997 (Annexure `F'), conveyed its approval as required under Section 2 of the Central Act. The material part thereof is to the following effect:-

> "After careful consideration of the proposal of the State Government, the Central Government hereby, conveys its approval under section 2 of the Forest (Conservation) Act for diversion of 608,000 hs. of forest land in the district Bellary, Karnataka, for renewal of mining lease for mining of iron ore in favour of M/s. National Mineral Development Corporation Ltd., Sandur, subject to fulfilment of following conditions-
>
> (i) The legal status of forest land will remain unchanged.
>
> (ii) Compensatory afforestation over non-forest land equivalent of forest area to be broken afresh will be done at the cost of user agency which will be notified as protected forests under Indian Forest Act.
>
> (iii) Penal afforestation over degraded forest land equivalent to forest area to be broken afresh at the cost of user agency.
>
> (iv) Compliance of condition No. (ii) of this Ministry's approval of even number dated 22-10-1992.
>
> (v) Reclamation of mined area will be done at the cost of user agency.
>
> (vi) In order to prevent any damage to nearby forest, free supply of fuel wood is to be provided to the labour working in the project, at the cost of project authorities.
>
> (vii) Lease period shall be co-terminus with lease under the MMRD Act subject to maximum of 30 years.
>
> (viii) The user agency will stick to the environment safeguards as per Annexure 'A'.
>
> (ix) The forest land shall not be used for any purpose other than that specified in the proposal.
>
> (x) Any other condition that the State Government may impose from time to time in the interest of afforestation and protection of forests."

9. It is worthwhile to notice here that before the Central Government accorded the said prior approval, the Supreme Court in its order dated 12-12-1996 (AIR 1997 SC 1228) in the case of T.N. Godavarman Thirumulkpad v. Union of India (Writ Petition (Civil) No. 202 of 1995) (Annexure `D') *inter alia* issued general direction to the effect that: -

> "Prior approval of the Central Government is required for any non-forest activity within the area of any `forest'. In accordance with section 2 of the Act, all ongoing

activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith."

10. In para 7 of the said order, it was further declared by the Supreme Court that-

"This order is to operate and to be implemented notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or Court, including the High Court."

11. In pursuant to the said order of the Supreme Court, since till upto grant of the prior approval by the Central Government under its letter dt. 4-2-1997 (Annexure `F'), despite the interim order passed by this court on 16/25-9-1992 in Writ Petition No. 27644/92 in favour of the Company, the respondent - Deputy Conservator of Forest under this notice dt. 17-1-1997 (Annexure 'E'), directed the company to forth with stop all mining operations until further orders. Accordingly the entire operations of the Company abruptly came to grinding halt, causing substantial loss to the Company, and the other Government agencies which according to their estimate was to the extent of about Rs. 2 crores per day.

12. It has been stated in the writ petition that the daily production target of the Company was about 20,000 tonnes during the quarter of January to March, 1997. The Company was employing more than 1,500 employees with salary bill of about Rs. 16.00 crores per annum. It has further been averred that the closure of the mining operations has resulted in massive looses to the Company and the other Government agencies tentatively to the following extent:-

(i) About Rs. 50 lakhs per day to Dominate Iron ore mine.
(ii) Rs. 55 to 60 lakhs per day to Railway for transportation.
(iii) Rs. 12 to 15 lakhs is per day to Madras Port.
(iv) Rs. 1.20 crores per day as Forex.
(v) Rs. 3 lakhs per day as royalty to State Govt.
(vi) Rs. 2 lakhs per day towards charge to K.E.B.
(vii) Rs. 0.20 lakhs per day towards sales electricity commercial taxes (Rs. 60-70 lakhs per annum).

13. It was because of the said reason that as soon as the Company learnt about the grant of approval of the Central Government (Annexure `F'), it apprised the 2nd respondent Principal Secretary to the State Government through a letter dated 5-2-1997 (Annexure `H') requesting him to issue immediate instructions to the Forest officials to enable the company to proceed with the mining operations. The Company seems to have also made several representations *vide* its tele-fax message dated 6-2-1997 (Annexure `J') and letter dt. 10-2-1997 (Annexure 'J3') to the Chief Secretary to the Government to give proper instructions to the officials of Forest Department. Since, the requests/letters were not responded to by the Senior Officers of the State Government, the Chairman and Managing Director along with other officers of the Company called on the Chief

Secretary gnd other Senior Officers of the State Government on 14-2-1997 and made fervent request to ensure immediate commencement of mining operations of the company at least keeping in view the national and public interest because the loss which was being suffered was to ultimately fall on public exchequer.

14. Since, all the requests so made went on deaf ears reflecting complete apathy on the part of higher officers of the State Government, the Company, keeping in view the interim order dt. 16/22/9/9-1995 passed by this Court, the approval of the Central Government and the provision of sub-rule (6) of Rule 24A of the Mineral Rules as inserted by Notification No. GSR 724 (E) dated 27-9-1994, recommended the mining operations of its own on 26-9-1994, recommended the mining operations of its own on 26-2-1997 with due intimation of the same to the 6th respondent - Deputy Conservator of Forests. On receipt of this communication, the 6th respondent immediately swung into action and reported with the impugned communication dt. 27-2-1997 (Annexure `L`) directing the Company immediately to stop the mining activities till it obtains explicit order in the said regard from the State Government coupled with threatening of legal action including to propose for cancellation of the mining lease itself. Faced with the said direction and threats, the Company forthwith stopped its mining operations.

15. It has been stated on behalf of the Company that as a consequence of the said directions virtually a calamity had fallen on the Company, its workers and depending agencies, since it had resulted in colossal loss not only to the Company but it also caused loss of royalty, freight charges, power charges, incomes tax and other revenues to the various State and Central Governments which would have flown to them resulting from the working of the mines. According to them, such an inaction on the part of the State Government also caused substantial loss of valuable forex to the country. The heartfelt cry raised on behalf of the Company was that all these had happened only because the State Government, despite its constitutional and statutory obligations, had failed to act promptly.

16. Under the aforesaid circumstance, after hearing, Mr. V.R. Reddy, learned Addl. Solicitor General of Union of India, appearing for the Company and the learned Advocate-General, appearing for the respondent - State Government and its officers at length on 11-3-1997 the following interim order was passed:-

> "Keeping in view the facts of present case and particularly the prior approval Granted by the Central Government in terms of Sec. 2 of the Forest (Conservation) Act, 1980 and the financial loss the petitioner is suffering to the tune of about two crores per day, and the requirement of its fulfilment, the commitment with foreign buyers, interim order is granted permitting the petitioner to recommence its mining operating till further orders subject to the condition that, it will not work in any new area."

Subsequently the matter was finally heard on 17-3-1997, 20-3-1997 and 21-3-1997 orders were reserved.

17. From the above facts, it is further clear that despite the fact that the company had filed an application for renewal of the mining lease much within the period prescribed under Rule 24A of the Mineral Rules and had even discharged its obligations of paying the cost of

compulsory and penal afforestation, as required under the `Conservation Act' and the Rules framed thereunder on 3-7-1995, but still it had to close down its mining operations to its great detriment and loss during the periods commencing from 17-1-1997 to 26-2-1997 (41 days) and again between 27-2-1997 to 11-3-1997 (13 days), thus for total period of 54 days. According to the Company. this stoppage of mining operations has caused it a tentative loss of Rs. 27 Crores being at the rate of Rs. 50 lakhs per day. which fact has not been controverted by the State Government its officers by filing any counter - affidavit/statement of objections.

18. Under these circumstances, the question that falls for consideration is as to whether, the 6th respondent - Deputy Conservation of Forest under his letter dt. 27-2-1997 (Annexure 'D') was justified in directing the Company to stop its mining activities forthwith by taking shelter under the order of the Supreme Court dt. 12-12-1996 passed in W.P. (Civil) no. 171/96.

Statutory Aspects

19. In the present case, I am primarily concerned with the provisions of two Central Acts and the Rules framed thereunder, namely, the Minerals Act, the Minerals Rules, the Conservation Act and the Conservation Rules. Section 8 of the Mineral Act as substituted by the Central Act 37/86 reads as under:-

"8. Period for which mining lease may be granted or renewed:-

(1) The period for which a mining lease may be granted shall not exceed twenty years.

(2) A mining lease may be renewed for two periods each not exceeding ten years.

Provided that no mining lease granted in respect of mineral specified in the First Schedule shall be renewed except with the previous approval of the Central Government.

(3) Notwithstanding anything contained in sub-section (2), if the Central Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of mining lease for a further period or periods not exceeding in each case the period for which the mining lease was originally granted."

20. Rule 24A of the Mineral Rules provides the procedure for renewal of mining lease. To the extent it is relevant for the present purposes it is extracted below:-

"Rule 24A - Renewal of mining lease:-

(1) An application for the renewal of a mining lease shall be made to the State Government in Form-J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

(2) An application for the first renewal of a mining lease granted in respect of mineral specified in the First Schedule to the Act may, subject to the provisions of sub-section (2) of Section 8, be granted by the State Government.

(3) An application for the first renewal of a mining lease granted in respect of a mineral which is not specified in the First Schedule to the Act may, subject to the provision of sub-section (2) of section 8, be granted by the State Government.

(4) (xxx) Omitted by GSR 6 (E), dt. 7-1-1993.

(5) (xxx) Omitted by GSR 6 (E), dt. 7-1-1993.

(6) If an application for renewal of mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of one year or end with the date of receipt of the orders of the State Government thereon, whichever is shorter.

(7) xxx xxx xxx".

21. Subsequently, by Notification No. GSR 724 (E) dt. 27-9-1994, the Central Governments substituted the above sub-rule (6) of Rule 24A of the Mining Rules by the following sub-rule:-

"(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the periods of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon."

22. From the above, it is crystal clear that for seeking renewal of mining lease the lessee is required to make an application to the State Government in Form-J at least 12 months before the date on which the lease was due to expire in the present case, admittedly the Company had filed its application on 3-4-1987 which was much within the prescribed time since the lease was to expire on 4-11-1988. As such, keeping in view the substituted sub-rule (6) of Rule 24A of the Mineral Rules, the Company would have been entitled to carry on its mining operations even without renewal of lease because of deeming provisions contained in the substituted sub-rule (6) of Rule 24A of the Mineral Rules till the State Government passes an order on the application for renewal of mining lease filed by the lessee but the said sub-rule (6) of Rule 24A of Mineral Rules has to be read subject to the restrictions contained in Section 2 of the Conservation Act and also in view of the explicit order of the Supreme Court 12-12-1996 refereed to above.

23. Therefore, it has to be held that in such cases, where an application for renewal of mining lease has been filed in accordance with Rule 24A (1) of the Mineral Rules for carrying on mining operations in non-forest areas, then keeping in view the deemed extension stipulated in sub-rule (6) of Rule 24A of the Mineral Rules the lessee can continue with the mining operations for which it held the lease till the State Government

passes appropriate orders thereon, but the said deeming provision contained in the above Rule 24A (6) cannot become operative for renewal of mining lease in respect of forest lands till the provision of section 2 of the Conservation Act and the Rules framed thereunder are complied with.

24. Section 2 of the Conservation Act reads as under:-

> *"Section 2 Restriction on the preservation of forest or use of forest land for nonforest* purpose:- Notwithstanding anything contained in any other law for the time being in force in State Government or other authority shall make, except with the prior approval of the Central Government, any order directing:
>
> (i) that any reserved forest (with the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
>
> (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
>
> (iii) that any forest land or any portion thereof may be assigned by a lessee or otherwise to any private person or to any authority, corporation, agency of any other organisation not owned, managed or controlled by Government;
>
> (iii) that any forest land or any portion thereof may be assigned by a lessee or otherwise to any private person or to any authority, corporation, agency of any other organisation not owned, managed or controlled by Government;
>
> (iv) that any forest land or any portion thereof may be cleared of trees which ever grown naturally is that land or portion, for the purpose of using it for afforestation.
>
> *Explanation:-For* the purpose of this Section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for:-
>
> (a) the cultivation of tea, coffee, spices, rubber, palms oil bearing plants, horticultural crops or medicinal plants.
>
> (b) any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wildlife namely, the establishment of check posts, fieriness, wireless and communications and construction of fencing, bridles and culverts, dams, waterholes, trench, marks, boundary marks, pipelines or other like purposes."

25. Section 4 of the Conservation Act empowers the Central Government to make rules by carrying out the provisions of the Act through notification in the official gazette. Accordingly, the Central Government has framed the Conservation Rules. Rule 4 of the Conservation Rules provides that every State Government or other authority seeking prior

approval under section 2 of the Conservation Act has to send its proposal to the Central Government in the form appended to the Conservation Rules. The said rule further provides that all proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reforestation shall be sent in the form of Working Plan/Management Plan.

26. Rule 5 of the Conservation Rule provides that every proposal has to be referred to the Committee constituted under Section 3 of the Conservation Act for its advice in the manner provided thereunder. Thereafter, as provided under Rule 6 of the Conservation Rules, the Central Government is required to consider the advice of the committee and after such further enquiry as it may consider necessary grant approval to the proposal with or without condition or reject the same.

27. In the said legal perspective, now reverting to the facts of the present case as noticed above, it is clear that pursuant to the proposal sent by the State Government under Section 2 of the Conservation Act read with Rule 4 of the Conservation Rules in relation to the grant of renewal of mining lease to the Company, the Central Government under its letter dt. 22-10-1992 (Annexure `B') clearly intimated to State Government that in principle the Central Government agree for approval for diversion of 608.00 ha. of forest land in question for renewal of mining lease subject to fulfilment of conditions contained therein which I have already extracted above. It is also not in dispute that as soon as the Company was intimated about its obligation to pay the compensatory and penal afforestation charges, the Company did so on 3-7-1995. Thereafter, the Company was not required to do anything further on its part for seeking renewal of its mining lease.

28. On the contrary, thereafter, it was for the State Government to act with promptness to communicate to the Central Government about the compliance for obtaining the prior approval in terms of Conservation Act. But, surprisingly even the Chief Conservator of Forests took more than 4 months in communicating the compliance aspect to the Principle Secretary to the department concerned of the State Government, with a copy to the Central Government. But even thereafter, the State Government did not find it necessary to formally apprise the Central Government of the required compliance. It is for these reasons and that because of intervening directions, passed by the Supreme Court under its order dt. 12-12-1996 as noticed above the company had to face the first closure of its mining operations. But still despite repeated requests made by the management of the Company to the State Government did not feel to oblige to discharge its part of the statutory obligations. Under these circumstances, and possibly looking at the interest of the Company and its workers, the Central Government took notice of the fact of compliance communicated to it by the Chief Conservator of Forests and accorded its approval for renewal of mining lease in question (Annexure `F'). The Company, having learnt about the same and having felt that the legal impediments in recommencing the mining operations have been crossed over started the mining operations on 26-2-1997, under intimation to the respondents'.

29. An objection has been taken by the learned Advocate General appearing on behalf of the State Government that the Central Government could have granted prior approval in terms of the Conservation Act. Only on receiving the report of compliance by the `user agency' namely, the Company, from the State Government and not on the basis of the

report of said effect sent by the Chief Conservator of Forests. For the said purpose he has placed reliance on certain clause of the guidelines framed by the Central Government for effective compliance of the statutory provisions in said regard. But, I do not find it is not necessary to deal with this aspect at any greater length, because it is quite well settled that the guidelines issued by way of executive instructions cannot override the statutory guidelines not any statutory order passed in violation of such guidelines can be held to be illegal, void or inoperative. Non-statutory guidelines framed by enforcing authorities can be pressed into service only to ensure that any deviation from those do no lead to discrimination defeating the equality clause as enshrined in Article 14 of the Constitution of India, which is a constitutional mandate against the State and its instrumentalities.

30. In the present case, it has not been disputed on behalf of the respondents that the statutory proposal as required under rule 4(1) of the `Conservation' Rules was sent by the State Government and on an examination thereof the Central Government had agreed in principal for according permission to renew the mining lease of the Company subject to certain compliances and the same were in fact made by the Company.

31. Therefore, in my opinion it is not very relevant as to who had sent the compliance report. But since admittedly, the compliance was made, therefore, the Central Government was within is statutory competence to accord prior approval as had been done in the present case.

32. Apart from the above, on 17-4-1997, an affidavit was filed on behalf of the Company raising issues of *mala fide* pertaining to the present controversy, A reply thereto was filed by the State Government on 19-4-1997. These are in the form of allegations and counter allegations touching upon the aspect of *mala fide.* But for the reasons set out above, I do not find it necessary to enter into those aspects.

33. Now, coming to the impugned communication dt. 27-2-1997 (Annexure 'L') of the 6th respondent - Deputy Conservator of Forests directing the Company to stop its mining operations, I find that the basic reason which had prevailed with him for issuing the said direction was that even if the Central Government had accorded the prior approval in terms of section 2 of the Conservation Act, still mining operations could not have been commended unless appropriate orders in this regard were obtained from the State Government on the renewal application filed by the Company.

34. As discussed above, I have no hesitation in holding that the reasoning so given by the 6th respondent - Deputy Conservator of Forests is fallacious and is based on misconception of law and even if no *mala fide* in facts but it is definitely so in law. In my opinion, once the prior approval is accorded by the Central Government in terms of the Conservation Act, then in respect of the applications pending for grant of renewal of mining leases, sub-rule (6) of Rule 24A of the Mineral Rules automatically comes into operation and the period existing lease shall be deemed to have been extended by further period till the State Government passed order thereon. Therefore, the deemed extension is based on the statutory provisions and not on any order passed by the State Government. It seems that the Central

Government as a rule making authority was possibly compelled to incorporate such a deeming provision in the Mineral Rules considering the necessity of continuation of mining operations and their experience of lethargy and inaction on the part of the State Governments in disposing of the applications for renewal of mining leases with expected expediency and speed. The said provision was found necessary to be incorporated despite the fact that under sub-rule (1) of Rule 24A of the Mineral Rules it was made obligatory on the part of the lessees to file appliance for renewal of mining lease at least twelve months before the expiry of their lease period.

35. In the result, the impugned letter/communication bearing No. M-2MNG-NMCD 3725/991 dt. 27-2-1992 (Annexure `L') issued by the 6th respondent - Deputy Conservator of Forests, Bellary is quashed. It is further observed that it will be open, if so advised, for the Company to institute appropriate proceedings before the competent Civil Court for claiming damages against the concerned respondent for the loss it claims to have suffered because of stoppage of mining operations.

36. The Writ Petition is accordingly allowed with costs which is assessed keeping in view the high cost of litigation as is now judicially recognised, at Rs. 1,50,000/- to be paid by the State of Karnataka through its Chief Secretary within one month from today.

37. Let a copy of this order be made available to the learned Advocate General for compliance.

Petition allowed.

Niyamakendram, Blue Mountain Buildings, Kochi v. Secretary, Corporation of Kochi
1997 ELD 619
O.P. No. 17722 of 1986-I decided on 10-1-1997
K. Narayana Kurup, J.

Constitution of India, Arts. 21, 226 – Right to life – Mosquito menace – No tangible action on part of officers to combat mosquito menace by tackling it on war footing – Official reaction, one of lethargy – Corporation is having financial crunch - High Court decided to step in and bale out Corporation from its precarious position in order to protect health of citizens which is part of fundamental right to life and liberty – Various institutions impleaded as respondents called upon to come forward and make generous, practical humanist contributions to Mosquito Control Programme of High Court which will be utilised to flight mosquito menace – Advocate appointed as Special Officer to co-ordinate operation.

Para (2, 3)

Pathrose v. State of Kerala
AIR 1997 Kerala 48
O.P. No. 3366/1990 A, D/-27-6-1996
Mr. S. Sankarasubban, J.

Water (Prevention and Control of Pollution) Act (6 of 1974), Ss. 25, 26 – Licence for manufacturing ice – Rejection on objection by President of mosque situated opposite proposed ice-factory on ground that entire atmosphere will be polluted – Another ground for rejection was that it will also result in communal tension – Rejection of licence, improper.

Peoples Council for Social Justice, Ernakulam v. State of Kerala
1997 ELD 620
O.P No. 3040 of 1988-J, 1234-3 of 1991-T and 7827 of 1994-F, decided on 28-7-1997
K.G. Balakrishman, P.K. Balasubramanayan and J.B. Koshy, JJ.

Constitution of India, Art. 226 - Mandamus - Demonstrations or processions conducted in city area - Obstruction in free movement of pedestrians and vehicular traffic - Duties of organisers and police - Directions issued by Court.

Kerala Police Act (5 of 1960), S. 19.

Criminal P.C. (2 of 1974), S. 1-19.

AIR 1993 SC 171: 1992 AIR SCW 3099	10
AIR 1986 Kerala 82: 1985 Ker LT 722	16
AIR 1978 SC 597	1
AIR 1962 SC 1166	9
AIR 1925 PC 36	7
ILR 26 Madras 555 (FB)	8

ORDER

Balakrishnan, J.:-These three Original petitions have been filed seeking a writ of mandamus or other appropriate order directing the respondents to ensure that all demonstrations or processions of any form within the Cochin Corporation area are conducted without obstructing in any way the free movement of pedestrians and vehicular traffic. O.P. No. 12343 of 1991 is filed by a public spirited citizen. In O.P. No. 3040 of 1988 and O.P. No. 7827 of 1994 are filed by registered Societies. When these matters came before the learned single Judge it was felt that the questions of lam involved in these Original Petitions are of general importance and these cases were referred to a Full Bench.

2. We heard counsel for the petitioners, learned Advocate General and some of the counsel for respondents.

3. Petitioners allege that though Ernakulam City is commercially very important, the roads such as, Banerji Road, M.G. Road, Shanmugham Road and Chittoor Road are not very much wide and except M.G. Road, all other roads are not sufficient to accommodate the every increasing vehicular traffic. These roads are maintained by the Cochin Corporation. Various institutions like Courts, Hospitals, Colleges and Schools, Banks and other establishments are located within a small area and they are accessible only through the roads mentioned above. The bus services, boat services, railway and airport etc. can be approached only through the main roads of the Cochin City. If any of these important roads are blocked the entire flow of traffic will be paralysed.

4. One of the important problems faced by the general public is that these roads are often blocked by the authorities to facilitate the political parties or other organisation to take out processions or demonstrations through public streets. When ever procession or demonstration passes through any of these roads the entire vehicular traffic is blocked. This causes undue hardship to the public. Sometimes projectionists stage dharma in front of the State Government offices and Central Government offices. Even if there are very few people in procession its participants block the roads completely and prevent vehicular traffic and most often they do not allow the pedestrians and vehicles are serious violations of the rights of the public. Those who want urgent medical attention or to attend public examination or interview or to reach Airport to catch the flight find it extremely difficult and the participants of demonstration and procession prevent these persons from going to their destination and the authorities are not doing anything to avoid the hardships of the public. Though the political parties and religious congregations have a right to assemble gracefully and move through these roads they have no right to create unreasonable obstruction which may cause inconvenience to others. Petitioners allege that under Section 149 of the Criminal Procedure Code and Section 19 of the Police Act is the duty of the police to prevent the commission of any public nuisance. The police have a duty to prevent the obstruction on the road. Therefore, the petitioners pray that there shall be a writ of mandamus or other appropriate direction directing the authorities to ensure that all demonstrations and processions of any form within the Cochin Corporation area is conduced without obstructing in any way the free movement of pedestrians and vehicular traffic.

5. A counter-affidavit is filed by first respondent in O.P. No. 12343 of 1991. It is conceded that the demonstrations and processions result in traffic blockade and it causes inconvenience to the public, but it is contended that there is no inaction on the part of authorities in preventing such demonstrations and processions. It is submitted that the police are helpless in preventing such things, even though they are taking all possible steps to inform the public in advance about the possibility of traffic blockade due to processions and demonstrations so that the public can schedule their programmes in such a way to avoid the inconvenience caused by such demonstrations. Often traffic is deviated through alternative routes. In the absence of definite guidelines based on public policy and for lack of resources, it is not possible for the police to prevent demonstrations and precessions invoking the provisions of law. Demonstrations and processions being an accepted practice in an open society, the police are not expected to use force to check

such mass movement of people. They cannot be treated on par within isolated groups causing public nuisance or disturbance in the streets. It is further stated that it would be physically impossible for the police force available in the City to prevent thousands of unarmed people marching through the streets under the banner of political parties, religious groups and other organisations. It is submitted that it would be ideal if the parties and groups themselves come forward to evolve guidelines based on self-imposed code of conduct.

6. Freedom of association and assembly are linked with human right and individual has a right to associate with groups in order to make his or her views known publicly and obtain public support. Clearly a protest of plea for support will be more effective if carried out collectively rather that individually. All free societies recognise the need, firstly to allow citizens to join or support groups which express a view at variance with the government view and secondly to allow such groups to assemble in order to express their views publicly. Allowing citizens to engage in public protest is one of the main distinctions between a totalitarian society and a democracy. Freedom of association would almost cease to exist if citizen could join a group but could not meet regularly with it. Freedom of assembly includes freedom to engage in an entirely spontaneous demonstration and is closely with freedom of speech.

7. In a decision of the Privy Council reported in Said Manzur Hassan v. Saiyid Muhammed Zaman, AIR 1925 PC 36 Lord Dunedin held:

> "There is right to conduct a religious procession with its appropriate observances along a highway. Person of whatever sect are entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the magistrates may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace; and suit lies for the declaration of such right. But a claim by one sect, for the exclusive use of the highway for their worship is untenable".

8. In a Full Bench decision reported in Viaraghava Chariar v. Emperor, (1903) ILR 26 Madras 555 the Madras High Court considered the question of religious procession on highways. One Ten-alai sect had obtained a decree in a civil suit declaring their rights entitled to hold certain offices connected with a temple, and as such office-holders were entitled to recite certain in processions. Another sect by name Vadagali tried to interfere with the rights of Tengalai in the recital of hymns. After the court decree the 'tengalai sect was conducting religious procession along a public highway chanting hymns. It was contended against Tengalai sect that they were using the highway and, therefore, it was unlawful. Justice Benson held:

> "There is nothing illegal, in India (where highways have from time immemorial been used for the passing of religious processions), in a procession or assembly engaging in worship while passing along a highway. If it were necessary to refer the origin of the use of highways for religious processions to a dedication of the highway to such use, such a dedication could reasonably be presumed, history, literature and traditions showing that such processions have formed a feature of the

national life from the earliest times, and it being unreasonable to suppose that a dedicator would make a reservation against processions, which would be wholly opposed to the sentiment of the community".

9. In Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166, Rule 4A of the Bihar Government Servants' Conduct Rules, 1956 which prohibited any form of demonstrations for the redress of the grievance of Government servants was challenged on the ground that it was violative of the fundamental rights guaranteed to them under Article 19(1) (a) and (b) of the Constitution. A Constitution Bench of the Supreme Court considered the question whether right to make demonstrations is covered by the fundamental rights under Clauses (a) and (b) of Article 19(1) of the Constitution. In paragraph 13 of judgement if was held that.

> "A demonstration is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession. In Webster it is defined as `a public exhibition by a party sector society .... as by a parade or mass-meeting'. Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech needs not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1) or 19(l)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) & 19(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, fur instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances".

10. It was held in Life Insurance Corporation of India v. Manubhai D. Shah, AIR 1993 SC 171 that:

> "Freedom of speech and expression is a natural right which a human being acquires on birth. It is, therefore, a basic human right. The words freedom of speech and expression has to be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or though audio-visual instrumentalities."

11. The scope and ambit of the right of freedom of speech and expression was

considered in detail in Maneka Gandhi v. Union of India, AIR 1978 SC 597.

It was held by Justice P.N. Bhagwati as he then was jointly with Untwalia and Murtaza Fazal Ali, JJ. that:

> "There are no geographical limitations to freedom of speech and expression guaranteed under Article 19(1)(a) and this freedom is exercise not only in India but also outside and if State expression in any country in the world, it would violate Article 19(1)(a) as much as if the inhibited such expression within the country. This conclusion would on a parity of reasoning apply equally in relation to the fundamental right to practice any profession or to carry on any occupation, trade or business guaranteed under Article 19(1)(a)".

It vas held at Para 77 of the judgement that:

> "Even if a right is not specifically named in 19(l), it may still be a fundamental right covered by some clause of that Article if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right ..... What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right".

12. The right to assemble peaceably and the right to form association or union and to have freedom of speech and expression for such association or union are valuable fundamental rights recognised under our Constitution. The right to take procession along the highway is a part of this right. However, these should be exercised without causing injury or annoyance to others. As regards procession and street marches, the authorities have got every right to impose reasonable restrictions just as the participant of these processions and marches have got right to use the highway the ordinary citizens and pedestrians have also got equal right to pass and re-pass along the highway.

13. Demonstrations and precessions along the public street are restricted in so many ways. In Kerala there is a Police Act where there are provisions to impose restrictions. Section 19 of the Kerala Police Act reads as follows:

> "S. 19 Regulations of public assemblies and processions and music in streets.
>
> The Superintendent of Police may, as occasion requires, subject to any order or direction, if any issued by the District magistrate: -
>
> (i) direct the conduct of assemblies and processions in any street and specify, by general or special notice, the routes by which and the times at which, such procession may pass;
>
> (ii) require by general or special notice on being satisfied that any person or class of persons intend to convene or collect an assembly in any street or to form a procession which would in his judgement, if uncontrolled, be likely to cause

a branch of the peace, that the persons convention or collecting such assembly or directing or promoting such procession shall not do so without applying for and obtaining a licence;

And on such application being made, the Superintendent may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or procession is to be permitted to take place;

(iii) Prevent obstruction on the occasion of all processions and assemblies and in the neighbourhood of all places of worship during the time of public worship, and in all cases when any street or public place or place of public resort may be thronged or liable to be obstructed or

(iv) Prohibit or regulate the use of music or sound amplifiers or tom toms or other noisy instruments in any street or public place and in any private if their use may cause annoyance to neighbours".

14. There is also the Central Act *viz*. The Prevention of Damage to Public Property Act, 1984 (Act No. 3 of 1984). Section 3 of the Act says that whoever commits mischief by doing any act in respect of any public property other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

15. The grievance of the petitioners is that in spite of the powers conferred on the police under Section 19 of the Kerala Police Act no effective steps are being made to control processions and marches along the highway. It is contended by the petitioners that on many occasions demonstrations and processions along the public roads continue for hours together and almost all the main roads are blocked and pedestrians and vehicles are not allowed to pass through the road and the police become silent spectators of these unauthorised uses of highways. Just as the participants of demonstrations and processions have got a right use the roads the passengers other citizens have also got equal rights to use the roads for passing and re-passing. Quite often the pedestrians are not allowed to cross the roads for by cutting across the moving procession. In a city like Cochin where there are no link-road it would be difficult for the ordinary persons to reach their destinations when there is demonstration or procession covering entire streets for hours together. It is the duty of the police to regulate these public assemblies and processions in an orderly manner. Under no circumstance these processionists and demonstrators should he allowed to obstruct the road completely so that it would be impossible for others to use the road. Under Section 19(iii) of the Police Act it is the duty of the police to prevent obstruction on the occasion of all processions an assemblies and in the neighbourhood of all places of worship during the time of public worship, and in all cases when any street or public place or place of public resort may be thronged or liable to be obstructed. The organisers of these assemblies or processions are bound to give prior notice to the police authorities. If the police apprehend that there would be any serious damage to property they shall take all precautions. The police would be well within their authority to give direction as to the timings of the procession and the members of the marchers who are

permitted to go and the police can prohibit it from entering any public place or direct in which direction the processionists shall go.

16. Learned Advocate-General submitted that there are sufficient provisions in the Criminal Procedure Code and in the Police Act to regulate public procession and all steps are taken by the authorities. It is submitted that in certain cases the projectionists carry lengthy banners that occupy almost all the tarred space of the road. However, the police try their level best to cause least hardships to the pedestrians. But, counsel for the petitioners contend that whenever traffic is blocked and the pedestrians are not allowed to pass and re-pass through the road and even if the number of participants in the procession or demonstration is very much less the inconvenience caused to the public is the same. Petitioners' counsel also pointed out that similar question came up for consideration before this Court in Sankaranaryanan v. State of Kerala, 1985 Ker Lt 722: (AIR 1986 Kerala 82). There was an assurance on the part of the Government that the Police would take all possible steps and the then Advocate-General of the State Government gave an undertaking and the same was recorded by the Court in the following lines:

> "The Original Petitions are disposed of in the light of the assurances contained in the counter affidavit, and the submission of the Advocate General that the State Government will take up forthwith the enactment of a law to regulate the use of public places by public precessions, political, religious and otherwise, in such a manner as not to obstruct the use of public streets and other public places by the ordinary citizens".

But the petitioners' counsel pointed out that no such enactment was made and public processions and demonstrations are continued causing great inconvenience to the public.

17. In the light of the provisions contained in the Kerala Police Act under Section 19, the government could have issued strict instruction to the police regarding the manner in which processions and demonstrations are to be conducted. It is a fact that in the absence of specific direction the police find it difficult to control the same. In view of the circumstance of specific direction the police find it difficult to control the same. In view of the circumstances, we are constrained to give the following directions as otherwise the valuable fundamental rights guaranteed to the pedestrians under Article 19 and 21 of the Constitution will be in danger. Therefore, in the interest of the public, there should be some restrictions and limit to processions and demonstrations in the public places.

(i) The organisers of the procession for demonstration shall give advance notice to the highest Police Officer of the District or such other officer authorised by the Government at least six days before the procession or demonstration is intended to be held. The notice must contain a brief note giving the reasons and purpose of the demonstration or procession and the approximate number of participants

(ii) The participants of procession/demonstration shall not be allowed to occupy the entire breadth of road so as to obstruct the passing and re-passing of

pedestrians or vehicles through the road. The precessionists shall not be allowed to carry lengthy banners so as to occupy the entire breadth of the road. The police should restrict the length of the banners if it is likely that the same would cause obstruction to the pedestrians and vehicular traffic.

(iii) In all road junctions pedestrians shall be allowed to cut across the procession/ demonstration and the police shall help the pedestrians to cross the road. Such crossing shall be once in every 10 minutes in very road junction and the police shall help and regulate the same by appropriate directions.

(iv) If any participant in the demonstration/procession engages in disorderly conduct he shall be dealt with according to law.

(v) Participants of processions/demonstrations shall not be allowed to carry any weapons or instruments that could be used as dangerous weapons.

(vi) There shall be sufficient contingent of police and the police shall take all possible steps to regulate public assemblies and processions as envisaged under Section 19 of the Police Act and shall see that it shall be peaceful and cause least inconvenience to the public.

(vii) Any wrongful act or omission upon or near public street by any of participants in the demonstration/processions whereby the public are prevented from freely, safely and conveniently passing along public road shall be dealt with according to law.

(viii) Road picketing and dharnas on public roads, being clear violations of law, shall strictly be prohibited and the police shall see that the person who cause such obstruction to the pedestrians and vehicular traffic be removed from the road.

(ix) The Government shall issue appropriate circulars to the police authorities impressing upon them the need to enforce, the provisions maintained in the Police Act.

With the above directions, the Original Petitions are disposed of.

Order accordingly.

People's Union for Civil Liberties, Delhi v. Union of India
AIR 1997 Delhi 395
Civil Writ Petition No. 4622 of 1996, D/-5-9-1997
P. Misra. C. J. and Dalveer Bhandari, J.

Constitution of India, Art. 226 – Appointment of enquiry committee – Cases of non-functional medical equipment in Government Hospitals in Delhi and purchase of contaminated IV fluids at exorbitant prices by hospitals – Ascertaining correct position and fixing responsibility and liability on concerned persons – Not possible in proceedings under Art. 226 - Thus High Court constituted two separate committees to

probe the matter in detail in terms of reference and also to suggest remedial measures to be adopted in future to prevent such incidents.

Rajeev Mankotia v. Secretary to the President of India
AIR 1997 Supreme Court 2766
Writ Petition (Civil) No.862 of 1990, D/-27-3-1997
K. Ramswamy and G. B. Pattanaik, JJ.

Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), S. 4 - Historical monument - Preservation of - Vice regal Lodge at Shimla - A summer seat of Asian British Empire - Also a witness to heralding new era of independence to India - Notifying its entire area as historical heritage has become fait accompli by orders of supreme court - Supreme Court also directed government of India to maintain all national monuments under the respective acts and ensure that all of them are properly maintained so that cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour, workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved.

ORDER:

…

19. It is needless to mention that as soon as the Indian Institute of Advanced studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and resorting to the building its natural beauty and grandeur. It is also necessary that its proper maintenance and preservation is undertaken as an on-going process to protect the historical heritage and needed repairs are affected from time to time. **We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are the pride of Indians and places of public visit.** The tourist visitors should be properly regulated and collection of funds by way of admission/entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under the respective regulations/rules. Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first settlement of the Britishers therein is preserved as a tourist report and though it is one in the row, its originality is maintained and busy business activity goes on in and around the area attracting daily hundreds of tourists from all over the world. Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our

cultural heritage or historical evidence. Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourists and to give them a good account of our past and glory of the people of India as message to the other countries and territories. Equally all the State Governments would do well vis-a-vis monuments of State importance, though given power under Entry 12, List 11 of the Seventh Schedule to the Constitution. From this perspective, the petitioner has served a great cause of national importance and we place on record his effort to have the Vice regal lodge preserved and maintained; but for his painstaking efforts, it would have been desecrated into a five star hotel and in no time " We, the people of India" would have lost our ancient historical heritage.

Ranjan Deb v. Union of India
1997 ELD 205
Writ petition (Civil) No. 16/19, decided on 10-10-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Sewerage system in the city of Puri - Court issues certain directions.

ORDER

1. Pursuant to this Court's order dated September 24, 1996 Dr. Shyam Lal, Director in the Ministry of Environment and Forests, New Delhi has filed affidavit. Paragraphs 3.1, 3.2, 3.4 and 3.5 are as under:

> 3.1 The Ministry of Environment and Forests has different programmes for survey of natural Resources, Conservation of Natural Resources including Forests and Wild Life, Environmental, Research & Development etc. Impact Assessment, prevention and control of pollution, Hazardous waste, Management.
>
> 3.2 The various programmes and schemes of Ministry and its associated organizations related to pollution prevention through different schemes like:
>
> - Environment statistics and mapping
> - Development and promotion of cleaner technologies
> - Waste minimization
> - Programme for improvement of quality of Automotive fuels
> - Environmental Epidemiological studies
> - Monitoring of air and water quality etc.
>
> 3.4 That the construction of sewerage systems in Puri is the responsibility of the State Government through its local bodies and accordingly the respondent humbly submits that, the State Government may kindly be directed to provide funds for that.
>
> 3.5 The respondent humbly submits that the Ministry of Environments has no such scheme from which to contribute towards construction of sewerage systems in the city of Puri."

2. The primary function of the Ministry of Environment and Forests is the "prevention and control" of pollution. The construction of a sewerage system is a major step towards the control of pollution. Apart from that, discharge of treated effluent into the sea would protect the marine life which is in abundance in the sea. In our order dated September 24, 1996, we highlighted the fact that the City of Puri the "Abode of Lord Jagannathan" the tourist resort are of great interest even to the foreigners. The State Government has not been able to construct the sewerage system in the city of Puri till date for one reason or the other. Government of India must render all assistance to the State Government in this respect. We take judicial notice of the fact that huge amount of money is being received as foreign and specially for the purpose of protecting the environment and controlling pollution. We have, therefore, no hesitation in reaching the conclusion that the Government of India, Ministry of Environment and Forests is in a position to extend financial help for the Project. We, therefore, request Mr. T.K.A. Nair, Secretary, Ministry of Environment and forests to look into the matter personally and file an affidavit in this Court by October 24, 1996.

3. Copy of this order the sent to the Secretary to Government, Ministry of Environment and Forests, Government of India, New Delhi.

4. To come up on October 24, 1996.

S. Jagannath v. Union of India
AIR 1997 Supreme Court 811
Writ Petition (Civil) No. 561 of 1994, D/-11-12-1996
Kuldip Singh and S. Saghir Ahmad, JJ.

Environment (Protection) Act (29 of 1986), S. 3 - Notification dated 19-2-1991, Para 2 (i) - Shrimp culture industry - Neither "directly related to water front" nor "directly needing foreshore facilities" - Setting up of within prohibited area and in ecological fragile coastal area has adverse effect on environment and coastal ecology and economics - Cannot be permitted to operate - Employees of industries directed to be closed entitled to retrenchment compensation and six years wages as additional compensation - High power authority directed to be constituted for granting permission for installation of shrimp industry.

Constitution of India, Art. 48-A

Industrials Disputes Act (14 of 1947), S. 25F

The part of the shore which remains covered with water at the High Tide and gets uncovered and becomes visible at the Low Tide is called "foreshore". It is possible to set up a shrimp culture farm in the said area because it would completely submerge in water at the High Tide. It is, therefore, obvious that foreshore facilities are neither directly nor indirectly needed in the setting up of a shrimp farm. So far as "water front" is concerned

it is no doubt correct that a shrimp farm may have some relation to the water front in the sense that the farm is dependent on brackish water which can be drawn from the sea. But on a close scrutiny, it can be said that shrimp culture farming has no relation or connection with the 'water front' though it has relation with brackish water which is available from various water bodies including sea. What is required is the "brackish water" and not the water front. The material on record shows that the shrimp ponds constructed by the farms draw water from the sea by pipes, jetties etc. It is not the 'water front' which is needed by the industry. What is required is the brackish water which can be drawn from any source including sea and carried to any distance by pipes etc. The purpose of CRZ notification is to protect the ecological fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds and other infrastructure thereon is per se hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. Therefore, the shrimp culture industry is neither "directly related to water front" nor "directly needing foreshore facilities". The setting up of shrimp culture farms within the prohibited areas under the CRZ notification cannot be permitted.

(Para 19)

An industry dependent on sea water like salt industry cannot by itself be an industry "directly related to water front" or "directly needing foreshore facilities". The shrimp culture industry, therefore, cannot be permitted to be set up any where in the coastal regulation zone under the CRZ Notification.

(Para 21)

Sea coast and beaches are gift of the nature to the mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity which has the effect of degrading the environment cannot be permitted. Apart from that the right of the fishermen and farmers living in the coastal areas to eke out their living by way of fishing and farming cannot be denied to them.

(Para 22)

It cannot also be said that commercial shrimp farming has no adverse effect on environment and coastal ecology.

(Para 23)

The damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of coastal aquaculture produce.

(Para 26)

The traditional and improved traditional types of shrimp - farm technologies - are environmentally benign and pollution free. Other types of technologies - extensive, modified extensive, semi-intensive and intensive - create pollution and have degrading effect on the environment and coastal ecology, such type of shrimp farms cannot be permitted to operate.

(Para 35)

Before any shrimp industry or shrimp pond is permitted to be installed in the ecological fragile coastal area it must pass through a strict environmental test. There has to be a high powered "Authority" under the Act to scrutinise each and every case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broad based primarily concerning environmental degradation linked with shrimp farming. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who are affected and prejudiced.

(Para 43)

The Supreme Court further directed that-

(1) The Central Government shall constitute an authority under S. 3 (3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal States and Union Territories. The authority shall be headed by a retired Judge of a High Court. Other members preferably with expertise in the field of aquaculture, pollution control and environment protection shall be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under S. 3 of the Act and for taking measures with respect to the matters referred to in Clauses (v), (vi), (vii), (viii), (xi), (x) and (xii) of sub-section (2) of S. 3 The Central Government shall constitute the authority before January 15, 1997.

(2) The authority so constituted by the Central Government shall implement "the Precautionary Principle" and "the Polluter Pays" principles.

(3) The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2 (i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ Notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies as defined in Alagarswami reports which are practised in the coastal low lying areas.

(4) All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997. The Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/ Collector of the area be directed to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report shall be filed in this Court by these authorities before April 15, 1997.

(5) The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production/productivity and file return with prior approval of the "authority" constituted by this order.

(6) The agricultural lands, salt pan lands, mangroves, wetlands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.

(7) No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed, set up within 1000 meters of Chilka lake and Pulikat lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu).

(8) Aquaculture industry/shrimp culture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meters shall be closed and demolished before March 31, 1997. The Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area directed to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries shrimp culture ponds on or before March 31 1997. A compliance report in this respect shall be filed in this Court by these authorities before April 15, 1997.

(9) Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meters of Chilka and Pulikat lakes with the prior approval of the “authority” as constituted by this Court. Such industries which are already operating in the said areas shall obtain authorisation from the “authority” before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. We further directed that any aquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, or the drinking water or wells and/or by the use of chemical feeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation, turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall be allowed by the aforesaid authority.

(10) Aquaculture industry/shrimp culture industry/shrimp culture ponds which have been functioning/operating within the coastal regulation zone as defined by the CRZ Notification and within 1000 meters from Chilka and Puliket lakes shall be liable to compensate the affected persons on the basis of the "polluter pays" principle.

(11) The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected area and shall identify the individual/families who have suffered because of the pollution and shall assess the compensation to be paid to the said

individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

(12) The authority shall compute the compensation under two heads namely, or reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the person to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrate of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears for land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

(13) It is further directed that any violation or non-compliance of the direction of this Court shall attract the provisions of the Contempt of Court Act in addition.

(14) The compensation amount recovered from the polluters shall be deposited under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment.

(15) The authority, in consultation with expert bodies like NEERI, Central Pollution Control Board, and respective State Pollution Control Boards shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollutions in the coastal States/Union Territories. The scheme/schemes so framed shall be executed by the respective State Government/Union Territory Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the respective State Government/Union Territory Governments and the Central Government.

(16) The workmen employed in the shrimp culture industries which are to be closed in terms of this order, shall be deemed to have been retrenched with effect from April 30, 1997 provided they have been in Continuous service (as defined in S. 25B of the Industrial Disputes Act, 1947) for not less than one year in the industry concerned before the said date. They shall be paid compensation in terms of S. 25F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, six year's wages as additional compensation. The compensation shall be paid to the workmen before May 31, 1997. The gratuity amount payable to the workmen shall be paid in addition.

(Para 45)

Cases Referred: **Chronological Paras**

1996 AIR SCW 1069: (1996) 2 JT (SC) 196: AIR 1996 SC 1446 42
1996 AIR SCW 3399: (1996) 7 JT (SC) 375: AIR 1996 SC 2715 42

KULDIP SINGH, J.: - Shrimp (Prawn) Culture Industry is taking roots in India. Since long the fishermen in India have been following the traditional rice/shrimp rotating aquaculture system. Rice is grown during part of the year and shrimp and other fish species are cultured during the rest of the year. However, during the last decade the traditional system which, apart from producing rice, produced 140 kg of shrimp per hectare of land began to give way to more intensive methods of shrimp culture which could produce thousands of kilograms per hectare. A large number of private companies and multinational corporations have started investing in shrimp farms. In the last few years more than eighty thousand hectares of land have been converted to shrimp farming. India's Marine export weighed at 70,000 tonnes in 1993 and these exports are projected to reach 200 thousand tonnes by the year 2000. The shrimp farming advocates regard aquaculture as potential saviour of developing countries because it is a short-duration crop that provides a high investment return and enjoys an expanding market. The said expectation is sought to be achieved by replacing the environmentally benign traditional mode of culture by semi-intensive and intensive methods. More and more areas are being brought under semi-intensive and intensive modes of shrimp farming. The environmental impact of shrimp culture essentially depends on the mode of culture adopted in the shrimp farming. Indeed, the new trend of more intensified shrimp farming in certain parts of the country - without much control of feeds, seeds and other inputs and water management practices - has brought to the fore a serious threat to the environment and ecology which has been highlighted before us.

2. This petition under Art. 32 of the Constitution of India - in public interest - has been filed by S. Jagannathan, Chairman, Gram Swaraj Movement a voluntary organisation working for the upliftment of the weaker section of society. The petitioner has sought the enforcement of Coastal Zone Regulation Notification dated February 19, 1991 issued by the Government of India, stop page of intensive and semi-intensive types of prawn farming in the ecologically fragile coastal areas, prohibition from using the waste lands/wet lands for prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas. Various other prayers have been made in the writ petition. This Court issued notice by the order dated October 3, 1994. On December 12, 1994, this Court passed the following order:

> "Ministry of Environment and Forests, Government of India issued a Notification dated February 19, 1991, under C1. (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 wherein it was declared that the coastal stretches of seas, bays, estuaries, creeks, rivers and back water which are influenced by the tidal action (in the landward side) up to 500 meters from the High Tide Line (HTL) and the HTL are Coastal Regulation Zone. The Central Government has imposed various restrictions in the said notification. Mr. Mehta, learned advocate appearing for the petitioners states that despite the issue of the Notification unauthorised industries and other construction is being permitted by various States within the area which has been declared as Costal Regulation zone .....Meanwhile we direct all the respondent States not to permit the setting up of any Industry or the construction of any type on the area at least up to 500 meters from the sea water at the maximum

High Tide. The above said area i.e. from the High Tide Level up to 500 Meters shall be kept free from all construction of any type".

The Union of India and States/Union Territories of Gujarat, Maharashtra, Orissa, Kerala, Tamil Nadu, West Bengal, Goa, Pondicherry, Daman Dui, Andaman/Nicobar and Lakshedeed have filed replies to the writ petitions. This Court on March 27, 1995 passed the following order: -

"This public interest petition is directed against the setting up of prawn farms on the coastal areas of Andhra Pradesh, Tamil Nadu and other coastal States. It is alleged that the coastal States are allowing big business houses to develop prawn farms on a large scale in the ecologically fragile coastal areas of the States concerned in violation of Environment Protection Act, 1986 and the rules framed thereunder and various other provision of law. It is also alleged that establishment of prawn farms on rural cultivable lands is creating serious environmental, social and economic problems for the rural people living along with the coastal bed specially in the east coast .....Meanwhile, we direct NEERI, Nagpur through its Director to appoint an investigating team to visit the coastal areas of the States of Andhra Pradesh and Tamil Nadu and give its report to this Court regarding the various farms which are being set up in the said area.

In case the investigating team finds that the ecologically fragile area is being environmentally degraded then it shall suggest the remedial measures in that respect. The NEERI team shall keep in view the notification dated February 19, 1991 of the Ministry of Environment and Forests, Govt. of India, issued under the Environment Protection Act, 1986 and also the provisions of the Tamil Nadu Agriculture (Regulation) Act, 1996. The NEERI shall submit its report before April 30, 1995".

Pursuant to the above quoted order, the National Environmental Engineering Research Institute, Nagpur (NEERI) submitted its report dated April 25, 1995 before this Court. This Court further directed NEERI to send an expert team to the coastal areas in other States and file its report within two months. The report was filed in this Court within the specified time. This Court on May 9, 1995 passed the following order: -

"This matter be listed for final hearing on 4th August, 1995. Meanwhile we direct that no part of agricultural lands and salt farms be converted into commercial aquaculture farms hereinafter. We further direct that no ground water withdrawal, be allowed for aquaculture purposes to any of industries whether already existing or in the process of being set up. No further shrimp farms of any aquaculture farms be permitted to be set up in the areas in dispute hereinafter.

We direct the respective State Governments (the Collector concerned or any other Officer appointed by the Government) to provide free access through aquaculture units to the sea coast to the fishermen/tourists after hearing the parties concerned.

Mr. Mehta has contended that due to these farms occupying the most of the coastal areas it has become difficult for the villagers to search for fresh water. The State

Govt. may examine this aspect and provide water by way of tankers wherever it is necessary.

So far as the farmers in the State of Tamil Nadu are concerned they are all represented through Mr. Kapil Sibal and his team. We direct the State of A.P. to send a copy of the order of this Court to all the aquaculture farms in the State of A.P. informing them that the matter shall be taken up by this Court for final hearing on 4th August, 1995. This may be done by the State of A.P. by the end of June, 1995.

We direct the Pondicherry Administration to send a copy of the order of this Court to all the aquaculture farms in Pondicherry informing them that the matter shall be taken up by this Court for final hearing on 4th August, 1995. This may be done by the Pondicherry Administration by the end of June, 1995.

We further direct the Superintendent of Police and the Collector of the areas concerned to see that the orders of this Court especially the directions given are meticulously complied with by all the farms".

Before finally hearing this matter, this Court passed the following order on August 24, 1995: -

"We are of the view that it would be in the interest of justice to have full representation before us so far individual aqua-farms in various States/Union Territories are concerned. We, therefore, adjourn the hearing to October 17, 1995. Meanwhile, we direct the coastal States/Union Territory Government, through their learned counsels who are present in the Court, to issue individual notices to all the aqua-farms which are located in their respective territories. It may be stated in the notices that the same are being issued under the direction of this court. It should also be specifically mentioned that if they want to be heard in these matters by this Court, they be present through their counsel/representatives in the Court, on the next date of hearing, which is October 17, 1995. We also direct the Marine Products Export Development Authority (MPEDA), through its counsel Mr. Harish N. Salve, to do the same exercise at its level also. Apart from that, we further direct all the State Governments/Union Territories to issue public notices in this respect in daily newspapers which have circulation in the coastal areas, informing the aqua-farms regarding the hearing of these matters in this Court, on October 17, 1995. This may be done on two consecutive days.

Notices and publication be completed within 3 weeks from today. Meanwhile, we direct all the State Government/Union Territories not to give fresh licences/permission for setting up/establishment of any aqua-farm in their respective Territories till further orders".

3. Coastal Pollution, universally, is an emerging problem. So far as India is concerned it has already become a serious environmental problem. Besides direct dumping of waste materials in the seas discharge through marine outfalls, large volumes of untreated or semi-treated wastes generated in various land-based sources/activities ultimately find way to the seas. The coastal waters directly receive the inland waters, by way of surface

run-off and land-drainage, laden with myriad of refuse materials - the rejects or wastes of the civilisation. Apart from inputs from rivers and effluent-outfalls, the coastal areas are subject to intensive fishing, navigational activities, recreations, ports, industrial discharge and harbours which are causative factors of water quality degradation in varying degrees. Contrary to the open sea the changes in the quality of coastal waters, are much greater due to river discharges under tidal conditions.

4. With noticeable increase in marine pollution and the consequential decline in marine resources serious concern was expressed in the United Nations' Conference on Human Environments in Stockholm (sic) (1977) attracting global attention towards the urgent need of identifying the critically polluted areas of the marine environments, especially in coastal waters, for urgent remedial actions. The Conference unanimously resolved that the littoral States should take early action in their National level for assessment and control of marine pollution from all sources and carry out systematic monitoring to ascertain the efficacy of the pollution regulatory actions taken by them. In the background of the Stockholm Conference and in view of 1987 Convention on the "Law of the Sea" defining jurisdiction of territorial waters, a model comprehensive Action Plan has been evolved under the United Nations' Environment Programme (UNEP). Keeping with the international commitments and in greater National interest, the Government of India and the Governments of the coastal States are under a legal obligation to control marine pollution and protect the coastal-environments.

5. According to the facts placed on record by the Central Pollution Control Board (the Board) the coastline of India's mainland is about 6000 km long. Out of the total landmass of about 3.28 million sq. kms nearly 0.13 million sq. kms of coastal land belt (considering 25 km landward distance) griddles three sides of the country's sea front which in turn underlay about 0.13 million sq. km sea-bed up to the territorial limit. The Country being riverine, has 4 major, 44 medium and 55 minor rivers which discharge annually about 1566 thousand million cubic meters of water through land drainage into the seas transporting a wide range of pollutants generated by land-based activities. Nine out of fourteen major rivers meet the sea in the east coast (Brahmaputra through Bangladesh) and the remaining five in the west coast (Indus through Pakistan).

6. Besides land drainage, there are large numbers of marine coastal outfalls discharging directly or indirectly industrial and municipal effluents into the seas. Uncontrolled disposal of land-based waste into the seas, through rivers and effluent outfalls, is a major cause of pollution of coastal waters. There are nine coastal States and one Union Territory (UT) in India namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala, Tamil Nadu, Pondicherry (UT), Andhra Pradesh, Orissa and West Bengal. More than one-forth of the total population of the country is settled in the coastal areas. The Board in its report regarding "Pollution Potential of Industries in Coastal Areas of India" dated November, 1995 gives the following data regarding aquaculture farms:

> "The effluent generation from aquaculture farms in the east coast only, in absence of data on west coast farms, is to the tune of 2.37 million cubic meters per day, out of which Andhra Pradesh has the lion share of about 2.12 million cubic meters per day ..... It may de noted that in all the States, in most cases, the effluent discharges is

indirect (through estuaries, creeks, canals, harbours). It may also be noteworthy that the effluents from aquaculture farms are discharged directly/indirectly into the coastal waters practically without any treatment. For disposal of solid waste, on the other hand, open dumping and land filling is a common practice".

In marine pollution control utmost importance has to be given to the beaches. The beaches and other areas of special interest are to be maintained aesthetically and at permissible levels of enteric bacteria. Protection of ecologically sensitive areas and land-sea interlace resource areas is equally important. The Central Board for the Prevention and Control of Water Pollution (Central Board) in its report "coastal Pollution control series COPOCS/1/1982" recommended as under: -

"- the mangrove forest at Pichavaram, the bird sanctuary and forest areas at Point Calimere and Coral reef at Mandapam are ecologically sensitive areas warranting special watch and preservation.

- recreational coastal portions of some sectors of the stretch under investigation such as Marine and Elliot beaches at Madras, Mahabalipuram, Pondicherry beach at Pondicherry and Poompouhar at the confluence of the river Cauvery with the sea are to be maintained at appropriate quality level.

- Continuous monitoring of the coastal waters especially heavy metals and pesticides in the biota should be carried out to detect possible biomagnifications of some toxic chemicals and to provide early warning".

7. The Central Board in its report "Coastal Pollution Control Series COPCS/5/1986-87" sought protection of the ecologically fragile areas in the following terms: -

"The mangrove forest and the wildlife sanctuary in Coringa Island, the Pulicat lake and the bird sanctuary at Nelapattu are the ecologically sensitive areas warranting special attention and protection. No industrial activity which may pose a danger to the ecosystem in these areas should be permitted.

At Pulicat Lake Area, Machilipatnam, Naupada and Ichapuram, Salt pan Irrigation is practised. No water polluting industry should be allowed nearby.

The domestic sewage and the industrial effluents entering the Kolleru Lake through various drains be properly treated so that no pollutants enter the coastal waters through Upputeru drain."

8. Shrimps are basically marine. Shrimps are also called Prawns. In commercial jargon, marine prawns are referred to as shrimps and freshwater ones as prawns. Prawns and shrimps are invertebrates and are decamped crustaceans. Sea is their home and they grow to adulthood and breed in the sea. The progeny start their life by drifting into estuaries and such other brackish water areas for feeding. In about 4-6 months the larvae grow into adolescent and go back to their real home of birth, the sea.

9. Aquaculture has been practised for many centuries by small farmers and fisher folk in Asia to improve their living conditions. However, there is a vast difference between the

traditional methods and the new commercialised system. The traditional aquaculture, including shrimp, is usually small-scale, using low inputs and relies on natural tidal action for water-exchange. In Some countries, such as India, Bangladesh and Thailand, there is a tradition of rice/shrimp rotating, with rice grown part of the year and shrimp and other fish species cultured the rest of the year. Chemicals, antibiotics and processed feeds are not used in the traditional method. In this low yield, natural method, the harvest is small but sustainable over long periods. It has no adverse effect on the environment and ecology. The modern method, on the other hand, is large in scale and intensive or semi-intensive in nature. It is owned and operated by commercial and often foreign owned companies which mainly export the shrimp. In intensive aquaculture, selected species are bred using a dense stocking rate. To maintain the very crowded shrimp population and attain higher production efficiency, artificial feed, chemical additives and antibiotics are used.

10. The Food and Agriculture Organisation (FAO) - and organ of United Nations Organisation (UNO) - published a report in April, 1995 on a Regional Study and Workshop on the Environmental Assessment and Management of Aquaculture Development. Copy of the report has been placed on record by Mr. Santosh Hegde, learned counsel for the State of Karnataka. India was one of the 16 countries participated in the workshop. Dr. K. Alagarswami, Director, Central Institute of Brackish Water Aquaculture, Madras presented a paper titled "the current status of aquaculture in India, the present phase of development and future growth potential" (hereinafter called Alagarswamin report). It has been published as an Annexure to the workshop report published by the FAO. Para 5.1.2 of Alagarswami report gives various types of technologies adopted by the aquaculture industry in India. It would be useful to reproduce the same hereunder: -

> "5.1.2. Types of technology - changes in technology with time
>
> *Traditional*: Practised in West Bengal, Kerala, Karnataka and Goa, also adopted in some areas of Orissa, Coastal low lying areas with tidal effect along estuaries, creeks and canals; impoundments of vast areas ranging from 2-200 ha in size. Characteristics: fully tidally-fed; salinity variations according to monsoon regime; seed resource of mixed species from the adjoining creeks and canals by auto stocking; dependent on natural food; water intake and draining managed through sluice gates depending on local tidal effect; no feeding; periodic harvesting during full and new moon periods; collection at sluice gates by traps and by bag net; seasonal fields alternating paddy (monsoon) crop with shrimp/fish crop (inter monsoon); fields called locally as bheries, pokkali fields and khazam lands.
>
> *Improved traditional*: System as above but with stock entry control; supplementary stocking with desired species of shrimp (see P. monodon or P. indicus); practised in ponds of smaller area 2-5 ha.
>
> *Extensive*: New pond systems; 1-2 ha ponds; tidally fed; no water exchange, stocking with seed; local feeds such as clams, snails and pond side, prepared feed

with fishmeal, sova, oilcake, cereal flour etc.; wet dough ball form; stocking density around 20,000/ha.

Modified Extensive: System as above, pond preparation with tilling, liming and fertilisation; some water exchange with pump sets; pellet feeds indigenous or imported; stocking density around 50,000/-ha.

Semi-intensive: New pond systems; ponds 0.25 to 1.0ha in size, elevated ground with supply and drainage canals; pond preparation methods carefully followed; regular and periodic water exchange as required; pond aerators (paddle wheel) at 8 per ha; generally imported feed with FCR better than 1:1:5 or high energy indigenous feeds; application of drugs and chemicals when need arises; regular monitoring and management stocking density 15-25/m2.

Intensive: Ponds 0.25-0.50 ha in size; management practices as above; 4 aerators in each pond; salinity manipulation as possible; central drainage system to remove accumulated sludge; imported feed; drugs and chemicals used as prophylatic measures; strict control and management; stocking density 20-35/m2.

Changes in technology: As already indicated. The initial concept and practice was to develop tide-fed systems, this slowly gave way to a pump-fed system. Presently the emphasis is on seawater based farming systems for P. Monodon with a water intake system extending far into the sea with submerged pipeline, pier system and gravity flow. From sandy clay soft, the present coastal farms are located in sandy soils also with seepage control provisions".

Alagarswami report further states as under: -

"The Ministry of Environment and Forests, Government of India, issued a Notification S.O. No. 119 (b) in 1991, under "The Environmental (Protection) Act, 1986" declaring coastal stretches as Coastal Regulation Zones (CRZ) and regulating activities in the CRZ. This Notification has implications for coastal aquaculture, particularly those activities within 500 m from the High Tide Line. No regulations to control the use of chemicals and drugs exist, Pollution Control Board general regulations on effluent discharges include hazardous substances, but they are not specific to aquaculture. In some regions, there is indiscriminate use of chemicals and pesticides, particularly in shrimp farms ..... Under the Notification of Union Ministry of Environment and Forests, each maritime State is expected to have its own coastal zone management plan, which would consider aquaculture zonation requirements along with shoreline development. The zone up to 500 metres from the waterline along the sea is restricted against any construction activity."

11. Alagarswamy report highlights various environmental and social problems created by the Coastal Aquaculture. The relevant part of the report is as under: -

"Physical factors

Shrimp farming along the coastal area of the whole country is developing at a rapid rate. Huge cyclone protection dykes and peripheral dykes are constructed by the shrimp farmers. In many bases as in Kandleru creek (Andhra Pradesh), the farm areas are the natural drainage areas for floods. Due to physical obstruction caused by the dykes, the natural drain is blocked and flood water accumulates in the inter land villages. Protests are being made by people in some of the village against such dykes. The ponds are constructed right on the bank of the creeks without leaving any area for draining of flood water.

Right of passage of coastal fishermen

The Shrimp farms do not provide access to the beach for traditional fishermen who have to reach the sea from their village. As farms are located and enter is restricted, the fishermen have to take a longer route to the sea for their operations. This is being objected to by traditional fishermen.

Drinking water problems

The corporate sector has purchased vast areas adjoining the villages which, in some cases, include drinking water public wells of the villages. The villagers cannot use these wells anymore as they are located in private land owned by the farmers. This is causing social problems.

Salinisation

It is reported that salinisation of land is spreading further landwards and the wells yield only saline water. In Tamil Nadu and Andhra Pradesh protests have been voiced against salinisation. Some of the socially conscious shrimp farm operators are providing drinking water to the affected villages by laying a pipeline from their own freshwater source wherever available. Apart from wells, the agricultural farms adjoining the shrimp farms are reported to be affected. However, there is increasing conversion of paddy fields as in the Bhimavaram area of Andhra Pradesh and even on the fringes of Chilka Lake into shrimp farms.

Mangrove areas

The status report on mangroves of India published by the Ministry of Environment and Forests (GOI, 1987) is shown in Table 5. In the earlier years, vast areas of mangrove were destroyed for agriculture, aquaculture and other uses. In the more recent years, the mangroves have been protected by law. However, the satellite imagery pictures show destruction of mangroves in Krishna and Guntur Districts of Andhra Pradesh for construction of shrimp farms. Gujarat State is planning major shrimp culture programmes in the Narmada region adjoining Gulf of Cambay. Protection of Mangroves should receive attention".

Alagarswami report further indicates that the demand for shrimp seed is growing with the expansion of shrimp culture and hatchery production is unable to meet it. Exploitation of natural seed resources is growing unabated, particularly in West

Bengal, Orissa and Andhra Pradesh. Large quantities of fry by catch are discarded by the fry collectors because their value is insignificant. The report states "elimination of fry and the fry by-catch is not only detrimental to the predators thriving on them, but it also creates an ecological imbalance".

12. Agitations by the environmentally conscious people of the coastal areas against polluting aquaculture technologies has been noticed by Alagarswamy report as under: -

People's awareness

People in general have become aware of the environmental issues related to aquaculture. A current case in point is the agitation against a large commercial farm coming up in Chilka Lake (Orissa). People have demanded an EIA of the project. People in Nellore District in Andhra Pradesh have raised environmental issues and called for adoption of environmentally-friendly technologies and rejection of "Imported" technologies from regions which have suffered environmental damage. Protests have been voiced by the local people in Tuticorin area in Tamil Nadu. Both print and visual media take up environmental issues with a great deal of zeal. This appears to augur well for regulating coastal shrimp farming with eco-friendliness".

13. The intensive farming technique and the pollutants generated by such farming have been noticed by Alagarswamy in the following words: -

"Intensive farming, stocking densities are on the increase, in one instance, P. indicus was stocked at 70 post larvae/m2, almost reaching the levels of Taiwan before the disease outbreak in 1988. This necessitates heavy inputs of high energy feeds, the use of drugs and chemicals and good water exchange. The organic load and accumulation of metabolites in the water drained into the sea should be very high as could be seen from the dark-brown colour and consistency of the drain water".

14. The Alagarswamy report further states that paddy fields are being converted to shrimp farms, as in some parts of Andhra Pradesh (e.g. Bhimavaram). Some paddy lands along the fringe of chilka lake have been lost in shrimp farming.

15. The report suggests future management strategies - quoted hereunder - for farms and Government in resolving any conflicts or environmental problems: -

"As shrimp farming is developing fast, the following strategies have been developed for avoiding problems which have arisen in other countries (or reducing their impact):

1. India needs to boost production of shrimp through aquaculture with environment and development as a unified motto.

2. Since the area available is vast, this can be achieved by application of environmental friendly technologies for optimal production rates against maximum production rates.

3. Sustainable development on shrimp aquaculture should be guided by the principles of social equity, nutritional security, environmental protection and economic development with a holistic approach to achieve long term benefits.

4. New definitions and parameters of extensive, semi-intensive and intensive culture systems as suited to India conditions and Government policies rather than copying models of other countries (particularly those which have rushed and suffered) and the development of guidelines thereof.

5. Diversification of species among shrimps and to integrate fish wherever possible to suit the different agro-climatic and aquatic zones of the country.

6. Careful development of Coastal Zone Management Plans under CRZ to meet the requirements of coastal aquaculture development plans with some flexibility (as required) for specific areas.

7. Identification of aquaculture zones or careful consideration and provision of buffer zones against possible impact on other land uses; also intermediate buffer zones within aquaculture zones.

8. Consideration of the living, social and vocational needs of people in villages/towns in aquaculture plans in order to avoid conflicts.

9. Development of sets of regulations on use/ban of drugs and chemicals, including antibiotics, in hatcheries and farms; on abstraction of ground water and salinisation problems.

10. Development of standards for effluent discharge as applicable to local conditions.

11. Development of viable technologies for secondary aquaculture to gainfully utilise nutrient enriched farm effluents and encourage farmers to adopt such technologies with the necessary support.

12. In view of the fact that coastal farms are located generally in remote areas and cannot be monitored by external agencies on a reasonably effective basis, farmers/group of farmers should equip themselves with facilities to monitor possible important parameters at periodic intervals and maintain such records for their own benefits and for production to inspecting agencies.

13. Brackish water Fish Farmer Development to be strengthened in all respects, including environmental management and disease diagnosis, prevention and control, through appropriate training and setting up district level laboratories for essential analytical and diagnostic work.

14. Manpower development at managerial and technical level.

15. Research extension farmer group meet for appropriate technologies and feedback.

16. Effective monitoring and enforcement of regulations.

use of nets and fishing in any specified water for a period not exceeding two years. Thus, legal provisions were made on fisheries matters in India nearly a century ago".

Alagarswami's report identifies salinisation of land, salinisation of drinking water wells, obstruction of natural drainage of flood water, passage of access to sea by fishermen and public, self-pollution of ponds, pollution of source water, destruction of mangroves, land subsidence and pressure on wild seed resources and consequences thereof as environmental issues in shrimp culture. Para 6.2 of the report lists the following preventive measures: -

"6.2 PREVENTION

(i) Aquaculture units causing harmful changes to the environment; and

(ii) Non-aquacultures from modifying the environment to the detriment of aquaculture production units.

1. Enforcement of legal provisions under the relevant Acts of the Government.

2. CRZ regulations to consider specific needs of aquaculture as an expanding production activity and the Coastal zone Management Plans of the States/Union Territories to carefully plan taking into consideration present situation and future needs.

3. Early development of regulations on permissible levels of most significant parameters of water quality keeping in view the limited intervention of aquaculture for promoting growth of stock in the medium.

4. Environment Impact Assessment (EIA) and Environmental Monitoring Plan (EMP) to be insisted upon for larger units and self-assessment/monitoring for smaller units, subject to verification at inspection.

5. Zonations and appropriate setting of farms; not to proliferate indiscriminately but to develop in a planned manner for sustaining production (Alagarswami, 1991).

6. More hatcheries to be encouraged and supported to meet seed demands to reduce pressure on wild seed resources.

7. Feed mills to maintain quality of feeds and to ensure water stability as required; self/external inspection mechanism to be introduced to maintain specific standards.

8. Mangrove forests not to be touched for aquaculture purposes".

The FAO report - based on Alagarswami report states the impact of aquaculture on the environment, in India, as under: -

"The impacts of aquaculture on the environment are as follows:

By shrimp culture: Loss of agricultural land and mangroves, obstruction of natural drains, salinisation, destruction of natural seed resources, use of drug and chemicals and extraction of groundwater. Social conflicts have arisen".

16. Alagarswami's report quoted by as extensively is an authentic document relating to the functioning of shrimp culture industry in India. It has rightly been suggested in the report that sustainable development should be the guiding principle for the shrimp aquaculture. The industry must develop under the unified motto of Environment and Development. Environmentally-friendly technologies are to be adopted with a view to achieve optimal production. The report calls for a ban on the use of drugs, chemicals and antibiotics in the shrimp culture farms. The report clearly indicates that except the traditional and improved traditional, the other methods of shrimp aquaculture are polluting and as such may have an adverse impact on the environment.

17. Mr. M. C. Mehta, learned counsel for the petitioner, has taken us through the NEERI reports and other voluminous material on the record. He has vehemently contended that the modern - other than traditional techniques of shrimp farming are highly polluting and are detrimental to the coastal environment and marine ecology. According to him only the traditional and improved traditional systems of shrimp farming which are environmentally friendly should be permitted. Mr. Mehta has taken us through the Notification dated February 19, 1991 issued by the Government of India under S. 8 of the Environment (Protection) Act, 1986 (the Act) (CRZ Notification) and has vehemently contended that setting up of shrimp farms on the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters up to 500 meters from the High Tide Line (HTL) and the line between the Low Tide Line (LTL) and the HTL is totally prohibited under Para 20 of the said notification. The relevant part of the notification is as under:

"2. Prohibited Activities:

The following activities are declared as prohibited within the Coastal Regulations Zone, namely:

(i) Setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities.

(ii) Manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests No. S. 0.59.1 (E) dated 28th July, 1989, S.O. 966 (E) dated 27th November, 1989 and GSR 1037 (E) dated 5th December, 1989.

(iii) Setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas).

(iv) …

(v) Discharge of untreated wastes and effluent from industries, cities settlement. Schemes shall be implemented by the concerned authorities

phasing out the existing practices, if and within a reasonable time period not exceeding three years from the date of this notification.

(vi) …

(vii) …

(viii) Land reclamation, bounding or disturbing natural course or sea water with similar obstructions except those required for control of coastal erosion and maintenance clearing of waterways, channels and for prevention of sandbars and all except for tidal regulators. Storm water drains and structures for prevention of salinity increase and for sweet water recharge.

(ix) …

(x) Harvesting or withdrawal of ground water and construction of mechanisms therefore with 200 m of HTL; in the 200m to 500m zone it shall be permitted only when done manually through ordinary wells for draining, horticulture, agriculture and fisheries.

18. According to Mr. Mehta the shrimp culture-industry is neither "directly related to water iron" nor "directly needing foreshore facility" and as such is a prohibited activity under Para 2 (f) of the CRZ Notification. Mr. Kapil Sibal on the other hand has argued that a shrimp farm is an industry which is directly related to water front and cannot exist without foreshore facilities. Relying upon Oxford English Dictionary Mr. Sibal contended that "water front" means land abutting on the sea, that part of a town which fronts on a body of water. According to him "foreshore" in terms of the said dictionary means the part of the shore that lies between the High Tide and the Low Tide. According to Webster Comprehensive Dictionary, International Edition the expression 'foreshore' means "that part of a shore uncovered at low tide".

19. It is, thus, clear that the part of the shore which remains covered with water at the High Tide and gets uncovered and become visible at the Low Tide is called "foreshore". It is not possible to set up a shrimp culture farm in the said area because it would completely submerge in water at the High Tide. It is, therefore, obvious that foreshore facilities are neither directly nor indirectly needed in the setting up of a shrimp farm. So far as "water front" is concerned it is no doubt correct that a shrimp farm may have some relation to the water front in the sense that the farm is dependent on brackish water which can be drawn from the sea. But on a close scrutiny, we are of the view that shrimp culture farming has no relation or connection with the 'water front' though it has relation with brackish water which is available from various water-bodies including sea. What is required is the “brackish water” and not the “water front”. The material on record shows that the shrimp ponds constructed by the farms draw water from the sea by pipes, jetties etc. It is not the 'water front' which is needed by the industry, what is required is the brackish water which can be drawn from any source including sea and carried to any distance by pipes etc. The purpose of CRZ Notification is to protect the ecologically fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of

ponds and other infrastructure thereon is per se hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. We have, therefore, no hesitation in holding that the shrimp culture industry is neither "directly related to water front" nor "directly needing foreshore facilities". The setting up of shrimp culture farms within the prohibited areas under the CRZ Notification cannot be permitted.

20. Para 2 (viii) of the CRZ Notification quoted above, prohibits the bounding or disturbing the natural course of sea water with similar obstructions. A bund is an embankment or dyke. Alagarswami report in para 4.3.2 (quoted above) has specifically mentioned that huge cyclone protection dykes and peripheral dykes are constructed by the shrimp farmers. The report further states that due to physical obstruction caused by the dykes the natural drain is blocked and flood water accumulates in the hinterland villages. The report notices that the shrimp ponds are constructed right on the bank of the creeks without leaving any area to draining of flood waters. A shrimp farm on the coastal area by itself operates as a dyke or a bund as it leaves no area for draining of the flood waters. The construction of the shrimp farms, therefore, violates C1. (viii) of Para 2 of the CRZ Notification. In view of the findings by the Alagraswami report it may be useful to hold an inquiry/investigation to find out the extent of loss occurred, if any, to the villages during the recent cyclone in the State of Andhra Pradesh because of the dykes constructed by the shrimp farmers.

21. Annexure-1 to the CRZ Notification contains regulations regarding Coastal Area Classification and Development. The coastal stretches within 500 m or HTL of the landward side are classified into four categories, namely, CRZ-I, CRZ-II, CRZ-III and CRZ-IV. Para 6 (2) of the CRZ Notification lays down the norms for the development or construction activities in different categories of CRZ areas. In CRZ-III zone, agriculture, horticulture, gardens, pastures, parks, playfields, forestry, and salt manufacture from sea level may be permitted up to 200 m from the high tide line. The aquaculture or shrimp farming has not been included as a permissible use and as such is prohibited even in this zone. A relevant point arises at this stage. Salt manufacturing process like the shrimp culture industry depends on sea water. Salt manufacturers can also raise the argument that since they are wholly dependent on sea water theirs is an industry "directly related to water front or "directly needing foreshore facilities." The argument stands negative by inclusion of the salt manufacturing industry in CRZ-III zone under para 6(2) of the CRZ Notification otherwise it was not necessary to include the industry therein because it could be set up anywhere in the coastal regulation zone in terms of para 2(1) of the CRZ Notification. It is thus obvious that an industry dependent on sea water cannot by itself be an industry "directly related to water front" or "directly needing foreshore facilities". The shrimp culture industry, therefore, cannot be permitted to be set up anywhere in the coastal regulation zone under the CRZ Notification.

22. We may examine the issue from another angle. Sea coast and beaches are a gift of the nature to the mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity which has the effect of degrading the environment cannot be permitted. Apart from that the right of the fishermen and farmers living in the coastal areas to eke their living by way of fishing and farming cannot be denied to them.

Alagarswami report states that "the shrimp farms do not provide access to the beach for traditional fishermen who have to reach the sea from their villages. As farms are located and entry is restricted the fishermen have to take a longer route to the sea for their operation. This is being objected by traditional fishermen".

23. The Alagarswami report further highlights drinking water problem, salinisation and destruction of mangrove by the shrimp culture industry. The relevant paragraphs have already been quoted above. The increase of stocking densities, heavy inputs of high energy feeds, use of drugs and chemical result in the discharge of highly polluted effluent into the sea, creeks etc. and on the sea coast by the shrimp farms. It is, therefore, not possible to agree with Mr. Sibal that commercial shrimp farming has no adverse effect on environment and coastal ecology.

We may at this stage refer to the two investigation reports dated April 23, 1995 and July 10, 1995 by NEERI regarding the ecological fragile coastal areas of India.

24. The report dated April 23, 1995 states that a 18 member team of scientists, lead by Dr. A. S. Bali and Dr. S. K. Kaul inspected the shrimp farms situated on the ecological fragile coastal areas in the States of Andhra Pradesh and Tamil Nadu between April 10 and April 19, 1995. It is further stated that the coastal areas in the Union Territory of Pondicherry were also inspected by the team. Regarding the CRZ Notification, the report states as under: -

> "The MEF's notification dated February 19, 1995 stipulates that the aquaculture farms on the coastal areas should not be constructed within 500 m from the High Tide Line (HTL) of the seas. The hatcheries, however, may be constructed between 250 and 500 m from HTL of the sea.
>
> The inspection team observed during field investigations that the MEF's norms for location of aquaculture and hatcheries have been violated in the States of Andhra Pradesh, Tamil Nadu, and the Union Territory of Pondicherry ..... There is an urgent need to ensure scrupulous implementation of the provisions made in the MEF's notification dated February 19, 1991 in the States and Union Territory inspected by the team. In addition, the damage caused to the land and water ecosystems by coastal aquaculture activity, as detailed in the report, must be restored to its original ecological state. The cost for eco-restoration of the coastal fragile area must be borne by individual entrepreneurs of the coastal aquaculture farms in keeping with the polluter-pays principle ....Further, no activity of commercial coastal aquaculture should be undertaken even beyond 500 m HTL unless a comprehensive and scientific Environmental Impact Assessment (EIA) study has been conducted by the entrepreneur, and the Environmental Management Plan approved by the respective State Department of Environment Authority, and also by the Ministry of Environment and Forests. Appropriate terms of reference for EIA have been incorporated in the report".

25. Regarding the socio-economic assessment of aquaculture in the area, the report gives the following finding: -

"A socio-economic assessment of aquaculture in the ecologically fragile coastal areas in the States of Andhra Pradesh and Tamil Nadu has been conducted by the NEERI team. This assessment, detailed in the report, indicates that the cost of ecological and social damage far exceeds the benefits that accrue our coastal aquaculture activities".

The adverse impacts of aquaculture farming on the environment and the ecologically fragile areas in the States on Andhra Pradesh, Tamil Nadu and Union Territory of Pondicherry have been stated in the report as under: -

"3.0 Observations on the Impacts of Aquaculture Farming on Ecologically Fragile Areas in States on Andhra Pradesh, Tamil Nadu and Union Territory of Pondicherry.

Coastal aquaculture units are situated within 500 m of High Tide Line of the sea. This is not in consonance with the MEF's notification dated February 19, 1991. It is common practice to convert agricultural land, and land under salt production, into coastal aquaculture units which infringes the fundamental rights to life and livelihood.

Conversion of agricultural farms and salt making lands into commercial aquaculture farms is rampant in the fragile coastal areas of Andhra Pradesh, Tamil Nadu and Union Territory of Pondicherry.

Brackish aquaculture units have been installed in deltaic regions which is an ecologically unsound practice.

Natural saline canals which travel from sea to the mainland are being used for brackish aquaculture farming. The flow of the natural saline canals is being obstructed due to prawn farming activity which has resulted in the spread of brackish water over agricultural farms resulting in loss of agricultural lands, and potable water.

Villages situated along the sea coast, deltaic regions, and natural saline canals are under threat due to diversion of land to aquaculture farms.

Traditional fishermen have lost their landing grounds for fish catch. Coastal aquaculture has resulted in loss of mangrove eco-systems which provide protection against cyclones and other natural hazards, and which provide natural habitats for spawning of marine (sic). Indiscriminate destruction of mangrove areas in and around the creeks, estuaries, and sea has resulted in loss of natural breeding grounds for shrimps.

Natural Casuarinas plantations have also been destroyed. This may result in increasing damage from cyclone, and intrusion of saline water into mainland.

Costal aquaculture farms have not been scientifically designed and located resulting in excessive ecological damages.

No proper peripheral drainage has been provided around the aquaculture farms.

The saline water intake and effluent discharge points from aquaculture farms are located in close vicinity, resulting in contamination of feed water to the aquaculture units threatening their productivity.

Three types of saline water supply systems are in vogue for the aquaculture farming, viz.

- direct pumping from the sea, creek, and estuary

- direct pumping from deep sea with jetties

- using high tides of sea for carrying saline water through excavated canals.

These activities for feed water supply to the aquaculture ponds have resulted in:

- loss of fish catch (except in the case of feed water supply through sea water canal system)

- loss due to damage of fishing nets

- degradation of fragile coastal land.

Large commercial aquaculture farms have installed fencing in and around the farms resulting in blockage of free access for the fishermen to the sea shore.

The waste water discharge from the aquaculture farms released into the creeks is not properly flushed out of the creek during low tides thereby leads in the accumulation of pollutants in the creek, affecting the quality of intake water to aquaculture farm with concomitant loss in productivity, and damage to creek ecosystem.

Disappearance of the native fish species due to increase in salinity of the creek water has been observed by the team, and reported by the fishermen. Increase in salinity has also reduced the ingress of shrimp seedlings in the creek.

Indiscriminate catch of natural shrimp seedlings from the coastal waters, creeks, and estuaries has resulted in reduction of their availability, which in turn has forced the commercial aquaculture farmers to import the seeds.

Unscientific management practices adopted by the commercial aquaculture farmers, and improper design of aquaculture farms including inadequate drainage systems have resulted in skin, eye, and water born diseases in the contiguous population.

Commercial aquaculture farm owners have not contributed to any social infrastructure facilities for the villagers.

Employment avenues of the contiguous population have considerably reduced due to the commercial aquaculture farming. The unemployed villagers are seeking employment in nearby towns and cities.

Owners of the commercial aquaculture farms are using various means to encroach upon the Government lands and also forcing the agricultural land owners/salt

making villagers to sell their lands. In addition, the fishermen are also being forced to migrate to other coastal areas".

Regarding the socio-economic status of the ecologically fragile coastal areas in the States of Andhra Pradesh and Tamil Nadu, the report states as under: - "During the inspection of the aquaculture units located on the Ecologically Fragile Coastal Areas of AP and TN, the inspection team collected data and information and discussed the issues related to socio-economic status of the affected people with the farmers, fishermen, NGOs, and Government officials.

The basic socio-economic issues are presented in Table 4.1 which also lists the parametric values in the assessment of the damage caused by the aquaculture units located in the Ecologically Fragile Coastal Areas. Tables 4.2 and 4.3 present the socio-economic assessment of aquaculture in the Ecologically Fragile Coastal Area of the States of AP and TN.

Tables 4.2 and 4.3 bring forth that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of coastal aquaculture produce".

26. The NEERI has, thus, given a positive finding that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of coastal aquaculture produce. The finding is based on the assessment keeping in view fourteen parameters listed in Tables 4.2 & 4.3 regarding the States of Andhra Pradesh and Tamil Nadu respectively. The parameters taken into consideration are land, equivalent wages for the farmers to be earned, equivalent amount of agricultural produce (rice, husk), loss due to cutting of Casuarinas in terms of fuel, loss in terms of grazing grounds, loss involving assesses, loss caused by cyclones due to cutting of Casuarinas forests, loss due to desertification of land, loss in terms of potable water, total loss due to mangrove destruction, loss in fishing income, loss due to damage of fishing nets and man-days lost due to non-approachability to sea coast. These losses are computed in money and are then compared with the total earnings from the sale of coastal aquaculture produce. On the basis of the assessment of socio-economic status of aquaculture in a systematic manner the NEERI has reached the conclusion that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of coastal aquaculture produce.

Paras 6.1, 6.2 and 6.3 of the report clearly show the environmental degradation caused by the shrimp culture farming by its adverse impact on surface water, contamination of soil and ground water and destruction of mangrove vegetation. The said paragraphs are reproduced hereunder: -

"6.1 Impact on Surface Waters

Mangrove vegetation is important in protecting marine and terrestrial ecosystem. This vegetation is also important as it removes the pollutants like carbon, nitrogen, phosphate and other nutrients, as also certain toxic compounds. The importance of mangrove plants especially Vettivera Zaizonoids is known in reducing the impact of

pollution due to discharge of aquaculture pond effluents, and the Cauvery Delta Farmers are now propagating the cultivation of these species in estuaries. Mangrove vegetation also acts as a barrier of floods, and provides spawning grounds and nesting places for fishes; it also supports avian fauna (birds) thus maintaining the natural ecosystem.

The observations on the water quality in the aquaculture ponds show that the pond water harbours a dense algal bloom compared to the water in estuaries, creeks or sea indicating eutrophic nature of pond effluent. When water in large volumes, from the ponds is discharged during flushing of ponds, in creek or estuary, the pollutants remain stagnated in the estuary, or near sea coast due to the typical tidal activity in creeks. As a result, the raw water source to the ponds gets contaminated in course of time. The waste water discharged from the ponds warrant proper treatment before discharge. Uncontrolled discharge of waste water triggers a series of deleterious impacts, e.g.

-With the increase in eutrophication levels, there is shifting in dominance of phytoplankton flora in pond effluent from diatoms to blue-green algae. Decomposition of dead blue-green algae may lead to the generation of toxic substances, e.g. ammonia, hydrogen sulphide etc. Further, some of the blue-greens also excrete bio toxins in large quantities which are toxic to aquatic animals, i.e. prawns in ponds or fishes in estuaries or coastal waters. Large amount of blue-green algae was recorded by the inspection team in Sirkali area (e.g. S&S Industries & enterprises Ltd; High Tide Sea farms) and Killai area (Aqua Gold Shrimp Farm; MRV Aqua Farm; Mohi Aqua Farm). The presence of Oscillatory, Microcystis and some other filamentous blue-green algae is undesirable in the pond effluent as they chock the gills of fishes.

-The suspended solids released from the ponds are laden with unconsumed food and other organic contaminants. Accumulation of these organics in the intake water creates problems in the intake water quality when the intake and discharge points are in close proximity.

6.2 Contamination of soil and ground water

The shrimp farms are constructed well above the ground levels. Seepage of pond effluent in the surrounding fields was noted by the inspection team in a number of farms. Seepage of pond effluent deteriorates the soil quality in the adjoining aqua cultural field. It has also contaminated potable water in surrounding villages.

Deterioration of ground water quality in villages that over one km away from the pond sites was not noticed. This observation is based on analysis of bore well water at three sites by an inspection team. This observation justified the locational constraints on aquaculture farms in coastal areas.

6.3. Destruction of Mangrove vegetation

The inspection team noticed destruction of mangrove vegetation at most of the prawn farming sites for the development of shrimp farms.

Significant destruction of mangrove forest was observed near the Aqua Gold shrimp farm at village Vellar in Killai taluk of South Arcot district. Similarly on Pichavarum estuary in village Pichavarum in Killai taluk of South Arcot district of TN, the shrimp farms are constructed by clearing mangrove vegetation. Mangrove vegetation in Kuchipalam village is also facing threat due to the expansion of prawn farming activity.

The final conclusions and recommendations are in para 8 of the NEERI report which is as under: -

"8.0 Conclusions and Recommendations on the attenuation of the Impact of Aquaculture Farming on Ecologically Fragile Areas in States of AP. TN, and Union Territory of Pondicherry.

Socio-economic assessment of aquaculture in the ecologically fragile areas in the States of AP and TN reveals that the cost of ecological and social damage far exceed the benefits that accrue out of the coastal aquaculture activities.

The MEF's norms for location for aquaculture and hatcheries have been violated in the States of AP, TN, and Union Territory of Pondicherry.

The current practice of installation of coastal aquaculture farms within 500 m HTL violates the fundamental rights and livelihood of people in the States AP and TN, and the Union of Pondicherry.

The State of AP has adopted twenty point guidelines as ad hoc measures for management of aquaculture in the district of Nellore. These guidelines have not been made mandatory in the State of AP as a whole. Also, these guidelines do not address all socio-economic, and ecological aspects of coastal habitats.

The State Government of TN has enacted a Bill to provide for the regulation of coastal aquaculture on April 10, 1995. This Bill is not in consonance with the MEF's notification dated 19, 1991 (sic) it allows the construction of aquaculture units within 500 m of HTL of the sea.

The cost of eco-restoration of the coastal fragile area must be borne by the individual entrepreneur of the commercial aquaculture farms in keeping with the polluter-pays principle.

No commercial coastal aquaculture activity should be undertaken even beyond 500 m HTL unless a comprehensive and scientific Environmental Impact Assessment (EIA) study has been conducted by the entrepreneur, and the Environment Management Plan (EMP) approved by the respective State Department of Environment, Pollution Control Board, Shore Development Authority, and also by the Ministry of Environment and Forests.

Agricultural lands are being converted into commercial aquaculture farms, which cause unemployment to the landless labourers and also in loss of cultivable land.

Commercial aquaculture farms are being installed near the cultivated lands and the salt water from the farms damages the productivity of the adjoining lands.

Ground water also gets contaminated due to seepage of impounded water from the aquaculture ponds.

Desertification of cultivable land is on the increase due to salinity intrusion.

Due to commercial aquaculture farms, there is a loss of

- mangrove ecosystems

- casuarinas plantations

- grazing grounds for cattle

- potable water to contiguous population

- fish catch

- fishing nets

- agricultural produce

- manpower loss due to non-approachability of fishermen to sea shore directly.

There is a perceptible increase in the diseases of skin and eye, and water borne diseases in the contagious population.

The designs of the aquaculture farms are inadequate. No. provision has been made for waste water treatment facility enabling recycling and re-use of waste water.

Prohibition on conversion of agricultural lands and salt farms into commercial aquaculture farms must be enforced with immediate effect.

No ground water withdrawal must be allowed for aquaculture purpose.

Free access through aquaculture unit to the sea coast must be provided to the traditional fishermen.

No aquaculture farm based on brackish water should be installed on inland brackish water bodies.

Wild seed collection from creek and sea must be prohibited. Seed must be procured from hatcheries. If seed collection is noticed it must immediately be seized and dumped back into the creek.

An eco-restoration fund must be created by collecting the stipulated fees from the owners of aquaculture farms. In addition, one per cent of total export earning per annum must also be collected from commercial aquaculture farm owners and used for rejuvenation of coastal ecosystem with special reference to planting of mangroves and common eco-sensitive zones. The waste water treatment system with

reuse and recycle must be installed by all units. The smaller units can form a co-operative and treat their water through common effluent treatment plant. The aquaculture units must be closed down if the waste water treatment system is not functioning to its design efficiency".

27. The second NEERI report dated July 10, 1995 states that a 19 member team of scientists led by Dr. A. S. Ball and Dr. S. N. Kaul inspected the shrimp farms situated on the ecologically fragile coastal areas in the States of West Bengal, Orissa, Kerala, Karnataka, Goa, Maharashtra and Gujarat during May 20 and June 10, 1995. The summary of salient comments in the report regarding aqua-farming in the State of West Bengal is as under: -

* organic pollution in creeks and estuaries with respect to BOD

* microbiological deterioration of water quality

* accumulation of organic carbon and heavy metals in the sediments of shrimp farms

* Shannon Weaver Index values less than 3 indicate organic contamination.

* Bore well water characteristics near M/s. Index Port Ltd. Sarberia, Basanti, North 24-Parganas, show intrusion of salinity in drinking water source.

* conversion of land, and traditional fish farm at M/s. Index Port Ltd., North 24 Parganas

* conversion of land, traditional fish farm and mangrove plantation at M/s. Sundarban Aquatics, South 24 Parganas

* violation of CRZ regulations regarding high tide line (HTL) has taken place at M/s. Sundarban Aquatics, South 24 Parganas. In addition, violations of CRZ for setting up the aqua farm on creeks have taken place at the following places:

- M/s. Index Port Ltd., North 24 Parganas

- M/s. Sundarban Aquatics, South 24 Parganas

- All shrimp farms developed by BWFD at Ramnagar, Midnapore".

The comments regarding the acqua farming in the State of Orissa by the NEERI team are as under: -

"* Organic pollution in creeks and estuaries with respect to BOD

* deterioration of microbiological water quality

* accumulation of organic carbon and heavy metals in the sediments of shrimp farms

* Shannon Weaver index values less than 3 indicate organic contamination

* characteristics of bore well water samples near M/s. Sundeep Aquatics, District Bhadrak and M/s. Suryo Udyog Pvt. Ltd., District Balasore, show intrusion of salinity into drinking water

* conversion of cultivable land for the establishment of aqua farms/hatcheries in all districts

* violation of CRZ regulations by all aqua farms on creeks in the districts of Balasore and Bhadrak. Hatcheries have been constructed/under construction within 200 m of high tide line (HTL) in contravention of CRZ regulations".

The status of aqua-farming in the State of Kerala as indicated in the NEERI report is as under:

"The comments on aqua farming in the State of Kerala are presented in the footnotes of Tables 2.2 1.2 through 2.2 1.7 Summary of the salient comments is given hereunder:

* organic pollution in river, creeks and estuaries

* deterioration of microbiological water quality

* accumulation of organic carbon and heavy metals in the sediments of shrimp farms

* Shanon Weaver index values less than 3 indicate organic contamination

* well water characteristics in the vicinity of M/s. Agalapuzha aqua farm, Kozhikode show the intrusion of salinity in drinking water source

* conversion of land, and traditional fish farm by M/s. Vasu Aqua farms at Kozhikode

* conversion of land, traditional fish farm, and mangrove plantation by M/s. West Coast Aqua farms, Irinavu, Kannur

* violation of CRZ regulations regarding the locations of aqua farms on creeks has taken place at the following sites:

- M/s. Consolidated Aqua farm, Poya, Trissur

- M/s. Jaladhi Aqua farm, Cherchi

- M/s. Keetodiyal Aquarium, Arookutty, Alleppey

- M/s. Mejovi Fisheries, Irinavu, Kannur".

The report further indicates the status of aquaculture in the State of Karnataka as under: -

"Organic pollution in river, creeks, and estuaries

Shanon Weaver index values less than 3 indicate organic contamination

well water characteristics in vicinity of M/s. Raja Ram Bhat Aqua farm, Hanmav, Kumta show the intrusion of salinity in drinking water source

conversion of agricultural land into shrimp farms was observed at

- M/s. Popular Aqua farm, Tallur, Kundapur

- M/s. Raja Ran Bhat Aqua farm, Karwar destruction of mangrove vegetation by M/s. Popular Aqua farm, Tallur, Kundapur was observed by the inspection team

violation of CRZ regulations by aqua farms situated on the creek of Razadi river at Kundapur, Hanmav creek at Kumta, and Hgnashree creeks were noted by the inspection team".

The comments of NEERI report regarding aqua farms in the State of Goa are as under: -

"* organic pollution in river, estuary and discharges from ponds

* Shanon Weaver index values less than 3 indicate organic contamination

* well water characteristics in vicinity of M/s.Govt. Prawn Farm, Choraho indicate salinity intrusion

* conversion of agricultural land into shrimp farm was observed by the inspection team at M/s. Sky Pak Aqua farm Ltd., Paliyam, Goa

* violation of CRZ regulations by all the aqua farms on the creeks, viz. Masem creek at Kankun, and Chahora at Pernem were observed by the inspection team."

Summary of the salient comments on aquaculture in the State of Maharashtra is as under:-

"* organic pollution in river, estuary and discharges from ponds

* microbiological deterioration of water quality

* accumulation of organic carbon and heavy metals in the sediments of shrimp farms

Shanon Weaver index values less than 3 indicate organic contamination

* conversion of agricultural land into shrimp farms

* violation of CRZ regulations regarding location of shrimp farm on creeks, viz. Dharamtar, Satpati and Dhanu."

The comments regarding the State of Gujarat are as under: -

"* organic pollution in river, estuary and discharges from ponds

* destruction of mangrove and shrubs in the marine zone by M/s. GFCCA, Onjal and M/s. Sea Crest Pvt. Ltd., Mendhar

* violation of CRZ regulations for setting up the shrimp farms on the creeks, viz. Kanai, Ambika, and purna."

Para 3 of the NEERI report dated July 10, 1995 gives in detail the impact of aquaculture farming on ecologically fragile coastal areas of India: -

"3.0 Observation on the Impacts of Aquaculture Farming on Ecologically Fragile Coastal Areas of India

3.1 East Coast

* The Shrimp farms at Ramnagar, Midnapur district are located right on the creek, and therefore, are not in consonance with CRZ regulations

* No waste water/sediment treatment facilities exist at any of the aquaculture farms

* No direct withdrawal of water from creek/estuary

* No conversion of land has taken place except in cases of M/s. Index Port Ltd., North 24 Parganas and M/s. Sundarban Aquatic Farms Ltd., South 24 Parganas

* wild shrimp seedling collection by villagers including children is a common practice

* M/s. Index Port ltd., North 24 Parganas has created the following problems:

- design of aquaculture farm is not proper, and no waste water/sediment treatment facility exists in this shrimp farm

- intensive mode of operation creates waste water problems. Presently, there is no treatment facility existing for reuse and recycle of treated waste water

- deposition of clay in the intake water reservoir, and no proper mechanism exists for its disposal

- seepage from the bunds create additional problems around the farm

- inspection team observed that ground water in the vicinity of this aquaculture farm has become saline

- conversion of agricultural land and traditional fishing farm

- barbed wire fencing along the periphery of the farm has resulted in restriction to free access for the farmers, fishermen and cattle to the creek

- M/s. Sundarban Aquatic Farms Ltd., South 24 Parganas has created the following problems:

- conversion of agricultural land, traditional fish farming, and mangrove plantation

- the aqua farm is located below ground level. Therefore, it is difficult to assess the seepages from this farm unless perimeters are installed around the aqua farm

- a well designed sedimentation tank is being used as a wastewater treatment system. However, it is not adequate. Necessary arrangement has to be made for recycle and reuse of wastewater

- no provision exists for treatment of sediments

- the location of the aqua farm is not as per MEF notification dated February 19, 1991, keeping in view high tide line, and minimum distance from the creek

The important areas of environmental concern regarding shrimp farming in the State of Orissa are

World Bank Aided Projects Narendrapur, Dhadrak District

World Bank aided project comes within the national park area. Therefore, it is desirable that this project proposal must be dropped. It was also informed to the inspection team that two private shrimp farms are in operation at present near the proposed World Bank

Aided Project which must be crossed immediately, in view of proximity of the national park.

- Beidipur, Bhadrak District

There are plans to construct large shrimp farms. It is necessary to mention that this area is profusely covered with wild sea weeds, which has direct relationship with the ecology of the marine biota. Keeping this aspect in view, a detailed EIA is required before finalizing the development of shrimp farms in the area which must include private farms in the region.

In addition, there is a salt dyke which prevents the flow of sea water into the agricultural lands. It is worth mentioning that more than 50 shrimp farms, 1 ha, each have come up in this area. This leads to conversion of fertile agricultural lands into brackish water based shrimp farming resulting salinity, intrusion and desertification of land.

- Jagatjore-banapada, Kendrapara District Construction work of shrimp farm is in progress. Mechanised systems for excavation, and construction are being used. In addition, inhabitants are prosecuted. There is a signpost "Trespassers will be prosecuted". It was informed to the inspection team by the nearby villagers that this place was used for agriculture. Farmers, fishermen, and cattle had free access to the nearby creeks. Now it has been limited to a large extent. In addition, the inspection team was informed about indiscriminate cutting of mangrove bushes around the area. This project must be reviewed critically keeping Bhitar Kanika Wild Life Sanctuary in view.

Local entrepreneurs have started small shrimp farms of about 1 ha each. This will cause water logging problems in the area. Finally, the high tide line (HTL) just touches the saline dyke. Therefore, World Bank project proposal and other shrimp farms fall within 500, or HTL, and do not conform to the MEF notification dated February 19, 1991.

Chilka Lagoon

The silt carried by two main rivers, viz. Daya and Bharagabi gets deposited in the lagoon. There is little exchange of water from the sea because the mouth of the lagoon (35 km long) has been blocked by three factors, viz.

- silt

- improper mixing, and

- large clusters of shrimp farms hinder the passage of water into/out of the lagoon

The bird sanctuary at Nalaban has also been affected by siltation and shrimp farming activities. 35 km of the canal mouth of the lagoon needs immediate attention, because the exchange of sea water into and from the lagoon is vital from ecological considerations. In addition, deposited silt has to be removed. Shrimp farms must be closed down immediately to restore the Chilka lagoon, to its original ecological condition by application of scientific management practices.

Subarnarekha Mouth

A large number of shrimp farms have come up on both sides of the lower reaches of the Subarnarekha river to utilise the tidal brackish water as observed by the inspection team. It was reported to the inspection team by local people that this has resulted in water logging in upper reaches of Subarnarekha river.

* The inspection team observed that the shrimp farming is at least three times more than what has been presented by the State Govt. of Orissa.

* All the shrimp farms do not observe the MEF notification dated February 19, 1991. The creek/estuarine water based shrimp farms are also not observing the CRZ guidelines of MEF.

* Agricultural land is being converted to shrimp farming because of Land Reform Act of Govt. of Orissa.

* Artificial creeks are being constructed to allow high tides of creek/estuarine water into the large reservoir. In addition, this factor must result in flooding of low lying areas.

* Reservoirs act as a settling cum concentration basin. Therefore, it is necessary sometimes for the shrimp farmers to dilute this water by withdrawing groundwater resulting in depletion of groundwater resources in the nearby villages. In addition, groundwater has become saline. This is confirmed by the situation in Adhuan village in Bhadrak district.

* The shrimp farming has resulted in several social problems viz.

- denial of free access to fishermen

- denial of job opportunities

- conversion of agricultural land to shrimp farming

- social displacement

- Salination of groundwater

- reduction in grazing ground of cattle, and free access to creek/estuarine water

* Wild shrimp seedling collection is still in practice. This will have detrimental effect on the ecology of the sea, creek, and estuarine water bodies.

* Direct pumping from the creek/estuarine water system is being practiced. This results in reduction of fish catch and must be stopped immediately.

* No shrimp farm had any type of wastewater and sediment treatment systems including hatcheries.

* All hatcheries are located within 200 m of the HTL in contravene of the MES's notification dated February 19, 1991. It is necessary to stop the commissioning of all new that hatcheries which are not being constructed as per CRZ regulations.

* Intake points and wastewater discharge channels of the prawn farms are nearby. This is not a scientific water management of shrimp farms.

* It has been observed by the inspection team that some shrimp farms have barbed wires along the periphery of project site, e.g.

- M/s. Deep Sun Culture Pvt. Ltd.

- M/s. Surya Udyog Pvt. Ltd.

- M/s. Manas Prawn Farm

Therefore, there is no free access to creek and estuarine water for the fishermen and cattle.

3.2 West Cost

* The shrimp farming activity in the west coast is mostly confined to the traditional extensive type of farming. Limited number of commercial shrimp farms having areas more than 5 ha, working on the semi-intensive type have been installed in the coastal areas since last 3 years.

* Though in limited numbers prawn farms working on the semi-intensive type specifically in the States of Karnataka, Maharashtra, and Gujarat are situated within 500 m of high tide line of the sea, which is not in consonance with MEF's notification dated February 19, 1991.

* Incidence of conversion of agricultural land into coastal aquaculture units, which infringes the fundamental right to life and livelihood, could be noticed in States of Karnataka (Kumta taluk), Maharashtra (Ratnagiri district, and Palghar taluk) and in Gujarat (Valsad district).

* In States situated on the west coast of India brackish water aquaculture units have been mainly installed along the estuaries and river banks, where impounded backwater is being used for shrimp farming. Such practices of extensive type of farming may not have significant adverse impact on environment due to the fact that limited quantities of brackish water are required for recharging these ponds, and the waste-water generation is negligible. However, this practice of utilisation of back waters will prove to be unsound if carried out for large scale farms using semi-intensive type of farming.

* Villages situated along the sea coast, and backwater zones, specifically at Gunda, Kumta and Karwar (Karnataka), Palghar and Dahanu (Maharashtra), and Valsad (Gujarat) are under threat due to conversion of land into aquaculture farms.

* In the State of Karnataka, the inspecting team observed that M/s. Murudeshwar Food and Export Ltd prawn aqua farm units are located within 100 of HTL.

* The Intake and discharge points of M/s. Samudra Aqua farms and M/s. Skyline Biotechnologies Pvt. Ltd., Kagil, Kumta are very close to each other with may create problems of contamination in the ponds. The prawns grown in these farms were reported to be affected by viral infection. Disposal of sediments from the ponds was also observed to be carried out on the side of the river.

* It was also observed by the inspecting team in the State of Karnataka that aqua farm of M/s. Rajaram Bhat Pvt. Ltd. Hornavas in Kumta taluk has been installed on the periphery of the village. The bunds constructed for making the ponds have obstructed the free flow

of storm water, and domestic wastewater from the village to sea and this has created health hazards for the villagers. Intrusion of saline water in the soil was also observed, and reports on damage to coconut plantations in nearby areas were also received. Contamination of drinking water sources due to saline water intrusion was observed.

* In the State of Karnataka, M/s. Agnasana Aqua farm Pvt. Ltd. has come up adjacent to a school in village Gunda, and the constructed bund of the pond touches the compound of the school. Seepage of saline water from the bund and subsequent damage to the foundation of the school building, and damage to coconut plants in nearby areas was observed. Such practices of allowing the ponds to come up near residential and public utility places must be stopped immediately.

* Coastal aquaculture has resulted in loss of mangrove ecosystems to a limited extent on the west coast. However, significant destruction of mangroves could be noticed in the coastal areas of the districts of Karwar & Kumta (Karnataka), Palghar & Shrivardhan (Maharashtra), and Valsad (Gujarat). Since the mangrove ecosystems provide natural habitat for spawning of marine biota, the practice of indiscriminate destruction of mangrove ecosystem due to installation of shrimp farms must be stopped.

* No proper peripheral drainage has been provided around the aquaculture ponds following semi-intensive mode of farming in the States of Kerala, Karnataka & Maharashtra, and the waste-water from the ponds was observed to be discharged into the receiving bodies without treatment.

* The brackish water intake and effluent discharge points for the ponds are located in close vicinity resulting in contamination of feed water of the aquaculture units. The situation is predominant at Kumta (Karnataka), Palghar (Maharashtra), and Valsad (Gujarat) where a large number of medium and large aqua farms have been installed.

* Since large numbers of medium and big farms have been installed on the coastal areas at places mentioned above, the wastewater discharge into the creeks and back water zones is not properly flushed out during low tide, thereby, affecting the intakes water quality of aquaculture farms.

* The situation in the State of Goa has not reached such an alarming situation as yet due to limited number of farms, and abundant quantities of back water available in the riverine zones of Zuari and Mandavi rivers. However, future expansion of the shrimp farming practices warrant careful control, in view of tourism potential of the State.

* Shrimp farming activity in the State of Gujarat is presently confined to the coastal areas of Valsad, Bharuch, and Surat. Two large commercial shrimp farms are proposed to be installed in the Jamnagar district where salt farms are being operated currently. Sanctions for such installations warrant careful consideration to avoid damages to the highly eco-sensitive coral reef zones near this coast.

The conclusions and recommendations as given in para 7 of the NEERI report are as under: -

"7.0 Conclusions and Recommendations on the Attenuation of Adverse Impacts of Aquaculture Farming on Ecologically Fragile Coastal Areas

7.1 East Coast

* The shrimp farming activity in east coast is mostly confined to the traditional and extensive mode. However, a large number of commercial shrimp farms have started functioning on modified extensive, semi-intensive; and intensive modes since last three years.

* The large scale shrimp farms and hatcheries have violated CRZ notification of MEF dated February 19, 1991 in the States of West Bengal and Orissa.

* Incidence of conversion of agricultural land into coastal aquaculture units which infringes upon the fundamental rights to and livelihood were noticed particularly in the State of Orissa.

* It is desirable to establish aquaculture farms on modified extensive mode. Semi-intensive and intensive mode of aquaculture must not be adopted in the States of West Bengal and Orissa.

* Maintenance of quality or the feed, and stocking of healthy seed from the government approved hatcheries associated with appropriate water management practices warrants proper attention in the prawn farming activities of the coastal areas.

* The proposed guidelines for shrimp farming in the State of West Bengal do not address all socio-economic and ecological status or coastal habitats.

* The State of Orissa has not formulated any guidelines related to aquaculture practices.

* The cost of eco-restoration of the coastal fragile area must be borne by the individual entrepreneurs of the commercial farms in keeping with the polluter pays principle with specific reference to

- Sunderban Mangrove/Littoral Forest, West Bengal

- Chilka Lagoon, Orissa

- Bhitar Kanika Wild Sanctuary, Orissa

- National Park, Orissa

- Subanrnarekha Mouth, Orissa

* No commercial coastal aquaculture activity should be undertaken even beyond 500 HIL unless a comprehensive and scientific environmental impact assessment (EIA) study has been made by the entrepreneurs and the environmental impact assessment (EIA) study has been made by entrepreneurs and the environment management plan (EMP) approved by the respective State Department of Environment, Pollution Control Board, and also by the HEI.

* Agricultural lands are being converted into commercial aquaculture, which causes unemployment to the landless labourers and also in loss of cultivable land.

- Groundwater also gets contaminated due to seepage of impounded water from aquaculture farms.

* Due to commercial aquaculture farms there is a loss of

- Mangrove ecosystem

- grazing grounds for cattle

-potable water to contiguous population

- fish catch

- agricultural produce

- Economic loss due to non-approachability of fishermen to creek, estuary and sea directly

* The designs of the aquaculture farms are inadequate. No provision has been made for wastewater treatment facility enabling recycling and re-use of wastewater in shrimp farms and hatcheries to minimise water exchange. In addition, there is a necessity to treat deposited sediments from the shrimp farms. Sediments can be converted into manure for land application after proper treatment.

* Prohibition on conversion of agricultural land must be enforced with immediate effect.

* Wild seed collection from creek, estuary, and sea must be prohibited. Seed must be procured from hatcheries.

* An eco-restoration fund must be created by collecting the stipulated fees from the owners of aquaculture farms. In addition, one percent of total export earnings per annum must also be collected from commercial aquaculture farm owners, and used for rejuvenation of coastal ecosystem. The wastewater treatment system including sediment control with reuse and recycle must be installed by all units. The smaller units can form a co-operative, and treat water through common effluent treatment plant. The aquaculture units must be closed down if the wastewater treatment system including sediment control is not functioning to its designed efficiency.

* A strict vigilance by the State Department of Fisheries and Pollution Control Board is required to keep a check on pollution abatement measures. It may be mentioned that even a small, one ha shrimp farm can be tailored to function on any mode of production, i.e. modified-extensive; semi intensive, and intensive. Therefore, strong control measures for production and pollution (wastewater and sediments) are essential.

* Water (for sources such as creek, estuary or sea) cess must be charged from the shrimp farm owners.

* Cultivable lands must not be converted for aquaculture. There is a perceptible difference between cultivable and no cultivated land. Thus, even if aqua culturist buys agricultural land and keep them fallow for say 2 or 3 years that does not mean that the land has become non-cultivable. Currently almost all the farms that exist are cultivable lands except those in Midnapur district (7 aqua farms in wastelands). Even those farmers, who do not sell their land to prawn farm owners, are affected due to lack of drainage from paddy fields which in turn cause flooding of the crop during rainy season.

* The location of shrimp farms in Midnapur district on waste land developed by the Department of Fisheries, Govt. of West Bengal fulfils all scientific conditions except:

- CRZ guidelines for creeks

- Wastewater & sediment management practices, and

- Mode of operation which is mostly semi-intensive and intensive

- There are two commercial aquaculture units in the State of West Bengal, viz, M/s. Sundarban Aquatic Farm Ltd. M/s. Index Port Ltd., which are violating the regulation of MEF dated February 19, 1991 as discussed hereunder.

- M/s Sundarban Aquatic Farms Ltd.: conversion of agricultural land & traditional fish farm, and destruction of mangrove plantation have taken place. In addition, this farm falls within 500 m from HIL. Further, CRZ regulations for location of aquaculture farm near the creek have also been violated.

- M/s. Index Port Ltd.: Conversion of agricultural land & traditional fish farm have taken place. Groundwater has become saline around the farm. Shrimp farms are not well designed resulting in seepage. Barbed wire fencing has restricted free access to farmers, fishermen and cattle to the creek. In addition CRZ regulations for location of aquaculture farm near the creek have also been violated.

* No treatment facilities have been provided by both the farms.

- It is necessary to review the World Bank aided projects and commercial shrimp farms in and around Chilka Lagoon, keeping in view the MEF norms dated February 19, 1991 in the State of Orissa, viz.

- Narendrapur project must be abandoned as it is within the National Park. Also the existing commercial farms in operation must be closed down.

- Bideipur project requires EIA studies. Several Farms have come up on the other side of the saline dyke which must also be included for evaluation in the EIA studies.

- Jagatjaore-Banaspade project is within 500 m. Farmers, fishermen and cattle earlier had free access to the nearby creek, which has been limited to a great extent due to the commercial shrimp farming activity. Also indiscriminate cutting of mangrove bushes has been reported. This project must, therefore, be reviewed critically keeping Bhitar Kanika Wild Life Sanctuary in view.

* The commercial shrimp farms in Chilka Lagoon must be abandoned keeping in view the ecological condition of the lagoon and also the location of National Bird Sanctuary.

7.2 West Coast

MEF's norms for location of aquaculture farms and hatcheries have been violated at many places in the States situated on west coast of India.

* The current practice of Installation of coastal aquaculture farms within 500 m HTL violates the fundamental right and livelihood of people in the coastal States.

* The States of Kerala, Karnataka, Maharashtra and Gujarat have neither formulated nor adopted any guidelines in consonance with CRZ-notification, Ministry or Environment & Forests (MEF), Govt. of India for scientific control and management of the shrimp farms in the respective States. These States must formulate and adopt legislative Acts for proper management and regulation of existing shrimp farms in the respective States.

* The State government of Goa has enacted a bill dated November 17, 1994 in order to regulate, promote and manage the shrimp farms in this State, in a scientific manner. However, this bill is not in consonance with the MEF notification dated February 19, 1991 as it allows the construction of aquaculture units within 500 m HTL of the sea. The bill is limited to the guidelines pertaining to the allotment of lands for the entrepreneurs.

* The cost of eco-restoration of the coastal fragile area must be borne by the individual entrepreneur of the commercial aquaculture farms in keeping with the polluter pays principle.

* No commercial coastal aquaculture activity should be undertaken even beyond 500 m HTL unless a comprehensive and scientific environmental impact assessment (EIA) study has been conducted by the entrepreneur, and the environment management (EMP) approved by the respective State Department of Environment Pollution Control Board, Show Development Authority, and also by the Ministry of Environment and Forests.

* Commercial aquaculture farm are planned to be installed near the cultivated lands in all the States of west coast. Salt water from the farms results in damage to the productivity of the adjoining lands.

* Groundwater also gets contaminated due to seepage of impounded water from the aquaculture ponds.

* Desertification of cultivable land can result in increase saline intrusion on west cost.

Due to commercial aquaculture farms, there is a loss of

- mangrove ecosystems

- casuarinas plantations

- grazing grounds for cattle

- potable water to contiguous population

- fish catch

- fishing nets

- agricultural produce

- economic loss due to non-approachability of fishermen to sea shore directly

* The designs of the aquaculture farms are inadequate. No provision has been made for waste water treatment facility enabling recycling and re-use of wastewater.

* Prohibition on conversion of agricultural lands and salt farms into commercial aquaculture farms must be enforced with immediate effect.

* Wild seed collection from creek and sea must be prohibited. Seed must be procured from hatcheries.

* An eco-restoration fund must be created by collecting the stipulated fees from the owners of aquaculture farms. In addition, one percent of total export earnings per annum must also be collected from commercial aquaculture farm owners and used for

rejuvenation of coastal ecosystem with special reference to plantation of mangroves and common eco-sensitive zones. The wastewater treatment system with reuse and recycle must be installed by all units. The smaller unit can form a co-operative and treat their water through common effluent treatment plant. The aquaculture units must be closed down wastewater treatment system is not functioning to its design efficiently.

* Drainage canals must be constructed around the ponds to collect seepage from the pond which will prevent the intrusion of saline water into the adjoining agricultural fields & residential areas. The design and construction of the drainage canal/bund must be undertaken scientifically based on the topographical features of the area. This will avoid the flooding of the area with saline water, and will help in restoration of hygienic & sanitary conditions in the nearby residential areas.

The two NEERI reports clearly indicate that due to commercial aquaculture farming there is considerable degradation of the Mangrove ecosystems, depletion of Casurina plantations, pollution of potable waters reduction in fish catch and blockage of direct approach to the sea-shore. Agriculture lands and salt farms are being converted into commercial aquaculture farms. The ground water has got contaminated due to seepage of impounded water from the aquaculture farms. Highly polluted effluents are discharged by shrimp-farms into the sea and on the sea-cost.

28. A report "Expert Committee Report on Impact of Shrimp Farms along the Coast of Tamil Nadu and Pondicherry" has been placed on the record. Justice Mr. Suresh, a retired Judge or the Bombay High Court Mr. A. Sreenivasan, Joint Director of Fisheries (retd), Dr. A.G.K. Menon, an Ichthyologist, Mr. V. Karuppal I.A.S. (retd), Dr. M. Arunachalam, Lecturer Centre for Environmental Sciences, Manommanam Sundarnar University, Tamil Nadu and Dr. K. Dakshinamoorthy, a Medical Surgeon constituted the "expert committee" (Suresh Committee). Although the investigation by the Suresh Committee was done at the instance of "complaint against of the committee members and the factual data collected and relied upon by the committee it would be useful to examine the same. The Suresh Committee visited various villages in Tamil Nadu and Pondicherry and gave its findings based on the evidence collected by the Committee. Some of the findings of Suresh Committee are as under: -

> "The farmers of Perunthottam told us that they have sold nearly 140 acres of their own lands to the Bask company and 40 acres to the Bismi company. Evidence was also given to us showing in the lands purchased by Bask Farms, where three or two crops were being cultivated. It also revealed that the percentage of yield was as much as 60 m. Details regarding this are found in Annexure 15. The Bismi company has erected a pipe line till the boundary of the farm for draining sea water. It is yet to be connected to the sea.
>
> The Bask company is situated at a distance of 150 m from the scheduled caste households. Bask Aqua Farm is situated within 500 m from the sea and the distance of Bismi Aqua farms is just 25 m from the sea. During our visit, we found Bask farms engaged in construction of Prawn farms on agricultural lands that had been purchased (Photo No. 23 & 24) ..... Representative of Perunthottam village also

shared before the Expert team that the yield obtained from the fields adjacent to prawn farms were affected. Moreover the villagers have lost their access to potable water as the water tables have become alkaline due to the seepage of sea water from the prawn farms. Bask farms have been using ground water for nearly two years crop. The Managing Director confirmed this before the Expert team."

The Committee visited Pichavaram Vedaranyam on July 13th/15th, 1995 and observed as under:-

"It was observed that the palmyrah trees in this area which is the most drought resistant tree has dried after the onset of prawn farms in this area. Majority of the coconut trees have dried up and few remaining have stopped yielding fruits.

The unanimous opinion of the people is that most of the mangrove species are on the decline. Theses mangroves serve as a source of fuel wood for domestic purposes, grazing ground for animals, water way for local and tourists and an important habitat for fisheries increasingly polluted because of the effluent discharged by the shrimp farms. They also brought to our notice the greater value of the mangrove as a stabiliser of the coast and how, because of this being disturbed by the destruction of the palmyrah, coconut and casdarnst grooves, coastal erosion has become common".

Regarding visit to Pudhupetti, the Committee stated as under:

"We visited Pudhupettai on 14th July in order to get a first hand knowledge about the impact of Farisa Aqua Farm details of which was narrated by the Pudhupettai representative to the expert team on 13th July at Nagai. We saw the pucca construction of the Farisa farm's Jetti into the sea to enable the pumping of the sea water. This clearly is acting as a hindrance for the free mobility of the community and their access to sea and land .... All three farms are situated within 25 m from the sea. Further these farms are closely situated to the dwelling houses also. Coastal Enterprises is situated at a distance of 20 m. the Farisa Aqua farm at a distance of 250 m and Blue Base Aqua farm at 20m from the dwellings of Perumalpettai the next fishing village from Pudupettain. There is a fourth enterprise namely Abhirami Aqua farm which owns about 150 acres of wet land has not commenced work as yet. .....Pipes have been laid to discharge effluent either to the sea, of adjoining dry lands belonging to the village or to the water channel used by villages for bathing. Effluent is also being discharged closed to the dwelling houses. In particular, effluent is being collected right in front of my house" said Kalvikarasi a resident of Pudupettai village who made a representation to the Expert team on July 13th. She said that "Drinking water in the village is now turning salty".....the advantages of shore seine net fishing is the abundant catch of "Anchovy" fish which has commercially viable market. The construction of permanent jetties has eliminated the shore seine net fishing shore seine net fishing needs uninterrupted coastline and it has become an impossibility in Pudupettai. About 10 shore seine nets are idle in the village. The construction of pipe to discharge effluent is a permanent one. By construction of the permanent jetties, the natural sand dunes in the village were destroyed. These sand

dunes are a natural cyclone barriers. Hence a threat of cyclone is imminent since these natural cyclone barriers are destroyed.

The Construction of pipeline ending in the sea for pumping in sea water has damaged nearly 10 nets worth Rs. 60,000/- Details of nets damaged is given in Annexure 19. The Coastal Enterprises Ltd. Pudupettai and Blue Base Aqua farm have encroached the burial ground of Perumalpettai.

The Committee visited the Pullicat lake area on July 16, 1995. The findings of the committee are as under: -

"Ecologically the Tamilnadu part of the Pulicat lake is important since it has the only opening of the lake into the sea thus functioning as the migratory route of these spawning animals like prawns, fish and mud crabs. The mud rats of Pulicat lake harbours a number of winter migratory birds. We were told that the water fowl sanctuary at Pulicat is slowly being destroyed ....We observed that Prawn Farms are located all around the wetland. In the northern region of the lake prawn farms are situated even in the lakebed. Maheshwari Export India Ltd. is constructing a Prawn Farm across the Pulicant lake bed clearly violative of the Tamilnadu Aqua Culture Regulation Act. We also noticed water being pumped out from the lake into the Prawn farms.

According to Dr. Sanjeeva Raj Publicat lake has two bird sanctuaries namely Yedurapattu and Nelapattu. It is estimated that nearly 10-15 thousand of flamingos and other rare birds visit the Pulicat lake for four months only for feeding all the way from Raun of Kutch. Other water birds like Pelicans, Cormorants, Egrets and Herons breed at Nelapattu and feed at this Pulicat lake. The Yedurapattu, Painted Storks, Pelicans, and Upen Bills also feed here. In 1993 it was estimated that there was 10000 to 15000 Flamingos. By 1994 this has been reduced to less than 1000. The reason for this can be attributed to the effluent from prawn farms which kills the organisms on which the Flamingos feed. The depletion of natural feed could have caused this reduction ..... The Tamilnadu forest Department is establishing a third sanctuary in the southern than of Pulicat lake. We were told that due to the noise of oil engines, bulldozers and other disturbances by the prawn farms many birds especially painted storks have deserted this lake.

Dr. Sanjeeva Raj also states that Pulicat is ecologically very sensitive and fragile. The east coast is vulnerable to cyclone. With the hundreds of prawn farms along the coast excavating sand along the coast line every possibility existed for inviting the sea to enter and destroy the water table. Further, prawn farms destroys sand dunes and vegetations and in times of tidal waves sea water could enter in a big way.

Further, Dr. Sanjeeva Raj said that Pulicat lake is fairly shallow with an average depth of about 1.5 m. It can be described as a saucer. The pumping of water by aqua farms will result in an artificial drying up of the lake. Added to this the road from Sulpurpet that has been constructed for reaching the Shriharkotta rocket launching site through the lake has obstructed free flow of water. It is generally claimed by the prawn farm owners that the

land on the eastern side of the road is not the part of Pulicat lake and hence prawn farms can be constructed. This is false as all this land area is part of the Pulicat lake. The tragedy is that if prawn farms are effluent from the prawn farms will flow back into the lake causing serious damage to marine and estuarine.

Biota .....Pasiapuram Rajiv Gandhi Nagar has a dalit hamlet Edamani. This hamlet had a tank which provided water to the nearby 35 villages. The source of water was the village ground water. But due to the impact of the adjoining farm the water became saline making it unsuitable for consumption.

An eminent danger by the prawn companies is to the village called Jamil Bath. This village has 150 Muslim families (fisher). They were originally living in the land on which the Surharikutta Space Research Station is built. These families were relocated by the Government promising jobs and providing free housing site near the Pulicate lake. They built their own huts at the cost of Rs. 3000/- each. This is the reduced oxygen, hypernitrification, alteration or community structure, sedimentation, changes in besithic communities etc. (Phillips et al 1993).

Further self pollution results from feed wasted, which become unmanageable (imre Osava 1994. Shrimp News International March-April 1994). Organic wastes, Solid mater, dissolved metabolites like ammonia, Carbon-dioxide are produced. Decomposing organic matter depletes oxygen from water. Admittedly being biodegradable the effluents consume oxygen and so denude the water of its oxygen. When there is oxygen deficit, fish avoid such low oxygen zones and move further away to oxygen saturated zones and when there is oxygen depletion fish die en-masse. Fishing village near whose coast shrimp ponds have come up fish have become scarce and the artisanal fishermen have to go further away from shore to catch fish. Population of fish and their diversity decrease .... With regard to farm effluents being treated and discharged into the sea and other water bodies we did not see or hear about any such scientific process or effluent treatment having been set up by prawn farms. In M/s. Bask farms were shown two partially dry sedimentation tanks. We saw untreated effluents from M/s Amaigam shrimp farm being discharged into the beach not even into the beach causing degradation of the sea shore with dark brown, foul smelling organic matter which is heading a hazard. The Joint Director, APEDA itself has stated that most of the farms have not set up effluent treatment systems.

(b) Salinisation

The dominant species or Shrimp cultured is penaeus monodon, the tiger prawn and next comes the white prawn, p. indicus, both the marine prawns. P. Monodon grows best at salinities or 10-20 p. pt. ($20^1/_2$) but tolerate slightly higher or lower salinities. p indicus requires higher salinity 20-30 ppt. Thus seawater is the primary medium of growth. Seawater or salinity 55-56 ppt. is taken into the ponds. The growing period ranges from 120-150 days. Sea water is periodically replaced. Sea water remaining in the pond for a long period Seeps into neighbouring areas where agriculture is practiced and salinizes the soils which therefore lose their productivity for crops and become unfit for agriculture.

Even assuring that the 500 m zonation is enforced it will not solve the problem of salination. Agriculture lands, inwards (towards inland) of shrimp ponds will become saline and the chain reaction will continue ..... Many shrimp industries assert that they are taking only sea water for shrimp culture and do not use ground water. Sea water has salinity around 35 ppt. It is mostly Penaeus monodon the tiger shrimp. This needs a salinity in the range of 15-20 ppt. for optimum growth. So the shrimp producers have necessarily to dilute it to bring down the salinity by adding fresh water. Let alone round waters we have even seen river water being pumped near Poompuhar into to shrimp ponds .....Salinization is not only possible but has actually happened all over the world. The Bhagwathi Institute of Environment and Development, analysed numerous samples of water adjacent to shrimp farms in Sirkali Taluk, TN and found that in most of them Chlorides exceeded the permitted limits even by over 100 times for e.g. 15265 mg/1 in drinking water source near Suryakumar Shrimp Co. Mahendrapalle. In Kurru village, Nellore District, drinking water became saline after flout, shrimp farms were established and the 500 peoples of this village had no drinking water (Vandana Shiva 1994. "Social and Environmental Impact or Aquaculture). Dr. Alagarswami, Director CIBA identifies salinization of drinking water, wells, dwelling units adjoining agriculture lands, aquifers as critical issues in shrimp culture (National Workshop on Transfer of Technology for Sustainable Shrimp Farming, Ms. Swaminathan Foundation Madras, January 9-10, 1995). Dr. V. Gopalakrishnan, former FAO experts says "salt water seepage problem appears to be genuine and such should be avoided for establishing new shrimp farms" (Fish & Fisheries, Newsletter No. 4 January 1995). Dr. Sanjeevaraj noted that in Pulicat lake, saltwater from Prawn ponds was known to be seeping into drinking water tables (COPDANC NEWSLETTER winter 1994). .....We have noted the salinization of drinking water in Pudukuppam, Naicker Kuppam, Poompuhar, Perunthottam, Pudupet, etc in Sirkali Taluk caused by large shrimp units and also in a very acute manner in Pattinamarudur, Tuticorin, VOC district which is sandwitched between two large farms viz. ITC and MAC Aqua farms Ltd.

(c) Feed and wastes

In a moderate 3t/ha field of shrimp, 4-6 t/ha feed is applied while for 51/ha it is 15t/ha. The magnitude of pursuable organic matter from these wastes is enormous. Hence the practice of discharging such effluents into common water bodies needs to be strongly discouraged because of the strongly polluting effect (Mackintosh, D. J. INFOFISH. International 6/92.38-41). Feed wastes are more toxic than sewage and this is a sufficient ground for banning industrial Shrimp Culture .....The Team found that Amalgam Marine Harvests, was blatantly discharging the effluents into the foreshore narrow sandy breach at Pudukuppam. This has spoiled the aesthetic appearance of the beach. The area is dark brown in colour and foul smelling. This well poses a serious hazard to public health. The wastes also enter "Uppanar" stream hardly 5 m away from discharge point. This is illegal and affects the health of villages. Settle able solids silt up the ponds and canals. Over accumulation of detritus leads to profusion of protozoa and ciliates, which cover the body of fish disease, shell disease, foul smell of internal parts, tail rot etc are caused by such unhealthy pond conditions. The quality of effluents discharged into the environment are so poor that biological methods will not be sufficient to treat them, most of the

environmental troubles are caused by the industrial shrimp. The coastal zone used for culturing aquatic organisms is only a narrow strip on the continental shelf and on the low lying flatlands. Hence the very fragile nature of the costal ecosystem is getting destroyed.

(d) Fertilizers and therapeutants

Large quantities of feed are being used and fertilizer applications are generally minimal. Lime is regularly used but continued use of lime impoverished the soil. It also hardens the soil.

However, it is the use of therapeutant that is highly destructive of the environment. A very incisive account of the use of drugs in aquaculture is available from P. de Kinklein and U. Aichael (INFORISL International 4/92.45-46 1992) and an exhaustive report is provided by Fred P. Meyer, an authority on the subject. (Review in Aquaculture sciences Ve 1 (4): 693-710 1989). However the use of drugs has only aggravated the damage to environment. Sulpha drugs, letracyclines, Quionfones, Nitrofurans, macrolids (for e.g.) erythromycin). Chiloramphenicol, and dozens of similar drugs are in use, Organophosphours compounds like Dichlorvas are also used. Formahan malachite green copper sulphate, quaternary ammonium compounds. Iodophores, chlormine-I etc. are used as sanitizers.

Viruses cannot be treated by any of the drugs. Renibacteriumsp is also resistant to drugs. Chemotherapy leads to transit of drugs and their long persistence. Rebase of drugs or their metabolites into the environment affects the non-target organisms. Use of steroids (Di-dehy) stiboestrol) to fatten shrimp in pond has carcinogenic effect on humans. Use of cloramphenicol has unpredictable risk for human beings. Effluent treatment and self-recovery are hampered by the drugs by suppressing saprophytic bacteria involved in purification processes. Soils accumulate drop residues.

(e) Loss of Mangroves and Biodiversity

We observed that removal or destruction of these important mangrove habitats for establishing shrimp farms is becoming increasingly common along the coasts to Tamilnadu. From the Photographs (No. 40-45 showing the destruction of mangroves bunds are already built), it is evident that there are several shrimp farms on the banks or Pitchavaram Mangrove forests a valuable habitat. For the farms, water intake from the habitat will lead to virtual dryness of the habitat and the loss of biodiversity in this valuable realm. It is evident that the consequences are felt by the existing farms (Palmyarh and coconut trees in nearby farms are withering-photograph No.46 & 47). The destruction of the mangroves (Photo No. 40-42) for shrimp farm will be a major cause for the loss of habitat diversity along the coastline of Tamilnadu. We are going to lose a valuable gene pool and thus conservation of mangrove genetic resources from the activities of shrimp industry is a matter of primary urgency.

(f) Loss of Biodiversity in Cauvery flood plain and delta

The stagnation or water of this lower reaches is due to the illegal damming at several places along the course and the obstruction of feeder canals and distributors to the main

river. Once considered a best estuary and the delta of Cauvery are now vanished (Photo No. 48 showing the ill fated Cauvery). Also in the lower reaches in Nagai district, Tamilnadu, low land drains regulator has been used for their effluent release (Photo No. 49) showing the block and the P.W.D. feeder canals are either blocked by the farm owners or using as drainage for effluent release by Amalgam Marine Harvests Ltd. at Pudhukkuppam (Photo No. 50) from the farms. There canals and drains once used as a freshwater resource for bathing and recharges for the wells for the fisher folk in several villages now become saline because of the cessation of flow (example: Pudukuppam village of Sirkali taluk district; Pudupetta village Tharangampadi (sic) taluk, ...Seed collection of Peneaus monodon (tiger prawn) by children is a regular practice in these canals now. During their collection of seeds the children picked only the tiger prawn seeds and threw away all other shrimp and fish seeds, thus depleting the estuarine and coastal fisher resources. One child get paisa U. 10 for the tiger prawn seed and one earns about Rupees one hundred (Rs. 100 per day and 40-50 children are engaged in seed collection). This involves child labour and depletion of fishery resources and the loss of biodiversity in coastal and deltaic regions of Cauvery. Nursery grounds for shell and fin fishes are lost in this ancient river delta.

(g) Threatened Wetlands of National and International Importance

The marshy swamps of Vedaranyam are now as threatened habitats with the formation of shrimp culture all along the brackish water zones and in the marshy swamps .....Another wetland of national importance, which is being threatened is Pulicat lake. Report A (1992) by the Ministry of Environment Forests, Government of India clearly stressed the need of conserving these wetlands of national importance .....In the Government of India Report Pulicat Lake has been identified as an important lagoon (p 8 of the Report). The fragile ecosystem has been under great threat by the industrial shrimp farming. In the main brackish water area, construction of bunds is going on (Photo No. 55 to 56). From the photographs it is evident that the marshy lands with its typical marshy vegetation is the only area left and almost all the marshy areas are being lost because of the incoming shrimp culture ponds. There areas of marshy vegetation act as spawning/nursery grounds for a variety of estuarine marine invertebrates, and fishes. These areas also provide wildlife habitats to several migrant birds.

(h) Impact on agriculture

Dr. Alagarswami, Director CIBA identifies "indiscriminate conversion of agricultural lands into shrimp culture" as a critical issue. Most shrimp farmers in coastal areas have converted agricultural lands into shrimp ponds. More relevant is the fact that shrimp seawater (Salinity around 35 ppt. i.e. 35%) is pumped into the shrimp ponds. The growing period is from 120-150 days. This long detention of saline water in the shrimp ponds seeps into the adjacent crop lands and salinizes them resulting in reduction or productivity or even barrenness. Then this "Unproductive" land (so declared by the shrimp industries) is converted into shrimp ponds.

We are concerned that conversion of paddy fields to shrimp ponds is already adversely affecting local rice production, in all the places we visited in NOM District

Pattnamarudur of Tuticorin, Pulicat of Chengai MGR districts etc. most of the shrimp ponds are constructed on fertile agricultural land or on marginal lands where no crop is raised. Owing to the recent shortage of Cauvery water (dispute between T. N. and Karnataka) the yield of crops has been affected. Taking advantage of this, Shrimp industries have been buying up agriculture land through inducement, persuasion and high pressure on revenue authorities. Salinization of soil and water adjoining the shrimp farms is very well documented for Perunthottam village. As per the cultivation record for land purchased by M/s Bask farms we see clearly that the lands purchased were fertile agricultural lands with an average of two corps having a 60% harvest yield.

(i) Denial of potable water

"Nagal, U.M. districts of Tamilnadu, the erstwhile granary of South" is today threatened with pollution, ecological imbalance and land alienation because of the arrival of large number of private companies and transnational corporations that have been investing heavily in shrimp farms etc. (Mukul Sharma: Inter press service November 11, 1194). Drinking water in the vicinity of shrimp farms has become saline, wherever such farms were operated. Shrimp culture may increase salinity through facilitating the flow or saline water inland and discharge of saline effluent (Phillips, Kwel) lin and Beveridge 1993). Water samples from 7 villages in Sirkazh near the shrimp farms were analysed by Bhagwathi Environment Development Institute at Dindigul. It was found that the water from bore wells and hand pumps were un-potable (see Annexure). The villages affected were Mahendrapatti, Neithavasal, Pudukuppam, Eranyimedu, Keelaiyur, Thirunagari, Nirajimedu etc. This was also confirmed by the Bharatiya Mazdoor Sangh in Kurru village, Nellore Dist. where all the freshwater wells became saline and un-potable after 4 shrimp farms were established. The proof of this was the fact that the District Collector, Nellore ordered the supply of drinking water through tankers, to these villagers. Dr. P. Sanjeev Raj (CUPDANET NEWSLETTER winner 1994) also found that salt water from shrimp ponds seeped into drinking water sources. Dr. Vandana Shiva, after visiting some villages recorded that "shortage of drinking water and deterioration of its quality have resulted in the neighbourhood of shrimp farms".

Protection of ground water sources may be viewed as non-tradable capital, as contaminated, they may prove impossible to rehabilitate (Mark Evarard 1994).

As per the study done by BEDI, water sample from a drinking water well in Naikarkuppam had a IDS of 2164 mg/1 and a chloride content of 993 mg/ 1 in addition to excessive quantities of MG and Ca. Samples collected from a drinking of MG and Ca. Samples collected from a drinking water hand pump near Shrimp farm now Amalgam farms had an exceedingly high TDS of 35778 mg/1, hardness of 7500 mg/I which is as bad as seawater. Unacceptably high Ca, Mg and sulphate were recorded. Another hand pump near the same farm had a TDS of 1466 mg/and a chloride content of 656 ppm which are un-potable.

Drinking water from a hand pump near the shrimp farm of Coastal Enterprises Ltd. had a TDS of 7694, chloride of 3879, hardness of 24/0 mq/I and so was un-potable".

29. The three reports discussed above give a rather depressing scenario of the shrimp industry. While the production increases and export earnings of the industry are well publicised, the socio-economic losses and environmental degradation affecting the well-being of coastal population are hardly noticed. The traditional production systems are being replaced by more intensive ones. This has been encouraged by increasing demand from high income countries. Shrimp yield per hectare in many areas increased within a few years from an average 100 kg/ha per harvest to an average of 100 kg/ha/crop for semi-intensive shrimp farms and to between 2000 and 10000 kg/ha/crop for intensive type of production. The social and environmental costs of the expanding shrimp industry are closely interrelated. Pollution and other, types of natural resource degradation induced by Shrimp farming has been considerably highlighted in the NEERI reports and other material quoted and discussed by us. Social and environmental changes resulting from expanding shrimp industry in coastal area are largely due to the conversion into shrimp farms of the lands, waters and forests which were earlier dedicated to other uses. In fact, shrimp farms are developing at the expense of other agriculture, aquaculture, forest uses and fisheries that are better suited in many places for meeting local food and employment requirements. Intensive and semi intensive types of shrimp production hardly seem to meet these requirements.

30. Mangrove forests constitute an important component of coastal eco-systems. They thrive in tidal estuaries, salt mashes and muddy coast lines. Conversion of mangrove to shrimp farms significantly reduces the natural production of wild capture shrimp as well as other fisheries. Moreover their production role for low-lying coastal regions is rapidly diminishing by their replacement by shrimp ponds. The Sunderbans, which constitute one of the biggest mangrove areas in the world covered in the early 1990s about 12000 sq kms. In India and Bangladesh mangrove areas have been replaced by shrimp ponds.

31. The increasing need for land by shrimp enterprise has meant a dramatic rise in land prices in many areas. After the installation of shrimp from near village lands, prices rose astronomically. Local farmers can no longer afford to purchase land while indebted farmers are tempted to sell their holdings. Much of the coastal land recently concerted into shrimp farms was previously used for food crop and traditional fishing.

32. The United Nations Research Institute for Social Development in collaboration with the World Wide Fund for Nature International has conducted a study and published a report dated June 19, 1995 called "Some Ecological and Social Implications of Commercial Shrimp farming in Asia". (The report is prepared by Solon Barraclong and Andrea Finger - Stich the UN Report).

33. The UN Report gives the following picture regarding polluted waters and depleted fisheries:

> "Polluted waters and depleted fisheries Shrimp farm use both sea fresh water to replenish their ponds. This brings them into competition with other users of these water resources. In areas where commercial shrimp ponds have been constructed there is frequently insufficient fresh water left to meet customary needs for irrigation, drinking, washing, or other household and livestock related uses, and

water supplies may be contaminated, or both. Groundwater salinization has been reported in several places. This often means that people - most of the time women - have to bring water from more distant wells. In a village in Tamil Nadu (Nagal-Quaid-Millet district, Pompuhar region), for example, women have to walk two to three kilometres to fetch drinking water that previously was available nearby before the expansion of shrimp farms on about 10,000 hectares (Bhagat, 1994). In Andhra Pradesh, a case study conducted by Vandana Shiva reports that, in the Nellore district, there was no drinking water available for the 600 fisher folk of the village Kurru due to aquaculture farms salinizing groundwater. She adds that "after protest from the local women, drinking water was supplied in tankers" (Mukul, 1994) ..... Local stocks of native fish and crustaceans are being depleted in many places because of the removal of mangroves which served as nursery beds, and also as a result of indiscriminate over fishing of wild shrimp fry (over 90 per cent of randomly caught fry are often wasted (Gujja, 1994). Natural fisheries are also frequently damaged by pollution caused by overloads of nutrients, sediments and chemicals from shrimp farms. In another Indian coastal village, Ramachandrapuram, fishermen reported that the value of their average catch of shrimp used to be Rs. 50,000 per catamaran per month, but after one year of operation of nearby aqua farms their catch was ten times smaller (Mukul, 1994). In the Chokoria part of the Sundarbans of Bangladesh, fishermen report an 80 per cent drop in fish capture since the destruction of the mangroves and building of dikes for shrimp farming (Sultana, 1994). Frequently, fisher folk protest because their traditional access to the coast has been restricted or because stocks of wild crustaceans and fish have disappeared.

34. All the reports referred to by us clearly indicate that the expansion of modern shrimp ponds in the coastal areas has meant that local fishermen could only reach the beach by trespassing at great risk on shrimp farms or by taking a long detour. Local people have not only lost access to their fishing grounds and to their sources of riverine seafood and seaweeds, but they also have to relinquish social and recreational activities traditionally taking place on their beaches.

The UN Report gives the following picture regarding natural resource degradation as a result of shrimp farming: -

"In areas densely covered with intensive shrimp farms, however, the industry is responsible for considerable self-pollution and particularly for bacteriological and viral contamination. Each hectare of pond produces tons of undigested feed and faecal wastes for every crop cycle. This induces the growth of phytoplankton, protozoa, fungus, bacteria and viruses (like the Vibrio group growing in shrimp faeces and in large part responsible for the 1988 collapse of Iasiwan's production) (Lin, 1989). The overuse of fertilizers and of veterinary and sanitary products such as antibiotics adds to the water pollution problem. It also contributes to the decreasing resistance of the shrimp stock where intensive shrimp farms are densely spaced, waste laden water tends to slosh from one pond to another before it is finally

discharged into the sea. Shrimp producers are extremely concerned about assured supplies of clean water as it is vital for their immediate economic returns.

Large amounts of sedimentation in intensive shrimp ponds are posing serious disposal problems for shrimp farmers. From 100 to 500 tons of sediment per hectare per year are apparently accumulating. Since only some 10 tons of feed is used to produce about 5 tons of shrimp per hectare per year, this raises question about where such incredible quantities of sediment come from (Rosenberry, 1994a: 42). Ponds are cleaned after each crop cycle and the sediments are often discarded in water ways leading into the sea or they are sometimes used to build dikes. Their putrefaction inside and outside the ponds cause foul odours, hyper-nitrification and eutrophistion, siltation and turbidity of water courses and estuaries, with detrimental implications on local fauna and flora ..... Biodiversity losses: The impacts of semi-intensive and intensive shrimp aquaculture on biodiversity, "the totality of genes, species and ecosystems in a region") are multiple. This is because of the land they cover, the water they pollute; the water circulation systems they alter; the wild fish and crustacean habitats they replace; the risks they pose of disease transfer; the impacts of released raised shrimp on the genetic diversity and resilience of indigenous shrimp and possibly also their negative impacts on their native fauna and flora .....Health hazards: Health hazards to local populations living near or working in shrimp farms have been observed in several places. For instance, in Tamil Nadu (Quaid-e-Milleth district near Pondichery) approximately 1,500 acre large shrimp farms has been reported to have caused eight deaths from previously unknown diseases within a period of two months following the installation of the aquaculture farm (Naganathan et al.,, 1995: 60/). There are numerous hazards to public health along the shrimp production chain from the farmers through the various processors to the often distant consumers. The workers employed on shrimp farms handle several potentially dangerous chemicals, and may be exposed to unsanitary working conditions".

According to the UN Report-intensive ponds have a maximum life of only 5 to 10 years. Abandoned ponds can no longer be used for shrimp and there are few known alternative uses for them except some other types of aquaculture. Apparently they can seldom be economically rehabilitated for other uses such as crop land. The extent of abandoned areas by the shrimp industry has been indicated by the UN Report in the following words:-

"After a production cycle of about four or five months, shrimp ponds under intensive use are cleaned and disinfected and the polluted sludge is removed and often disposed of unsafely. This treatment, however, does not usually suffice to maintain the ponds productivity for more than five to ten years (Ibid., Annex III/12). Entrepreneurs then move to other areas because of pollution and disease. This mode of production has been called “rape and run" (cassavas, 1946). The altered milieu of these abandoned ponds inhibits the spontaneous regeneration of vegetation and their use for agriculture, forestry, other aquaculture or related fishing activities. These abandoned areas do not appear in worldwide estimates of areas used for shrimp

farming, which for 1993 were estimated to include 962, 800 hectares, of which 847,000 hectares were in Asia. In December 1994 theses areas were estimated to have increased worldwide to 1, 147 300 with 1,017. 500 hectares in Asia (Rosenberry, 1993 and 1994a). Globally, areas affected by the industry's practices over the last decade are probably at least one third large, or even more if the total infrastructures surrounding the ponds are accounted for".

The UN Report pettily sums up the conflicts and externalities as under: -

> "A major portion of the conflicts arising from the expansion of shrimp farming are the result of environmental and social degradation that is not included in the costs of shrimp production where the industry assumes no responsibility for damages to other grounds arising from its activities, economists call them "externalities". For example, abandoned ponds are usually virtually unusable for other purposes for indefinite periods without costly rehabilitation, which is seldom undertaken. Mangrove destruction, flooding or crops, salinization or pollution of land and water associated with the expansion of shrimp farming all affect the local people depending on these resources".

35. Alagarswami has divided the shrimp-farm technology into six types. We have already quoted the relevant paragraph 5.1.2 of the report. Although different experts have given different nomenclature to different types of shrimp farm technologies, we are of the view that the types indicated by Alagaswami in his report are based on the functioning of the shrimp culture industry in India and as such are acceptable. Keeping in view the NEERI report and other material quoted and discussed by us, we are of the view that the traditional and improved traditional types of shrimp farm technologies defined by Alagarswami are environmentally benign and pollution-free. Other types of technologies are extensive, modified extensive, semi intensive and intensive-crenate pollution and have degrading affect on the environment and coastal ecology. Such type of shrimp farms cannot be permitted to operate.

36. We may refer to constitutional and statutory provisions which mandate the State to protect and improve the environment. Article 48-A of the Constitution of India states that "the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country". Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen, the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The Environment (Protection) Act, 1986 (the Act) was enacted as a result of the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India participated. The Indian delegation was led by the then Prime Minister of India. The Statement of objects and reasons to the Act is as under: -

> "The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's

resolve to protect and enhance the environmental quality, found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the conference has become increasingly evident."

Section 2 (a), 2 (b), 2 (c) and 2 (e) of the Environment Act are as under: -

2 - Definitions In this Act, unless the context otherwise requires, -

(a) "environment"" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

(c)"environmental pollution" means the presence in the environment of any environmental pollutant;

(d) "hazardous substance" means any substance or preparation which by reason of its chemical or physio-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment;

Sections 7 and 8 of the Environment Act are as under: -

7. Persons carrying on Industry, operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards. - No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

8. Persons handling hazardous substances to comply with procedural safeguards. - No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

Section 15 of the Act makes contravention of the provision or the said Act punishable with imprisonment for a term which may extend to five years of with fine which may extend to one lakh rupees or with both. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years. The effluents discharged by the commercial shrimp culture farms are covered by the definition of Environmental pollutant, environmental pollution and hazardous substance. The NEERI reports indicate that the effluents discharged by the farms at various places were excess of the prescribed standards. Unfortunately, no action is being taken by the authorities under the Act.

37. Hazardous Waste (Management and Handing) Rules, 1989 (the rules) have been framed under the Act. Rule 2 (i) of the rules defines "hazardous wastes" to mean categories of wastes specified in the Schedule appended to the rules. Waste category No. 12 under the Schedule to the rules is as under:

> Rule 5 of the rules makes it obligatory for every occupier generating hazardous wastes to obtain authorisation as provided under the said rule. Rule 5 (4) requires the State Pollution Control Board not to issue any authorisation unless it is satisfied that the operator of a facility or an occupier, as the case may be possesses appropriate facilities, technical capabilities and equipment to handle hazardous waste safety.

38. Mr. Mehta has vehemently contended that the shrimp culture farms are discharging highly polluting effluent which is "hazardous waste", under the rules. Mr. Mehta relying upon the NEERI reports and other reports placed on record has contended that none of the farms have obtained authorisation from the State Pollution Control Boards.

39. The Water (Prevention & Control of Pollution) Act, 1974 (the Water Act) has been enacted to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. The Statement of Objects and Reasons of the Water Act, inter alia, states as under: -

> "The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency of urbanization. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy."

SCHEDULE

Categories of Hazardous Waste

Waste Categories	Types of Wastes	Regulatory Quantities
1	2	3
Waste Category No. 12	Sludges arising from treatment of waste wasters containing heavy metals, toxic organics, oils, emulsion and spend chemical and incineration (sic) ash".	Irrespective of any

Section 2 (j) & (k) of the Water Act are as under: -

> "2. Definitions, in this Act, unless the context otherwise requires;
> (i) "stream" includes
> (i) river,

(ii) water course (whether following or for the time being dry);
(iii) inland water (whether natural or artificial);
(iv) sub-terranean waters;
(v) sea or tidal waters to such extent or; as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;
(k) "Trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry operation or process, or treatment and disposal system other than domestic sewage.

Section 25 of the Water Act provides that no person shall, without the previous consent of the State Board establish any industry, operation or process, or any treatment and disposal system which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. There is nothing on the record to show that the shrimp culture farms owners are even conscious of the statutory provision which required them to obtain the necessary consent/authorisation from the concerned Pollution Control Boards.

40. There are other legislations like Fisheries Act, 1897, Wild Life Protection Act, 1972 and Forest Conservation Act, 1980 which contain useful provisions for environment protection and pollution control. Unfortunately, the authorities responsible for the implementation of various statutory provisions are wholly re-missed in the performance of their duties under the said provision.

41. At this stage we may deal with a question which has incidentally come up for our consideration. Under Para 2 of the CRZ notification, the activities listed thereunder are declared as prohibited activities. Various State Governments have enacted coastal aquaculture legislations regulation the (sic) set up in the coastal areas. It was argued before us that certain provisions of the State legislations including that of the State of Tamil Nadu are not in consonance with the CRZ notification issued by the Government of India under Section 3(3) of the Act. Assuming that or so, we are of the view that the Act being a Central legislation has the overriding effect. The Act (the Environment Protection Act, 1986) has been enacted under Entry 13 of List1 Schedule VII of the Constitution of India. The said entry is as under: -

"Participation in international conferences, assessment and other bodies and implementing of decision made there at".

The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972. The Parliament has enacted the Act under 1972. The Parliament has enacted the Act under Entry 13 of List 1 Schedule VII read with Article 253 of the Constitution of India. The CRZ notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States.

42. The Court in Vellore Citizens Welfare Forms v. Union of India, (1966 AIR SCW 3399), has dealt with the concept of “Sustainable Development” and has specifically accepted “The Precautionary Principle” and “The Polluter Pays” principle as part of the

environmental laws of the land. The relevant part of the judgment is as under (at pp. 3405 and 3406 of AIR SCW):

> "The traditional concept that development and ecology… Sustainable Development is the answer. In the International sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in the report called "Our Common Future". The commission was chaired by the then Prime Minister of Norway Ms. G.H. Brundtland and as such the report is popularly known as Brundtland Report. In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" with is a strategy for sustainable living. Finally, came the Earth Summit June, 1992 at Rio which saw the largest gathering of world leaders ever in the history deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 158 nations. The delegates also approved by consensus three non binding documents namely, a Statement on Forest Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco systems. Sustainable Development as defined by the Brundtland Report means "Development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs." We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international Law though its salient features have yet to the finalised by the international law Jurists.

Some of the salient principles of "Sustainable Development" as called out from Brundtland Report and other international documents, are inter-Generational international documents, are inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principles, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that the “Precautionary Principle” and the “Polluter Pays” principles are essential features of “Sustainable Development”. The "Precautionary Principle in the context of the municipal law means:

(i) Environment measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "Onus of proof" is on the actors or the developer/industrialist to show that his action is environmentally benign.

"The Polluter Pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro-legal Action v Union of India, 1996 (2) JT (SC) 196: (1996 AIR SCW 1069). The Court observed. "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of revering the damaged ecology.

The precautionary principle and the polluter pays principles have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of the life and personal liberty. Articles 47, 48A and 51A(9) of the Constitution are as under:

> "47. Duty of the State to raise the level of nutrition and the standards of living and to improve public health. The State shall standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition on the consumption except for medicinal purposes of intoxicating drinks and the of drugs which are injurious to health.
>
> 48A. Protection and improvement of environment and safeguarding of forests and wild life. The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country.
>
> 51A(9). To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".

Apart from the constitutional there are plenty of post independence legislations on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974 the (Water Act), 1981 (the Air Act) and the Environment Protection Act, 1986 (The Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. Also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of

imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the environment in the country. We shall deal with the Environment Act in the later part of this Judgement.

In view of the above meanings constitutional and statutory provision we have no hesitation is holding that the precautionary principle and the pollutant pays principle are part of the environment law of the country.

43. We are of the view that before any shrimp industry or shrimp pond is permitted to be installed in the ecology fragile coastal area it must pass through a strict environmental test. There had to be high powered "Authority" under the Act to scrutinise each and every case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broad-based primarily concerning environmental degradation linked with shrimp farming. The assessment must also include the social impact on different population strata in the area. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who are affected and prejudiced.

44. Before parting with this judgment, we may notice the "Dollar" based argument advanced before us. It was contended before us by the learned counsel appearing for the shrimp aquaculture industry that the industry has achieved singular distinction by earning maximum foreign exchange in the country. Almost 100 per cent of the product is exported to America. Europe and Japan and as such the industry has a large potential to earn "Dollars". That may be so, but the farm-raised production of shrimp is much lesser than the wild caught production. The UN Report shows the world production of shrimp from 1982 1983 under:

"Table 1: World Production of Shrimp
Thousands of metric tons

Year	Farm-raised	Wild-caught	Total
1982	84	1,652	1,786
1983	143	1,683	1,626
1984	174	1,733	1,907
1985	213	1,906	2,121
1986	309	1,909	2,218
1987	551	1,785	2,264
1988	604	1,914	2,518
1989	611	1,832	2,443
1990	633	1,968	2,601
1991	690	2,118	2,608
1992	721	2,191	2,912
1993	610	2,100	2,710

It is obvious from the figures quoted above that farm raised production of shrimp is of very small quantity as compared to wild-caught. Even if some of the shrimp culture farms which are polluting the environment, are closed, the production of shrimp by environmentally friendly techniques would not be affected and there may not be any loss to the economy specially in view of the finding given the NEERI that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of coastal aquaculture produce. That may be the reason for the European and American countries for not permitting their sea-coasts to be exploited for shrimp-culture farming. The UN report shows that 80% of the farm cultured shrimp comes from the developing countries of Asia.

45. We, therefore, order and directed as under.

1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal States, Union Territories. The authority shall be headed by a retired Judge of a High Court. Other members preferably with expertise in the field of aquaculture, pollution control and environment protection shall be appointed by the Central Government. The Central Governments shall confer on the said authority the powers to issue directions under Section 5 of the Act and for taking measures with respect to the matters referred to in Clauses (v), (vi) (vii), (viii), (ix), (x) and (xii) of sub-section (2) of Section 5. The Central Government shall constitute the authority before January 15, 1997.

2. The authority so constituted by the Central Government shall implement "the Precautionary Principle" and "the Polluter Pays" principles.

3. The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(1) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the costal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks, river and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in the coastal low lying areas).

4. All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997. We direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report in this respect shall be filed in this Court by these authorities before April 15, 1997.

5. The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production productivity and return with prior approval of the "authority" constituted by this order.

6. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.

7. No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 meter or Chikla lake and Pulicate lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu)

8. Aquaculture industry/shrimp aquaculture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and demolished before March 31, 1997. We direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish and aquaculture industries/shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report in this respect shall be filed in this Court by these authorities before April 15, 1997.

9. Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the authority as constituted by this Court. Such industries which are already operating in the said areas shall detain authorisation from the "Authority" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. We further direct that any aquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, or the drinking water or wells and/or by the use or chemical reeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation turbidity of water courses local fauna and flora shall not be allowed by the aforesaid Authority.

10. Aquaculture industry/shrimp culture industry/shrimp culture ponds which have been functioning/operating within the coastal regulation zone as defined by the CRZ Notification and within 1000 meter from Chilka and Pulikat Lakes shall be liable to compensate the affected person on the basis of the "polluter pays" principle.

11. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to the paid to the said individuals/families. The authority shall further determine the

compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

12. The authority shall compute the compensation under two heads namely for reversing the ecology and for payment to individuals. A Statement showing the total amount to be recovered, the name of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrate of the area concerned. The Collector/District Magistrate shall, recover the amount from the polluters, if necessary as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

13. We further direct that any violation or non-compliance of the directions of this Court shall attract the provisions of the Contempt of Courts Act in addition.

14. The compensation amount recovered from the polluters shall be deposited under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment.

15. The authority in consultation with expert bodies like NEERI, Central Pollution Control Board, and respective State Pollution Control Boards shall frame scheme/schemes for reversing the damage cause to the ecology and environment by pollutions in the coastal. States/Union Territories. The scheme/schemes so framed shall be executed by the respective State Governments/Union Territory Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from the other sources provided by the respective State Governments/Union Territory Government and the Central Government.

16. The workmen employed in the shrimp culture industries which are to be closed in terms of this order, shall be deemed to have been retrenched with effect from April 30, 1997 provided they have been in continuous service (as defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in the industry concerned before the said date. They shall be paid compensation in terms of Section 25F (b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, six years' wages as additional compensation. The compensation shall be paid to the workmen before May 31, 1997. The gratuity amount payable to the workman shall be paid in addition.

46. The writ petition is allowed with costs. We quantify the costs as Rs. 1,40,000/- (Rupees one lac forty thousand) to be paid by the States of Gujarat, Maharashtra, Orissa, Kerala, Tamil Nadu, Andhra Pradesh and West Bengal in equal shares of Rs. 20,000/- each. The amount of Rs. 1,40,000/- realised from the seven coastal State shall be paid to

Mr. M.C. Mehta, Advocate who has assisted us in this case throughout. We place on record our appreciation for the assistance rendered by Mr. Mehta.

Petition allowed.

Samatha v. State of A. P.
(1997) 8 Supreme Court Cases 191
K. Ramaswamy, J.

K. RAMASWAMY, J. Leave granted.

2. These appeals are directed to resolve mutually inconsistent law adumbrated by two Division Benches of the Andhra Pradesh High Court. The appeals arising from SLPs (C) Nos. 17080-81 of 1995 are filed against the judgment passed in *Samatha Vs. State of A.P.*[1] in which the Division Bench has held that Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (1 of 1959), as amended by Regulation II of 1970 (for short "the Regulation") and the Mining Act (67 of 1957) do not prohibit grant of mining leases of government land in the Scheduled Area to the non-tribals. The Forest (Conservation) Act, 1980 (for short "the FC Act") does not apply to the renewals. The Andhra Pradesh Forest Act, 1967 also does not apply to the renewal of the leases. It accordingly, dismissed the Writ Petitions filed by the appellant challenging the power of the Government to transfer the Court land situated in the tribal areas to the non-tribals for mining purpose.

3. In the appeal arising from SLP (C) No. 21457 of 1993 filed by Hyderabad Abrasives and[2] Minerals, another Division Bench, earlier had taken diametrically the opposite view and held that mining leases are illegal. The word "person" used in Section 3 of the Regulation includes Government. Any lease to the non-tribals even of government land situated in a Scheduled Area is in violation of Section 3 and so is void. Equally, it held that a mining lease in a forest area for non-forest purpose renewal thereof, without prior approval of the Central Government, is in violation of Section 2 of the FC Act. Accordingly, the Division Bench directed the Government to prohibit mining operations in Scheduled Area except that the mines stacked on the surface be permitted to be removed after obtaining proper permits. This decision, though earlier in point of time, was not brought to the notice of the latter Bench mentioned above.

4. The admitted facts are that Borra Reserved Forest Area along with its environs consisting of 14 villages is the notified Scheduled Area in Ananthagiri Mandal of Visakhapatnam District of Andhra Pradesh. The State Government granted mining leases in this area to several non-tribal persons. K. Appa Rao, Respondent 13, was granted mining lease in that reserved forest area. Most of the area granted to M/s Perclase India Ltd., Respondent 7 falls in reserved forest area. M/s Unirock Minerals Pvt. Ltd.,

[1] Samatha Vs. State of A.P., (1995) 2 Andh LT 233 (DB)
[2] (1995) 2 Andh LT 233 (DB)

Respondent 8 had 125.30 acres in the reserved forest area and 45.70 acres in the non-reserved forest area. M/s Kalyani Minerals, Respondent 10 had 48.00 acres in the reserved forest area and 32 acres in non-reserved forest area. One M. Seetharama Swamy was granted mining lease to an extent of 300 acres in Borra Reserved Forest Area. Shri R.K. Deo is also having mining lease in that area. Respondent 9 is said to be the legal heir of M. Seetharama Swamy. These facts are admitted in the counter-affidavit filed by the Government.

5. It is also an admitted fact that Ananthagiri Mandal in which the mining areas are situated, is within the Scheduled Area. The tribal people from tribal groups are inhabiting therein. Two mining leases were granted to one Chalapati Rao, Respondent 11 for graphite to an extent of 50 acres in Nandkote Reserve Forest for a period of 20 years on 26-08-1971. The lease deed was executed on 24-1-1972 and expired on 23-1-1992; it is stated that thereafter mining operations are not being carried on. Similarly, mining lease for an extent of 111 acres of land situated in Chimidipalli and Saripalli villages of Ananthagiri Mandal, was granted on 29-8-1974. The lease was executed on 20-12-1974 for a period of 20 years which expired on 19-12-1994. Mining lease for Andhra Phosphates (P) Ltd. was granted to an extent of 271.544 hectares in Y. Seetharampuram, Veduruvada Reserved Forest on 23-3-1957 for 20 years. The lease deed was executed on 10-6-1957 which was renewed for 20 years on 2-5-1978. The renewed deed was executed on the even date which would continue up to 9-6-1997. As stated earlier, K. Appa Rao, Respondent 13, was granted mining lease for 20 years on 26-7-1978 which was executed on 24-1-1979. It is due to expire on 23-7-1999. But, it is stated that at present he is not working out the mining operations. Respondent 14, M. Venkatapathi Raju was granted mining lease for 13.84 acres for yellow ochre in unsurveyed revenue poramboke, in Konapuram, Ananthagiri Mandal for a period of 20 years on 4-4-1980. The lease deed was executed on 26-4-1981 and is to expire on 25-4-2001. It is claimed that the lease is not being worked out and it is said to have lapsed. The lease granted to M/s Visaka Mines & Minerals, Respondent 15, is said to be in non-surveyed area in Mandaparti Village of Ananthagiri Mandal on 20-7-1978 for a period of 20 years. The lease deed was executed on 18-12-1978 and it would expire on 17-12-1998. They are working out their mines. Another lease was granted for 130 acres in reserved forest area of Sivalingam Village of Ananthagiri Mandal on 20-9-1977 for a period of 20 years which expire on 30-12-1997. It is stated that the lease had lapsed since it was not being worked out, w.e.f. 9-2-1988 as per GOMs No. 295 dated 6-6-1989.

Associated Mica Exports, Respondent 16 holds two leases for 50 acres in Dumbriguda Village of Ananthagiri Mandal for a period of 20 years granted on 13-3-1986. The Lease was executed on 11-9-1986 and it is to expire on 10-9-2006. It is stated that lease is not being worked out at present. They had another lease for 10 acres in Borra group of villages for 20 years granted on 20-10-1983 and the lease deed was executed on 21-11-1983. The lease is to expire on 20-11-2003. It is stated that the mine is not being worked out at present. Respondent 17 N. Madan Mohan Reddy had a lease in Mallagumuru Village of Ananthagiri Mandal. The extent of the land has not been mentioned but the lease was granted on 4-7-1984. The lease was executed on 5-9-1984 and it is to expire on 4-9-2004. It is stated that the mine is not being worked out at present. M/s Trowall

Cements Ltd., obviously got it transferred from N. Madan Mohan Reddy to whom lease was granted for 20 years in GOMs No. 303, Industries and Commerce on 9-7-1984 for a period of 20 years. The lease deed was executed by Madan Mohan Reddy on 7-1-1985 and is due to expire on 6-1-2005. It is stated that the mining is not being worked out and steps are being taken to declare it as a lapsed lease. It is the case of the appellant that the above lease was sub-leased to M/s Indian Rayon Industries Ltd., Respondent 19 but in the affidavit filed by the Government, it is said that no steps are being taken to win over the mine from the leased area. On the other hand, in the counter-affidavit filed on behalf of Respondent 19, it is admitted that the mines are being worked out and that high purity calcite with minimum silica content is their product. Calcite mine is available in Visakhapatnam District at a short distance of 100 kms from their factory situated in Visakhapatnam. One M. Laxminarayana was the lessee of an extent of 21.56 acres of land in Nimmalapadu Village in Ananthagiri Mandal which is valid up to 31-5-2005. Another lease of 37.895 hectares in Ananthagiri Mandal was granted for a period of 10 years. The lease is valid up to 3-7-1996. Respondent 19 had transferred the said lease in its favour in GOMs No. 4, Industry and Commerce dated 5-1-1993 and they are working out the mines. M/s Birla Periclase is a subsidiary of Respondent 19. It is stated in the affidavit filed on behalf of the Government that 21.56 acres of land containing mica, calcite, quartz and yellow ochre in Nimmalapudu Village which is the subject-matter of the original lease dated 17-11-1984 for a period of 20 years had by M. Laxminarayana, was transferred to Respondent 19. It was stated that the same has further been transferred in favour of M/s A.P. Mineral Development Corporation Ltd. on 20-12-1994 by GOMs No. 456 dated 7-12-1994. The latter is a State Government undertaking but that is not so stated in the counter-affidavit field on behalf of Respondent 19. It is sought to be justified that M. Laxminarayana, Respondent 20, has a legal right to assign the lease in favour of Respondent 19. It is also admitted in the Government's counter-affidavit that by operation of Section 11(5) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Mining Act"), as amended by the State Act, on and from 14-8-1991, no mining leases in the Scheduled Area should be granted in favour of non-tribals. It is also admitted that tribals have their patta lands in five enclosures and have their right to cultivate those lands. It is the case of the appellant that after re-survey, the entire area was identified as reserved forest area or at any rate is a forest area in Scheduled Area.

6. On this factual matrix, the appellant-Society claiming to protect the interests and life of the Scheduled Tribes in the area, filed the writ petitions questioning the power of the Government to grant mining leases in favour of non-tribals in the Scheduled Area, in violation of the Regulation which prohibits transfer of any land in Scheduled Area to a non-tribal. The Division Bench of the High Court has held that the Regulation does not prohibit transfer of the Government land by way of lease to the non-tribals. The word "person" in Section 3 of the Regulation is applicable to natural persons, namely, tribals and non-tribals. The regulation prohibits transfer of land in Scheduled Area by a tribal to non tribal natural persons. The leases granted in accordance with the provisions of the Mining Act to non-tribals are valid. The FC Act was not violated by grant of leases or renewal thereof. Therefore, the writ, as sought for, was not available. Resultantly, the Writ Petitions were dismissed.

7. In the appeal of M/s Hyderabad Abrasives and Minerals, the admitted facts are that the appellant was granted mining lease for 20 years in 1974 for mining laterite situated in Peddamaredumilli Reserved Forest Area in East Godavari District. The total extent of the land leased was 318 acres out of which it was carrying on mining operation in 42 acres. Similarly, other persons were also granted mining leases in the reserved forest area in East Godavari District. Consequently, M/s Shakti, the voluntary organisation filed the Writ Petition in the High Court questioning the power of the Government to grant mining leases in violation of Section 3 of the Regulation and the FC Act. The lease expired in 1994. The Division Bench held that by operation of the prohibition contained in Section 3 of the Regulation and Section 2 of the FC Act, the appellant is not entitled to mining operations. However, since he had already broken up the mining, the excavated mine on the surface may be removed on obtaining permission from the appropriate authorities. Feeling aggrieved, the appellant has filed the above appeal.

8. The primary questions in these cases are whether the Regulation would apply to transfer of government land to a non-tribal; whether the Government can grant mining lease of the lands situated in Scheduled Area to a non-tribal; whether the leases are in violation of Section 2 of the FC Act; and whether the leases are in violation of the Environment (Protection) Act, 1986 (for short "The EP Act"). It is stated in paragraph 3(c) of the petition of Samatha that the Borra Reserved Forest Area was part of the domain of the Rajah of Jeypore and from time immemorial, it was a tribal area occupied by tribal villages. They have pattas in their favour and do cultivation. In 1967, 14 villages were declared as Borra Reserved Forest. About 250 tribal families settled in 14 villages have in their occupation 436 acres of land in five enclosures. They are situated in Anathagiri Mandal. In the counter-affidavit filed on behalf of Respondent 10, M/s Kalyani Minerals, it is admitted that Borra caves may be as old as a million years. It is admitted that the "entire area around Borra caves is thickly forested". In the counter-affidavit filed by the District Forest Officer, Respondent 4, it is admitted that Ananthagiri mandal is a Scheduled Area and the tribals belong to diverse denominations. It is also one of the important hill regions of the Eastern Ghats and is known not only for the diversity of its flora and fauna but also for the richness of mineral deposits. It is also rich in forest wealth and the minerals. It is their contention that the forest wealth in this area is a national asset.

Agriculture - a means of livelihood, succour for social justice and base for dignity of person

9. *Agriculture is the main part of the economy* and source of livelihood to the rural Indians and a source and succour for social status and a base for dignity of person. Land is a tangible product and sustaining asset to the agriculturists. In *Waman Rao Vs. Union of India*[3] a Constitution Bench had observed that India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in social system". The strip of land on which they till and live assures them equal justice and "dignity of their person by providing to them a near decent means of livelihood".

[3] (1981) 2 SCC 362: (1981) 2 SCR 1

Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.

10. Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means of economic and social justice and is a potent weapon of economic empowerment in social democracy.

11. Ninety percent of the Scheduled Tribes predominantly live in forest areas and intractable terrains, 95 per cent of them are below poverty line and totally depend upon agriculture or agriculture-based activities and some of them turn out as migrant construction labour due to their displacement from hearth and home for the so-called exploitation of minerals and construction of projects. As per 1991 Census, in Andhra Pradesh the population of the tribes was 41.99 lakhs. They adopted traditional shifting cultivation (Podu of Jhoom), since they are poor and illiterate and away from the winds of modern agricultural technology and economy. Such cultivation is predominantly prevalent in Andhra Pradesh, Bihar, Orissa, Madhya Pradesh, Maharashtra, Gujarat, Rajasthan, North-Eastern States and some parts of Uttar Pradesh. According to this practice, an area covered with vegetation is burnt out to serve as manure. Cultivation is done for a year or two and then the area is abandoned. Another area is cleared in a similar manner and again abandoned. Vegetation regenerates in the abandoned area and after a lapse of 8 to 10 years, the area is again cleared and burnt and, thus, shifting cultivation is carried on. This cycle repeatedly goes on. Due to pressure on land this shifting cultivation has now been abandoned and the tribes are settling to cultivate crops in fixed holdings.

Plight of the Tribes

12. Detailed study in this behalf and of their exploitation has been conducted by sociologists and anthropologists, the foremost notable of them being Prof. C.V.F. Haimendrof and Arher. Many others equally have evinced keen interest and investigated into living conditions of the tribes, their culture and customs, etc. which establishes that initially the tribals had held large tracts of lands as masters and had their own rich culture with economic status and cohesiveness as compact groups. The policy adopted by the rulers encouraged non-tribals to immigrate in large number and settle down in tribal areas. Governments compelled tribal chieftains to permit non-tribals to take hold of revenue administration, which led to the slipping of lands from the hold of the tribes to the non-tribals. In the *"Tribes of India-The Struggle for Survival",* Prof. Haimendrof has graphically explained diverse methods by which the tribals were deprived of their lands. Numerous methods adopted to exploit them having become unbearable, they rebelled against their exploitation. Inderelli (Andhra Pradesh) police firing in which hundreds of innocent tribals were killed, is one of the latest events which would depict the enormity of their exploitation. By laying railway tracks and roads as means of communication by

the British rulers, the tribal areas became accessible to the non-tribal immigrants who, with limited means, came in large numbers in search of livelihood and settled down in the Agency areas and acquired large holdings by exploitation of the tribals. Dr. P.V. Ramesh, IAS, Director, Tribal Welfare, in his article "*Land Reforms and Land Transfer in Scheduled Area"* in a seminar organised by A.P. Judicial Academy and published by it as "*Scheduled Tribes and Social Justice"* p. 78 at p. 202 has stated that in Utnoor Division of Adilabad District a tribal in whose name 148 acres was recorded as owner, was declared as surplus landholder under the Land Reforms Act and the only 5 acres of land in his actual possession and enjoyment was taken by the Government as surplus land. In contract, Izaradars surrendered Government land as they entered their names in revenue records as owners and claimed compensation under the Land Acquisition Act for 742 acres.

13. The tribal economy was simple but with the gradual contact with the non-tribals they started taking loans. The wiles of moneylenders and traders exploited their innocence. Honest, truthful and hard-working tribals became prey to the greed and exploitation by non-tribals. They charged maximum rate of interest etc. for fringe money or gains or goods lent to them. Tribals had to repay disproportionately in three or fourfold in kind. Exorbitant rate of interest was charged and repayment collected in kind, i.e., the produce in three or fourfold. In the "*Land Alienation and Restoration in Tribal Communities in India"* edited by S.N. Dubey and Ratna Murdia, (Himalaya Publishing House), compilation of articles presented and read out at a seminar organised by Tata Institute of Social Sciences in which bureaucrats and social scientists participated. B. Danam, IAS, the then Project Officer, ITDA, Khammam, had highlighted in his paper about diverse modes of exploitation by moneylenders of the tribals in Andhra Pradesh. They were: short-term loan at an exorbitant rate of interest (Kandagutha), the repayment of which was made in kind, i.e., harvest produced from a particular extent of land; the medium-term loan on the security of the immovable property, repayable with compound interest at yearly or half-yearly rests. Third mode was lease of land against a loan for a fixed number of years (Tirumanam) during which period the tribals have to cultivate their land, raise the crop and deliver the entire produce of the moneylender; by usufructuary mortgage, the moneylender remains in possession and enjoys the produce from the land for fixed number of years or till the principal sum is repaid; by advancing cash and kind loans (Namu) and lending commodities like food grains mostly for sustenance during the lean months or for seedings, on the condition that the same would be repaid in full along with flat rate of interest at the time of harvest and in default payment should be with compound interest; in case of further default, the accumulated arrears get merged with the principal, i.e., by way of compound interest. The other types of money lending extends to petty loans or selling clothes on credit to the tribals during the lean months on the condition that it would be paid in full at the time of harvest and in default the moneylender would take over the land by threat of physical force.

Legislative intervention - Enforcement ineffectiveness

14. The Ganjam and Vizagapatnam Act of 1839 declared the Agency areas of the Madras Presidency, comprising parts of Southern Orissa and seven present Andhra Pradesh

districts for special administration. In 1874, the Scheduled Districts Act XIV (Central Act) was passed. Thereunder, Scheduled Districts were defined to mean the territories mentioned in the First Schedule and parts thereof; they also include any other territory to which the Secretary of State for India by resolution in council, may declare. Subsequently, the Act was extended to the Taluk of the then Bhadrachalam in East Godavari District which is now a part of Khammam District together with the districts covered under the 1839 Act. The Provincial Government issued rules prescribing the procedure to be followed by the officers appointed thereunder to administer Agency tracts. Later on, the Agency Tracts and Land Transfer Act 1 of 1917 came to be passed. Thereunder, to mitigate the hardships of the tribals from the wiles of moneylenders and other migrants from plain areas, provision was made so that rate of interest would not exceed 24% per annum and compound interest would not be charged nor any collateral advantage would be taken by the moneylenders. The total interest allowed or decreed should not exceed the principal amount. The "Scheduled Districts" defined in the 1874 Act were reconfirmed in the 1917 Act. Section 4 thereof prohibited transfer of land in the Agency tracts which read as under:

> *"4. Transfer of immovable property by a member of a hill tribe-*
>
> *(1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.*
>
> *(2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed officer may, on application by anyone interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.*
>
> *(3) Subject to such conditions as may be prescribed an appeal against a decree or order under sub-section (2) if made by the Agent shall lie to the Governor General-in-Council and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed."*

15. The Montague and Chelmsford Report, 1918 briefly touched the administration of tribal areas and political reform and excluded them from the reformed Provincial Governments. The Government of India Act, 1919 divided the area into two parts- "wholly excluded and partially excluded areas for reform". The former were small and the latter were given joint responsibility of the Governor and the Governor General-in-Council. The Montague Chelmsford Report of 1918 suggested that the backward areas where primitive tribes live should be excluded from proposed political reform and administration was entrusted to the Governors of the Provinces.

16. Pursuant to Simon Commission Report, the Government of India Act, 1935 dealt with excluded and partially excluded areas as per 1936 Order issued under Section 91 of the Government of India Act, 1935. Simon Report is worth extracting here and reads thus:

"There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural: and, secondly, they were likely to get into the 'wiles of the moneylenders'. The primary aim of government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas."

17. Therein also, "Scheduled Districts" defined in 1874 Act were treated as excluded and partially excluded areas. The administration thereof was exclusively vested in the Governor of the Province under Section 92 of the Government of India Act, 1935 and sub-sections (1) and (2) which are relevant for our purpose read as under:

"92.(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal legislature or of the Provincial legislature shall apply to an excluded area or a partially excluded area, unless the governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any special part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The governor may make regulations for the peace and good Government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any act of the Federal legislature or of the Provincial legislature or any existing Indian law, which is for the time being applicable to the area in question.

Regulations made under this sub-section shall be submitted forthwith to the Governor General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor General as they apply in relation to Acts of a Provincial legislature assented to by him."

18. The Government of India (Adoption of Indian Laws) Order, 1937 repealed 1874 Act and brought excluded and partially excluded areas directly under the governance of the Governor under Section 92 of the Government of India Act, 1935. Thus they became Scheduled Areas by virtue of the Scheduled Areas (Part 'A' States) Order, 1950 issued by the President of India. After the advent of the Constitution, Fifth and Sixth Schedules were engrafted as part of the scheme of the Constitution by the founding fathers. Fifth Schedule empowers the President of India who thereunder issued Scheduled Area (Part 'A' States) Order, 1950 declaring specified areas therein to be Scheduled Areas within the States specified in Part 'A' of the First Schedule to the Constitution of India. Therein also East Godavari, West Godavari and Visakhapatnam Agencies (Vizianagaram and Srikakulam Districts are part of it) were declared to be Scheduled Areas in Madras

Province. Equally, by Scheduled Areas (Part 'B' States) Order, 1950 which became effective from 7-12-1950, the President exercised the power declaring certain specified areas as Scheduled Areas in Part 'B' States including the State of Hyderabad (Adilabad, Karimnagar, Nizamabad, Warangal, Khammam, Mahaboobnagar Districts).

19. It would, thus, be clear that right from the inception of colonial administration, the agency areas were treated distinctly from other areas. Tribals were protected from exploitation; their rights and title to enjoy the lands in their occupation and their autonomy, culture and ecology were preserved; infiltration of the non-tribals into tribal areas was prohibited. Sugalis, i.e., Khanbadosh, non-tribals, by migration became in due course, tribals. Even those migrant non-tribals were prohibited to purchase the lands in Agency areas from the tribals except with the prior sanction of the officer appointed by the Government in that behalf. However, with the connivance and fabrication of revenue records, non-tribals got hold of the lands and exploited the tribals.

20. Prof. Haimendorf has explained how notoriously the migrants swelled in number in the Agency areas in Telangana of Andhra Pradesh and dispossessed the tribals from their holdings with impunity and prevented them from enjoying right over their lands or unlawfully dispossessed them in collusion with the Patwaris, Deshmukhs or Deshpandes, the lower level local officials. He has given the comparison of the population at p.57 thus:

> *"Despite all such obstacles the allocation of land to the tribals of Adilabad which began in 1944 made good progress. By 1945 a total of 45,117 acres of land had been granted to 3144 tribals, and by 1949 the amount of land assigned on patta to tribals had arisen to 160,000 acres and the number of beneficiaries to 11,198. The work continued until about 85 percent of the tribals householders of Adilabad acquired holdings of cultivable land."*

At p. 59 he has stated that:

> *"Visual impression of the process of ethnic and cultural change are supported by demographic figures. While in 1951 the population of a Utnur Taluk was only 34,404, the majority of whom were tribals, by 1961 it had risen to 55,099 and by 1971 to 93,823. No official census figures are available for later years, but according to a malaria survey of 1977 the population of the taluk had then reached a total 112,000. This phenomenal increase is clearly due to immigration, and all the newcomers are non-tribals. The change in the composition of the population is reflected in the figures for tribals in individual circles. Thus in the Marlavai Circle, which in 1941 was almost totally tribal, the percentage of tribals in 1961 was still 90.38 per cent, but by 1971 it had dropped to 65.52 per cent, a figure which undoubtedly has diminished since then."*

Narrating the event (after his revisit), he has stated at pp. 59-60 thus:

> *"On 7th December, 1976, Kumra Boju of Kerimeri came to see me in Kanchanpalli and told me the following story:*

My father Somu owned fifteen acres of patta land, but for the last thirteen years Rama Gaudu of Asifabad (a man of toddy-tapping caste) has been cultivating this land. When my father died I was a small child, and Rama Gaudu occupied our land. Some time ago I applied to M. Narayan, the Special Deputy Collector, for restoration of my father's land. The Deputy Collector decided the case in my favour and restored the land to me. I was very happy and ploughed the land in preparation of sowing jawari. But when I was ready to sow Rama Gaudu, supported by some villagers of Keslaguda, stopped my cultivating. Then the Tahsildar, the revenue inspector, and the Patel came to the village and told me that my father's land was mine by right. But at the same time they advised me not to cultivate that land, but to occupy instead the adjoining field which belongs to a Muslim. How could I do this? Then Rama Gaudu brought some men and sowed on my land. Moreover Rama Gaudu had reported to the police that I had illegally ploughed his land. So the Sub-Inspector of Police came to my house with some constables and wanted to arrest me. But in the end they did not take me to Asifabad. Rama Gaudu has occupied also the patta land of three other Gonds, who are my mother's brothers. They all died but they have sons who have a claim to their land. Now none of us has any land of our own because Rama Gaudu has all of it taken away."

This is only a tiny iceberg of several instances. He has highlighted the gross injustice done to the tribals. The book contains full details which need no recounting here to avoid needless burden.

21. Dr. G.P. Reddy at pp. 66-67 of his book *Politics of Tribal Exploitation* has stated thus:

"These non-tribals cultivator immigrants enjoyed liberal concessions. They were assigned land just for asking even waiving land revenue. Many of them were also conferred with right of Patel and Patwari. They were encouraged not only to establish new villages but also to settle in already well established Goa villages. In this process the aboriginals gained nothing but became mute witnesses to the process set in by the rulers which ultimately pauperised the tribals, turning them from landowners to agricultural proletariat."

22. Writing about the non-tribals acquiring interest in the land in the tribal areas of Adilabad, Sethumadhava Rao has stated that:

"Where land outside the forest was vacant it was readily granted Patta to the non-tribals. The Gonds too had an opportunity of acquiring patta rights in the land but they were slow to understand that they would suffer if they did not take advantage of these concessions. The new Watandars made a subtle use of their office as village headmen to evict the original possessors or take lands vacated by them for themselves."

23. Another modus operandi for evicting the tribals who were cultivating the lands was by treating them as Sivaijamabandi, i.e., treating as unauthorised occupants. A cultivator who held land under Sivaijamabandi tenure is liable to eviction at any time. The tribals

who were owners under the law were treated as unauthorised occupants by manipulation of revenue records. The tribals who could not understand the meaning of Patta rights could not be expected to understand the meaning of Sivaijamabandi. In many cases, though tribals had been cultivating the lands for several decays and generation, they were purposefully categorised as Sivaijamabandi, and were evicted. Their lands were assigned to non-tribals. It is ridiculous even to classify the lands held by tribals as Sivaijamabandi just because these people lacked knowledge of the nature of their rights over their lands.

24. Traditionally, the tribals of the area acquired absolute right over the land for cultivation the day they started clearing new patches of forest. Prof. Haimendorf has narrated hundreds of such cases wherein the poor tribals had complained to him as to how they had lost their lands because of wrong and false entries made in the land records by the Patwaris. Even till recently, the records were not maintained properly. This gave scope for the manipulation both by the Patwaris as well as by the petty revenue officials. This manipulation of records took place mainly due to corrupt practices.

25. Dubey's compilation gives first-hand account given by IAS officers on the field representing Andhra Pradesh, Bihar, Gujarat, Maharashtra, represented then by K. Padmanabhaiah, the present Home Secretary, Government of India, Orissa, M.P. Rajasthan and West Bengal and they had given graphic first-hand account of the magnitude of the problems of land alienations and causes of exploitation. They pointed out the urgent need for restoration of the lands to the tribals. Dr. G. Prakash Reddy from ICSSR surveyed the problems once again and has graphically explained it in his *Politics of Tribals Exploitation (Mittal Publication), The Khonds and Jaungs in Andhra Pradesh, Handbook for Development* by Dr. Ramakant Nath, B.M. Boal and N. Soreng tells the plight of, and the need for restitution of the land to and rehabilitation of, Orissa tribes. The Reports of the Commissioner of SCs and STs, 1980-81 and 1984-85 also emphasise the urgency of the problem. As in the year 1995, in Andhra Pradesh, the non-tribals were in possession of 7,51,435.66 acres in Scheduled Areas of A.P. State (vide p. 192 of *Scheduled Tribes and Social Justice).*

26. Like in Madras Province, in Bihar, the Chotanagpur Tenancy Act, 1908 prohibited transfer of lands by sale etc. except with the previous sanction of the Deputy Commissioner. The Bombay Province Land Revenue Code, 1879 also prohibited transfer of land from a tribal to a non-tribal without the permission of the District Collector. Similarly, the Chotanagpur Tenancy Act, 1908, the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1959 and the Bihar Scheduled Areas Regulations, 1969 also prohibit the alienation of land of the tribals. These regulations also provide for restoration of alienated land to the tribals or when converted for urban use, to give them equivalent lands. As early as in 1901, in Gujarat, some measures of protection were provided (when it formed part of the Bombay Province) by amendment of Sections 73-A and 79-A in the Bombay Land Revenue Code, 1879, and imposed ban on transfer of land of tribes in those scheduled villages in which survey and settlement had not been introduced without previous permission of the Collector. The Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 and the Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974 also prohibit alienation and ensure restoration of

alienated lands to the tribes. Dr. B.L. Maharda, IAS, a bureaucrat of Rajasthan cadre, in his *History and Culture of Giriasias* of State of Rajasthan, has narrated the similar problem of tribals.

27. The regulation prohibits absolutely the transfer of land in Scheduled Areas of Andhra Pradesh between tribals and non-tribals or non-tribals inter se. In 1971, an amendment was made to exempt hypothecation of lands by tribes to the Cooperative Land Mortgage Banks and other financial institutions approved by the Government subject to certain conditions. In Assam, the Assam Land and Revenue Regulation Act, 1964 was enacted. In Himachal Pradesh, the H.P. Transfer of Land (Regulation) Act, 1968 was made. In Karnataka, the Bombay Tenancy and Agricultural Lands Act, 1948 was made applicable in Bombay region of the Karnataka State. The Mysore Land Revenue (Amendment) Rules, 1960 were suitably amended imposing restriction on alienation of the lands allotted to the Scheduled Tribes and Scheduled Castes without prior permission of the Government. In Kerala, the Kerala Land Reforms Act, 1963 contains similar provision. The Kerala Scheduled Tribes (Restriction of transfer of Land and Restoration of Alienatin Lands), Act, 1975 was enacted for the same object which has recently been amended by a bill, details whereof are not available. In Madhya Pradesh, the M.P.L.P. code, 1959, under Section 165(6) and 168(1), prohibits alienation of land and remedy of restoration thereof is provided. In Manipur, the Manipur Land Reforms and Land Revenue Act, 1970 was made. Similarly, the Orissa Scheduled Areas (Transfer of Immovable Property) Regulation and also Orissa Land Reforms Act, 1960 were made for the same purpose. The Rajasthan Tenancy Act, 1955, as amended in 1956, prohibits such transfer of lands. In Sikkim, the Sikkim Revenue Order, 1977 and the Sikkim Agricultural Land Ceiling and Reforms Act, 1977 are enforced. Equally, the Madras cultivating Tenants Protection Act, 1955 provides the same relief. In Tripura, the Tripura Land Revenue and Land Reforms Act, 1960 imposes similar restrictions. In Uttar Pradesh, the U.P. Land Laws (Amendment) Act, 1982 was made though its implementation was stayed by the High Court.

28. The above bird's eye survey discloses the enormity of the yawning gap between making of the Acts and their proper enforcement. The magnitude of the problem is of national importance which needs to be tackled and solved by parliamentary law and effective enforcement.

29. As we have seen from the legislative history, from the beginning of the British rule in India, the legislature has adopted the policy to exclude some areas totally and some partially from the governance through the Executive Council and given power to the governor of the Province and the Governor General/Viceroy to administer them with their special responsibilities. The partially excluded areas had the dual control by the Executive with primacy given to the Governor of the Province to apply or to exclude the application of the laws made by the legislature or the Executive Council to the partially excluded Scheduled Areas. In either event the object was to prevent the tribals to get into the wiles of the moneylenders and preservation of their property and customs and to allow the tribals autonomy of their living in accordance with their customs and culture. Until the Simon Commission, the legislative protection was not available in that behalf.

The Simon Commission found it necessary to bring the tribals into the mainstream of national life. In consequence, tribal area was to be brought under the direct administration of the elected governments by encouraging education, self-reliance and the Provincial Governments were to devote special attention to their upliftment. But the scheme was not given effect to in the Constitution of India Act, 1935. As is seen, Section 91 and 92 of the Government of India Act and the Cabinet Mission Statement of 16-5-1946 emphasised the special attention on the tribal areas.

30. From this perspective, we are required to consider the debate in the Constituent Assembly and the draft statements by the two Committees, one for the North-East area now called Sixth Schedule and the rest of the areas covered under Fifth Schedule to the Constitution.

The Draft Constitution on Fifth Schedule, presented by Dr. Ambedkar related to Draft Articles 215-A and 215-B making provision for the administration and control of Scheduled Areas and Scheduled Tribes. Emphasis was laid therein on the creation of the Tribal Advisory Council to assist the Governor or the Ruler of each State *having Scheduled Area therein*, who are required to submit annual report to Government of India regarding the administration of Scheduled Areas in that State, so that the executive power of the Union shall extend to that area to give directions to the State as to the administration of the said area. Draft Part II, clause 5 relates to the law applicable to Scheduled Area and clause (a) of sub-clause (2) of clause 5 postulated, prohibition or restriction on the transfer of land by or among members of the Scheduled Tribes in such area; clause (b) regulates the allotment of the land to members of the Scheduled Tribes in such area and clause (c) regulates the person who lends money to members of the Scheduled Tribes in such areas. Sub-clause (3) of clause 5 gives power to the Governor or Ruler to amend any Act of Parliament or of the legislature of the State or any existing law which is for the time being applicable to the area in question. The draft report contained provision for allotment of lands to the non-tribals. The report dated 18-8-1947 indicates that areas like the Madras and Orissa Agencies still need to be of simplified type which does not expose them to the complicated machinery of ordinary law course vide Shiva Rao's study. It is provided at pp. 755-56 thus: As regards the allotment of new land for cultivation or residence, however, "we are of the view that the interest of the tribals needs to be safeguarded in view of the increasing pressure on land everywhere. We have proceeded accordingly that the allotment of vacant land belonging to the State in Scheduled Area should not be made except in accordance with special regulation made by the Government on the advice of the Tribal Advisory Council". In the joint report on the partially excluded areas other than Assam and North-East Frontier dated 25-8-1947 the above finds place. As per the minutes of the advisory committee dated 7-12-1947 it was felt that the amendment should be made after discussion in the Constituent Assembly. In the revision of articles qua allotment of lands to non-tribals was retained. However, after authorisation given by the Constituent Assembly to make necessary restructuring of the Fifth Schedule as explained by Dr. Ambedkar, the Draft was amended excluding all references to the allocation of land of tribals to the non-tribals with no amendment proposed by any member (vide vol. 9, CAD, pp. 965-1001).

31. It would, therefore, be seen that before the Draft Constitution became paramount law and the Fifth Schedule as its integral part, the members of the Constituent Assembly deliberated to protect land, the precious asset to the tribals, for their economic empowerment, economic justice, social status and dignity of their person by retention of the land with the tribals not only belonging to them but also allotment of the government land. The proposal for allotment of the government land to the non-tribals though was initially proposed but was ultimately dropped. After restructuring the Fifth Schedule, as presently found, the specific provision in the draft report to allot land to non-tribals was omitted which was accepted by the members of the constituent Assembly without any demur or discussion.

32. The Draft Constitution, 1948, clause (6) as originally proposed reads as under:

> *"(i) alienation of allotment of land to non-tribals in Scheduled Areas, it shall be lawful for a member of Scheduled Tribes to transfer any land in person who is not a member of the Scheduled Tribes; (ii) no land in Scheduled Area vested in the State within such area shall be allotted to person who is not a member of the Scheduled Tribes except in accordance with the rules made in that behalf by the Governor in consultation with the Tribal Advisory Council for the State."*

The text ultimately approved by the Constituent Assembly as part of the Constitution reads as under:

> *"(2) The Governor may make regulations for the peace and good government of any area in the State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulations may -*
>
> *(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;*
>
> *(b) regulate the allotment of land to members of the Scheduled Tribes in such area;*
>
> *(c) regulate the carrying on of business as moneylender by persons who lend money to members of the Scheduled Tribes in such area."*

33. It would, therefore, be clear from the narration of the Debates in the Constituent Assembly that various drafts were placed before the Constituent Assembly. Suggestions and ultimate approval of the Fifth Schedule, as extracted hereinbefore, would manifest the animation of the founding fathers that land in the Scheduled Area covered by the Fifth Schedule requires to be preserved by prohibiting transfers between tribals and non-tribals and providing for allotment of land to the members of the Scheduled Tribes in such area and regulating the carrying on of the business by moneylenders in such area.

Constitutional Scheme to protect the Tribes

34. Chapter VI, Part X of the Constitution deals with "Scheduled Tribes and Tribal Areas". Article 244 provides that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Area and Scheduled Tribes in any State other

than the States of Assam, Meghalaya, Tripura and Mizoram. The provisions of clause (2) of Article 244-A are not relevant for the purpose of this case; hence omitted. The Fifth Schedule makes the provisions as to the administration and control of Scheduled Area and Scheduled Tribes, Para (1) envisages that unless the context otherwise requires, the expression "State" defined in the Schedule does not include the States of Assam, Meghalaya, Tripura and Mizoram, Part V of the Schedule gets attracted to its administration and control. Para (2) envisaged that *subject to the provisions of the Schedule*, the executive power of a State extends to the Scheduled Areas enumerated therein. Special duty has been entrusted to the governor to report to the President of the administration of Scheduled Area. It enjoins that the governor of each State, having Scheduled Areas therein, shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area. Para 5(2) provides that the governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Without prejudice to the above general power, special power has been conferred under clause (a) to prohibit or to restrict the transfer of land by or among members of the Scheduled Tribes in such area and under clause (b) to regulate the allotment of land to members of the Scheduled Tribes in such area; under clause (c) regulates money lending to the tribals in the Scheduled Area.

35. In the Constitution, the expression "Scheduled Areas" has been defined to mean such area as the President may by order declare to be Scheduled Areas. Clause (2) of para 6 provides that the President may at any time by order (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (aa) increase the area of any Scheduled Area in a State, after consultation with the Governor of that State; (b) alter, but only by way of rectification of boundaries, any Scheduled Area; (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State declare any territory not previously included in any State to be, or to form part of a Scheduled Area. Clause (d) deals with the rescission of any order under para 6. Such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-para (1) of that para shall not be varied by any subsequent order. Part D, para 7 empowers Parliament to amend the Schedule by way of addition, variation or repeal of any of the provisions of the Fifth Schedule. Such a varied or modified Schedule shall be referred to such amended Schedule. The other details are not material for the purpose of this case. Hence they are omitted.

Scope and Sweep of the Regulation of 1970

36. As has been stated, the Regulation came into force on 4-3-1959 in Andhra area and Telangana area with effect from 1-12-1963. The prior order in operation in Telangana area will be dealt with a little later. The material provisions relevant for the purpose are dealt with hereunder.

37. Section 2(a) defines "Agency tracts" to mean the areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam,Vizianagaram, Adilabad,

Nizamabad, Warangal, Khammam and Mahaboobnagar declared from time to time as Scheduled Areas by the President under sub-para (1) of para 6 of the Fifth Schedule to the Constitution. "Scheduled Tribes" has been defined in Section 2(f) to mean any tribe or tribal community or part of or groups within any tribe or tribal community resident in the Agency tracts and specified as such by a public notification by the President under clause (1) of Article 342 of the Constitution. Section 2(g) defines "transfer" to mean mortgage with or without possession, lease, sale, gift, exchange or "any other dealing" with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing. The definition of transfer is a comprehensively wide definition except testamentary disposition by a tribal to another tribal so as to effectuate the prohibition of transfer of immovable property to any person other than a Scheduled Tribe or a cooperative society composed solely of members of the Scheduled Tribes.

38. Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 reads as under:

"3. Transfer of immovable property by a member of a Scheduled Tribe-

(1)(a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a s member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by a person or his predecessor-in-possession through a transfer made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Schedule Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent. Agency Divisional Officer or the prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed." (emphasis supplied)

Section 3(2) reads as under:

> *"3.(2)(a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by anyone interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.*
>
> *(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not know, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribes (or a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in the State) composed solely or members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government."*

Section 3(4) reads as under:

> "3.(4) For the purpose of this section, the expression "Transfer includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribes benami for the benefit of a person who is not a member of a Scheduled Tribes; but does not include a partition or a devolution by succession."

39. Section 3, therefore, prohibits transfer of immovable property by a member of the Scheduled Tribes to a non-Scheduled Tribe member. Sub-section (1)(a) envisages with a non obstante clause, that notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a number of a Schedule Tribe, shall be absolutely null and void, unless such transfer is made in favour of a Schedule Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 and composed solely of members of the Schedule Tribes. Clause (b) provides rule of evidence by way of presumption that until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a *non-Schedule Tribe member, shall be presumed to have been acquired by such person or his predecessor in-possession, through a transfer made to him by a member of a Schedule Tribes (emphasis supplied).* The burden would always be on the non-tribal to prove that the land in his possession was not acquired by transfer from a tribal; in other words, the land belongs to a tribal and the non-tribal possesses it in contravention of law.

40. Clause (c) of Section 3 provides that if a non-Schedule Tribe member, though intending to sell, is unable to sell his land on account of neither unwillingness of other tribals to purchase the land or the terms offered by him to a tribe are inaccessible to a tribal, he may apply to the agent named or other prescribed officer who would acquire the land and take over possession of such land on payment of compensation in accordance with the principles laid down in Section 10 of the Andhra Pradesh Ceiling on Agricultural

Holdings Act, 1961, as amended in 1972. Such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Schedule Tribes or a cooperative society composed solely of members of the Schedule Tribes or in such other manner and subject to such conditions as may be prescribed.

41. In case of any transfer made in contravention of sub-section (1) of Section 3, the agent, the agency Division Officer, or any other prescribed officer, may, on an application by anyone interested, or on information given in writing by a public servant or suo motu, issue decree of ejectment against any person in possession of the property claiming under the transfer. This should be done after due notice to such person. Clause (b) of sub-section (2) of Section 3 provides that if a transferor or his heirs are not willing to take back the property or where whereabouts of the transferor are not know, the said officer may by order assign or *sell the property to another member of the Schedule Tribes* or a cooperative society. Sub-section 3(4) provides that for the purpose of Section 3(4), the expression "transfer" includes sale in execution of a decree and also a benami transfer made by a member of a Scheduled Tribe in favour of any other member of the Scheduled Tribe but does not include a partition or a devolution by succession.

42. Section 3-A makes special provision relating to mortgages without possession; the details thereof are not material. Section 4 provides for the remedy of suits to be instituted in the Agency Courts against a member of the Scheduled Tribe; the details thereof are not material. Section 5 provides for attachment and sale of immovable property. Section 6 gives revisional power to the State Government. Section 6-A provides for penalties for contravention of the provisions of the Regulation. Section 7 prescribes limitation for purpose of initiating proceedings under the Regulation. Section 8 gives power to the State Government to make rules. Section 9 provides for repeal or repugnant provisions of the Madras Act 1 of 1917. Section 10 provides for saving of certain transfers and rights.

43. It is settled law that the transfer of immovable property between a member of the Scheduled Tribe to a non-Scheduled Tribe member in the Agency tracts is null and void. The non-tribals transferee acquires no right, title and interest in that behalf in furtherance of such sale. This Court in *Manchegowda Vs. State of Karnataka*[4] had declared such sales to be voidable. In *Lingappa Pochanna Appelwar Vs. State of Maharashtra*[5] this Court upheld the constitutionality of similar provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

44. When the constitutionality of Section 3 of the Regulation was impugned as violative of Articles 19(1)(f) and 14 of the Constitution, this Court in *P. Rami Reddy Vs. State of A.P.*[6] upheld its validity holding that the Regulation aims to restore the lands to the tribals which originally belonged to them but passed into the hands of non-tribals. It would be unjust, unfair and highly unreasonable merely to freeze the situation, instead of reversing the injustice and restoring the status quo ante. The non-tribal economic exploiters would

[4] (1984) 3 SCC 301
[5] (1985) 1 SCC 479
[6] (1988) 3 SCC 433: 1988 Supp (1) SCR 443

get no immunity and not be accorded a privileged treatment by permitting them to transfer the lands and structures, if any, raised on such lands to non-tribals and to make profits at the cost of the tribals. Section 3, though it causes hardship to the non-tribals, equally, alleviates hardship of the tribals. The Court must keep in mind the larger perspective of the interest of the tribal community in its entirely; the restrictions cannot be condemned as unreasonable. The presumption embodies in Section 3(1)(b) is a rule of evidence. The non-tribals could be reasonably expected to disclose their title to the properties. The tribals due to handicaps and ignorance are unable to prove their right to land. The burden to prove title, therefore, was shifted to the non-tribals. The presumption was upheld as reasonable.

45. As a part of the on-going industrial advancement, large industries or projects are being set up or constructed in the Scheduled Areas displacing the tribals and rendering them impoverished landless labourers. When their lands are acquired for public purpose, the Government should give alternative lands or rehabilitation and easy loans for reclamation. Law relating to prohibition of alienation and restoration of lands to tribes must be simple, less cumbersome and result-oriented. The machinery must be speedy and the officers must have compassion and sense of dedication and direction to ameliorate the economic status of the tribes to assimilate them into the national mainstream.

46. In Telangala area of the State of Andhra Pradesh, prior to the Regulation and pursuant to Part B State Regulation in the Fifth Schedule, the A.P. Tribal Area Regulation, III of 1359-F promulgated by the Rajpramukh of Hyderabad was in vogue. Section 46 of the Agricultural Land and Tenancy Act, 1950 prohibits transfer of agriculture land without sanction of the competent authority. Section 3 of the Tribal Area Regulation excludes the application of any Act, Regulation or Rules by a notification published in the Official Gazette. Section 4 gives power to the Government to make rules. Sub-section (2) of Section 4 prohibits eviction of tribals from the lands in their possession or occupied by them. Clause (f) *prohibits grant of patta rights over any land in a notified area to a non-tribal; the agent is empowered to cancel such transfer or revise any title of land granted in a non-tribals in any notified tribal area.* Clause (g) prohibits sale in execution of a decree or whenever made, cancellation of sales not finally confirmed before coming into force of the Regulation etc. As stated earlier, the Regulation was extended to the Telangana region w.e.f. 1-12-1963. Prior thereto, law in Telangana area was in operation prohibiting any transfer of agricultural lands without prior permission of the officers and 1950 Regulation referred to earlier draws rebuttable presumption that all the acquisitions of immovable property situated in Scheduled Areas are acquired through a transfer from tribal. The non-tribals shall be presumed to have acquired title from tribals unless they are able to prove to the contrary that their possession of properties in the Agency tracts was lawfully acquired.

Scope of Fifth Schedule - Interplay with Regulation.

47. The predominant object of para 5(2) of the Fifth Schedule of the Constitution and the regulation is to impose total prohibition of transfer of immovable property to any person other than a tribal for peace and proven good management of a tribal area; to protect possession, right, title and interest of the members of the Scheduled Tribes held in the

land at one time by the tribals. The non-tribals, at no point of time have any legal or valid title to immovable property in Agency tracts unless acquired with prior sanction of the Government and saved by any law made consistent with the Fifth Schedule. With the passage of time, when persons other than tribals gained unlawful title to and possession of the lands in Agency tracts, their acquisition and holding of the immovable property, unless proved otherwise, have always been null and void. The Regulation, as its predecessor law did, prohibits transfer by a tribal to any other person and even benami purchaser in the name of a tribal for the benefit of a non-tribal also is null and void. Non-tribal thereon, acquires no right, title and interest in the land situated in a Scheduled Area. Indisputably, any transfer inter vivos between tribals or non-tribals or inter se between non-tribals except testamentary disposition to a tribal, has been totally prohibited. The only exception engrafted is the transfer to cooperative societies composed solely of tribals or mortgage of the land to a Cooperative Land Mortgage Bank registered as an instrumentality of the State or any Government-approved lending agency to improve the agricultural lands or sale to an agent to the Government etc. A non-tribal person who is unable to find a tribal buyer is not totally prohibited to transfer it. He should offer it to the named or nominated government agent etc. who would purchase it in the prescribed manner under the Regulation and assign it to a tribal. The Andhra Pradesh High Court had held that the transfer of land in Scheduled Area by a tribal to any person who either belongs to a Scheduled Castes or a Backward Class settled in Agency tracts is void.

48. In *P. Rami Reddy case*[7] this Court had observed thus: (SCC pp. 440, 441-42, 446, paras 11 and 19)

> *"11.(1) Within the Scheduled Areas of both Telangana and Andhra Regions the land was entirely in occupation of different tribal communities. The area was an inaccessible tract of land covered by forests and hills. These tribal communities were in occupation of lands and lived by shifting cultivation and gathering whatever produce that was available.*
>
> *(2) The non-tribals who arrived in these areas late in the 19th century in certain areas and the early 20th century in certain other areas found the tribals who were in occupation of these land an easy prey for the schemes of exploitation. The non-tribals were lending money to the tribal communities and taking the land belonging to them as security though nothing was taken in writing from a tribal. The rates of interest charged ranged between 25 to 50 per cent and in certain cases even 100 per cent. The tribals who were traditionally honest and who were simple in their thought and habits fell an easy prey to the schemes of the non-tribals.*
>
> *(3)-(7) * * **
>
> *(8) It was observed by several committees that the non-tribals were able to find ways and means to circumvent the provisions of Regulation 1 of 1959 by entering into benami transactions and other clandestine transactions with unsophisticated tribals. It is absolutely necessary to create conditions for peace and maintain peace and*

[7] P. Rami Reddy Vs. State of A.P. (1988) 3 SCC 433: 1988 Supp (1) SCR 443

prevent the new non-tribals from settling down in the Scheduled Area. If the alienations are permitted to the non-tribals there is a danger of large-scale exploitation by the new non-tribals again with the result peace will be disturbed in that area.

(9)-(10) * * *

(11) Unless new entrants into the Scheduled Areas are prevented from setting down in the Scheduled Areas by purchasing properties either from tribals or non-tribals, it is not possible to prevent the exploitation of the unsophisticated tribals. It is only with a view to enforce the valid provisions of regulation 1 of 1959, the Regulation viz., Regulation 1 of 1970 was made. It is in the interests of the tribals and for their protection Regulation 1 of 1970 was passed, because without restricting or prohibiting the alienation of lands in the possession of non-tribals to non-tribals the objectives cannot be achieved.

(19) .... True, transfer by 'non-tribals' to 'non-tribals' would not diminish the pool. It would maintain status quo. But is it sufficient or fair enough to freeze the exploitative deprivation of the 'tribals' and thereby legalise and perpetuate the past wrong instead of effacing the same? As a matter of fact, it would be unjust, unfair and highly unreasonable merely to freeze the situation instead of reversing the injustice and restoring the status quo ante."

49. In this constitutional perception and statutory operation, the crucial question that arises for consideration is whether the transfer of its land in a Scheduled Area, by the Government is valid in law.

50. It is indisputable that apart from the patta lands or other lands held by the tribals the State holds vest tracts of land in Scheduled Area, in some areas with rich mineral deposit. The questions are whether the State Government is exempt from the Regulation; whether the State Government Stands above the law; whether the meaning of the word "person" in Section 3(i)(a) of the Regulation would include the State Government. Article 244(1) read with the Fifth Schedule, Part I, while defining "State" excepts certain states as enumerated therein. It bears repetition that para 5(2) of the Fifth Schedule enjoins the Governor to make regulations for the peace and good governance in a Scheduled Area. Without prejudice to the general power, subsequent clauses amplify particular powers. Clause (a) empowers him to prohibit or restrict the transfer of land by or among members of the tribals and non-tribals in such area. Clause (b) regulates the allotment of land only (added to emphasise) to members of the Scheduled Tribes in the area. The question, therefore, is while regulating allotment of land under this clause, can the Government exclude itself from the power to allot land to a non-tribal when the object of Article 244(1) read with the Fifth Schedule is to control and maintain peace and good governance of the Scheduled Area for the social and economic advancement of Scheduled Tribes. Would it be permissible to construe that the land belonging to the Government is outside such control or prohibition or restriction; whether the State Government could allot its land to non-tribals in violation of the Constitution and the law? The answer to these crucial questions bears paramount significance and impact

since the object of the founding fathers of the Constitution in empowering the Governor, on the basis of his personal satisfaction, is to regulate by law and administration or control of the Scheduled Area for peace and good governance of the Scheduled Tribes in the area. The question is whether any contra-interpretation would sub serve the constitutional animation or would it frustrate the constitutional objective.

The Division Bench of the High Court in *Samata case*[8] relied upon the dictionary meaning of the word "person" and the prohibition on transfer of land inter vivos between natural persons of Scheduled Tribes and non-tribes in Agency tracts; it came to conclude that the Regulation does not apply to the land owned by the State Government since the State Government is not a natural person. The earlier Division Bench had taken contra view. The question, therefore, is which of the two views sub serves the constitutional purpose and is correct in law.

Meanings of the word "person" - Whether Government is persona ficta?

51. From this perspective, the next question that arises is whether the State Government is a person within the meaning of Section 3 of the Regulation and whether its transfer of land to non-tribals or company is valid in law.

52. The word "person" in the interplay of juristic thought is either natural or artificial. Natural persons are human beings while artificial persons are corporations. Corporations are either corporation aggregate or corporation sole. In *English Law* by Kenneth Smith and Denish Keenan (Seventh Edn.) at p. 127, it is stated that "[L]egal personality is not restricted to human beings. In fact various bodies and associations of persons can, by forming a corporation to carry out their functions, create an organisation with a range of rights and duties not dissimilar to many of those possessed by human beings. In English law such corporations are formed either by charter, statute or registration under the Companies Acts; there is also the common law concept of the corporation sole." At p. 163, it is further stated that [T]he Crown is the executive head in the United Kingdom and commonwealth, and government departments and civil servant act on behalf of the Crown." In *Salmond on Jurisprudence* by P.J. Fitzgerald (Twelfth Edn.), at p. 66, it is stated that "[A] legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination … … " At p. 72, it is further amplified that "[T]he King himself, however, is in law no mere mortal man. He has a double capacity, being not only a natural person, but a body politic, that is to say, a corporation sole. The visible wearer of the crown is merely the living representative and agent for the time being of this invisible and underlying persona ficta, in whom by law the powers and prerogatives of the government of this realm are vested." In *Jurisprudence* by R.W.M. Dias (Fifth Edn.), at p. 265, it is stated that " …. the value of personifying group activities is further reduced by the fact that courts have evolved ways of dealing with such activities without resorting to the device of persona."

[8] Samata Vs. State of A.P., (1995) 2 Andh LT 233 (DB)

53. In *Madras Electric Supply Corpn. Ltd., Vs. Boardland (Inspector of Taxes)*[9] relied upon by Shri Dhavan, it has been held that the word "person" in its ordinary and natural sense includes Crown. The same view was reiterated in *IRC Vs. Whitworth Park Coal Co. Ltd.*[10] (All ER at p. 108). On the concept of "legal personality" and the concept of "person", in *Elementary Principles of Jurisprudence* by Keeton (1949 Edn.) relief on by Shri Rajeev Dhavan, in Chapter XIII at p. 150, it is stated that in modern law, this personification by law is confined to certain definite limits, although this restriction is based, not upon principle, but upon convenience. In law, however, we are concerned with legal persons, whether they are natural, i.e., human beings capable of sustaining right and duties, or artificial or juristic, i.e., groups or things to which the law attributes the capacity to bear rights and duties. Legal personality is itself nothing but a fiction, insofar as it is intended to imply no more than that a legal person is simply a complex of legal rights and duties. At p. 151, it is stated that juristic persons may be defined as those persons or groups of persons which the law deems capable of holding rights and duties, with a few exceptions. At p. 152, he has amplified that corporation sole is a juristic person and it succinctly describes the position in modern English law. The conception of separate personality attaching to the successive occupants of a particular office is as valid juristically as the conception of incorporation of the members of a group. The Law of Property Act, 1925, Section 180 contents itself with addition briefly, that a corporation sole may now hold personal property with rights and duties. At p. 154, it is stated that principles applying to corporation aggregate are not fully applicable to corporation sole. "Court regarded the corporation sole not as a person, but as a device for the transmission of rights from one natural person to another." He quotes Blackstone that: "Corporation sole consists of one person only and his successors, in same particular station, who are incorporated by law, in order to give them legal capacities and advantages, in particular that of perpetuity, which in the natural persons could not have had. In this sense the King is a corporation sole." At p. 155, it is further stated that the law, therefore, has wisely ordained, that the person, *qua tenus* person, shall never die, any more than the King; by making him and his successor a corporation sole. By which means all the original rights of a personage are preserved entirely to the successor. At p. 169, it is stated that the reason for King's personality, a corporate sole, is that corporate personality is a technical device, applied for a multitude of very diverse aggregations, institutions and transactions, whereas each of many theories has been conceived for a particular type of juristic personality. None of them foresaw the extent to which the device of Incorporation would be used in modern business, or we may add, to cloak the activities of some branch of Government.

54. Thus, in Great Britain, the Crown has been regarded as a corporation sole, *persona ficta* so that it has never been considered necessary to personify the State. The Crown in its political capacity represents the State in England and can sue in the English courts as a person. In *Madras Electric Corpn. case*[11] the same view was reiterated but when liability

[9] (1955) 1 All ER 753: (1955) 2 WLR 632
[10] (1958) 2 All ER 91: (1958) 2 WLR 815 (CAI)
[11] Madras Electric Supply Corn. Ltd Vs. Boarland (Inspector of Taxes), (1955) 1 All ER 753:(1955) 2 WLR 632

was sought to be imposed upon a person, it was held that the general principle of person, does not include the Crown, unless the statute is binding on the Crown, by express provision or by necessary implication. As held in *IRC Vs. Whitworth Park Coal Co. Ltd.*[12] (All ER at p. 108) in a taxing statute it was held that there was no objection to interpret the word "person" to include the Crown in any provision other than those which seek to impose a burden.

55. In the *American Jurisprudence*, 2nd Series, Vol. 72, p. 407, it is stated that a State, in the ordinary sense of the Federal Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organised under a government sanctioned and limited by a written Constitution, and established by the consent of the governed. While the municipal corporation is organised under the authority of a State legislature and draws its public character from the law of the State creating it, it is endowed with a public character by virtue of having been invested by the legislature with subordinate legislative powers to administer local and internal affairs of the community, as well as by having been created as a branch of the State Government to assist it in the Civil Government of the State. A public corporation with capacity to sue and be sued, under modern statutory provisions is a legal person. So, also, for purpose of convenience, certain departments of the Government or the board of managers of a public institution are sometimes incorporated, but the corporations thus created, although public, are not municipal corporations. In *Black's Law Dictionary,* Sixth Edn., p. 695, the word "Government" has been defined thus:

> *"From the Latin gubernaculums. Signifies the instrument, the helm, whereby the ship to which the State was compared, was guided on its course by the 'gubernator' or helmsman and in that view, the Government is but an agency of the State, distinguished as it must be in accurate thought from its scheme and machinery of Government.*
>
> *In the United States, Government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, it includes the Federal Government and all its agencies and bureaus, State and county governments, and city and township governments.*
>
> *The system of polity in a State; that form of fundamental rules and principles by which a nation or State is governed, or by which individual members of a body politic are to regulate their social actions. A Constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical government, a republican government, etc. The sovereign or supreme power in a State or nation. The machinery by which the sovereign power in a State expresses its will and exercises its functions; or the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative, and administrative business of the State is carried on."*

[12] (1958) 2 All Er 91: (1958) 2 WLR 815 (CA)

56. In *Edgar B. Sims Vs. United States of America*[13] the Federal tax authorities issued notices of levy of tax for assessment on unpaid income of employees of the State of West Virginia, and had the notice served on the defendant. The State auditor seized the accrued salaries of the tax payers pursuant to Section 6331 of the Internal Revenue Code of 1954. The defendant-State refused to honour the levy and instead, delivered payroll warrants to the taxpayers for their then accrued salaries. Thereafter, the Government brought the action in the District Court for the Southern District of West Virginia to recover from the defendant the amount of salaries he had so paid to the taxpayer in disobedience to the Government's levies. The District Court upheld the Government's order. The Court of Appeal, on appeal, affirmed it. On a writ of certiorari, it was held by the Supreme Court of USA that the levy of tax made under Section 6331 was authorised levy and that the defendant under Section 6332 of the Internal Revenue Code of 1954 as 'person' was liable to pay the same.

57. In *State of Ohino Vs. Guy T. Helvering*[14] (L Ed at p. 1310) the question was whether "the State", when it as selling liquor through its agency and sources, "was a person" within the meaning of USC Title 26, Section 205 (Section 3244, as amended). It was held at p. 1310 that the tax is levied upon every person who sells liquor etc. The word "person" as used in the title, should be broadly construed as to mean and include a partnership, association, company or corporation, as well as a natural person. Whether the word "person" or "corporation" includes a State or the United States depends upon the connection in which the word is found. In *South Carolina case*[15] the United States Court disposed of the question by holding that since the State was not exempt from the tax, the statute reached the individual sellers who acted as dispensers for the State. While not rejecting that view, the Court preferred to place on the Word "person" the broader ground that when the State itself becomes a dealer in intoxicating liquors, it falls within the reach of the tax either as a "person" under the Statutory extension of that word to include a corporation, or as a "person" without regard to such extension.

58. In *State of Georgia Vs. Hiram W. Evans*[16] the same view was reiterated by the USA Supreme Court and it was held that if the word "persons" is to include a State as plaintiff, it must equally include a State as a defendant or else the language used would be meaningless.

59. In *United States of America Vs. Cooper Corpn.*[17] relied on by Shri Sudhir Chandra, considering the word "persons" used in Sections 7, 85 and 178 of the Sherman Anti Trust Act, it was held that although the term "person", as used in a statute, is not ordinarily construed to include the sovereign, this is not a hard and fast rule of exclusion, but may be negatived by resort to aids to construction indicating a contrary intent. On the facts, it was held that the State was not a person. In that context it was held that in the absence of any indication to the contrary, the term "persons", when used in different sections of a

[13] 359 US 108:3 Led 2d 667 (1959)
[14] 292 US 360: 78L Ed 1307 (1933)
[15] State of South Carolina Vs. United States, 199 US 437: 50 L Ed 261 (1905)
[16] 316 US 159: 86 Led 1346 (1941)
[17] 312 US 600 : 85 Led 1071 (1940)

statute, was employed throughout the statute, in the same, and not in different sense. But the said decision was reversed in *State of Georgia case*[18]. In *United States Vs. Interstate Commerce Commission*[19] it was held that when relief is sought against the State itself, the word "person" would include the State and be construed accordingly.

60. In *Supdt. & Remembrance of Legal Affairs, W.B. Vs. Corpn. of Calcutta*[20] a Bench of nine Judges of this Court was to consider whether the State of West Bengal, when it was carrying on trade, as owner and occupier of the market at Calcutta, without obtaining the licence, was bound by the Calcutta Municipality Act or, by necessary implication, was exempted to obtain licence. A complaint against the State, for its failure to obtain licence was filed by the Municipal Corporation. It was contended that the State is not a person under Section 218 of the said Act. Per majority, it was held that the Common Law rule of construction that the Crown is not, unless expressly named or clearly intended, bound to be a State, was held to be not acceptable as a rule of construction. It was held that the archaic rule based on prerogative and protection of the Crown has no relevance to a democratic republic. It is inconsistent with the rule of law based on the doctrine of equality and introduces conflicts and anomalies. The normal construction, viz., that an enactment applies to citizens as well as to the State, unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the anomalies and is consistent with the philosophy of equality enshrined in the Constitution. Under the Act there is a distinction between fine imposed under Section 537 and under Section 541 of the Act, the fines under Section 537 are in respect of offences enumerated therein and they certainly go to the coffers of the States. In respect of such offences it may be contended that, as the fines paid reach the State itself, there is an implication that the State was not bound by the sections enumerated therein, for a person who receives the fine, cannot be the same person who pays it. The incongruity may lead to the said necessary implication. Another bench of nine Judges in *State Trading Corpn. of India Ltd. Vs. CTO*[21] (Air at p. 1817) per majority interpreted the word "citizen" in a broader perspective. In *Union of India Vs. Jubbi*[22] (Air at p. 362) a three-Judge Bench had held that a statute applies to State as much as it does to a citizen, unless, it expressly or by necessary implication, exempts the State from its operations. If the legislature intended to exclude the applicability of the Act to the State, it could have easily stated in Section 11 itself or by a separate provision that the Act was not to be applied to the Union or to the lands held by it. In the absence of such a provision, in a constitutional set-up like the one we have in this country, and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union. In that case, it was contended that Abolition of Big Landed Estate and Land Reform Act, 1953 and Section 11 thereof does not apply to the land held

[18] 316 US 159: 86 Led 1346 (1941)
[19] 337 US 426: 93 Led 1451 (1949)
[20] AIR 1967 SC 997: (1967) 2 SCR 170
[21] AIR 1963 sc 1811: (1963) 33 Comp Cas 1057
[22] AIR 1968 SC 360: (1968) 1 SCR 447

by the Government. This Court rejected that contention. It would, therefore, be settled law that the question whether or not the word "person" used in a statute would include the State has to be determined with reference to the provisions of the Act, the aim and its object and the purpose the Act seeks to sub serve. There is no reason to consider the word "persons" in a narrow sense. It must be construed in a broader perspective, unless the statute, either expressly or by necessary implication, exempts the State from the operation of the Act as against the State and would include "State Government".

Property of the State-How dealt with under the Constitution

61. Part I of the Constitution of India deals with the Union and its territories. Article I declares that India, that is Bharat, shall be a Union of States. The States and the territories thereof have been specified in the Fifth Schedule to the Constitution. The territory of India shall comprise of (a) the territory of states; (b) the Union Territories specified in the Fifth Schedule; and (c) such other territories as may be acquired. Article 2 to 4 deal with the power of Parliament to admit into the Union, by law, any State, or establish new states on such terms and conditions as it thinks fit. Formation of the new states and alteration of areas, boundaries and names of the existing states are regulated by law made by Parliament. It also gives power to Parliament to amend the First and the Fourth Schedules and to provide for supplemental, incidental and consequential matters. The Fifth Schedule enumerates the States and the first in the alphabetical order is Andhra Pradesh with territories specified thereunder.

62. Under Part VI of the Constitution titled "The States", Article 152 defines "State". For the interpretation of the Constitution, by operation of Article 367, unless the context otherwise requires or modifies, the General Clauses Act shall apply. Section 3(23) thereof defines Government to include both the Central Government and State Government. Section 3(8) defines "Central Government" and Section 3(60) defines "State Government" as regards anything *done* and or to be done, shall mean the Governor. The Governor of each State is its executive head and the executive power of the State shall be exercised by the Governor either directly or through officers subordinate to him in accordance with Constitution as envisaged under Article 154. The executive power of the State, subject to the provisions of the Constitution, by operation of Section 162, shall extend to the matters with respect to which the legislature of the State has power to make laws. The proviso thereto is not relevant for the purpose of this case.

63. The executive power, therefore, of the State is coextensive with that of the legislative power of the State. The Governor shall appoint the Chief Minister and on his advice, he appoints the council of Ministers, who shall aid and advise the Governor in the exercise of his function except, insofar as he is, by or under the Constitution, required to exercise his functions or any of them, in his discretion. The council of Ministers, headed by the Chief Minister, shall be collectively and individually responsible to the legislature and the people in the matter of the governance of the State. All executive actions of the Government of a State, shall be expressed to be taken in the name of the Governor and the business of the Government is conducted in accordance with Article 166 and the Business Rules made, by the governor, by clause (3) thereof.

64. Under Chapter III of part XII, Article 294 vests in the Union and the corresponding State all property and assets which immediately before the commencement of the Constitution were vested in His majesty for the purposes of the Government of Dominion of India or of each Governor's Province, whether arising out of any contract or otherwise; similarly all rights, liabilities and obligations, respectively of the Government of the Dominion of India and of the Government of each corresponding State, shall belong to the Government of India and the Government of each corresponding State. Article 295 provides for succession to the property, assets, rights, liabilities and obligations in other case. Article 298 provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business, and to the acquisition, holding and *Disposal of property and the making of contracts for any purpose* coextensive with legislative power. The Union of India and each State under Article 300 may sue or be sued, with all rights and liabilities as a constituent power of the State under the Constitution. Article 299 empowers Union of India and the Government of each State to enter into contract, in the exercise of the executive power, to be expressed in the name of the President or the Governor, as the case may be. All assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor, by such persons and in such manner as he may direct or otherwise. However, the President or the Governor shall not be personally liable therefore. Article 300 is of material importance. As stated earlier, the Government of India or a State may sue or be sued, by the name of the State and subject to the provisions of the Constitution and the law enacted and by virtue of the power conferred by the Constitution. It can sue and be sued in relation to their respective affairs in the like cases.

65. The members of the legislature are elected by the people periodically at the end of every five years. The political party or group of political parties who secure majority in the Legislative Assembly of the State elect the leader who would be called upon by the Governor to form the Government and on his appointment as the Chief Minister, on his advice, the Governor appoints his Council of Ministers who act in collective responsibility to aid and advise the Governor in the governance of the State during the tenure of their office.

Permanent bureaucracy acts as an arm of the Government

66. Article 309 to 312-A in Chapter I of Part XIV under the heading "Services under the Union and the States" regulate the recruitment and conditions of service and appointments to the public services and posts in connection with the affairs of the Union or the States, subject to the provisions of the Constitution and acts of the appropriate legislature. Details thereof are not material for the purpose of this case; suffice it to state that the Constitution has created permanent bureaucracy consisting of diverse All India Services allotted to various States and State Services created thereunder, to assist the political executive and to implement the provisions of the Constitution, the laws and the executive policy of the appropriate Government. Under the Constitution, in all ordinary matters of administration, the Ministers take full responsibility, subject to the control by the legislature. The bureaucracy gives shape to the decisions taken by the Council of Ministers at the Cabinet meeting or by the individual Ministers by working out the details

and they are applied in the given set of facts. In *Halsbury's Laws of England (4th Edn.)* Vol. 8 in para 1152 at p. 711 it is stated that the Government offices and departments through which the general executive administration of the country is carried on owe their establishment and organisation, together with the powers they possess and duties they perform, partly to the royal prerogative and partly to Parliament. They derive almost all their powers directly or indirectly from Parliament, which alone can provide them with the supplies of money necessary for their operation. Their internal arrangements on the other hand, are hardly ever organised or directly interfered with by Parliament, but have been a matter for the royal prerogative. The principle proprio vigore applies to Cabinet form of functioning under our Constitution. In para 1155 at p. 713, it is further stated that where functions entrusted to a Minister or to a department are performed by an official employed in the *ministry* or department, there is in law no delegation because constitutionally the acts or decisions of the officials are that of Minister. In the exercise of their functions relating to land under any enactment, every Minister and government department must have regard to the desirability of conserving the natural beauty and amenity of the countryside.

Ministerial Responsibility

67. As stated hereinbefore, the Constitution envisions to establish an egalitarian social order rendering to every citizen, social, economic and political justice in a social and economic democracy of the Bharat Republic. Article 261(1) of the Constitution provides that full faith and credit shall be given, throughout the territory of India, to public acts, record and judicial decisions of the Union and of every State. In *Secy., Jaipur Development Authority Vs. Daulat Mal Jain*[23] a Bench of this Court had held thus: (SCC pp. 44-45, paras 10-12)

> "10….The Governor runs the Executive Government of a State with the aid and advice of the Chief Minister and the Council of Minister which exercise the powers and performs its duties by the individual Ministers as public officers with the assistance of the bureaucracy working in various departments and corporate sectors etc. Though they are expressed in the name of the Governor, each Minister is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. The Council of Ministers are jointly and severally responsible to the legislature. He/they is/are also publicly accountable for the acts or conducts in the performance of duties.
>
> 11. The Minster holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy. The acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society

[23] 17(1997) 1 SCC 35

governed by rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The Executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity. Therefore, they should morally be responsible for their actions.

12. When a Government in office misuses its power figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Government acts through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility threat comes into consideration. The ministerial responsibility threat comes into consideration. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the electors for all his actions taken in the name of the Governor in relation to the Department of which he is the head."

68. *In* Samsher Singh Vs. State of Punjab[24] *a Bench of seven Judges of this Court had held that under the cabinet system of Government as embodied in our Constitution, the Governor is the formal head of the State. He exercises all his powers and functions conferred on him by or under the Constitution, on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his function in his discretion. The satisfaction of the Governor for the exercise of any power or function, required by the Constitution, is not the personal satisfaction of the Governor but is the satisfaction in the constitutional sense under the cabinet system of Government. The executive is to act subject to the control of the legislature. The executive power of the State is vested in the Governor as head of the Executive. The real executive power is vested in the Ministers of the Cabinet. The Chief Minister and the Council of Ministers with the Chief Minister as its head aids and advises the Governor in the exercise of his executive functions. The same principle was reiterated by a Bench of three Judges in* R.K. Jain Vs. Union of India[25]. *Therein, it was held that in a democracy*

[24] (1974) 2 SCC 831: 1974 SCC (L&S) 550
[25] (1993) 4 SCC 119: 1993 SCC (L&S) 1128: (1993) 25 ATC 464

governed by rule of law, State is treated on a par with a person by Article 19(6) in commercial/industrial activities.

***69**. It would thus be clear that in a democratic polity governed by the rule of law, the administration is run through constitutional mechanism, i.e., cabinet form of Government by a Council of Ministers headed by the Chief Minister. They aid and advise the Governor, the executive head of the State. The bureaucracy-an arm of the political executive-assists as an integral part of administrative mechanism. Their actions or the acts, individually or collectively, are directed to elongate and fulfil the socio-economic goals set down in the Constitution to establish the egalitarian social order in which socio-economic justice is secured to the poor and weaker sections of the society including the Scheduled Castes and Scheduled Tribes, in particular, as enjoined in Article 46 of the Constitution, to promote their socio-economic interest and protect them from social injustice and all forms of exploitation. The State is, therefore, a "person" within the constitutional mechanism (sic and as)* persona ficta *is enjoined to elongate the objects of the Constitution.*

Scope of the power of the Government in disposal of its property in Scheduled Area and constitutional duty and limitation of the State

70. In *The Framing of India's Constitution,* a study of B. Shiva Rao, (Vol. V) in Chapter 20 on the Fifth Schedule of the Constitution on the tribal areas, the author has surveyed the historical background for integration of Scheduled Tribes into the national mainstream. The historical survey and legislative development do assure us that throughout … a system of modified exclusion of law was applied to the Scheduled Areas. The power was with the Governor. He exercises the executive and legislative power to apply, or to refrain from applying any law made by Parliament or State legislature to the Agency tracts. The object of Government policy is to protect the tribals or their land, …. by securing to them protection from exploitation. The principal duty of the administration is to protect them from exploitation. Considering the past experience and the exploitation of the tribals' simplicity and truthfulness by the non-tribals, it became imperative by statutory safeguards to preserve the land which is their natural endowment and mainstay for their economic empowerment. No laws affecting social matters, occupation of land including tenancy laws allotment of land and setting apart of land for village purposes and village management, including the establishment of village panchayats, would apply, unless they are suitable to the conditions. Shiva Rao has stated at p. 579 this:

> *"The transfer of land in a Scheduled Area from a tribal to non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council. Likewise, if advised by the council, the Governor was obliged to license money lending, prescribing such conditions as were considered necessary; and the breach of these conditions would be an offence. In order that public attention might be focused on the development work carried out in these areas, the State Government was required to show separately in its annual financial statement the revenues and expenditure pertaining to these areas."*

71. Thus, the Fifth and Sixth Schedules, an integral scheme of the Constitution with direction, philosophy and anxiety is to protect the tribals from exploitation and to preserve valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat.

Egalitarian Social Order - Scope and Content

72. Justice is an attribute of human conduct. Law, as a social engineering, is to remedy existing imbalances, as a vehicle to establish an egalitarian social order is a socialist Secular Bharat Republic. The Upanishad says that, "Let all be happy and healthy, let all be blessed with happiness and let none be unhappy." Bhagwadgeeta preaches through Yudhishtra that: "I do not long for kingdom, heaven rebirth, but I wish to alleviate the sufferings of the unfortunate." Prof. Friedlander in his *Introduction of Social Welfare* at p. 6 states that social welfare is the organised system of social service and institutions are designed to aid individuals and groups to attain specified standard of life and health and personal and social relationship which permit them to develop their full capacities and to promote their well-being in harmony with the needs of their families and the community. Welfare State is a Rubicon between unbridled individualism and communism. All human rights are derived from the dignity of the person and his inherent worth. Fundamental Rights and Directive Principles of the Constitution have fused in them as fundamental human rights as indivisible and interdependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people to remove social and economic inequality and to improve quality of status. Article 39(b) enjoins the State to direct its policy towards securing distribution of the ownership and control of the material resources of the community as best to sub serve the common good. The founding fathers with hindsight, engrafted with prognosis, not only inalienable human rights as part of the Constitution but also charged the State as its policy to remove obstacles, disabilities and inequalities for human development and positive actions to provide opportunities and facilities to develop human dignity and equality of status and of opportunity for social and economic democracy. Economic and social equality is a face of liberty without which meaningful life would be hollow and a mirage.

Right to Development - A fundamental right

73. Declaration of "Right to Development Convention" adopted by the United Nations and ratified by India, by Article 1 *"right to development"* became part of *an inalienable human right*. By *virtue thereof, every human person and all people re entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms would be fully realised* (emphasis supplied). Clause (2) thereof provides that "the human right to development also implies the full realisation of the right of the people to improve their natural wealth and resources". Article 2(1) provides that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development". Clause (2) says that "all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the

community, which alone can ensure free and complete fulfilment of the human being and they should, therefore, promote and protect an appropriate political, social and economic order for development". Clause (3) thereof provides that the states have "the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom".

74. Article 3(1) recognises and enjoins that it is the State's primary responsibility to create conditions favourable to the realisation of the right to development. Under clause (3) thereof, it reminds the States of their duty to cooperate with each other and of "ensuring development and eliminating obstacles to development". Article 6(2) reassures that "human rights and fundamental freedoms are indivisible and interdependent; equal attention and *urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights" (emphasis supplied)* and clause (3) thereof enjoins that "the States should take steps to eliminate obstacles to development". Article 8 enjoins that "the State should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure inter alia equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income". It also provides that *"an appropriate economic and social reform should be carried out with a view to eradicating all social injustice".* Article 9 gives a right declaring that "all the aspects of the right to development set forth in the present declaration are *indivisible and interdependent and each of them should be considered in the context of the whole"* and Article 10 concludes and reminds the State of its duty "to take steps to ensure them the *full exercise and progressive enhancement of the right to development,* including the formulation, adoption and implementation of policy, legislative and other measures at the national levels". The Directive Principles in Part IV of the Constitution are forerunners to the Convention (emphasis supplied).

75. India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the right to social, economic, civil and cultural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Articles 46 read with Articles 38, 39 and all other related articles read with the right to life guaranteed by Article 21 of the Constitution of India. By that constant endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of "persons" as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity, the trinity are pillars to establish the egalitarian social order in Socialist Secular Democratic Bharat Republic.

76. Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity. Law as a social engineering is to create just social order removing inequalities in social and economic life, socio economic disabilities

with which poor people are languishing by providing positive opportunities and facilities to individuals and group of people. Dr. B. R. Ambedkar, in his closing speech in the Constituent Assembly on 25-11-1949, had lucidly elucidated thus:

> "*... What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."*

(Vide B. Shiva Rao's *The Framing of India's Constitution: Select Document.* Vol. IV pp. 944-45)

77. The core constitutional objective of "social and economic democracy" in other words, just social order, cannot be established without removing the inequalities in income and making endeavour to eliminate inequalities in status through the rule of law. The mandate for social and economic retransformation requires that the material resources or their ownership and control should be so distributed as to sub serve the common good. A new social order, thereby, would emerge, out of the old unequal or hierarchical social order. Legislative or executive measures, therefore, should be necessary for the reconstruction of the unequal social order by corrective and distributive justice through the rule of law.

Right to life - Scope and Content

78. Article 21 of the Constitution reinforces "right to life" - a fundamental right - which is an inalienable human right declared by the Universal Declaration on Human Rights and the sequential conventions to which India is a signatory. In *Delhi Transport Corpn.*

Vs. D.T.C. Mazdoor Congress[26] (Air at p. 173 in para 223:SCC p. 717, para 232) this Court had held that right to life would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition or mercy of the employer. Income is the foundation to enjoy many fundamental rights and when work is the source of income, the right to work would become as much a fundamental right. Fundamental rights can ill afford to be consigned to the limbo of undefined premises and uncertain application. That will be a mockery of them. In *Bandhua Mukti Morcha Vs. Union of India*[27] (SCC at pp. 183-84, para 10) this Court had held that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom an dignity. Adequate facilities, just and humane conditions of work etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State has to take every action.

In *Subash Kumar Vs. State of Bihar*[28] this Court had held that the right to life includes the right to enjoyment of pollution-free water and air for full enjoyment of life. In *Olga Tellis Vs. Bombay Municipal Corpn.*[29] this Court had held that right to livelihood is an important facet of the right to life. In *C.E.S.C. Ltd. Vs Subash Chandra Bose*[30] (SCC at pp. 462-63, para 30), it was held that right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. Therefore, right to life enshrined in Article 21 means something more than mere survival or animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful would embrace the protection and preservation of life guaranteed by Article 21. Right to health and social justice was held to be fundamental right to workers in *Consumer Education and Research Centre Vs. Union of India*[31] and *LIC of India Vs. Consumer Education and Research Centre*[32]. Right to economic equality is held to be fundamental right in *Dalmia Cement (Bharat) Ltd. Vs. Union of India*[33]. Right to shelter was held to be a fundamental human right in *P.G. Gupta Vs. State of Gujarat*[34], *Shantisar Builders Vs. Narayan Khimalal Totame*[35], *Chameli Singh Vs. State of U.P.*[36] and *Ahmedabad Municipal Corpn. Vs.*

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[26] 1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213: AIR 1991 SC 101
[27] (1984) 3 SCC 161: 1984 SCC (L&S) 389
[28] (1991) 1 SCC 598: AIR 1991 SC 420
[29] (1985) 3 SCC 545: AIR 1986 SC 180
[30] (1992) 1 SCC 441: 1992 SCC (L&S) 313
[31] (1995) 3 SCC 42: 1995 SCC (L&S) 604
[32] (1995) 5 SCC 482
[33] (1996) 10 SCC 104: JT (1996) 4 SC 555
[34] 1995 Supp (2) SCC 182: 1995 SCC (L&S) 782: (1995) 30 ATC 47
[35] (1990) 1 SCC 520
[36] (1996) 2 SCC 549

Nawab Khan Gulab Khan[37]. The tribals, therefore, have fundamental right to social and economic empowerment. As a part of the right to development to enjoy full freedom, democracy offered to them through the States regulated power of good government that the lands in Scheduled Areas are preserved for social economic empowerment of the tribals.

Meaning of Socialist Democratic Republic

79. It is necessary to consider at this juncture the meaning of the word "socialism" envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word "socialist used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold the Government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interests of the weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of person and equality of status to all.

80. Shri P. A. Choudhary, learned Senior Counsel for the 13th respondent, contended that the word "person" in Section 3(1) of the Regulation does not cover the Executive Government of the State nor does it prohibit the Government from transferring its land. According to him, such an interpretation would get the Regulation exposed itself to be ultra vires Article 298 of the Constitution which should he avoided. The premise of his contention is founded on the principle that the Constitution empowers the Executive to acquire, hold and dispose of the property and the Governor, as sovereign head of the Executive, gets no power under the Fifth Schedule to prohibit the State Government to transfer its property to non-tribals. On the other hand, the Constitution has full faith in the Executive to implement the directives contained in the Fifth Schedule to the Constitution to promote the welfare of the Tribes. The Constitution has built up a balanced structure distributing powers and functions to each of the three branches of the State. The Fifth Schedule read with Article 244 of Chapter X of the Constitution, with a non obstante clause, has conferred only the legislative power on the Governor, referable to Article 245 to enact the law relating to Scheduled Areas. The power to acquire, hold and dispose of the property of the State was wisely left untouched in that behalf. The prohibition contained in the Fifth Schedule, therefore, does not affect the power of the State under Article 298 to dispose of its property situated in the Scheduled Area in the manner it deems appropriate. To buttress his contention, the learned counsel cited a passage from Walter Bagehot's - *The English Constitution* at p. 283 that the Queen, without consulting Parliament, can by law disband the army, engage or dismiss the officers from General Commanding-in-Chief downwards. She could sell all her warships and all

[37] (1997) 11 SCC 121: JT (1996) 10 SC 485

naval stores etc. He also cited *Governmental Law* by Hartey and Griffith, p. 289 in that behalf. He further cited Lord Birkenhead's dictum in *Birkadale Distt. Electric Supply Co. Ltd.* Vs. *Corpn. of Sourthport*[38] (*AC* at p. 364) wherein it was held that power entrusted to a person or public body by the legislature was to effectuate public purpose. They cannot divest themselves of those powers and duties. Nor can they do any action incompatible with due exercise of their powers or the discharge of their duties.

81. In *Rederiaktiebolaget Ainphitrite Vs. R.*[39] cited by the learned counsel, the Government had given an undertaking to the owners and permitted the neutral warships to carry a particular class of cargo to a British colony in which event the said ships would be released from detention. On the faith of it the owners of the ships carried the cargo and requested for their release from detention. When clearance was refused, action was laid in the Court for damage for breach of contract. It was held that such an undertaking by the Government was not enforceable in a Court of law, as it was not being within the competence of the Crown to make a contract which would have the effect of limiting its power of executive action in the future.

82. He also cited *Youngstown Sheet & Tube Co. Vs. Charles Sawyer*[40] (US at p. 632:L Ed at p. 1198) for the proposition that the President has executive inherent power to seize private property to meet an emergency subject to the legislation confronting him of the power. He also cited *Lois P. Myers Vs. United States*[41] wherein it was held that the President has the executive power to appoint and remove executive subordinates.

83. In *State of U.P. Vs. Babu Ram Upadhya*[42] cited by Shri Choudhary, it was held that the pleasure doctrine of the President under Article 310 of the Constitution is qualified by Article 311 and is not subject to any law made by Parliament or the legislature of the State. In other words, according to the learned counsel, the ratio therein reiterates that the executive power of the President/Governor granted under the Constitution is not subject to any limitations but is coextensive with the exercise of the legislative power.

84. *Maru Ram Vs. Union of India*[43] was cited for the proposition that the power of the President under Article 72 and of the Governor under Article 162, are not subject to legislative control. The power of the legislature imposing minimum sentence of imprisonment under Section 433-A of the Code of Criminal Procedure is not subject to, nor can nullify wholly or partly, the executive power of the President or the Governor to pardon or to reduce the life imprisonment of a convict.

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[38] 1926 AC 355: 1926 All ER Rep Ext 714
[39] (1921) 3 KB 500: 1921 All ER Rep 542
[40] 343 US 579: 96 L. Ed 1153 (1951)
[41] 272 US 52: 71 L.Ed 160 (1926)
[42] AIR 1961 SC 751 : (1961) 2 SCR 679
[43] (1981) 1 SCC :107 : 1981 SCC : (Cri) 112 : (1981)

85. It is true, as contended by Shri Choudhary, that the Constitution has demarcated legislative, executive and judicial powers and entrusted them to the three wings of the State; in particular the President/Governor of the State is to exercise the executive power in their individual discretion. It is not subject to legislative limitation to be done in accordance with rules of business. In particular the President/Governor is entrusted with the executive power coextensive with the legislative power enumerated in the Seventh Schedule read with Article 245 of the Constitution. The executive power especially conferred by the Constitution like the pleasure tenure or the power of pardoning a convict are in our view, not opposite to the issue. The power of the executive Government in that behalf has wisely been devised in the Constitution and is not subject to any restriction except in accordance with the Constitution and the law made under Article 245 read with the relevant entry in the Seventh Schedule to the Constitution subject to the Fifth Schedule when it is applied to Scheduled Area. The power of the Government to acquire, hold and dispose of the property and the making of contracts for any purpose conferred by Article 298 of the Constitution equally is coextensive with the legislative power of the Union/State. However, Article 244(1) itself specifies that provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State except the excluded areas specified therein. The legislative power in clause (1) of Article 245 equally is *"subject to the provisions of the Constitution"* i.e. Fifth Schedule. Clause (1) of para *5* of Part B of the Fifth Schedule applicable to Scheduled Areas, adumbrates with a non obstante clause that: "Notwithstanding anything in the Constitution, in other words, despite the power, under Article 298, the Governor may, by public notification direct that any particular Act of Parliament or of the legislature of a State *shall not apply to a Scheduled Area or any part thereof* in the State or shall apply to a Scheduled Area or any part thereof in the State, subject to such exceptions and modifications as he may specify in the notification and any direction given under clause (1) of para 5, may be given so as to have retrospective effect." The executive power of the State is, therefore, subject to the legislative power under clause 5(1) of the Fifth Schedule. Similarly sub-para (2) thereof empowers the Governor to make Regulation for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such Regulations may regulate the allotment of land to members of the Scheduled Tribes in such area or may prohibit or restrict the transfer of land under clause (a) by or among the members of the Scheduled Tribes in such areas. In other words sub-para 5(2) combines both legislative as well as executive power, clause 5(2)(a) and (c) legislative power and clause (b) combines both legislative as well as executive power. The word "regulation" in para 5(2)(b) is thus of wide import.

Meaning of the word "Regulation" in the title of the Regulation, para 5(2)(b) of the Fifth Schedule to the Constitution

86. The question then is whether the word "regulate" in para 5 clause (2)(b) would include prohibition to transfer the Government land? It requires no elaborate discussion in this behalf. While interpreting Article 19(1)(g) of the Constitution, this Court has consistently held that the term "regulation" would include total prohibition vide

Narendra Kumar Vs. Union of India[44]*; Fatehchand Himmatlal Vs. State of Maharashtra*[45]*; State of U.P. Vs. Hindustan Aluminium Corpn.*[46]; *K. Ramanathan Vs. State of T.N.*[47]. This Court considered the meaning of the word "regulation" in *Air India Statutory Corpn. Vs. United Labour Union*[48] (Scale para 56 at pp. 104-05). Therein, the Contract Labour (Regulation and Abolition) Act, 1970 came for consideration. The question was whether the word "regulation" would include regularisation of the contract labour in the establishment in which contract labour system was abolished, though it was not expressly provided. A Bench of three Judges had held that the word "regulation", in the absence of restrictive words, must be regarded as plenary in the larger public interest. By necessary implication it includes to do everything which is indispensable for the purpose of carrying out the purposes in view. Accordingly, it was held that though no express provision was made in the Contract Labour (Regulation and Abolition) Act to regularise the services of contract labour, working in an establishment after the abolition of contract labour, by necessary implication, the word "regulation" includes the power to regularise their services as permanent employees in the establishment. Therefore, the word "regulate" in the context of the allotment of land to members of the Scheduled Tribes in Scheduled Area in the Fifth Schedule by clause 5(2)(b) must be read as a whole to ensure regulation of the land only to and among the members of the Scheduled Tribes in the Scheduled Area. In the light of the provisions contained in clause (a) of sub-para(2) of para 5, there is implied prohibition on the State's power of allotment of its land to non-tribals in the Scheduled Areas. When so read there is no incompatibility and inconsistency between the power of the Executive Government and the Constitution and conjoint operation would elongate the good governance of the Scheduled Areas. So while prohibiting transfer of land between natural persons, i.e. tribes and non-tribals and preventing non-tribals to purchase from or transfer to another non-tribal, his right, title or interest in the land in the Scheduled Area, at the same breath would not he permissible for the Government to transfer their land to non-tribal except for equally competing public purpose. The answer obviously should be that it is *(sic not)* permissible to the Government to transfer its lands to the non-tribals. This negative answer leads to effectuate the constitutional objective to preserve the land in the Scheduled Area to the tribals, prohibits the Government from allotting their land to the non-tribals; prohibits infiltration of the non-tribals into the Scheduled Areas and prevents exploitation of tribals by the non-tribals in any form. This purposive interpretation would ensure distributive justice among the tribals in this behalf and elongates the constitutional commitment. Any other interpretation would sow the seedbeds to disintegrate the tribal autonomy, their tribal culture and frustrate empowerment of them, socially, economically and politically, to live a life of equality, dignity of person and equality of status.

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[44] AIR 1960 SC 430: (1960) 2 SCR 375
[45] (1977) 2 SCC 670
[46] (1979) 3 SCC 229
[47] (1985) 2 SCC 116: (1985) SCC (Cri) 162
[48] (1997) 9 SCC 377 : (1996) 9 Scale 70

87. It would, therefore, be clear that the executive power of the State to dispose of its property under Article 298 is subject to the provisions in the Fifth Schedule as an integral scheme of the Constitution. The legislative power of the State under Article 245 is also subject to the Fifth Schedule, to regulate the allotment of the government land in the Scheduled Areas. Obviously, therefore, the State legislature of Andhra Pradesh has now imposed total prohibition under Mines Act to transfer its land to the non-tribals. Doubtless that under Article 298, the State exercises its power of disposal for public purpose. When two competing public purposes claim preferential policy decision, option to the State should normally be to elongate and achieve the constitutional goal. Secondly, the constitutional priority yields place to private purpose, though it is hedged by executive policy. As a facet of interpretation, the Court too adopts purposive interpretation tool to effectuate the goals set down in the Constitution. Equally, the executive Government in its policy options requires to keep them in the backdrop and regulate disposal of their landed property in accordance with the constitutional policy, executive decision backed by public policy and, at the same time, preserve paramount tribal interest in the Scheduled Area. No abstract principle could be laid in that behalf. Each case requires examination in the backdrop of the legislative/executive action, its effect on the constitutional objectives and the consequential result yields therefrom. The law relating to the power of the President under the Constitution of USA as has been interpreted by the Supreme Court of USA or the executive power of the Queen under the scheme in English unwritten Constitution transformed by convention does not assist us much in this behalf. Shri Choudhary also cited an article *"The Nation of a Living Constitution"* written by William H. Rehnquist, the present Chief Justice of the Supreme Court of USA (Texas Law Review Vol. 54, 693) emphasising that the executive should have full freedom in exercising its executive power and the Court cannot limit the executive power by interpretation of a statute or regulation. This also is of no assistance since the Constitution of India conferred express power of judicial review on the constitutional courts, i.e. the Supreme Court of India and the High Court under Articles 32 and 226 of the Constitution respectively.

From the afore stated constitutional perspective and the interpretation of the words "person" and "regulation" put up in the earlier parts of the judgment, the question arises whether the word “person" under Section 3(1) of the Regulation would include the State Government.

88. Shri Rajeev Dhavan, learned Senior Counsel for the appellant, contended that the word "person" in Section 3(1)(a) requires interpretation, keeping in view the contextual constitutional history of prohibition on transfer of the land by a tribal to a non-tribal including that of the government land, differently depending upon the context in which it has occurred in the first part of Section 3(2)(a) the word "person" may be considered in a generic sense and in the second part thereof to mean a natural person. Prohibition on the transfer of the land by a tribal to a non-tribal visualises transfer between natural persons. The factum of membership of the person as a tribe does not necessarily cut down the width of the word "person", namely legal person taken alongside the natural person. The word "person" requires interpretation

in the natural sense of the context in which it is used. Legal person may be natural, artificial or statutory person. The words "whether or not" in clause 3(2)(a) are in the nature of clarification and it would not cut down the contextual meaning. The words "such person" in the first part of Section 3(1)(a) must be interpreted to mean transferor, namely, artificial or statutory person apart from natural person. The objection of Section 3(1)(a) would be rendered nugatory if the meaning of the word "person" is confined or restricted to natural person in Section 3(2)(a). Generic person may be a cooperative society, a shareholder of a company and equally a Government constitutionally capable to hold, acquire and dispose of the property. Therefore, the word "person" used in the first part of Section 3(2)(a) if of wider import in the context of ownership of the land transfer of which is prohibited within the Scheduled Area to a non-tribal. The word "person" in the second clause was used in the context of natural persons, i.e., the transfer between the tribes and non-tribes. In that context, the word "person" was used in a restricted sense. So in the context of the artificial or juridical or statutory person, the word "person" is of wider import. Any other interpretation would defeat the object of the Fifth Schedule and the Regulation. Similarly, Section 3(2)(b) regulates the reverse effect. The land in the Scheduled Area is presumed to belong to the tribals treating them as a class. The meaning of the word "person" does not detract from the meaning of the word "person" in Section 3(2)(a).

Similarly, in Section 3(2)(c) if a non-tribal intends to sell the land to a tribal and if the latter is not willing to purchase the same, the Government may purchase the land from the non-tribal person and distribute it to the tribal (in such a manner as may be prescribed). The words "manner of disposal" would indicate that it should be only in favour of the Scheduled Tribes since the sole object of the Fifth Schedule and its species, the regulation, is that the land in Scheduled Area requires preservation among the tribals by allotment and their enjoyment by the tribals alone. Section 3(2)(b) reinforces that the assignment or sale of the property should only be in favour of the Scheduled Tribes or as society composed solely of the members of the Scheduled Tribes. The entire property in Scheduled Area is treated to be the property, be it taken from the non-tribals or is of the Government and at the disposal of the State Government. In that context, the learned counsel has drawn our attention to the word "regulation" in the Fifth Schedule, para 5(2)(b). He also contends that the word "regulation" requires to be interpreted broadly to preserve not only the tribal autonomy but also to subserve distributive justice in favour of the tribals in the matter of assignment of the land belonging to the Government in their favour. Conversely, there is implied prohibition on the transfer of government land in favour of the non-tribal. The words "peace and good government" used in para 5(2) also require to be understood in a wider sense. Good government must, of necessity, be in accordance with the Constitution and dispensation of socio-economic justice to the tribals including regulation of the land, distribution between the tribals and prohibition on the non-tribals to entrench into Scheduled Area, to acquire, hold and deal with the lands in Scheduled Area. It would defeat the object of the Constitution envisaged in the Fifth Schedule thereof because the non-tribals get the government land transferred in their favour an meanoeuvre to

have the tribals deprived of their land by other illegal means. The word "State", therefore, would include within the concept of the word "person" in Section 3 of the Act. In support thereof, Shri Rajeev Dhavan cited *State of W.B. Vs. Union of India*[49] and *Madras Electric Corpn. case*[50]. He has also drawn our attention to construe the provisions in the context of the whole statute relying upon *Reserve Bank of India Vs. Peerless General Finance & Investment Co Ltd*[51] (SCC para 33 at pp. 450-51) *and CESC Ltd. Vs. Subhash Chandra Bose*[52] (SCC at p. 464). He further contends that in view of the object, the word may be read broadly, in the light of public purpose and social and economic justice which the Regulation seeks to serve. He cited, in support of his contention, the following decisions, viz. *State of Bombay Vs. R.M.D. Chamarbaugwala*[53] (SCR at pp. 892-95); *Ishwar Singh Bindra Vs. State of U.P.*[54] (SCR at p. 225*); Neduriniilli Janardhana Reddy Vs. Progressive Democratic Students' Union*[55] (SCC para 6). A word may he read in different contexts in a different way. He cited that the word "sale" used in the context of freedom of speech and expression was given different meaning in *Printers (Mysore) Ltd. Vs. Asstt. CTO*[56] (SCC at p. 445); *Pushpa Devi Vs.Milkhi Ram*[57] and *CIT Vs. J.H. Gotla*[58]. The word "vest" was interpreted with a different meaning in *M. Ismail Faruqui (Dr) Vs. Union of India*[59] (SCC at pp.393, 404-05 and 423). He, therefore, contends that different meaning is required to be given to the word "person" as used in Sections 3(1)(a), 3(1)(b) and 3(l)(c) of the Act. We find force in his contention.

89. M/s Sudhir Chandra, L. Nageswara Rao, A.V. Rangam and their companion learned advocates, contended that in Section 3 of the Regulation read with the Fifth Schedule, para 5 sub-clause 2(b), the word "person" would be understood in its natural and contextual perspective which would indicate that the word "person" would be applicable only to natural persons. The learned counsel laid great emphasis on the Statement of Objects and Reasons for amendment of the Regulation in 1970. According to the learned counsel, the golden rule of interpretation is that the legislative intent is to be effectuated by giving natural and grammatical meaning to the word used in a statute. Only when the Court finds ambiguity of the expression used by the statute, principles of interpretation would be applicable. In this case, there is no such ambiguity. The word "person" is simple and plain, connoting prohibition on transfer of land between natural persons, namely, tribals and non-tribals. That is made

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[49] AIR 1963 SC 1241: (1964) 1 SCR 371
[50] Madras Electric Supply Corpn. Ltd. Vs. Boardland (Inspector of Taxes), (1955) 1 All ER 753: (1955) 2 WLR632
[51] (1987) 1 SCC 424
[52] (1992) 1 SCC 441: 1992 SCC (L&S) 313
[53] AIR 1957 SC 699: 1957 SCR 874
[54] AIR 1968 SC 1450: (1969) 1 SCR 219
[55] (1994) 6 SCC 506
[56] (1994) 2 SCC 434
[57] (1990) 2 SCC 134
[58] (1985) 4 SCC 343: 1985 SCC (Tax) 670
[59] (1994) 6 SCC 360

manifest by the Statement of Objects and Reasons of the amended Regulation which envisages that the Regulation was brought on statute to prohibit alienation of the lands in the Scheduled Area by a tribal in favour of a non-tribal. By necessary implication the Government is not intended to be included in the word "person". Shri P.A. Choudhary, learned Senior Counsel, further elaborated, stating that Section 3(2)(b) amplifies that the land is purchased from a non-tribal by the Government or where the heirs of a tribal transferor are not willing to take back the property, assignment or disposal of the said property in favour of another tribal as "a property at the disposal of the State Government" and prosecution for violation of the Regulation under Section 6-A by way of penalty, are not intended to be applied to the Government when the transfer is made in violation of the provisions of the Regulation; and, therefore, the word "person" should be given restricted meaning applicable only to natural person.

90. Shri Sudhir Chandra further contended that clause 2(a) of para 5 of the Fifth Schedule restricts transfer of land by or among members of the Scheduled Tribes; clause (b) regulates the allotment of land to members of the Scheduled Tribes in such area; and clause (c) regulates money lending business by non-tribals to members of the Scheduled Tribes in Scheduled Area and para 5(3) gives power to the Governor to regulate by law or to repeal or amend any Act of Parliament or of the legislature of the State or any existing law in relation to that area. The purpose, thereby, is to prevent exploitation of tribals by non-tribals. The State Government is not expected to exploit the tribals. The Fifth schedule does not prevent establishment of any factory or an industry or any scheme for development of the tribal area by non-tribals. Exploitation of valuable minerals by the non-tribals is not intended to be prevented by the Fifth Schedule to the Constitution. In particular, they laid emphasis on para 5, clause 2(b) of the Fifth Schedule, which does not prohibit the allotment of the land to the non-tribals. It is contended that the word "regulate" used therein does not necessarily imply prohibition. If such a construction is adopted, it would hinder the progress of the tribal areas. It introduces mutually internal and external contradictions. Harmonious interpretation, therefore, has to be adopted to make the Regulation and the Fifth Schedule work as a consistent whole, regulating prohibition on transfer of land in the tribal areas to the non-tribal natural persons only. Thereby, the word "persons" should be understood in that perspective. The Government and juristic persons are outside the purview of paras 5(2) and 5(3) of the Fifth Schedule and Section 3 of the Regulation.

91. The respective contentions give rise to the question whether the Regulation prohibits the State Government transferring its lands to non-tribals.

92. The historical evidence collected and culled out from B. Shiva Rao's *The Making of the Constitution* and the scheme of the representative form of Government furnishes background material for interpretation of the word "person". It is a well-established rule of interpretation that the words of width used in the Constitution require wide interpretation to effectuate the goals of establishing an egalitarian social order supplying flesh and blood to the glorious contents and context of those words and to enable the citizen to enjoy the rights enshrined in the Constitution from generation to generation. In

Ashok Kumar Gupta vs. State of U.P. [60] this Bench has applied the rule of wide interpretation of the Constitution. It bears no reiteration; reasons given therein mutatis mutandis would proprio vigore apply to the fact situation. From the above perspective, having given our deep and anxious consideration to the respective contentions of the learned counsel for the parties, we are of the considered view that the interpretation put up by Shri Rajeev Dhavan merits acceptance. It is seen and bears recapitulation that the purpose of the Fifth and Sixth Schedule to the Constitution is to prevent exploitation of truthful, inarticulate and innocent tribals and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognizant to the problem of the exploitation of the tribals. They were anxious to preserve the tribal culture and their holdings. At the same time, they intended to provide and create opportunities and facilities, by affirmative action, in the light of the Directive Principles in Part IV, in particular, Article 38, 39, 46 and cognate provisions to prevent exploitation of the tribals by ensuring positively that the land is a valuable endowment and a source of economic empowerment, social status and dignity of person. The Constitution intends that the land always should remain with the tribals. Even the government land should increasingly get allotted to them individually and collectively through registered cooperative societies or agricultural/farming cooperative societies composed solely of the tribals and would be managed by them alone with the facilities and opportunities provided to them by the Union of India through their annual budgetary allocation spent through the appropriate State Government as its instrumentalities or local body in a planned development so as to make them fit for self-governance. The words "peace and good government" used in the Fifth Schedule require widest possible interpretation recognised and applied by this Court in *T.M. Kanniyan Vs. ITO*[61] (SCR at pp. 107-108) and *Russel Vs. R*[62].

93. By the Constitution (73rd Amendment) Act, 1992 amended Part IX of the Constitution, the principle of self-government based on democratic principles at Gram Panchayat level and upwards was introduced through Article 343 to 343-ZG. As an integral scheme thereof, the Andhra Pradesh (provision of the Panchayats Extension to Scheduled Areas) Act, 1966 came to be made. Section 4(d) of that Act provides that "(N)ot withstanding anything contained under Part IX of the Constitution, every Gram Sabha shall be competent to safeguard and preserve.....community resources". Clause (j) of Section 4 provides that planning and management of minor water bodies in the Scheduled Areas shall be entrusted to the Panchayats at the appropriate level. Under clause (m)(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a member of a Scheduled Tribe and under clause (iv) the power to manage village markets, by whatever name called, are entrusted to the Gram Panchayats. It would indicate that the tribal autonomy of management of their resources including the prevention of the alienation of the land in

[60] (1997) 5 SCC 201 : JT (1997) 4 SC 251
[61] AIR 1968 SC 637 (1968) 2 SCR 103: (1968) 68 ITR 244
[62] (1882) 7 AC 829 : 51 LJPC 77

the Scheduled Areas and taking of appropriate action in that behalf for restoration of the same to the tribals, is entrusted to the Gram Panchayats.

94. The maxim "*reddendo Singlla singulis"* will apply to the interpretation of the word "person" in its generic sense with its width would not be cut down by the specific qualification of one species, i.e., natural "person" when it is capable to encompass in its ambit, natural persons, juristic persons and constitutional mechanism of governance in a democratic set-up. It has already been held, and bears no repetition, that the State, by Cabinet form of Government, is a persona ficta, a Corporate sole. The Constitution empowers the State to acquire, hold and dispose of their property. The Governor in his personal responsibility is empowered to maintain peace and good government in Scheduled Area. The Fifth Schedule to the Constitution empowers him to regulate allotment of the land by para 5(2)(b) read with Section 3 of the Regulation of the land (sic) be it between natural persons, i.e., tribals and non-tribals; it imposes total prohibition on transfer of the land in Scheduled Area. The object of the Fifth Schedule and the Regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for preservation of peace and good government in the Scheduled Area. Therefore, all relevant clauses in the Schedule and the Regulation should harmoniously and widely be read so as to elongate the aforesaid constitutional objectives and dignity of person belonging to the Scheduled Tribes, preserving the integrity of the Scheduled Areas and ensuring distributive justice as an integral scheme thereof. Clause (a) and (c) of sub-para (2) of para 5 of the Fifth Schedule prohibits transfers inter vivos between tribals and non-tribal natural persons and prevents moneylenders from exploiting the tribals. Clause (b) intends to regulate allotment of land not only among tribals but also prohibits allotment of the land belonging to the Government to the non-tribals. In that behalf, wider interpretation of "regulation" would include "prohibition" which should be read into that clause. If so read, it sub serve the constitutional objective of regulating the allotment of the land in Scheduled Areas exclusively to the Scheduled Tribes.

Para 5(2)(b) ensures distributive justice of socio-economic empowerment which yields meaningful results in reality. If purposive construction in this backdrop is adopted, no internal or external contradiction would emerge. The word "person" would include both natural persons as well as juristic person and constitutional government. This liberal and wider interpretation would maximise allotment of government land in Scheduled Area to the tribals to make socio-economic justice assured in the Preamble and Article 38, 39 and 46 a reality to the tribals. The restricted interpretation would defeat the objective of the Constitution. The word 'person" would be so interpreted as to include State or juristic person, Corporate sole or persona ficta. Transfer of land by the juristic persons or allotment of land by the State to the non-tribals would stand prohibited, achieving the object of para 5(2) of the Fifth Schedule of the Constitution and Section 3 of the Regulation. If the word "person" is interpreted to mean only natural persons, it tends to defeat the object of the Constitution, the genus and the Regulation, its species. As a corollary, by omission in the final draft of the Fifth Schedule of the power of the State Government to transfer its land to the non-tribals with the sanction of a competent authorised officer or authority would, by interpretation brought into effect and the object

of the Constitution would easily be defeated. We are, therefore, inclined to take the view that the word "person" includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the government land in Scheduled Area to non-tribal person, be it natural or juristic person except to its instrumentality or a cooperative society composed solely of tribes as is specified in the second part of Section 3(1)(a). Any other interpretation would easily defeat the purpose *(sic)* exclusive power entrusted by the Fifth Schedule to the governor. If the Cabinet form of Government would transfer the land of the Government to non-tribals peace would get disturbed, good governance in Scheduled Area would slip into the hands of the non-tribals who would drive out the tribals from the Scheduled Area and create monopoly to the well-developed and sophisticated non-tribals; and slowly and imperceptibly, but surely, the land in the Scheduled Area would pass into the hands of the non-tribals. The letter of law would be an empty content and by play of words deflect the course of justice to the tribals and denude them of the socio-economic empowerment and dignity of their person.

95. The word "person' in Section 3(1)(a) would, therefore, be construed to include not merely the natural persons, in the context of tribal and non-tribal who deal with the land in Scheduled Areas by transfer inter vivos but all juristic persons in the generic sense, including the Corporation aggregate or corporation sole, State Corporation, partnership firm, a company, any person with corporate veil or persons of all hues, either as transferors or transferees so that the word "regulate" in para 5(2)(b) of the Fifth Schedule in relation to the land in a Scheduled Areas would be applicable to them either as transferor or transferee of land in a Scheduled Area. It, thus, manifests the constitutional and legislative intention that tribals and a cooperative society consisting solely of tribal members alone should be in possession and enjoyment of the land in the Scheduled Area as dealt with in various enactments starting from Gunjam and Vizianagram Act, 1839 to the present Regulation.

96. This interpretation of ours is consistent with the constitutionality of the Regulation as was upheld by this Court in *P. Rami Reddy Vs. State of A.P.*[63], *Lingappa Pochanna Appelwar Vs. State of Maharashtra*[64] and *Manchegowda Vs. State of Karnataka*[65]. There is no internal and external contradiction in this process of harmonious and purposive interpretation of para 5(2)(a) of the Fifth Schedule which regulates transfers between natural persons; para 5(2)(b) encompasses within its ambit the transfer by the Government of its land to a non-tribal and clause (c) or the relevant clauses in Sections 3 and 4 of the Regulation. The Regulation prevents exploitation of the tribals through the State Government; from the other end, it does not allow parting with of their land and prevents induction of non-tribals into the Scheduled Area by allotment of the land or by regulating allotment of the land, be it private or private corporate aggregate. This interpretation per se, therefore, is public law interpretation to sub serve the constitutional purpose without recourse to private law principles.

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[63] (1988) 2 SCC 433 : 1988 Supp (1) SCR 443
[64] (1985) 1 SCC 479
[65] (1984) 3 SCC 301

97. In *Minerva Mills Ltd. Vs. Union of India*[66] the Constitution Bench had held that the edifice of our Constitution is built upon the concept of crystallised in the Preamble. We "the People" resolved to constitute ourselves into a socialist State which carries with it the obligation to secure to the people, justice-social, economic and political. We, therefore, put Part IV into our Constitution containing Directive Principles of State Policy which specifies the socialistic role to be achieved. In *D.S. Nakara Vs. Union of India*[67] (SCR at pp. 187-F to 189-H) another Constitution Bench had dealt with the object to amend the Preamble by the Constitution (42nd Amendment) Act and pointed out that the concept of Socialist Republic was to achieve socio-economic revolution to end poverty, ignorance and disease and inequality of opportunity. It was pointed out that socialism is a much misunderstood word. Values determine contemporary socialism-pure and simple. The principal aim of a Socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialist is to provide a decent standard of life to the working people especially to provide security from the cradle to the grave. The less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be prohibited. There will be equitable distribution of the national cake and the worst off shall be treated in such a manner as to push them up the ladder. The Preamble directs the centres of power, Legislature, Executive and Judiciary – to strive to set up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society under the rule of law though it is a long march, but during the journey to the fulfilment of the goal every State action including interpretation whenever taken, must be directed and must be so interpreted as to take the society towards establishing an egalitarian socialist State, the goal. It was, therefore, held that: (SCC p. 327, para 34)

> *"34. ..... It, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/administrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other."*

98. Pt. Jawaharlal Nehru, while participating in the discussion on the Constitution (First Amendment) Bill, had stated that the Directive Principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and for everyone, not only to the fortunate few but also the teeming millions of India who would be able to participate in the fruits of freedom and development and exercise the fundamental rights.

99. Dr. Ambedkar, while introducing the Preamble of the Constitution for discussion by the Constituent Assembly, had stated that the purpose of the Preamble is to constitute "a new society in India based on justice, liberty and equality". The Constituent Assembly debates of November 1948 at pp. 230 to 357 do indicate that the Directive Principles intended to provide life blood to social, economic and political justice to all people. Some of the members like Mahavir Tyagi, Professor K.T. Shah, Dr. Saxena etc. pleaded for incorporation of socialism as part of the Preamble but Dr. Ambedkar, the father of the

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[66] (1980) 3 SCC 625: (1981) 1 SCR 206

[67] (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165

Constitution, while rejecting the amendment, made it clear that the socio-economic justice provided in the Directive Principles and the Fundamental Rights given in Chapter III would meet the above objective without expressly declaring India as a socialist State in the Constitution.

Alladi Krishnaswamy Ayyar supported Dr. Ambedkar and had stated that "the Constitution, while it does not commit the country to any particular form of economic structure of social adjustment, gives ample scope for the future legislature and the future Parliament to evolve any economic order and undertake any legislation they choose in public interest". Pandit Jawaharlal Nehru in his speech also emphasised the need to enter into a new social order in which "there would be valid growth in the standard of living of all the people of India with equitable distribution of wealth and equality of opportunity and status of all". Dias, in his *Jurisprudence* (5th Edn.) on "distributive justice" in Chapter 4 at p. 66, has stated that justice is not synonymous with equality; equality is one aspect of it. Justice is not something which can be captured in a formula once and for all. It is a process, a complex and shifting balance between many factors including equality. Justice is never given, it is always a task to be achieved. Justice is just allocation of advantages and disadvantages preventing the abuse of power, preventing the abuse of liberty by providing facilities and opportunities to the poor and disadvantaged and deprived social segments for a just decision of disputes adapting to change.

100. Justice P.B. Sawant, former Judge of this Court, in his *Socialism under the Indian Constitution* has stated at p. 2 that today socialism has come to be associated with certain social and economic arrangements and a way of life in a socialist economy that the resources of the society are owned by the State as a whole and are used for the benefit of all, for ensuring all basic human rights to every member of the society and not for the profit of a few. By human rights is meant – all economic, political, social and cultural rights which are necessary for an individual to realise his full potential. In a socialist society, social, political and economic inequalities disappear and none is allowed to possess economic power to the extent that he is in a position to exploit or dominate others. It is only such society which can guarantee human dignity, stability, peace and progress.

101. Mahatma Gandhiji, the Father of the Nation, in *Harijan* dated 9-10-1937 had stated that "[T]rue economics never militates against the highest ethical standard, just as all true ethics to be worth its name must at the same time be also good economics. An economics that inculcates Mammon worship, and enables the strong to amass wealth at the expense of the weak is a false and dismal science. It spells death. True economics, on the other hand, stands for social justice, it promotes the good of all equally, including the weakest, and is indispensable for decent life." Dr. V.K.R.V. Rao, one of the eminent economists of India, in his *Indian Socialism Retrospect and Prospect* has stated at pp. 46-47 that a socialist society has not only to bring about equitable distribution but also to maximise production. It has to solve problems of unemployment, low income and mass poverty and bring about a significant improvement in the national standards of living. At p. 47, he has stated that socialism, therefore, requires deliberate and purposive action on the part of the State in regard to both production and distribution and the fields covered are not only

savings, investment, human skills and use of science and technology, but also changes in property relations, taxation, public expenditure, education and the social services. A socialist society is not just a give-away society not is it only concerned with distribution of income. It must bring about full employment as also an increase in productivity.

102. A socialistic society involves a planned economy which takes note of time and space considerations in the distribution and pricing of output. It would be necessary for both the efficient working of socialist enterprises and the prevention of unplanned and anarchical expansion of private enterprises. The Indian conception of socialism with democracy with human dignity is by creation of opportunities for the development of each individual and not the destruction of the individual. It is not for the merging of the individual in the society. The Indian Socialist Society wants the development of each individual but requires this development to be such that it leads to the upliftment of the society as a whole. Fundamental duties in Chapter VI-A of the Constitution to bear meaningful content, facilities and opportunity on equal footing is the fundamental condition of a socialist society. The more the talent from backward classes and areas get recognition and support, the more socialist will be the society. Public Sector and private sector should harmoniously work. The Indian approach to socialism would be derived from Indian spiritual traditions. Buddhism, Jainism, Vedantic and Bhakti Hinduism, Sikhism, Islam and Christianity have all contributed to this heritage rooted to respect for human dignity and human equality. While imposing restrictions on the right to private property even to the extent of abolishing it where necessary in the social and public interest, it permits private enterprise in economic activity and makes for a mixed economy rather than a completely socialised economy. It abhors violence and class structure and pins its faith on non-violence, sacrifice, and dedication to the service of the poor and as a natural consequence, its implementation is envisaged through parliamentary democracy planned economy and the rule of law rather than through a violent revolution or a dictatorship in any form. Indian socialism, therefore, is different from Marxist or scientific socialism.

103. To achieve the goal set down in the Preamble, the Directive Principles and Fundamental Rights, the Constitution envisaged planned economy. The Planning Commission has been given the constitution status for the above purpose. The Third Five Year Plan document extracts the basic features of the socialist pattern of society thus:

> *".....Essentially, this means that the basic criterion for determining lines of advance must not be private profit, but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increase in national income and employment but also in greater equality in incomes and wealth. .....The benefits of economic development must accrue more and more to the relatively less privileged classes of society, and there should be progressive reduction of the concentration of incomes, wealth and economic power. The socialist pattern of society is not to be regarded as some fixed or rigid pattern. It is not rooted in any doctrine or dogma. ...It is neither necessary nor desirable that the economy should become a monolithic type of organisation offering little play for experimentation either as to forms or as to modes of functioning. Nor should expansion of the public sector mean centralization of*

decision-making and of exercise of authority. .....The accent of the socialist patter of society is on the attainment of positive goals, the raising of living standards, the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes and the creation of a sense of a partnership among all sections of community. These positive goals provide the criteria for basic decisions. The Directive Principles of State Policy in the Constitution have indicated the approach in broad terms; the socialist pattern of society is a more concretised expression of this approach. Economic policy and institutional changes have to be planned in a manner that would secure economic advance along democratic and egalitarian lines....."

104. Mr. G.D.H. Cole, one of the leading socialists of U.K., in his speech *"The Growth of Socialism"* published in *"Law and Opinion in England in the 20th Century"* (Morris Ginsberg, Editor) at pp. 79-80, has stated that socialism is a movement aiming at greater social and economic equality and using extended State action as one of its methods, perhaps the most distinctive but certainly not the only one needed to be taken into account. The affairs of the community shall be so administered as to further the common interests of ordinary men and women by giving to everyone, as far as possible, an equal opportunity to live a satisfactory and contended existence, coupled with a belief that such opportunity is incompatible with the essentially unequal private ownership of the means of production. It requires not merely collective control of the uses to which these are to be put, but also their collective ownership and disinterested administration for the common benefit. This basic idea of socialism involves not only the socialisation of the essential instruments of production, in the widest sense, but also the abolition of private incomes which allow some men to live without rendering or having rendered any kind of useful service to their fellow men and also the sweeping away of forms of educational preference and monopoly which divide men into social classes. It involves, in effect, whatever is needful for the establishment of what socialists call a "classless society" and in pursuance of this aim its votaries necessarily look for support primarily, though not exclusively, to the working classes, who form the main body of the less privileged under the existing social order. Socialists seek to reduce economic and social inequalities not only in order to remove unearned sources of superior position and influence, but also in order to narrow the gaps between men to such as are compatible with all men being near enough together in ways of living to be in substance equals in their mutual intercourse.

105. *In Excel Wear Vs. Union of India*[68] the Constitution Bench had held (at SCR pp. 1030-31 : SCC pp. 244-45) that the concept of socialism or Socialist State has undergone changes from time to time, from country to country and from thinker to thinker. But some basic concepts still hold the field. The doctrinaire approach to the problem of socialism be eschewed and the pragmatic one should be adapted. So long as the private ownership of an industry is recognised and governs an over-whelming large proportion of an economic structure; it is not possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely or to a very large extent the interests of another section of the public, namely, the private ownership of the

[68] (1978) 4 SCC 224: 1978 SCC (L&S) 509 : (1979) 1 SCR 1009

undertaking. In other words, the object of intermediation should be coexistent and flourishing of mixed economy. In *State of Karnataka Vs. Ranganatha Reddy*[69] a Bench of nine Judges of this Court considered nationalisation of the contract carriages. In that behalf, it was held that one of the principal aims of socialism is the distribution of the material resources of the community in such a way as to sub serve the common good. This principle is embodied under Article 39(b) of the Constitution as one of the essential Directive Principles of State Policy. Therein, this Court laid stress on the word "distribute" as used in Article 39(b) being a key word of the provision emphasising that: (SCC p. 515, para 80)

> *"8.....The key word is 'distribute' and the genius of the article, if we say so, cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. Each word in the article has a strategic role and the whole article is a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to sub serve the common good. It reorganises by such distribution the ownership and control."*

106. *In Sanjeev Coke Mfg. Co. Vs. Bharat Coking coal Ltd.*[70] another Constitution Bench reiterated the above view; while considering Article 39(b) of the Constitution (SCR at p. 1020 : SCC p. 164), this Court had held that the broad egalitarian principle of economic justice was implicit in every directive Principle and, therefore, a law designed to promote a Directive Principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and desirable constitutional goal of social and economic justice for all. If the law was aimed at the broader egalitarianism of the Directive Principles, Article 31-C protected the law from needless, unending and rancorous debate on the question whether the law contravened Article 14's concept of equality before the law. The law seeking the immunity afforded by Article 31-C must be a law directing the policy of the State towards securing a Directing Principle and the connection with the Directive Principle must not be some remote or tenuous connection. The object to the nationalisation of the coal mine is to distribute the nation's resources. It was held (SCR at p. 1023: SCC p. 167) that though the word "socialist" was introduced in the Preamble by the late amendment of the Constitution, the socialism has always been the goal is evident from the Directive Principles of State Policy. The amendment was only to emphasise the urgency. Ownership, control and distribution of national productive wealth for the benefit and use of the community and the rejection of a system of misuse of its resources for selfish ends is what socialism is about and the words and thought of Article 39(b) but echo the familiar language and philosophy of socialism as expounded generally by all socialist writers. Socialism is, first of all, a protest against the material and cultural poverty inflicted by capitalism on the mass of people. Nationalisation of the coal mine for distribution was upheld as a step towards socialism. In *State of T.N.Vs. L. Abu Kavur Bai*[71] the same extended meaning of distribution of material resources in Article 39(b)

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[69] (1977) 4 SCC 471 : (1978) 1 SCR 641
[70] (1983) 1 SCC 147:(1983) 1 SCR 1000
[71] (1984) 1 SCC 515 : (1984) 1 SCR 725

was given by another Constitution Bench to uphold Tamil Nadu State Carriages and Contract Carriage (Acquisition) Act. Similar view was reiterated by a three-Judge Bench in *Madhusudan Singh Vs. Union of India*[72]. In *Air India case*[73] the concept of socialism was elaborated and applied to fill in the gaps of the Act to regularise the services of the contract labourers in the establishments of Air India.

107. It is an established rule of interpretation that to establish Socialist Secular Democratic Republic, the basic structure under the rule of law, pragmatic, broad and wide interpretation of the Constitution makes social and economic democracy with liberty, equality of opportunity, equality of status and fraternity a reality to "we, the people of India", who would include the Scheduled Tribes. All State actions should be to reach the above goal with this march under rule of law. The interpretation of the words "person", "regulation" and "distribution" require to be broached broadly to elongate socio-economic justice to the tribals. The word "regulates" in para 5(2)(b) of the Fifth Schedule to the Constitution and the title of the Regulation would not only control allotment of land to the Tribes in Scheduled Areas but also prohibits transfer of private of government's land in such areas to the non-tribals. While later clause (a) achieves the object of prohibiting transfers inter vivos by tribals to the non-tribals or non-tribals inter se, the first clause includes the State Government or being a juristic person integral scheme of para 5(2) of the Schedule. The Regulation seeks to further achieve the object of declaring with a presumptive evidence that the land in the scheduled Areas belongs to the Scheduled Tribes and any transfer made to non-tribal shall always be deemed to have been made by a tribal unless the transferee establishes the contra. It also prohibits transfer of the land in any form known to law and declared such transfer as void except by way of testamentary disposition by a tribal to his kith and kin/tribal or by partition among them. The Regulation and its predecessor law in operation in the respective areas regulate transfer between a tribal and non-tribal with prior permission of the designated officer as a condition precedent to prevent exploitation of the tribals. If a tribal is unwilling to purchase land from a non-tribal, the State Government is enjoined to purchase the land from a non-tribal as per the principles set down in the regulations and to distribute the same to a tribal or a cooperative society composed solely of tribals.

Whether lease is a transfer?

108. Section 105 of the Transfer of Property Act defines "lease" as a transfer of right to enjoy immovable property made by the transferor to the transferee for a certain period, express or implied, for consideration of price paid or promised etc. to the transferor by the transferee who accepts the transfer on such terms. Thereby the lease creates a right or an interest in enjoyment of the demised property on terms and conditions therein to remain in possession thereof for the duration of the period of lease unless it is determined in accordance with the contract or the statute. It is an encumbrance on the right to be in possession; use and enjoyment of the land by the transferee. Lease is the outcome of separation of ownership and possession. It may be either rightful or wrongful. If it is

[72] (1984) 2 SCC 381
[73] Air India statutory Corpn. Vs United Labour Union, (1997) 9 SC 377 : (1996) 9 Scale 70

rightful, it is an encumbrance on the owner's title but if it is wrongful the transferee acquires no lawful right to enjoy the interest therein. Section11(5) of the Mines and Minerals (Regulation and Development) Act, 1957 brought by State Amendment Act prohibits grant of mining lease in Scheduled Areas in favour of the non-tribals. It reads as under:

> *"Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled Areas to any person who is not a member of the Scheduled Tribes:*
>
> *Provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a Society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 which is composed solely of members of Scheduled Tribes.*
>
> *Explanation- For the purpose of this sub-section:*
>
> *(a) the expression 'Scheduled Areas' shall have the same meaning assigned to it in clause (25) of Article 366 of the Constitution of India; and*
>
> *(b) the expression 'Scheduled Areas' shall have the same meaning assigned to it in para 6 of the Fifth Schedule to the Constitution of India."*

109. It brings out and effectuates public policy envisaged in the Fifth Schedule of the Constitution and the Regulation. Undoubtedly, it is prospective but the underlying principle would permeate the purpose of interpretation that the state Government being a person is regulated under Section 3 of the Regulation which prohibits transfer of their land situated in the Scheduled Areas in which mines are discovered or for any other purpose. GOMs No. 971/Rev. B of 1969 provides that government land should not be given to non-tribals. The contention of Shri Sudhir Chandra that the Government being empowered to operate the Regulation, by implication, the Regulation does not apply to government land per force, is untenable in view of the above unambiguous constitutional, legislative and executive policy. The further contention that there is no need for its incorporation and that the Government would be prohibited from transferring for public-purpose, is untenable. They do not detract from legal reasoning and purposive interpretation. The transfer of such land for a public purpose, viz., to construct a hospital or to set up a bank by the Government or its instrumentalities and for any public purpose, etc., is not prohibited for two reasons, namely, (i) there is no transfer of interest in the government land in favour of non-tribal; (ii) there is no transfer of its land in law to itself. The contention, therefore, that the Regulation prohibits transfer of government land for its public purpose is unsustainable. The further contention that even philanthropic persons imbued with social zeal and spirit to ameliorate the social status and economic position of the tribals, would also be prevented to serve them is untenable. What the Regulation prohibits is the transfer of right, title and interest in the immovable property in Scheduled Areas in favour of non-tribals. There is no prohibition of non-tribal philanthropists to organise, through tribals and a cooperative society composed solely of tribals, actions to ameliorate socio-economic status of the tribals in the Scheduled Area. The further

contention that the rich mineral wealth being a national asset cannot be kept unexploited which is detrimental to the national development, is devoid of force. Instead of getting the minerals exploited through non-tribals who do so by exploitation of tribals, the minerals could be exploited through an appropriate scheme, without disturbing the ecology and the forests by the tribals themselves, either individually or through cooperative societies composed solely of the tribes with the financial assistance of the State or its instrumentalities. It would itself be an opportunity to the tribals to improve their social and economic status and a source of their economic endowment and empowerment and would give them dignity of person, social and economic status and an opportunity to improve their excellence. In the Constituent Assembly, a demand was made for allotment of mining areas in the North-Eastern States to the autonomous bodies; the Constituent Assembly instead approved payment of royalty. At many a place, the mineral deposits may be situated in tribal areas. In the light of the language used in Section 3 of the Regulation and Section 11(5) of the Mining Act, we have examined the question taking aid of the source thereof, i.e., para 5(2)(a) and (b) of the Fifth Schedule and interpreted the word "person" to include State Government.

110. The object of the Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled Areas for their economic empowerment, social status and dignity of their person. Equally exploitation of mineral resources constituting the national wealth undoubtedly is for the development of the nation. The competing rights of tribals and the State are required to be adjusted without defeating the rights of either. The Governor is empowered, as a constitutional duty, by legislative and executive action, to prohibit acquiring, holding and disposing of the land by non-tribals in the Scheduled Areas. The Cabinet, while exercising its power under Article 298, should equally be cognizant of the constitutional duty to protect and empower the tribals. Therefore, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled Areas to non-tribals.

111. Right to health has been declared to be a fundamental right in *CERC case;*[74] right to education is a fundamental right under Article 46 as held by this Court in *Maharashtra State Board of secondary and Higher Secondary Education Vs. K.S. Gandhi*[75] and *Unni Krishnan, J.P. Vs. State of A.P.*[76]; right to pollution free atmosphere has been held to be a part of right to life under Article 21 as held by this Court in *Subhash Kumar Vs. State of Bihar*[77]*;* right to potable water is a fundamental right as held by this Court in *State of Karnataka Vs. Appa Balu Ingale*[78]; right to shelter has been held to be a fundamental

[74] Consumer Education and Research Centre Vs. Union of India, (1995) 3 SCC 42 : 1995 SCC (L&S) 604
[75] (1991) 2 SCC 716
[76] (1993) 1 SCC 645
[77] (1991) 1 SCC 598 : AIR 1991 SC 420
[78] (1995) Supp (4) SCC 469 : 1994 SCC (Cri) 1762

right in a catena of decisions of this Court starting with *Olga Tellis case*[79]. These are all basic human rights declared under the Universal Declaration of Human Rights and integral part of the right to life under Article 21 other fundamental rights provided in Part III of the constitution.

112. In the absence of any total prohibition, undoubtedly Article 298 empowers the Governor being the head of the Executive to sanction transfer of its lands. Since the Executive is enjoined to protect social, economic and educational interests of the tribals and when the State leases out the lands in the Scheduled Areas to the non-tribals for exploitation of mineral resources, it transmits the correlative above constitutional duties and obligation to those who undertake to exploit the natural resources should also improve social, economic and educational empowerment of the tribals. As a part of the administration of the project, the licensee of lessee incur the expenditure for:

(a) Reforestation and maintenance of ecology in the Scheduled Areas;
(b) Maintenance of roads and communication facilities in the Scheduled Areas where operation of the industry has the impact;
(c) Supply of potable water to the tribals;
(d) Establishment of schools for imparting free education at primary and secondary level and providing vocational training to the tribals to enable them to be qualified, competent and confident in pursuit of employment;
(e) Providing employment to the tribals according to their qualifications in their establishment/factory;
(f) Establishment of hospitals and camps for providing free medical aid and treatment to the tribals in the Scheduled Areas;
(g) Maintenance of sanitation;
(h) Construction of houses for tribals in the Scheduled Areas as enclosures.

The expenditure for the above projects should be part of his/its Annual Budget of the industry establishment or business avocation/venture.

113. In this behalf, at least 20 per cent of the net profits should be set apart as a permanent fund as a part of industrial/business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads etc. This 20% allocation would not include the expenditure for reforestation and maintenance of ecology. It is needless to mention that necessary sanction for exemption of the said amount from income tax liability, may be obtained; and the Centre should ensure grant of such exemption and see that these activities are undertaken, carried on and maintained systematically and continuously. The above obligations and duties, should be undertaken and discharged by each and every person/industry/licensee/lessee concerned so that the constitutional objectives of social, economic and human resource empowerment of the tribals could be achieved and peace and good government is achieved in Scheduled Areas. We have not examined the other Acts in detail but as and when such need arises, they may be examined in the light of the language used therein and the law.

[79] Olga Tellis Vs. Bombay Municipal Corpn. (1985) 3 SCC 545 : AIR 1986 SC 180

Whether mining lease of government land is outside the Regulation?

114. The question then is: Whether grant of mining leases of lands in the Scheduled Areas belonging to the Government is outside the purview of the Regulation? In the light of the afforested discussion and the conclusion that the word "person" would include the State Government, the necessary corollary would be that the transfer of the land in Scheduled Area by way of lease, for mining purpose in favour on non-tribals stands prohibited by para 5(2)(b) of the Fifth Schedule read with Section 3 of the Regulation. It is on record that the non-tribal individuals have transferred their leasehold interest in the mining lease in favour of some of the respondent-companies. The Government stands prohibited to transfer the mining leases to Corporation aggregate etc. except to its instrumentality.

115. The lease being a transfer of an interest in the land or a right to enjoy such property during subsistence of lease, its transfer stands prohibited. It is well-settled position of law, by a catena of decision of this Court, that renewal of lease is in reality a fresh grant of lease, though it is called a renewal because it postulates the existence of a prior lease. It has been brought out from record that some of the respondent-companies have got transfer of mining lease in their favour from the individual lessees. This Court in *Victorian Granite (P) Ltd. Vs. P. Rama Rao* has held that the transfer of mining leases by an individual in favour of a company is void and in effect, would defeat the object of Article (39)(b) of the Constitution and would nullify the object of distributive justice of the largess of the State to accord economic justice to individuals to improve socio-economic status and to secure dignity of persons. Therefore, the transfer of lease or renewal of mining lease in favour of some of the respondents is void as it defeats the constitutional and statutory objectives.

116. It is seen that in one case, the transfer was claimed to have been made in favour of the State instrumentalities, i.e., A.P.S.M.D. Corporation Ltd. It has already been held that transfer of the government land in favour of its instrumentalities, in the eye of law, is not a transfer but one of entrustment of its property for public purpose. Since, admittedly, a public corporation acts in public interest and not for private gain, such transfer stands excluded from the prohibition under para 5(2)(b) of the Fifth Schedule and Section 3(1)(a) of the Regulation. Such transfer of lease, therefore, stands upheld. But a transfer of mining leases to non-tribal natural persons or company, corporation aggregate or partnership firm etc. is unconstitutional, void and inoperative.

117. The A.P.S.M.D. is required to exploit minerals in conformity with law, namely, the Forest (Conservation) Act, 1980, E.P. Act etc.

Enclosures - Whether Government can lease the lands for mining operation?

118. *It is an admitted position that five enclosures comprise of 426 acres of land occupied by the tribals in those villages. Resurvey started in 1990 jointly by Revenue, Forest and Mining Departments and was completed and the report was made on 2-8-1990. Though 14 villages with five enclosures were notified as Borra Reserved Forest in GOMs No. 2997 F&A dated 31-10-1966, they stood excluded from the reserved forest*

area. Therefore, the lands in the enclosures being cultivated by the tribals are their patta lands and are entitled to get pattas by the officers concerned. It is conceded on behalf of the respondents that the Government have no power to grant mining leases for these lands situated within the enclosures.

Whether leases are in violation of F.C. Act or E.P. Act?

119. In the counter-affidavit filed on behalf of the Government, it is conceded that major part of the lands to which mining leases were granted are situated in reserved forest. It has already been held that transfer of lands situated within Scheduled Area to non-tribals is void. It is stated that a part of the land covered by some mining leases is outside the reserved forest. The question, therefore, arises: whether these areas are forests. A controversy has been raised by the respondents that unless the lands are declared either as reserved forests or forests under the Andhra Pradesh Forest Act, 1967, the F.C. Act has no application. Thereby, there is no prohibition to grant mining lease or renewal thereof by the State Government. The need for prior approval of the Central Government is not, therefore, necessary. Prior to the Andhra Pradesh Forest Act, 1967, the Madras Forest Act, 1882 was in force. For declaration of reserved forest for the purpose of the Central Forest Act or a State Act, a set scheme has been devised, namely, publication in the State Gazette constituting any land as a reserved forest specifying its situation, its limits and a declaration constituting such land as reserved forest. A Forest Settlement Officer gets appointed to consider the objections, if any, from the persons claiming any right, title and interest in any land covered by the notification. Pending consideration thereof, provisions exist in the respective Acts prohibiting clearance of the forest or deforestation of the forest or depletion of forest wealth and resultant consequences. After consideration of objections, if any, and rejection of the objections and claims, subject to preserving the easementary right of way, water course or use of water or right to pastures or right to forest produce, the Forest Settlement Officer would determine the right of parties and would direct the department concerned to pay compensation determined on the basis of the principles laid in the Act with a right of appeal thereon. Thereafter, a declaration would duly be published in the Gazette with fixed boundaries the "aforesaid area is a reserve forest". Similar is the provision and procedure in the wildlife sanctuary under Wildlife (Protection) Act, 1972. Therein too, provisions have been made declaring them as sanctuary for preservation and protection of wildlife etc. However, the right to residence and right to collect forest produce, forest goods or agriculture etc. to the tribals is regulated under the appropriate provisions.

120. The words "forest" or "forest land" have not been defined in the A.P. Act or the Central Forest Act. In *Collins English Dictionary* (1979 Edn.) the word "forest' has been defined at p. 568 as "a large wooded area having a thick growth of trees and plants, the trees of such an area, something resembling a large wooded area especially in density". The *Shorter Oxford English Dictionary* defines "forest" as "an extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture". In *Webster's Comprehensive Dictionary* (International Edn.) at p. 495, "forest" has been defined as "a large tract of land covered with a natural growth of trees and underbrush, in English law wild land generally belonging to the Crown and kept for the protection of game; Of,

pertaining to, or inhabiting woods or forest; To overspread or plant with trees; make a forest of". The "forest cover" means "the sum total of vegetation in a forest; more especially, herbs, shrubs and the litter of leaves, branches". "Forest reserve" for the different manner "a tract of forest land set aside by Government order for protection and cultivation". According to *Stroud's Judicial Dictionary* (5th Edn.), Vol. 2 at p.1014 "forest" means "a place privileged by royal authority or by prescription for the peaceable abiding and nourishment of the beasts or birds of the forest, for resort of the King; a subject may hold a forest by grant from the Crown; by the grant of a forest in a man's own ground, not only the privilege but the land itself passes; within the bounds and within the regard". *Black's Law Dictionary* (6th Edn.) defines "forest" at p. 649 as "a tract of land covered with trees and one usually of considerable extent". *Chambers Twentieth Century Dictionary*, defines the expression "forest" at p. 415 as "a large uncultivated tract of land covered with trees and underwood: woody ground and rude pasture".

121. It would thus be seen that "forest" bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth intermingled with trees and pastures, be it of natural growth of man-made forestation. The FC Act, as amended by the 1988 Act was enacted to check deforestation and conservation of forest. Sub-section (2) with a non obstante clause of deforestation of forests or use of forest land for non-forest purposes; regulates the forest and provides that notwithstanding any other law for the time being in force in the State, no State Government or other authority shall make, except with prior approval of the Central Government, (i) any order directing that any reserved forest or any portion thereof shall cease to be a reserved forest, (ii) that any forest land or portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned, by way of lease or otherwise, to any private person or to any authority or corporation, agency or any other organization, not owned, managed or controlled by the Government, (iv) that any forest land or any portion thereof may be cleared or trees which have grown natural in the land or portion for the purpose of using it for reforestation. Clauses (iii) and (iv) were added by Amendment Act 69 of 1988 w.e.f. 19-12-1988. The explanation thereto of non-forest purpose was defined to mean the breaking up or clearing of any forest land or portion thereof for the cultivation of ……but does not include any work relating or ancillary to conservation, development and management of forest and wildlife, namely, establishment of check posts, fire lines ….. or other like purposes. Section 2, therefore, prohibits dereservation of the forest or use of any forest land for any non-forest purpose or assignment by way of lease or otherwise of any portion of land to any private person other than Government-controlled or owned, organized or managed by the State Government agency; it prohibits clearance of trees or natural growth in the forest land or any portion thereof to use it for reforestation, except for preservation. Breaking up or clearance of forest land or a portion thereof is amplified to be of non-forest purpose. The object of the FC Act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. It is, therefore, necessary for the State Government to obtain prior permission of the Central Government for (1) dereservation of forest; and (2) the use of forest land for non-forest purpose. The prior approval of the Central Government, therefore, is a condition precedent of such permission. The State Government are

enjoined by the FC Act, with power coupled with duty, to obtain prior approval of the Central Government. The leases/renewal of leases otherwise are good.

122. The Environment (Protection) Act, 1986 (for short "the EP Act") was enacted to protect and improve the environment and for prevention of hazards to human beings, other living creatures, lands and property. Section 3 of the EP Act enjoins the Central Government that it should take such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. It would, therefore, be clear that the meaning of expression "forest land" in the respective Acts requires extended meaning given so as to preserve forest land from deforestation to maintain ecology and to prevent environmental degradation and hazardous effects on the right to life. *In Virender Gaur Vs. State of Haryana*[80] this Court in para 7 at pp. 580-81 has held that environmental, ecological, air, water pollution, etc., should be regarded as amounting to violation of right to life assured by Article 21. Hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promotion of environmental protection implies maintenance of eco-friendly environment as a whole comprising of man-made and the natural environment. It is, therefore, the duty of every citizen and industry to conserve, and if it becomes inevitable to disturb its existence, it is concomitant duty to reforest and restore forestation; duty of the State to coordinate with all concerned and to ensure adequate measures to promote, protect and improve both man-made, natural environment flora and fauna as well as biodiversity.

123. In *Rural Litigation and Entitlement Kendra Vs. State of U.P.*[81] in para 14, this Court had observed that consciousness regarding environmental upkeep and cognizance of ecological importance had in recent times entered into governmental activities. The EP Act protects to upkeep forest land or reserved forest, prevents deforestation, encourages forestation and takes steps as are necessary to preserve ecology. In para 23, it was held that mining activity was held uncongenial to ecology and environment. Trees are friends of mankind and forests are an inevitable necessity for human existence, healthy living and the civilisation to thrive and flourish. The need for protection and preservation of forests is the fundamental duty of every citizen and all persons in comprehensive sense, i.e., juristic as well. The problem of forest preservation and protection was no more to be separated from the lifestyle of tribals. The approach required is a shift from the dependence on law and executive implementation to dependence on the conscious and voluntary participation of all persons. Maintenance of ecology is the primary duty of the State to prevent any further degradation of the ecology and the environment and equally is the duty of every citizen. All persons conjointly should allow regeneration of forest as an essential step for healthy life.

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[80] (1995) 2 SCC 577

[81] 1989 Supp (1) SCC 504

This Court in *Chhetriya Pardushan Mukti Sangarsh Samiti Vs. State of U.P.*[82] and *Subash Kumer Vs. State of Bihar*[83] had held that the protection of the environment is the duty of the State. In *Sachidanand Pandey Vs. State of W.B.*[84] it was held that it is the fundamental duty of every citizen under Article 51-A(g) and Article 48-A of the Constitution to protect the forest and the environment. The same view was reiterated in *State of Bihar Vs. Murad Ali Khan*[85] and *M.C.Mehta Vs. Union of India*[86]. On the positive obligation to protect the environment, this Court had emphasised it in *M.C. Mehta case*[87] and *Indian Council for Enviro-Legal Action Case*[88]. Industries which created an environment inimical to the human existence were directed to be disclosed in *Rural Litigation and Entitlement Kendra Vs. State of U.P.*[89]. *Tarun Bharat Sangh Vs. Union of India*[90], *Vellore Citizens' Welfare Forum Vs. Union of India*[91] and *Indian Council for Enviro-Legal Action Vs. Union of India*[92]. In particular, in *Vellore Citizens' case*[93] this Court had pointed out that the sustainable development consists in preservation of the person without compromising the ability of the future generation to meet their needs. Sustainable development is a balancing concept between ecological development and industrialisation. Therefore, with a view to improve the quality of human life, while living within the carrying capacity of the subordinate ecology system, sustainable development should be maintained by the industry and the State should ensure environmental protection and prevent degradation thereof.

As a facet thereof, as the principle of "the polluter pays", this Court awarded damages for causing deforestation and directed development of eco-friendly environment.

124. Mining operations, though detrimental to forest growth, are part of layout of the industry; provision should be made for investment or infrastructural planning to reforest the area; and to protect the environment and regenerate forest. The Ministry of Environment and Forests and all Secretaries of all the State Governments holding charge of Forest Departments, have a duty to prevent mining operations affecting the forest. It is significant to note that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. The provisions of the FC Act get attracted to ensure preservation of forest. In *Garwal case* this Court prohibited mining

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[82] (1990) 4 SCC 499
[83] (1991) 1 SCC 598: AIR 1991 SC 420
[84] (1987) 2 SCC 295
[85] (1988) 4 SCC 655: 1989 SCC (Cri) 27
[86] (1992) 1 SCC 358
[87] (1992) 1 SCC 358
[88] (1995) 3 SCC 77
[89] 1989 Supp (1) SCC 504
[90] 1992 Supp (2) SCC 448
[91] (1996) 5 SCC 647
[92] (1995) 3 SCC 77
[93] (1996) 5 SCC 647

operations. In *Rural Litigation and Entitlement Kendra Vs. State of U.P.*[94] and *State of H.P. Vs. Ganesh Wood Products*[95] it expressed anxiety to ensure eco-friendly environment. In the latter case, a two Judge Bench applied the provisions of the EC Act and the EP Act and held that the application of sustainable development requires that appropriate assessment should be made of the forest wealth and the establishment of industries based on forest produce; other working should also be monitored closely to maintain the required ecological balance. No distinction can be made between the government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology. The same view was taken by the Andhra Pradesh High Court in *Colorock (P) Ltd. Vs. Director of Mines & Geology, Government of A.P.*[96]; *Anupama Minerals Vs. Union of India*[97]*; Yashwant Stone Works Vs. State of U.P.*[98]*; Upendra Jha Vs. State of Bihar*[99] and *Ambalal Manubhai Patel Vs. State of Gujarat*[100].

125. It is well-settled law that mining operation is a non-forest purpose. In *Ambica Quarry Works Vs. State of Gujarat*[101] a Bench of three Judges of this Court had held that the renewal of a mining lease, without prior approval of the Central Government was in violation of Section 2 of the FC Act. The same view was reiterated in State of *MP Vs. Krishnadas Tikaram*[102] and *Tarun Bharat Sangh Vs. Union of India*[103]. In *Tarun Bharat Sangh case* it was however, held that even for mining operations outside the Tiger Reserved Forest declared as protected area, prior permission of the Central Government was necessary. The case of *State of Bihar Vs. Banshi Ram Modi*[104] strongly relied on by the Division Bench in *Samatha Case*[105] and learned counsel for the respondents, was overruled by this Court in *Ambica Quarry Works Case*[106]. Therefore, the decision no longer operates as a ratio decidendi. The same view was taken by the High Courts in the above judgments. It would, therefore, be mandatory that even renewal of mining leases without prior approval of the Central Government, is void. In *Victorian Granites case*[107] sub-lease of the mining leases, even with prior approval and grant by the State Government, was held to be illegal.

126. It is seen from the evidence that the mining leases were granted by the State Government or were transferred and retransferred with the sanction of the State Government from private individuals to juristic persons, the partnership firms or

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[94] 1989 Supp (1) SCC 537
[95] (1995) 6 SCC 363
[96] (1983) 3 ALT 39
[97] AIR 1986 AP 225: (1985) 1 Andh LT 148
[98] AIR 1988 All 121: (1988) 14 All LR 123
[99] AIR 1988 Pat 263: 1987 BBCJ 632
[100] (1986) 2 Guj LR 263: (1987) 1 Guj LH 125
[101] (1987) 1 SCC 213: (1987) 1 SCR 562
[102] 1999 Supp (1) SCC 587
[103] 1993 Supp (3) SCC 115
[104] (1985) 3 SCC 643: 1985 Supp (1) SCR 345
[105] Samatha Vs. State of A.P., (1995) 2 Andh LT 233 (DB)
[106] (1987) 1 SCC 213: (1987) 1 SCR 562
[107] Victorian Granites (p) Ltd. Vs P. Rama Rao, (1996) 10 SCC 665: JT (1996) 9 SC 303

companies. The lands with mining area are situated either in the reserved forest or forest land or within the Scheduled Area. Therefore, all the mining leases or renewals thereof are in violation of the Fifth Schedule. Equally, mining leases- renewals of mining leases by the State Government are in violation of Regulation 3(1)(a) read with Section 3(2) of the Regulation and the FC Act. Therefore, they are all void.

127. Shri Sudhir Chandra in his written submissions has stated that in respect of the lands leased to the 19th respondent, a sum of Rs. 350 crores has been invested for manufacturing of "High Purity Sea Water" magnified by using 100% import high technology. The said product saves annually 70 crores of foreign exchange. It is essential for modernisation of steel industry. The product also has wide application for major core industry saving large foreign exchange for the country. He has also stated that the mining operations are carried on in plain area only and thereby forest area is not affected. However, since these averments have been made for the first time in the written submissions, after the Court reserved its decision, we are deprived of the advantage of having the response of the State Government, which in fact, has not taken any active interest in this litigation. We, therefore, feel it necessary that the Chief Secretary of the Andhra Pradesh State should constitute a Committee consisting of himself, Secretary (Industry), Secretary (Forest), Secretary (Tribal Welfare/Social Welfare) to have the factual information collected and consider whether it is feasible to permit the industry to carry on mining operations. If the Committee so opines, the matter may be placed before a Cabinet Sub- Committee consisting of (sic Chief) Minister, Minister for Industries, Minister for Forests and Minister of Tribal Welfare to examine the issue whether licences could be allowed to continue until they expire by efflux of time or whether it is expedient to prohibit further mining operations in the light of Section 11(5) of the Mining Act, to take appropriate action in that behalf and submit report to this Court on the actions so taken.

128. In cases where similar Acts in other states do not totally prohibit grant of mining leases of the lands in the Scheduled Area, similar Committee of Secretaries and State Cabinet Sub-Committees should be constituted and decision taken thereafter.

129. Before granting leases, it would be obligatory for the State Government to obtain concurrence of the Central Government which would, for this purpose, constitute a Sub-Committee consisting of the Prime Minister of India, Union Minister for Welfare, Union Minister for Environment so that the State's policy would be consistent with the policy of the nation as a whole.

130. It would also be open to the appropriate legislature, preferably after a through debate/ conference of all the Chief Ministers, Ministers holding the Ministry concerned and the Prime Minister and the Central Ministers concerned, to take a policy decision so as to bring about a suitable enactment in the light of the guidelines laid down above so that there would emerge a consistent scheme throughout the country, in respect of the tribal lands under which national wealth in the form of minerals, is located.

131. The State Government therefore, is directed to ensure that all industrialists concerned, be they natural or juristic persons stop forthwith mining operations within the Scheduled Area, except where the lease has been granted to the State undertaking, i.e. A.P.S.M.D. Corporation; they should report compliance of this order to the Registry of this Court within six months of the receipt of this judgment. The lessees of mining leases are directed not to break fresh mines; however, in the meanwhile, they are entitled to remove the minerals already extracted and stocked in the reserved forest area within four months' time from today. All authorities concerned are directed to ensure compliance thereof. Even the State undertaking carrying the mining operations, would be subject to the regulations under the FC Act and the EP Act. It would be open to the State Government to organize cooperative societies composed solely of the Scheduled Tribes to exploit mining operations within the Scheduled Area subject to the compliance of the FC Act and the EP Act.

132. The appeals of Samatha are accordingly allowed. The judgment of the High Court stands set aside and directions are issued accordingly.

133. The appeal of Hyderabad Abrasives and Minerals (p) Ltd. stand dismissed since their licence has already expired by efflux of time and grant of renewal is prohibited under the FC Act and Section 11(5) of the Mining Act, No costs.

S. SAGHIR AHMAD, J. *(concurring)* - Leave granted.

135. I have had the advantage of going through the judgments prepared separately by esteemed Brothers Ramaswamy and Pattanaik. I am inclined to agree with Brother Ramaswamy, for the reason which I am presently setting out herein below.

136. Tribals were the first settlers in this country but they were gradually pushed back into the forests and hills by subsequent settlers who were non-tribals. The forests and hills provided a natural barrier and isolated the tribals from the people living in the plains. On account of their isolation, they remained illiterate, uneducated, unsophisticated, poor and destitute and developed their own society where they allowed themselves to be governed by their own primitive and customary laws and rituals.

137. Successive governments which ruled India from medical times to modern times (British period) allowed these tribals and aboriginals to live in complete isolation and allowed them to follow their own traditional culture, social customs and animistic tribal faiths. There were many dangers in subjecting them to normal laws and they were, therefore, governed by special laws.

138. The tribal areas or Agency areas of the Madras Presidency were governed by the Ganjam and Vizagapatnam Act of 1839. Then came the Schedule Districts Act, 14 of 1874 which was followed by the Agency Tracts and Land Transfer Act, 1 of 1917. Section 4(1) and (2) of this Act provided as under.

> *"4.(1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency treats by a member of a hill tribe shall*

be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.

(2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed officer may on application by anyone interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs. "

139. Under the Government of India Act, 1935, the administration of the Scheduled Districts was exclusively vested in the Governor of the Province. Sub-sections(1) and (2) of section 92 of the Government of India Act, 1935 provided as under:

"92.(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but notwithstanding anything in this Act, no Act of the Dominion Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the areas, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Dominion Legislature, or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question. Regulations made under this sub-section shall be submitted forthwith to the Governor General and until assented to by him shall have no effect. "

140. In B. Shiva Rao's Study Volume V of *The Framing of India's Constitution it is stated as under:*

"There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural: and, secondly, they were likely to get into the wiles of the moneylender. The primary aim of government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas. At first individual laws were enacted, applicable to particular areas, which, among other things, prescribed simple and elastic forms of judicial and administrative procedures. The Scheduled Districts Act, enacted in 1874, appears to have been the first measure adopted to deal with these areas as a class. That Act enabled the executive to extend any enactment in force in any part of British India to a 'scheduled district' with such modifications as might be considered necessary. In other words, the executive had power to exclude these areas front the normal operation of ordinary law and give them such protection as they might need.

The Montague-Chelmsford Report of 1918 contained a brief reference to these areas: it suggested that the political reforms contemplated for the rest of India could not apply to these backward areas where the people were primitive and 'there was no material on which to found political institutions'. The typically backward tracts were therefore to be excluded from the jurisdiction of the reformed Provincial Governments and administered personally by the heads of the Provinces. In the Government of India Act of 1919 these tracts were divided into two categories. Some areas were considered so backward that they wholly excluded from the scope of the reforms. The effect of this was that neither the Central nor the Provincial Legislature had power to make laws applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the responsibility for the administration of these areas. Proposals for expenditure in these tracts were not required to be submitted to the vote of the Legislative Assembly: and no question could be asked and no subject relating to any of these tracts could be discussed in the Assembly without the Governor's sanction".

It is further stated as under:

"The object of Government policy in relation to these areas, inhabited by backward, tribal and aboriginal populations, was clearly visualised by the Simon Commission. Until then the aim had primarily been to give the primitive inhabitants of these areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs: not self determination or rapid political advance, but experienced and sympathetic handling and protection from economic subjugation by their neighbours. The Commission realized that perpetual isolation from the main currents of progress would not be a satisfactory long term solution: and that it would be necessary to educate these people ultimately to become self-reliant. In this direction practically nothing had been achieved.

The Commission observed:

'The responsibility of Parliament for the backward tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their border. The principal duty of the administration is to educate these people to stand on their own feet, and this is a process which had scarcely begun.'

The Commission recognized this problem to be one of considerable magnitude and complexity. On the one hand it was too large a task to be left to the efforts of missionary societies and individual officials, since coordination of activity and adequate funds were required. On the other hand, the typically backward tract was a deficit area and 'no provincial legislature (was) likely to possess either the will or the means to devote special attention to its particular requirements'. In these circumstances the Commission recommended that the responsibility for the backward

classes would be adequately discharged only if it was entrusted to the Centre. It was recognized that it would not be a practicable arrangement if centralization of administrative authority in these areas led to a situation in which these areas would be separated front the Provinces of which they were an integral part: and in order to meet this difficulty the Commission suggested that even though there would be a Central responsibility, the backward tracts should not be separated from the Provinces but that the Central Government should use the Governors as agents for the administration of these areas and that, depending on the degree of backwardness, it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties.

The proposal for centralising the administration of these areas was however not adopted in the constitutional reforms of 1935. Under the Government of India Act of 1935, these backward areas were classified as excluded areas and partially excluded areas. A small number of excluded areas - the total extent of these was about 18,600 square miles in Assam and 10,000 square miles in the rest of India - in the Provinces of Madras, Bengal, the North-West Frontier Province, the Punjab and Assam, were placed under the personal rule of the Governor acting in his discretion: and while partially excluded areas were within the field of ministerial responsibility, the Governors exercised a special responsibility in respect of the administration of these areas; and they had the power in their individual judgment to overrule their Ministers if they thought fit to do so. No Act of the Federal or Provincial Legislature would apply to any of these areas: but the Governors had the authority to apply such Acts with such modifications as they considered necessary.

In addition to these excluded and partially excluded areas, there were in the territory of India certain `tribal areas', which were defined in the Government of India Act, 1935, as 'areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or any foreign State. The position of these areas was even more peculiar. In terms of the definition they did not form part of the territory of British India and neither Parliament of Britain nor the Legislatures of British India claimed or exercised any direct legislative powers over these areas. The power exercisable in these areas were described as arising out of 'treaty, grant, usage, sufferance or otherwise' and the Act of 1935 contained a specific authorisation enabling these powers to be exercised as part of the executive authority or the Central Government, by the Governor General acting in his discretion, and therefore outside the area of responsibility of the Ministry."

It is further stated as under:

"The Cabinet Mission's statement of 16-5-1946, mentioned the excluded and partially excluded area and the tribal areas as requiring the special attention of the Constituent Assembly. The Advisory Committee on Fundamental Rights and Minorities, to be set up at the preliminary meeting of the Assembly, was to contain due representation of all the interests affected; and one of its functions was to report to the Constituent Assembly on a scheme for the administration of tribal and excluded areas. At its meeting on 27-2-1947, the Advisory Committee set up three sub-committees - one to

consider the tribal and excluded and partially excluded areas in Assam: one to consider the tribal areas in the North-West Frontier Province and Baluchistan: and the third sub-committee to consider the position of excluded and partially excluded areas in the Provinces other than Assam."

141. The Sub-Committee on Assam submitted its report on 28-7-1947 while the other Sub-Committee on the Excluded and Partially Excluded areas other than Assam submitted its interim report on 18-8-1947 and final report in September 1947. The joint meeting of the two Sub-Committees was held in August 1947. The joint meeting summed up the problems as under.

"The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult to access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilising facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plains folk, resulting in the passage of land formerly cultivated by them to moneylenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them, the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribal customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals' simplicity and weaknesses, it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginals economic life and for his customs and institutions which, apart from being his own, contain elements of value."

142. It would be useful at this stage to reproduce further the two passages from Shri Rao's book relating to the recommendations:

"From the beginning the objectives of the Government's policy in regard to the tribes and tribal areas were primarily directed to the preservation of their social customs from sudden erosion and to safeguarding their traditional vocations without the danger of their being pauperised by exploitation by the more sophisticated elements of the population. At the same time it was recognized that this stage of isolation could not last indefinitely: a second and major objective was therefore laid down, that their educational level and standard of living should be raised in order that they might in course of time be assimilated with the rest of the population. From this point of view the sub-committee was of the opinion that the policy of exclusion and partial exclusion had not yielded much tangible result in the progress of the aboriginal areas towards the removal of their backward condition or in their economic and educational betterment. The sub-committee did not therefore find it advisable to abolish the administrative distinction between the backward areas and the rest of the country; and it recommended that while certain areas like Sambalpur in Bihar and Angul in Orissa need no longer be treated differently from the regularly administered

areas, there were other areas which needed a simplified type of administration to protect the aboriginal people from exposure to the complicated machinery of the ordinary law courts and save them from the clutches of the moneylender who took advantage of their simplicity and illiteracy, deprived them of their agricultural land, and reduced them to a state of virtual serfdom. The general position, according to the sub-committee, was that the areas predominantly inhabited by tribal people should he known as `Scheduled Areas' (the intention being that these areas should figure in a schedule to a notification) and special administrative arrangements made in regard to them.

At the same time, having found the treatment of exclusion and partial exclusion to have proved a failure, the sub-committee recommended that the responsibility for the betterment and welfare of these areas should be squarely that of the Provincial Government and that accordingly the Governors should not have any special, reserved or discretionary powers in regard to these areas. But the ultimate responsibility was to be that of the Centre, both for drawing up plans for the betterment of these areas and for providing the necessary finances. In order to ensure that the requirements of these areas were given full consideration, the sub-committee recommended that the Constitution should provide for the setting up in each Province of a body which would keep the Provincial Government constantly in touch with the needs of the aboriginal tracts in particular and with the welfare of the tribes in general. This body was to be known as a Tribes Advisory Council, which it was proposed, should have a strong representation of the tribal element.

The Tribes Advisory Council would primarily advise the Government in regard to the application of laws to the Scheduled Areas: no laws affecting the following matters would apply if the Tribal Advisory Council considered such a law unsuitable:

(1) Social matters; (2) occupation of land, including tenancy laws, allotment of land and setting apart of land for village purposes; (3) village management, including the establishment of village panchayats.

* * *

The provisions for the other States were more detailed. In their case, the advisory body was known as the Tribes Advisory Council. The membership of the Tribes Advisory Council in each of the States was to be between ten and twenty five, of whom three-fourths were to be elected representatives of the Scheduled Tribes in the Legislative Assembly of the State as in the case of the Punjab and the United Provinces; it was laid down as the duty of the Tribes Advisory Council generally to advise the Government on all matters pertaining to the administration of the Scheduled Areas and the welfare of the tribes. The State Government was statutorily enjoined to give effect to the advice of the council if it considered that an Act, whether of Parliament or of the State Legislature, relating to the following matters, was unsuitable for, or required modification in, its application to a Scheduled Area;

(a) marriage; (b) inheritance of property; (c) social customs of tribes; (d) land, including rights of tenants, allotment of land and reservation for any purpose; (e) village administration and village panchayats.

It was made obligatory that the Governor should act according to the advice of the Tribes Advisory Council on the application of Acts relating to these matters. He was not bound to accept the advice of the council on laws relating to other matters. The State Government was also empowered to make regulations applicable to a Scheduled Area after consulting the council. As in the case of East Punjab and the United Provinces, such regulations would make provision for the trial of offences other than those punishable with death, transportation for life or imprisonment for five years or more; such regulations could also provide for the trial of disputes 'other than those arising out of any such laws as may be defined in such regulations'.

The transfer of land in a Scheduled Area from a tribal to a non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council. Likewise, if advised by the council, the Governor was obliged to license money lending, prescribing such conditions as were considered necessary; and the breach of these conditions would be an offence. In order that public attention might be focused on the development work carried out in these areas, the State Government was required to show separately in its annual financial statement the revenues and expenditure pertaining to these areas."

143. The Sub-Committee in its report with regard to the land in tribal (Scheduled) Area, provided as under:

"25. Land.-The importance of protection for the land of the tribals has been emphasized earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribals land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted according to the different stages of advancement. We find however that Provincial Government are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribals in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence, however, we are of the view that the interests of the tribals need to be safeguarded in view of the increasing pressure on land everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council. "

144. In Part II of Appendix C to this report, it was indicated as under:

"Vacant land in a Scheduled Area which is the property of the State shall not he allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council."

145. The recommendations of the two Sub-Committees were not considered by the Constituent Assembly in its Session in July 1947, when the broad principles of the Constitution were settled since, as explained by Dr. Ambedkar, they were received too late. The Drafting Committee however, considered these proposals at the stage of drafting and suitable provision including Schedules V and VI were included in the Draft Constitution of February 1948 in which it was indicated that the transfer of land in Scheduled Area from tribals to non-tribals was forbidden; and the State Government was also prohibited from allotting the State land in the Scheduled Area to non-tribals except in accordance with the rules which may be made by the Governor after consulting the Tribes Advisory Council.

146. The Draft Fifth Schedule prepared by the Drafting Committee with regard to Articles 189(a) and 190(1) which related to the administration and control of Scheduled Areas and Scheduled Tribes consisted of several parts. Part I contained the general provision that the executive power of a State specified in Part I of the First Schedule shall extend to the Scheduled Areas therein. It further provided that the Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the Government of India, may report to the Government regarding the administration of the Scheduled Areas and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

147. Part II applied to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa. Clause 5 specified the laws applicable to Scheduled Areas in those States. It provided as under.

"5. Law applicable to Scheduled Areas -

(1) The Governor may, if so advised by the Tribes Advisory Council for the State, by public notification direct that any particular Act of Parliament or of the legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may with the approval of the said Council specify in the notification:

Provided that where such Act relates to any of the following subjects, that is to say-

(a) marriage;

(b) inheritance of property;

(c) social customs of the tribes;

(d) land, other than lands which are reserved forest under the Indian Forest Act, 1927 or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;

(e) any matter relating to village administration including the establishment of village panchayats;

the Governor shall issue such direction when so advised by the Tribes Advisory Council.

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make regulations for any Scheduled Area in the State with respect to any matter not provided for by any law for the time being in force in such area.

(3) The Governor may also make regulations for any Scheduled Area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or relating to disputes other than those arising out of any such laws as may be defined in such regulations, and may by such regulations empower the headmen or panchayats in any such area to try such cases.

(4) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate legislature which applies to such area and has been enacted by virtue of powers conferred on that legislature by the Constitution."

148. Clause 6 which dealt with the alienation and allotment of land to non-tribals in Scheduled Areas provides as under:

"6. Alienation and allotment of lands to non-tribals in Scheduled Area.-

(1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a Scheduled Area to any person who is not a member of the Scheduled Tribes;

(2) No land in a Scheduled Area vested in the State within which such area is situate shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State. "

149. Part III was applicable to the State of United Provinces (now known as Uttar Pradesh). Para 12 provided as under:

"(2) The Governor may also make regulations so as to prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate legislature which applies to such area and has been enacted by virtue of the powers conferred on that legislature by this Constitution."

150. Part IV related to the State of East Punjab. Clause 17 provided as under:

"(2) The Governor may also make regulations so as to prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate legislature which applies to such area and has been enacted by virtue of the powers conferred on that legislature by this Constitution. "

151. The important provision to be noticed is that although in respect of States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa, a total ban was placed on the transfer of land by a member of the Schedule Tribe to a person who is not a member of the Scheduled Tribe, it was provided, so far as allotment of government land was concerned, that no land in a Scheduled Area could be allotted to or settled with a non-tribal except in accordance with the rules made in that behalf by the Governor after consulting the Tribes Advisory Council. This indicated that if a rule was made by the Governor in that regard, land in a Scheduled Area which was vested in the Government, could be allotted to the non-tribal. It is obvious that the power of allotment could not be exercised so long as the rules were not made.

152. No provision, so far as allotment of government land was concerned, was made for the States of United Provinces and West Bengal for which the only provision made was that the Governor may make regulations so as to prohibit the transfer of land in a Scheduled Area by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

153. It also requires to be noticed that the Regulation made by the Governor for all these States to which the Fifth Schedule was applicable were to have the same force and effect as an Act of the appropriate legislature. But this was not stated in respect of rules which could be made by the Governor under clause 6(2) of the Fifth Schedule applicable to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa.

154. The comments and suggestions made on the Draft Constitution including the Fifth Schedule prepared by the Drafting Committee, so far as relevant para, namely, para 5,

para 6, para 12 and para 17 of the Filth Schedule are concerned, and the decision of the Drafting Committee thereon are quoted below:

PARAGRAPH 5

The Government of Orissa has questioned the propriety of the provisions contained in sub-paragraph (1) of paragraph 5 in Part II of the Fifth Schedule and has made the following comments:

> Under Section 92(1) of the Government of India Act, 1935 no Act of the Federal or Provincial Legislature applies to a partially excluded area unless the appropriate Provincial Government so directs by a notification. The plan followed in the Draft Constitution of India is, however, fundamentally different. The idea underlying paragraph 5(1) of Part II of the Fifth Schedule to the Draft Constitution is that as soon as an Act of the Federal or the Provincial Legislature is passed, it will apply automatically to all Scheduled Area unless the Governor on the advice of the Tribes Advisory Council directs, in respect of any particular legislation, either that it shall not apply to any specified Scheduled Areas or that it shall apply to such area, subject to specified exceptions and modifications. Although on the whole the Government of Orissa prefers the plan indicated in para 5(1) of Part II of the Fifth Scheduled to the Draft Constitution to the provision of Section 92(1) of the Government of India Act, 1935 they apprehend that difficulties, mainly of an administrative nature, might arise out of the inevitable time-lag between the passing of an Act by either the Dominion or the State Legislature and the decision of the Governor either that the Act shall not apply to any Scheduled Area or that in its application to such an area, it shall be subject to certain modifications and exceptions. Since the position will be that as soon as an Act is passed by a legislature it will apply in all Scheduled Area, certain rights and obligations will be created or modified by virtue of the Act. The accrual of such rights and obligations in the interim period might give rise to an awkward situation if it is decided subsequently (and a direction is made to that effect), either that the Act shall not apply to Scheduled Area or that it shall apply to such areas subject to certain specified exceptions and modifications. It is of course possible to give retrospective effect to the directions made under para 5(1) in order to secure that the exceptions and modifications subject to which the Act is applied to Scheduled Areas will have effect therein from the date of the passing of the Act. If that is done, consequential provisions will have to be inserted by way of 'modification' in order to regularize anything done under the Act during the interim period. Even so, however, it is likely that the rights of several parties might be seriously affected and there might be much confusion. The Provincial Government, however, see no easy solution of such difficulties if the plan envisaged in para 5(1) of the Fifth Schedule is adhered to.

Note.- The provisions of sub-paragraph (1) of paragraph *5* of the Fifth Schedule are based on the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas (Other than Assam) as adopted by the Advisory Committee. Attention is invited in this connection to paragraphs 10 and 11 of Volume I [Report

of the Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee]. It will appear from the said report that the present system under which the Governor in his discretion applies the legislation did not appeal to the committee as this principle would be regarded as undemocratic even though the Governor in future might be an elected functionary. The criticism offered by the Government of Orissa to the provision set out in sub-paragraph (1) of paragraph 5 will also apply if the present provisions of the Government of India Act, 1935, under which no Act of the Central or a Provincial Legislature applies to an excluded or a partially excluded area unless the Governor by a public notification so directs, is adopted; for, if in such case it is essential that an Act of the Central or a Provincial Legislature should apply to any such area along with other areas on the date when it becomes law after it has been assented to, there is bound to be some time-lag between the passing of the Act and the decision of the Governor that the Act shall apply to such area or that in its application to such area it shall be subject to certain modifications and exceptions as in the present case. A decision will have to be arrived at in either case as to the application or none application of the Act when the Bill is passing through the legislature and a notification will have to be kept ready for issue on the date the Bill on being assented to becomes law.

Decision of the Drafting Committee, October 1948.- The Drafting Committee decided to recast the Provision to sub-paragraph (1) of paragraph 5 of Part II of the Fifth Schedule as follows:

> Provided that where such Act relates to any of the following subjects, that is to say:
>
> (a) marriage, inheritance of property or social customs of the Scheduled Tribes;
>
> (b) and (c) (omit);
>
> (c) land, other than lands which are reserved forests under the Indian Forest Act, 1927, or under any law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;
>
> (d) any matter relating to village administration including the establishment of village panchayats.

the Governor shall issue such direction when so advised by the Tribes Advisory Council.

The Government of Orissa has also made the following comments with regard to sub-paragraph (2) of paragraph 5 of Part II of the Fifth Schedule:

> With reference to the Governor's power to make regulations under paragraph 5(2) of Part II of the Fifth Schedule, the question has been raised whether the power is as plenary as the power at present conferred by Section 92(2) of the Government of India Act, 1935. A Regulation made under Section 92(2) may deal with any subject irrespective of whether it is included in the Central, Provincial or Concurrent List; it

may even amend a Central Act. Since, however, sub-paragraph (4) of paragraph 5 of Part II of the Fifth Schedule does not specifically refer to the Dominion Parliament, the Provincial Government are doubtful if the power to make regulations conferred by sub-paragraph (2) of paragraph 5 will be equally plenary or will be restricted to matters on which the State Legislature will be competent to legislate. Although the term 'appropriate legislature' used in sub-paragraph (4) of paragraph 5 would etymologically include the 'Dominion Parliament' as well as 'the State Legislature' it appears from a perusal of the Draft Constitution that the draftsman made a distinction between 'Parliament' on the one hand and 'State Legislature' on the other. It may, therefore, be the intention of the Draft Constitution that the Governor's power to make regulations under sub-paragraph(2) of paragraph will not extend to matters included in the Central List. If that is the plan, the Provincial Government beg to differ from it, as they feel that the Provincial Governor's power to make regulations for the good government of Scheduled Areas should continue to be as plenary as it is at present.

Note. - The power to make regulations conferred by sub-paragraph(2) of paragraph 5 is not restricted only to matters on which the State Legislature will be competent to legislate. The expression 'with respect to any matter not provided for by any law for the time being in force in such area' in sub-paragraph (2) of paragraph 5 and the use of the expression 'appropriate legislature' in sub-paragraph (4) of that paragraph make it clear that the power to make regulations under sub-paragraph (2) of that paragraph is not restricted only to matters with respect to which the Legislature of the State is competent to legislate. Any further clarification is hardly necessary. However, to make the intention clearer the following amendment may be made in paragraph 5 of Part II of the Fifth Schedule:

In sub-paragraph (2) of paragraph 5 of the Fifth Schedule, the following be added at the end:

and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

Decision of the Drafting Committee, October 1948.- The Drafting Committee decided to substitute the following for sub-paragraph (2) of paragraph 5 of Part II of the Fifth Schedule:

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make regulations for any Scheduled Area in the State with respect to any matter not provided for by any law for the time being in force in such area, and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area:

Provided that any regulations so made with respect to any matter enumerated in the Union List shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

160????????. Para 5(2) of the Fifth Schedule, as finally adopted and engrafted in the Constitution, provided as under:

"5.(2) The Governor or Rajpramukh, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may -

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as moneylender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulations as is referred to in sub-paragraph(2) of this paragraph, the Governor or Rajpramukh may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Rajpramukh making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

161. The word "Rajpramukh" was subsequently deleted by the Constitution (Seventh Amendment) Act, 1956.

162. The above legislative history indicates that from the very beginning, at least from the 19th century, Scheduled Area inhabited by aboriginals and tribals have been administered exclusively under the control of the Central Government through the Governor of the State by providing special statutory measures. It is obvious that from the earliest time till the making of the Constitution, it was all along felt that the transfer of land in the Scheduled Areas by a tribal to a person who was not a member of the Scheduled Tribe be totally prohibited and if such a transfer was made, it was to be treated as null and void. Government land in the Scheduled Area could also not be allotted to persons who were not the members of the Scheduled Tribes. If such land was proposed to be allotted to them, it could be done only under the regulations made by the Governor. The basic concept was that the land of the Scheduled Tribes

should be protected and should not be frittered away by transfer nor should any non-tribal be allowed to infiltrate in the Scheduled Area by getting allotment of land made in his favour. In case of a transfer of land which was void, the power to restore land to a tribal or his heirs after evicting the non-tribal was also vested in the Government.

163. It has already been seen above that in the Draft Constitution, prepared by the Drafting Committee, there was a clear prohibition on the allotment of government land to non-tribals except in accordance with the rules made by the Governor.

164. In the Constituent Assembly when the Draft Fifth Schedule was considered, no member raised any objection that the Government should be free to allot its land to the non-tribals in the Scheduled Areas as all the members were conscious of the fact that the special privileges and special status enjoyed by the tribals should not be disturbed by allowing non-tribals to enter into that area.

165. The protective measures adopted through legislation for the preservation of tribal life, for the prevention of exploitation of tribals by non tribals and moneylenders and to seal infiltration of non-tribals in the Agency tracts or Scheduled Area rested on three main planks:

(a) Prohibition of transfer of land by tribal to a non-tribal with the stipulation that such transfer will be null and void.

(b) Prohibiting Government from allotting land vested in it to non-tribal.

(c) Power of Government to evict non-tribal from the tribal's land coming into his possession through a void sale deed and restoring the same to the tribal or his heirs.

166. The question is whether this position is still reflected in the Fifth Schedule read with Articles 15(4), 46 and 244 of the Constitution.

167. The Fifth Schedule as finally brought on the pages of the Constitution does not contain any specific prohibition.

168. After specifying that the executive power of the State extends to the Scheduled Area therein and that the Governor shall report annually to the President regarding the administration of those areas and that the executive power of the Union extends to the giving of direction to the States about the administration of the Scheduled Areas and further that there shall be a Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes as may be referred to them by the Governor, the Fifth Schedule, in para 5 thereof, proceeds to speak about the applicability of laws to the Scheduled Area by saying that the Governor may, by notification, direct that an Act of Parliament or legislature of the State shall not apply to the Scheduled Area or that it shall apply with such exceptions and modifications as may be specified in the notification. These directions may also be issued with retrospective effect.

169. Under para 5(2) of the Fifth Schedule, the Governor has also been given the power to make Regulations for the "peace and good government" of the Schedule Area.

170. Apart from this power which is in very wide and general terms, Regulations could also be made by the Governor to:

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as moneylenders by persons who lend money to members of the Scheduled Tribes in such area.

171. The power to make Regulations also includes the power to repeal or amend any Act of Parliament or of the State Legislature or any existing law which may, for the time being, be applicable to the Scheduled Area.

172. The power to make Regulations is undoubtedly legislative in character. The power to issue directions under para 5(1) of the Fifth Schedule as to the applicability of an Act of Parliament or State Legislature with such exceptions and modifications as the Governor may direct, is also legislative in character. In *Chaturram v CIT*[108] it was laid down with reference to Section 92(1) of the Government of India Act, 1935 that when the Governor issues a notification under Section 92(1) by which federal laws are applied to excluded and partially excluded area (Scheduled Areas), he exercises a legislative power. So also when the Governor makes Regulations in exercise of power under para 5(2) of the Filth Schedule, which is equivalent to Section 92 of the Government of India Act, 1935 and repeals or amend, any Act of Parliament or State Legislature, he exercises legislative power as the principle laid down in *Chatruram case*[109] which was followed in *Jatindra Nath Gupta v. Province of Bihar*[110] would be applicable to this situation also.

173. The Governor has also been given the legislative power to make Regulations for the *"peace and good government" of* any area in a State which is a Scheduled Area. The words "peace and good government" are words of very wide import and give wide discretion to the Governor to make laws for such purpose. In *King Emperor v. Benoari Lal Sarma*[111] and in *Attorney General for Saskatchewan V. Canadian Pacific Rly. Co.*[112] it was held that the words *"peace, order and good government"* are words of very wide import giving wide power to the authority to pass laws for such

[108] 1947 FCR 116: 1947 FLJ 92: AIR 1947 FC 32
[109] 1947 FCR 116: 1947 FLJ 92: AIR 1947 FC 32
[110] 1949 FLJ 225: 1949 FCR 595: AIR 1949 FC 175
[111] (1944) 72 IA 57: AIR 1945 PC 48
[112] 1953 AC 594: (1953) 2 ALL ER 970: (1953) 3 WLR 409

purposes. In *Raja Jogendra Narayan Deb v. Debendra Nararan Roy*[113] it was explained that these words, namely, *"peace, order and good government"* have reference to the scope and not to the merits of the legislation. It was again explained in *Girindra Nath Banerjee v. Birendra Nath Pal*[114] that these words are words of the widest significance and it is not open to a court to consider whether any legislation made by the Governor would conduce to peace and good government.

174. The words *"peace, progress and good government"* have also been used in Article 240 of the Constitution which empowers the President to make regulations for certain Union Territories. This Court had an occasion to consider the significance of these words in *T.M. Kanniyan v. ITO*[115] and relying upon the above decision also those rendered in *Riel v. R.*[116] *and Chenard and Co. V. Joachim Arissol*[117] it was held that the power of the President to make regulation is wide and the President could make regulations with respect to a Union Territory occupying the same field on which Parliament could also make laws.

175. In exercise of the power conferred by para 5(2) of the Fifth Schedule, the Governor of Andhra Pradesh promulgated Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959.

176. These Regulations were amended by Regulations I of 1970, again by Regulations I of 197I and Regulation I of 1978.

177. The constitutional validity of these Regulations was challenged in *P. Rami Reddy v. State of A.P.*[118] and upheld by this Court.

178. Para 3(1)(a) of the Regulations which opens with a non obstante clause provides that a transfer of immovable property situated in the Agency tracts by a person, whether or not such a person is a member of the Scheduled Tribes, shall he absolutely null and void. This puts a complete ban on the transfer of immovable properties in the Agency tracts by any person whatsoever, whether he is a member of Scheduled Tribes or not. There is, however, one exception to this rule as it is provided that such transfer shall not be null and void if the transfer is made in favour of a person who is a member of a Scheduled Tribes or is a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 which is composed solely of members of the Scheduled Tribes.

179. Para 3 (1)(c) provides that if a person "who intends to sell his land, is not able to sell that land either because the member belonging to the Scheduled Tribes is not willing to purchase the land or is not willing to purchase the land on the terms offered to him, such person may apply to the Agent or the Agency Divisional Officer or

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[113] (1942) 69 IA 76: AIR 1942 PC 44
[114] ILR (1927) 54 Cal 727: AIR 1927 Cal 496
[115] AIR 1968 SC 637: (1968) 2 SCR 103 (1968) 68 ITR 244
[116] (1885) 10 AC 127: 65 TLR 72
[117] 1949 AC 127: 65 TLR 72
[118] (1988) 25CC 433: 1988 Supp(1) SCR 443

any other Prescribed Officer (who are defined in para 2(b) and (c) of the Regulations) for the acquisition of such land by the State Government. The Agent or the Agency Divisional Officer or the Prescribed Officer, as the case may be, shall then take over the land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh (Ceiling on Agricultural Holdings) Act, 1961. The land shall then vest, free from all encumbrances, in the State Government which shall dispose of the land in the favour of members of the Scheduled Tribes or a cooperative society composed solely of the members of the Scheduled Tribes or "in such other manner and subject to such conditions as may he prescribed". There cannot also be a "benami" transaction under the Regulations and a member of the Scheduled Tribes cannot hold property in his name for the benefit of a non-tribal.

180. Para 3(2)(a) provides that if a transfer of immovable property has been made in contravention of para 3(l)(a), the Agent, the Agency Divisional Officer or any other Prescribed Officer suo moto or on the application of anyone interested or on the information of a public servant, decree ejectment of the person in possession of that property claiming under such transfer. The property shall then be restored to the transferor or his heirs.

181. Para 3(2)(b) provides that if a transferor or his heirs are not willing to take back the property or their whereabouts are not known, the property shall be assigned or sold to any other member of the Scheduled Tribes or a cooperative society composed solely of the members of the Scheduled Tribes. The Agent or the Agency Divisional Officer or the Prescribed Officer shall have a power to "otherwise" dispose of it as if it was the property at the disposal of the Sate Government.

182. It may be mentioned here that para 3(1)(b) contains a rule of presumption that if any immovable property situated in the Agency tracts is in possession of a person who is not a member of the Scheduled Tribes, it shall be presumed, until the contrary is proved, that the property has been acquired by that person through a transfer made to him by a member of the Scheduled Tribes.

183. Para 3-A of the Regulation places two restrictions on a person intending to mortgage his property. The first restriction is that it can be mortgaged only in favour of a person who is a member of the Scheduled Tribe or to a cooperative society or a Land Mortgage Bank or any other bank or financial institution approved by the State Government. The Explanation appended to para 3-A(1) defines a "bank". The other restriction is that while mortgaging the property, it would not be open to that person to deliver possession to the mortgagee. Clause 2 of para 3-A provides that in case the immovable property which was mortgaged is brought to sale on account of default in payment of the mortgage money or the interest payable thereon, the said property shall be sold only to a member of the Scheduled Tribe or to a cooperative society composed solely of members of the Scheduled Tribes. Explanation appended to this clause specifies as to what would be treated as cooperative society. It provides that if the Government is a member of any cooperative society, it, namely, the said society, shall also be deemed to be a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964.

184. Clause 5 provides that no immovable property situated in the Agency tracts and owned by a member of the Scheduled Tribes shall be liable to be attached and sold in the execution of a money decree.

185. Clause 6 creates certain offences and prescribes the penalties therefore. For example, if a person acquires any immovable property incontravention of any provision of the Regulations or continues in possession of such property after a decree for ejectment is passed, he will be prosecuted and sentenced to imprisonment for a term which may extend to one year.

186. These Regulations indicate a departure from the normal laws relating to immovable property. Normally, an owner of immovable property is free to transfer his property to anyone he likes. But if he possesses property in the Agency tracts or the Scheduled Area, his right to transfer the property is restricted as he can transfer it only to a member of the Scheduled Tribe or to a cooperative society compromising solely of the member of the Scheduled Tribes. So also, under the usufructuary mortgage, possession has necessarily to be transferred to the mortgagee but these Regulations prescribe that in no case shall possession be delivered to the mortgagee.

187. It will be seen from the above that at least in two circumstances, the property of the member of the Scheduled Tribe or any other person in the Scheduled Area becomes the property of the State Government:

(1) If a person is not able to sell his property either because a member of the Scheduled Tribe is not willing to purchase the property or is not willing to purchase the property on the terms at which it proposed to be sold, then the Agent, or the Agency Divisional Officer or any Prescribed Officer can, by order, acquire the property on payment of compensation. The property loses its original character and becomes the property of the State Government.

(2) If on a decree for ejectment being passed against a person in occupation of the property belonging to a Scheduled Tribes under a sale deed which is void, the property is sought to be restored to the transferor or his heirs but they are not willing to take back the property or their whereabouts are not known, it would be open to the Government to assign or transfer the property to any other member of the Scheduled Tribes or otherwise dispose of it as if it was the property, at the disposal of the State Government.

188. In all these circumstances, when the property either comes to vest in the State Government or becomes a property at the disposal of the State Government, the Government cannot, in view of the above, transfer the property to a "person" of its own choice but has to transfer, assign or sell to a member of the Scheduled Tribes or a cooperative society of the Scheduled Tribe.

189. The possibility of the Government disposing it of to a person who is not a member of the Scheduled Tribes is totally ruled out by the Regulations by providing that it shall be sold, assigned or transferred only to tribals or their cooperative society. If this applies to properties which becomes government

properties, how could the properties which are already the government properties be excluded from the applicability of these Regulations? The Government has to be bound down to the constitutional scheme sought to be enforced through Regulations made by the Governor under para 5(2) of the Fifth Schedule and cannot be permitted to transfer its own properties in favour of non-tribals so as to allow their infiltration into the Scheduled Area. The prohibition contained in para 3(1)(a) that no person, whether he is a member of the Scheduled Tribe or not, shall transfer his immovable property to a non-tribal must, therefore, in its scope, cover the Government, as well as which, if it possesses land in the Agency tracts, cannot transfer it either by sale, allotment, lease or otherwise to a non-tribal. To this limited extent, it has to be treated as a "person" within the meaning of clause 3(1)(a) of the Regulations.

190. It is contended by the learned counsel for the respondent that where the property is acquired by the Government on payment of compensation or it becomes the property at the disposal of the Government, such property, undoubtedly, has to be disposed of in favour of the member of the Scheduled Tribe or a cooperative society of the Scheduled Tribes but the Government also retains the power and choice to dispose it of in such other manner and subject to such conditions as may be prescribed. It is contended on the basis of the words "or in such other manner and subject to such conditions as may be prescribed" occurring in para 3(1)(c) that the Government is not bound to sell the property to a member of the Scheduled Tribes or the cooperative society of the Scheduled Tribes. It is contended that almost similar words have been used in para 3(2)(b) where the property, if it is not taken back by the transferor who is a member of the Scheduled Tribe or his heirs, becomes the property at the disposal of the State Government and the State Government has the choice either to assign or sell the property to any member of the Scheduled Tribe or a cooperative society of the Scheduled Tribes or “otherwise dispose it of as if it was a property at the disposal of the Government”. This interpretation cannot be accepted. The words “or in such other manner and subject to such conditions as may be prescribed” occurring in para 3(l)(c) and the words “or otherwise dispose of it as if it was a property at the disposal of the State Government” have to be read, not in isolation; but in the context of other words used in those provisions. The emphasis throughout in these Regulations has been that the property would he sold or transferred only to a member of the Scheduled Tribe or their cooperative societies.

The constitutional scheme which is sought to be enforced through these Regulations is that the property of the Scheduled Tribe or the immovable property situated in Agency tracts may be protected and be not frittered away and further that they may retain their original character and may continue to belong to members of the Scheduled Tribes or their cooperative societies, or that if the property belongs to a non-tribal alone, it may not be transferred to a non-tribal and may be transferred to a tribal alone. The words “or in any other manner” in para 3(1)(c) or the words “otherwise dispose of it as if it was a property at the disposal of the State Government” occurring in para 3(2)(b) have to be read in that context with the result that even if the Government intended to deal with such immovable properties "in any other manner" it could deal only in a manner which would ultimately benefit a member of the Scheduled Tribe or their cooperative

societies. The Fifth Schedule including para 5 thereof as also the Regulations made thereunder by the Governor of Andhra Pradesh clearly seek to implement the national policy that the custom, culture, lifestyle and properties of the Scheduled Tribes in the Agency tracts and other immovable properties situated therein shall be protected. The Government being under a legal constraint to deal with the property situated in the Agency tracts only in the manner indicated above, cannot itself act beyond the scope of the Regulations by saying that it is free to dispose of its own properties in any manner it likes. If the Government was allowed to transfer or dispose of its own land in favour of non-tribals, it would completely destroy the legal and constitutional fabric made to protect the Scheduled Tribes. The prohibition, so to say, disqualifies non-tribals as a class from acquiring or getting property on transfer. On account of this disqualification, the Government cannot, even if it is not a "person" within the meaning of para 3(1)(a), transfer, let out or allot its land or other immovable property to a non-tribal.

191. These Regulations have been made to give effect to the power of the Governor under clauses (a) and (b) of para 5(2) of the Fifth Schedule for "peace and good government" in the Agency tracts. These Regulations also aim at ushering in an era of social equality Where the most backward and isolated people who constitute the Scheduled Tribes may be rehabilitated effectively in the nation's mainstream. The prohibition to sell the land to non-tribals and the further requirement that if the property comes to be vested in the Government or it becomes property at the disposal of the Government, it will be sold, assigned or distributed only to the tribals also is a measure, may, a strong measure, in that direction to give effect to the philosophy of "Distributive Justice".

192. The Mines and Minerals (Regulation and Development) Act, 1957 has already been amended by insertion of Section 11(5) at the State level which provides that the government land shall not be allotted for the purpose of mining to non-tribals. A lot of argument was raised on both sides whether this amendment was retrospective or prospective. While it is contended on behalf of the respondents that the leases which had already been executed or renewed prior to the amendment or introduction of Section 11(5). would not be affected the appellants in CA arising out of SLPs (C) Nos. 17080-81 of 1995 argued that such leases, including renewed leases cannot be operated.

193. We have already held that the present scheme, set out in the Fifth Schedule and Regulations made by the Governor in exercise of the power under para 5(2) of the Schedule, is to sell, distribute, assign or let out the government land only to members of Scheduled Tribes. Section 11(5) introduced in the Act only seeks to give effect to what was already contained in the Fifth Schedule and the Regulations made thereunder. In order to set at rest the above controversy raised at various levels that the government land could also be allotted to non-tribals, the amendment was brought about in the Mines and Minerals (Regulation and Development) Act, 1957 so as to make it sure that it was never the intention that the government land could be allotted to non-tribals. The amendment only reiterates the existing position.

194. I am short of time as Brother Ramaswamy is retiring tomorrow. It is not possible

for me to write out in detail on other points involved in the case. Since I am agreeing with Brother Ramaswamy on the findings recorded by him on other issues involved in the case, specially those relating to forests and Conservation of Forests Act and the environmental questions, I conclude by saying that I am in respectful agreement with him. I also agree with the ultimate directions issued in the judgment.

195. In view of the above, I am also of the opinion that the appeals of Samata arising out of SLPs (C) Nos. 17080-81 of 1995 deserve to be allowed and are hereby allowed while the other appeal arising out of SLP (C) No. 21457 of 1993 is dismissed.

PATTANAIK, J.

Civil Appeals Nos. 4601-02 o f 1997

196. Leave granted.

197. These two appeals by special leave are directed against the judgment of the Andhra Pradesh High Court dated 28-4-1995 dismissing the two writ petitions filed by the present appellant which were registered as Writ Petitions Nos. 9513 of 1993 and 7725 of 1994, by a common judgment{Samata v. State of A.P., (1995) 2 LT 223 (DB)}. The appellant, a Rural Development Society of Peda Mellapuram, Sankhavaram Mandap in the State of Andhra Pradesh filed the two writ petitions as public interest litigation seeking issuance of writ of mandamus to terminate the mining leases in Borra Gram Panchavat area of Anatagiri Mandal which had been granted and/or renewed in favour of the private respondents inter alia on the grounds that the said leases contravened the provisions of the Andhra Pradesh Scheduled Area Land Transfer Regulations of 1959, as amended in 1970 (hereinafter referred to as “the Regulation”), the leases violate the provisions of the Forest (Conservation) Act, 1980 (hereinafter referred to as "the Conservation Act"): and such leases are prohibited under Section 11(5) of the Mines and Minerals (Regulations and Development) Act, 1957 as amended by Act of 1991 (hereinafter referred to as "the MMRD Act"). The appellant, who was the petitioner before the High Court advanced the contention that under the Regulation transfer of all lands in the Scheduled Area to a non-tribal is prohibited and the said prohibition equally applied to the government land and as such the mining leases in favour of the private respondents who are non-tribals are void. In elaborating this contention it was contended that the word “person" in Section 3(1) of the Regulation as amended in 1970 would include the Government. Further contention of the appellant was that in view of Section 2 of the Conservation Act no forest land could he utilised for non-forest purpose without the consent of the Central Government and the leaseholds in favour of the private respondents being the forest land and there being no consent of the Central Government the leases are invalid. Lastly it was contended that in view of Section 11(5) of the MMRD Act the leases in favour of the private respondents who are non-tribals must be declared to be void.

198. The Director of Mines and Geology, Government of Andhra Pradesh who was Respondent 2 before the High Court, filed a counter-affidavit taking the stand that the

leases in question in favour of the private respondents were prior to the Conservation Act coming into force and, therefore, the question of taking previous consent of the Central Government did not arise. On the question of alleged violation of the provisions of the Regulation it was stated that since the prohibitions and restrictions in the Regulation are not intended to apply to the government land there was no bar under the Regulation for the Government to grant mining leases in favour of the non-tribals. On the question of applicability of Section 11(5) of the MMRD Act it was contended that the said provisions is prospective in nature and no mining lease has been granted after enforcement of Section 11(5) of the MMRD Act in favour of any non-tribal. Respondent 4, the Forest Officer filed the counter-affidavit stating that the Borra forest block was notified as a reserve forest and some of the respondents have encroached into the reserved forest area and to that extent their operations arc illegal. The private Respondent 13 before the High Court also filed a counter-affidavit adopting the stand taken by Respondent 2. The said Respondent 13 was a transferee from the original lessee. The other lessee-respondents also filed affidavits adopting the stand taken by Respondent 13.

199. The High Court by the impugned judgment came to the conclusion that the word "person" in Section 3(1) of the Regulation does not include the Government and as such the Government is not prohibited from transferring the government land in favour of non-tribals within the Scheduled Area. According to the High Court this conclusion is irresistible from the fact that in order to prohibit grant of mining lease in favour of the non-tribals within the Scheduled Area Section 11(5) of the MMRD Act was introduced by the year 1991. But the said provision is prospective in nature and would not apply to the existing leases. So far as the contention of applicability of the Conservation Act is concerned the High court came to the conclusion that the said Act applies to the reserved forest and since it is not established as to the extent of the land covered by the mining leases which form a part of the reserved forest and since the joint survey conducted indicates that there is no lessee who is occupying the reserved forest area, except in one case where to an extent of two thousand metres of the mining lease forms a part of the reserved forest, the validity on account of the non-compliance of the Conservation Act cannot be gone into.

The High Court in the impugned judgment has also come to the conclusion that prior approval of the Central Government under Section 2 of the Forest (Conservation) Act is not required where the land in question has already broken in pursuance of lease and in support of this conclusion reliance has been placed on the decision of the Court in *State of Bihar v. Banshi Ram Modi*[119]. The aforesaid view in *Banshi Ram Modi case*[120] appears to have not been approved by the Court in the later cases: *Ambica Quarry Works v. State of Gujarat*[121]. Further in view-of the decision of this Court in *S. Nageswaramma Case*[122], *Supreme Court Monitoring Committee case* and *Godavarman case*[123], the High

[119] (1985) 3 SCC 643: 1985 Supp (1) SCR 345
[120] (1985) 3 SCC 643: 1985 Supp (1) SCR 345
[121] (1987) 1 SCC 213: (1987) 1 SCR 562
[122] Divisional Forest Officer v. S. Nageswaramma, (1996 6 SCC 442)

Court committed error in relying upon the ratio of *Banshi Ram Modi case*[124]. The High Court, therefore, observed that the writ petitioners may approach the competent authority in that regard seeking necessary relief and on such petitions being filed the appropriate authority would pass appropriate order bearing in mind the provisions of Section 2 of the Conservation Act. With these conclusions the writ petitions having been dismissed the present appeals by special leave have been preferred. Though the contentions before the High Court were limited to the aforesaid extent as indicated but before this Court the horizon was expanded and Dr. Rajeev Dhavan, learned Senior Counsel appearing for the appellant, raised several contentions in assailing the validity of the continuance of the mining leases which according to the learned counsel are situated within the Scheduled Area. These two appear initially had been heard by a Bench of two Judges but later on in view, of the question of law raised as well as in view of certain divergence of views, has been placed before a three-Judge Bench and the matter had been reargued.

200. It has been averred before this Court that the appellant-Society was started in the year 1990 at the request of the local tribes of Peda Mallapuram area and the main objects of the society are implementation of various welfare schemes of the Government and creating awareness among tribal people of their rights and duties and protection of ecological balance and imparting of environmental education in the tribal area. The society operates in the Borra reserved forest area which was a part of the domain of Raja of Jaipur before independence. Within the forest area the tribal villagers occupy the land for cultivation the rather are about 230 families settled in 14 villages occupying 436 acres within the enclosures which are threatened of eviction by the mining operators. Itmay be noticed that this assertion was not there in the writ petition filed before the Andhra Pradesh High Court. The further assertion of facts in this Court is that within Anatgiri Mandal there are 230 families of tribals and they occupy roughly 800 acres and yet they are also threatened to be evicted by mining operators. The appellant further asserts that the Borra forest area is a Scheduled Area in Vishakhapatnam District of Andhra Pradesh and it lies in Anantgiri hills. The Borra caves are of unique occurrence and the entire area is rich in mineral wealth, particularly mica and calcite. It is averred that the mining activity in the said area had started since 1946 and the said mining operations are being carried on in the reserved forest area, notwithstanding the prohibitions contained in different laws as already stated, and the State Andhra Pradesh has not taken any initiative in stopping the mining activities which has resulted in human hazards to the peaceful living of the tribal people and which affects the ecology and environment of the area and, therefore the same should be prohibited by issuance of mandamus. In the grounds taken before this Court in these special leave petitions it has been urged that under the amended Section 3(1) of the Regulations transfer of immovable property situated in the Scheduled Area to non-tribals is prohibited and the word “person" used in Section 3(1) includes the Government and as such the leases contravened Section 3(1) of the

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[123] T.N. Godavarman Thirumulkpad v. Union of India, WP (C) No. 202 of 1995
[124] (1985) 3 SCC 643: 1985 Supp (1) SCR 345

Regulations. The further ground taken is that under Section 2 of the Conservation Act without the prior approval of the Central Government the State Government could not have granted mining leases within the forest area as mining obviously is a non-forest purpose. The private Respondent 12, who is the Managing Director of the Company, filed the counter-affidavit taking the positive stand that the mining leases held by them do not form part of the Scheduled Area and further the leases have been granted much prior to the amended provisions of the Regulations as well as much prior to the coming into force of the Conservation Act and, therefore, are not hit by any prohibitions and restrictions contained in those provisions.

Respondent 19 has filed the counter-affidavit taking the stand that the lease has been granted in favour of Shri M. Laxmi Narainan on 17-11-1984 and certain other leases had been granted in Anantgiri Mandal to said Shri M. Laxmi Narainan on 24-1-1986. The transfer of mining leases from the original lessee was granted by the appropriate authority under the provisions of the MMRD Act and the Mineral Concession Rules framed thereunder and there has been no violation of any Act or Regulation in allowing such mining activities. It has also been stated that the mining activity does not encroach upon any forest area or reserved forest area and nowhere has the petitioner provided any factual foundation for allegation to demonstrate that any part of the land held by Respondent 19 is within any forest land. And in the absence of such factual matrix it is not possible to hold that there has been violation of Section 2 of the Conservation Act. It has also been averred by the respondent that the leases do not destroy the ecological balance and do not disturb the flora and fauna and the Government has granted the mining leases only after complying with the statutory requirements. On the question of interpretation of the provisions of the Regulation it has been stated that the word "person" in Section 3(1) does not include the Government and therefore, the provisions of the Regulation have no application to the government land. In para 20 of the counter affidavit it has been reiterated:

> *"There is no averment by the petitioner that his respondent has been in possession of any forest area or the area earmarked for the reserve forest. Therefore the statutory ban in Section 2 of the Forest (Conservation) Act is not applicable to the leases granted to this respondent company. "*

201. The said assertion has also been repeated in para 25 of the counter-affidavit. Several private respondents have also filed counter-affidavits in this Court more or less taking similar stand and it is therefore, not necessary to repeat the same. But it would be appropriate to notice the stand taken by the State of Andhra Pradesh and its officials who have been arrayed as Respondents 1 to 4. The State in its affidavit has indicated that the mining leases which are in dispute had been granted much prior to the coming into force of the Conservation Act of 1980 and, therefore, there has been no infraction of the aforesaid Act.

On the question of applicability of the provisions of the Regulation it has been stated that the Government is not a "person" within the meaning of Section 3(l)(a) of the Regulation and the Government being the sole owner of the land has the right to transfer the same to any individual/company. With regard to the activities of the

appellant-Society it has been averred that the Society is working for its selfish ends and is misguiding the tribals who are living peacefully and tribals are unnecessarily dragged into litigation. It has also been stated that the areas which are under occupation of the tribals have been surveyed and the said areas have been deleted from the mining leases and, therefore, the assertion that the tribals are being threatened by the mining operators from being dispossessed is not correct. It has also been averred that the mining activities are on the exposed mineral deposit and no extensive mining has been taken up in the area damaging the forest. With regard to the benefits obtained by the State on account of such mining activities, it has been stated that not only it has provided employment opportunity to the local tribals but has also encouraged mineral-based industries in the district which provide good opportunity to the educated unemployed. The State in its affidavit has also averred that all the meaning leases were granted in accordance with the prescribed law and there is no possibility of endangering the Borra caves by the alleged mining activities. The State has further stated that after coming into force of Section 11(5) of the MMRD Act no mining leases within the Scheduled Area have been granted in favour of any non-tribal in contravention of the aforesaid provisions of the MMRD Act. It has also been stated that every care has been taken by the Government to protect the interest of the tribals and to ensure that there is no blasting in the mining area to rehabilitate the affected people. The State in its affidavit has also indicated as to which mine continues to be operative and which is not operative as on the date of the affidavit.

202. Dr. Dhavan, learned Senior Counsel appearing for the appellant, contended that the history of the tribal areas traced from the administration under the British rule to the inclusion of Schedule V in the Constitution conferring a special power on the Governor to frame regulations for peace and good government in the area would clearly indicate that there should not be any allotment of land to the non-tribals within the tribal area, be it the government land or land belonging to the tribals, which in turn would accord responsibility to the tribals for the economic development of the area. According to the learned Senior Counsel one of the purposes for which Schedule V was engrafted in the Constitution conferring power on the Governor and not on the respective legislatures of the States for the administration of the tribal area is to ensure distributive justice, especially of land and that purpose will be frustrated if government land within the tribal area is allocated in favour of non-tribals, whether it is for the purposes of mining or for any other purpose. It is, therefore, urged that this purpose should be borne in mind in interpreting the Regulation framed by the Governor in exercise of power conferred upon him under Schedule V to the Constitution. The learned Senior Counsel urged that the term "peace and good government" should be given a wide interpretation and the expression "regulate the allotment of land to member of Scheduled Tribes in such area" in Schedule V(2)(b) should he construed to mean that the Governor should frame regulation ensuring that land does not pass out from tribals and that the land allotments are made exclusively to tribals and the distribution of land amongst them inter se can be regulated. Learned Senior Counsel further urged that the provisions of the Constitution itself mandate an obligation on the Governor to frame regulation prohibiting transfer of land of all categories within the

Scheduled Area in favour of a non-tribal. According to Dr. Dhavan, if the expression "person"' used in first part of Regulations 3(1)(a) is interpreted to include the State, thereby connoting that the government land also within the Scheduled Area cannot he transferred in favour of non-tribal then the very purpose of conferring power on the Governor for administration of tribal area would be achieved and such an interpretation would not only prevent the exploitation of tribals by non-tribals but would also advance the interests of the tribals and would secure substantive distributive justice for them.

According to learned Senior Counsel appearing for the appellant the regulations and statutes affecting the tribal regime must be given a purposive interpretation so that the raison deter of the regime is not defeated. So far as the Conservation Act is concerned, the counsel argued that in view of the embargo contained in Section 2 of the Conservation Act prior permission of the Central Government not having been obtained the mining activities within the forest area cannot be permitted to be continued. In relation to the provisions of the Environment (Protection) Act, the learned Senior Counsel contended that the Central Government is under a statutory duty to protect the environment and coordinate the activities of the State Government under the Environment (Protection) Act of 1986 and such statutory obligation not having been discharged by the Central Government and the mining activities within the Scheduled Area being hazardous to human health this Court should compel the Union Government to perform its statutory obligation. So far as the prohibition under Section 11(5) of MMRD Act is concerned, it is contended by Dr. Dhavan, learned Senior Counsel appearing for the appellant that Section 11(5) in the MMRD Act is merely in the nature of a clarification to the provisions of Section 3(1)(a) of the Regulation and in view of such provision the mining activities after coming into force of the aforesaid provision cannot be permitted to be continued. Let me now examine the contentions raised to find out, how many of them would be sustainable.

Administration of tribal areas under British rule and the debates in the Constituent Assembly in relation to administration of Tribal Area, leading to engraftment of Schedule V in the Constitution.

203. The Indian Statutory (Simon) Commission in its report in 1930 indicated that these tribal areas covered 1,20,000 square miles with a population of about eleven million. These areas are located mostly in Bihar, Orissa, Andhra Pradesh, Madhya Pradesh, Bengal and Assam. Even during the British rule, because of the social and economic conditions of these tribal people special laws were made applicable in those areas. In the book *The framing of Indian's Constitution - A study* by B. Shiva Rao, it has been stated that there were two dangers to which subjection to normal laws would have specially exposed these tribal people and both arose out of the fact that they were primitive, simple, unsophisticated and frequently improvident. There was also a risk of their agricultural land passing to the more civilised section of the population and the occupation of the tribals was for the most part agricultural and secondly they were likely to get into the "wiles of the moneylenders". It was thus the primary aim of the government policy then to protect these people from these two

dangers and preserve their tribal customs and this was achieved by prescribing special procedures applicable to these backward areas.

The Scheduled Districts Act, enacted in 1874 was the first measure adopted to deal with these areas and the said Act enabled the executive to extend any enactment in force in any part of the British India to a "Scheduled District" with such modifications as might be considered necessary. Thus the Executive had the power to exclude these areas from the normal operation of ordinary law and give such protection as they might need. Even in Montague-Chelmsford Report of 1918 it was suggested that the political reforms contemplated for the rest of India could not apply to these backward areas where the people were primitive and therefore these backward tracts were to be excluded from the jurisdiction of the reformed Provincial Governments and administered personally by the Heads so the Provinces. In the Government of India Act, 1919 these tracts were divided into two categories and some of the areas were wholly excluded from the scope of the reforms. Therefore, neither the Central nor the Provincial Legislature had the power to make laws applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the responsibility for the administration of these areas. Until the Simon Commission Report, the primary object and the policy of the Government in relation to the tribal areas was to give the inhabitants of the tribal areas security of land tenure, freedom in the pursuit of their traditional means of livelihood and a reasonable exercise of their ancestral customs. The Simon Commission, however, realised that isolation of these people from the main currents of progress would not be a satisfactory long-term solution and, therefore, it would be necessary to educate these people to become self-reliant. As the Provincial Government was not inclined to devote special attention for the upliftment of these tribal people mostly because of the fact that backward tracts were deficit areas and in view of the magnitude and complexity of problem the Commission had recommended that the responsibility for the backward classes would be adequately discharged only if it was entrusted to the Centre. But at the same time, it was also recognised that it would not be a practicable arrangement if centralisation of administrative authority in these areas led to situation in which these areas would be separated from the Provinces of which they were an integral part. The Commission, therefore had suggested that the Central Government should use the Governors for administration of these areas and it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties. This proposal, however, was not adopted in the Constitutional Reforms of 1935. Under the Government of India Act of 1935, these backward areas were classified as excluded areas and partially excluded areas. The excluded areas in Assam, Madras, Bengal and North-West Frontier Province were placed under the personal rule of the Governor acting in his discretion and while the partially excluded areas were within the field of ministerial responsibility and the Governors exercised a special responsibility in respect of the administration of these areas and they had the power in their individual judgment to overrule their Ministers if they thought fit to do so. No Act of the Federal or Provincial Legislature would apply to

any of these areas but the Governors had the authority to apply such Acts with such modification as they considered necessary, as is apparent from Section 91 and 92 of the Government of India Act, 1935. The Cabinet Mission's statement of 16-5-1946 mentioned about the requirement of the special attention of the Constituent Assembly in respect of these tribal areas.

204. The Fifth Schedule to the Constitution as well as para 5 of the said Schedule which confers power on the Governor to make Regulations for the peace and good government in any area in the State which is a Scheduled Area nowhere indicates that there should no alienation of any land in favour of non-tribal within the said area. The aforesaid provision is an enabling provision conferring power on the Governor to frame Regulations for peace and good government and the Regulation in question may provide for prohibiting or restricting transfer of land by or among the members of the Scheduled Tribes, regulate the allotment of land to members of the Scheduled Tribes and regulate the carrying on of business as moneylenders by persons who lend money to the Scheduled Tribes. It has, therefore, become necessary to find out from the debates in the Constituent Assembly as to whether the Constitution-makers at all intended to prohibit alienation of any land in favour of a non-tribal within the tribal area.

In course of arguments while placing reliance on the debates in the Constituent Assembly Dr. Rajeev Dhavan, learned Senior Counsel at one point of time had advanced an extreme argument that all lands within the tribal area belong to tribals and only during the British regime the tribals were denied of their rights over the lands and, therefore, this Court would be justified in holding that the lands within the entire tribal areas belong only to them and the State has no authority or power in respect of the said land. In support of the said contention learned Senior Counsel placed reliance on a decision of the Australian Court in the case of *Mabo v. State of Queensland*[125]. Learned Senior Counsel had argued that what has been held by the High Court of Australia in the aforesaid case, namely, Aborigines had the title to the land and it never got extinguished on annexation by Crown or by the application of common law in Australia, should apply to the lands within the tribal area in India. But, however, at a later point of time learned counsel did not pursue the said contention and, therefore, we have to examine and find out the correctness of the submission as to whether under the constitutional scheme there has been a prohibition for alienation of any land within the tribal area in favour of non-Scheduled Tribes. On going through the *Constituent Assembly Debates* and the book *The framing of India's Constitution* - A Study by B. Shiva Rao as well as B. Shiva Rao's *The Framing of India's Constitution,* Vol. III, it appears that on account of the study already made by the Britishers and several reports obtained prior to Independence, the question of administration of tribal areas did engage the attention of the Constituent Assembly for a considerable period. The Constituent Assembly had formed two committees, one for the tribal people of Assam and other for the excluded and partially excluded areas in provinces other than Assam. We are really concerned with the second committee, which had examined

[125] 1983) 3 SCC 643: 1985 Supp (I) SCR 345

the problems of the tribal people in all other parts of the country excepting Assam. The Committee in fact had suggested that the solution to the problem of backward areas lies in developing the area and not in isolating the same. The Committee had also suggested that it should be the responsibility of the Centre to draw up schemes for the development of these areas and ensure that such schemes were duly implemented by the States. But the said report could not be considered by the Constituent Assembly having been received at a late stage. The Drafting Committee of the Constitution, however, considered the suggestion of the Advisory Committee and drafted the Fifth Schedule to the Constitution. We are in the present case really concerned with clause 6 dealing with alienation and allotment of lands which is extracted herein below:

6. Alienation and allotment of lands to non-tribals in Scheduled Areas:

(1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a Scheduled Area to any person who is not a member of the Scheduled Tribes;

(2) No land in the Scheduled Area vested in the State within which such area is situate shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State.

Clause 7 of the Schedule V deals with money lending which is extracted hereunder:

7. Regulation of money lending in Scheduled Area : The Governor may, and if so advised by the Tribes Advisory Council for the State shall, by public notification direct that no person shall carry on business as a moneylender in a Scheduled Area in the State except under or in accordance with the conditions of a license issued by an officer authorised in this behalf by the Government of the State and every such direction shall provide that a breach of it shall be an offence, and shall specify the penalty with which it shall be punishable.

Clause 9 of Schedule V deals with Governor's power in extending the provision to other areas which is extracted hereunder:

9. Application of Part II to areas other than Scheduled Areas

(1) The Governor may at any time by public notification, direct that all or any of the provisions of this part shall on and from such date as may be specified in the notification apply in relation to any area in the State inhabited by members of any Scheduled Tribes other than a Scheduled Area as they apply in relation to a Scheduled Area in the State, and the publication of such notification shall be conclusive evidence that such provisions have been duly applied in relation to such other area.

(2) The Governor may by a like notification direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification cease to apply in relation to any area in the State in respect of which a notification may have been issued under sub-paragraph (1) of this paragraph.

(See The Framing of India's Constitution by B. Shiva Rao, Vol *III)*

205. We are really concerned with clause 6 of the Draft Constitution dealing with the alienation and allotment of lands to non-tribals in the Scheduled Areas. The Draft Constitution, therefore, had put two restrictions, namely, a member of a Scheduled Tribe was not entitled to transfer land within the Scheduled Area to a member of non-Scheduled Tribe, and so far as the land vested in the State is concerned, the prohibition was that the said land belonging to the State should not be allotted or settled in favour of a non-Scheduled Tribe except in accordance with the Rules made in that behalf by the Governor in consultation with the Tribes Advisory Council. To the aforesaid Draft several amendments were proposed by several speakers. So far as para 6 of Schedule V of the Draft Constitution is concerned, the proposal in the Draft that the land belonging to the State should not be allotted to or settled with any person who is not a member of a Scheduled Tribe was rejected and, therefore, in the final form in Schedule V there is no such indication that even the government land within the Scheduled Area should not be allotted to a non-Scheduled Tribe person. B. Shiva Rao in his book *The Framing of India's Constitution* - A Study dealing with the Scheduled and Tribal Areas has stated that for nearly a century under British rule special laws were applicable to what were called "backward areas" and two dangers were there to which subjection to normal laws would have specially exposed these people, and both arose out of the fact that they were primitive people, simple unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural, and, secondly, they were likely to get into the "wiles of the moneylender". The primary aim of government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas.

206. After going through the *Constituent Assembly Debates*, the Draft Constitution in relation to Schedule V and the final Constitution as it emerged, after amendments were brought about, it appears that it was not the intention of the Constitution-makers to prohibit alienation of the land vested in the State within the Scheduled Area in favour of a non- Scheduled Tribe person. On the other hand, though it was in para 6(2) of the Draft Constitution of Schedule V but it stood deleted while bringing the Fifth Schedule in its final form. In this view of the matter we are unable to accept the contention of Dr. Rajeev Dhavan, learned Senior Counsel that the framers of the Constitution intended to prohibit alienation of the government land in favour of non-scheduled Tribe person within the Scheduled Area which has been engrafted in the Fifth Schedule to the Constitution.

Constitutional mandate as engrafted in Article 46, Article 39(b) as well as the declaration *"Right to Development"* adopted by United Nations - in relation to prohibition of alienation of government land within the tribal area in favour of a non-tribal person.

207. As indicated in the earlier part of this judgment vast tracts of land lie within the tribal areas which are rich in mineral resources and the entire mineral resources of the country lie within the Scheduled Area of different States. In interpreting the provisions of the Regulations and the constitutional mandate engrafted in the Fifth Schedule to the Constitution as well as different other articles of the Constitution, it must be borne in mind that the interpretation should sub serve the main object, namely the development of the Scheduled Area and the protection of the tribal people from exploitation by the non-tribal people. It is in this perspective that Articles 46 and 39(b) of the Constitution have to be looked into.

208. Article 46 of the Constitution no doubt mandates the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and protect them from social injustice and all forms of exploitation. The said article embodies the concept of "distributive justice" which connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. It means those who have been deprived of their properties by unconscionable bargaining should be restored to their property. By taking recourse to this article the law invalidating transfers of land belonging to a member of the Scheduled Tribes and restoration of such land to the transferor was held constitutionally valid. Similarly, when Article 39(b) of the Constitution enjoins upon the State to have its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, what it connotes is a duty on the State for building of a welfare State and an egalitarian social order. The object is that the basic need of a common man must be fulfilled and the State should endeavor to change the structure of the society. The aforesaid provision, no doubt, may support a case of nationalisation of material resources, but by no stretch of imagination it can be said that it enjoins upon the State to exploit the mineral resources within the Scheduled Area by itself or through the Scheduled Tribes alone. The declaration of “Right to Development” adopted by the United Nations and ratified by India no doubt casts a responsibility on the State to promote and protect social and economic order for development of all people and it has become the State's responsibility to create conditions favourable to the realisation of the right to development. In other words it is the State's responsibility to ensure development and eliminate the obstacles to the States' development. It is the State's responsibility to eradicate social injustice. It is the State's responsibility to see to the upliftment of the tribals within the Scheduled Area. There possibly cannot be any dispute with the proposition that the State should formulate its policies and laws so that the neglected tribals within the Scheduled Area get equal opportunity with their counterparts in the other sophisticated parts of the State and State should be empowered to make laws for protection of these tribals from being exploited by the non-tribals. The State should take all effective steps so as to eradicate inequalities.

209. The aforesaid scheme of the Constitution in our considered opinion does not in any manner suggest that alienation of government land within the Scheduled Area was intended to be prohibited in favour of a non tribal person.

Article 244 and Fifth Schedule to the Constitution

210. Article 244(1) of the Constitution makes the provision of the Fifth Schedule applicable to the Scheduled Areas and Scheduled Tribes in all States other than Assam and Meghalaya. Article 244(1) of the Constitution read with the Fifth Schedule vests with the Governor of the State, the entire governmental power in respect of the Scheduled Areas within the State. The framers of the Constitution found the necessity of vesting such power on the Governors of the States as the people of the Scheduled Area were culturally backward and their social and other customs are different from the rest of the country. Which area is the Scheduled Area within the State is determined by the President by an order. By virtue of the Fifth Schedule to the Constitution the Governor is authorised to direct that any Act of Parliament or of the Legislature of a State shall not apply to a Scheduled Area or shall apply only subject to exceptions and modifications. The Governor is also authorised to make regulations to prohibit or restrict transfer of land by or amongst the members of the Scheduled Tribes, regulate the allotment of land and regulate the business of money lending and all such regulations by the Governor have to be assented to by the President.

211. Section 5(2) of Schedule V indicates the amplitude of the Governor's power to make Regulations for peace and good government in the Scheduled Area in a State. It also stipulates the field over which regulations can be framed by the Governor as contained in clauses (a) to (c) thereof. The Governor is the sole judge to decide as to what would be the regulation which would be necessary for the peace and good government of the area in question. The ambit of the power of the Governor is not restricted to the entries in the Seventh Schedule and the Governor is empowered even to override an act of Parliament or of State Legislature so far as its applicability to the Scheduled Area is concerned. Clauses (a) to (c) of Section 5(2) of Schedule V indicate that the Governor may frame regulations prohibiting or restricting the transfer of land by or among members of the Scheduled Tribes within the Scheduled Area, regulate the allotment of lands to the members of the Scheduled Tribes in the area; and regulate the carrying on of business as moneylenders by persons who lend money to the members of the Scheduled Tribes in such area. It would thus appear, as the Britishers during the British rule, were really concerned to save the tribals of the area from being exploited by the non-tribals, after coming into force of the Constitution, similar power was conferred on the Governor to make regulation for achieving the same object, namely, to save the tribals belonging to the Scheduled Area from the exploitation by nontribals. Any regulation framed by the Governor requires to be interpreted bearing in mind the aforesaid objective with which the Constitution conferred power on the Governor under the Fifth Schedule.

The Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 - whether Regulation 3(1) is contravened by grant/renewal of mining leases in favour of non-tribals

212. This Regulation has been framed by the Governor in exercise of power conferred upon him under para 5(2) of the Fifth Schedule to the Constitution. The original regulation is Regulation 1 of 1959 which was subsequently amended in 1970. The original Regulation prior to its amendment so far as transfer of immovable property by members of Scheduled Tribes is concerned, as contained in Regulation 3 stood thus:

"3.(1) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribes, shall be absolutely null and void unless made -

(i) in favour of any other member of the Scheduled Tribes or a registered society as defined in clause (f) of Section 2 of the Madras Cooperative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or

(ii) with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer.

Explanation. - The expression 'transfer' in this section includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribes benami for the benefit of a person who is not a member of a Scheduled Tribe.

(2)(a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.

(b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a registered society as defined in clause (f) of Section 2 of the Madras Cooperative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or otherwise dispose it of, as if it was a property at the disposal of the State Government.

(3) (a) Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such time as may be prescribed -

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.

(b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time-limit prescribed therefore."

213. After the amendment in 1970 Section 3(1) reads thus:

"3.(1)(a)Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribes, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964), which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of a Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor-in-possession through a transfer made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Schedule Tribe is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent, Agency Divisional Officer or any other prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed. "

214. So far as the regulation prior to its amendment in 1970 is concerned, a plain reading thereof clearly indicates that the Governor has framed the Regulation as a regulatory measure putting some embargo on the power of transfer of a member

belonging to a Scheduled Tribe in respect of his immovable property. The said embargo enabled a member of a Scheduled Tribe to transfer the immovable property only in favour of another member of a Scheduled Tribes or in favour of a cooperative society composed solely of members of a Scheduled Tribe. If the transfer was intended to be made in favour of a non-Scheduled Tribe member then it could be so made out only with previous sanction of the State Government or with the previous consent in writing of the agent or any prescribed officer subject to the rules made in that behalf. Thus immovable property even belonging to a Scheduled Tribe could be lawfully transferred in favour of a non-Scheduled Tribe member but only with previous sanction of the State Government. Under the pre-amended provisions, therefore, the question of any fetter on the powers of the State Government in transferring government land in favour of a non-tribal did not arise at all. The question that arises for consideration is whether there has been any change under the provisions of 1970 and has there been a total prohibition of transfer of any land in favour of non-Scheduled Tribe person in the Agency tracts.

215. Dr. Rajeev Dhavan, learned Senior Counsel appearing for the appellant, in this context advanced his argument that the entire object of the Amendment Act of 1970 was to prohibit totally transfer of any land in favour of a non-tribal member within the Agency tract and accordingly the word "person" in Section 3(l)(a) of the Regulation after the amendment would bring within its sweep the State Government though ordinarily the expression "person" may not bring within its sweep the State Government. According to Dr. Dhavan, learned Senior Counsel appearing for the appellant, the word "person" must be given the widest interpretation so as to bring within its sweep the State Government which would be consistent with the very object for which the amendment was brought into force so that the integrity of the tribal regime is maintained. On being faced with the difficulties in giving same interpretation to the word "person" used in Section 3(1)(a) throughout the learned counsel urged that it is permissible to give a different meaning to the same word used in the same statute depending upon the object sought to be achieved by the statute and therefore, it would be within the principles of interpretation to interpret the word "person" occurring in the first part of the Section 3(1)(a) to include the State Government whereas the same word "person" used in the latter part of Section 3(1)(a) may be interpreted to mean "an individual". In support of this contention the learned counsel relied upon the decisions of this Court in the case of *State of W.B. Vs. Union of India*[126], *Printers (Mysore) Ltd. Vs Asstt. CTO*[127], *CIT Vs. J.H. Gotla*[128] and *Dr. M. Ismail Faruqui Vs. Union of India*[129]. The learned Counsel also urged that this Court has accepted the principle than a wide interpretation has to be given to the meaning of immovable property while interpreting the provisions of the Regulation in order to fulfil the purpose of the tribal area regulation in the case of *P. Rand Reddy Vs. State of*

[126] AIR 1963 SC 1241: (1964) SCR 371
[127] (1994) 2 SCC 434
[128] (1985) 4 SCC 343: 1985 SCC (Tax) 670
[129] (1994) 6 SCC 360

A.P.[130], *Lingappa Pochanna Appelwar Vs. State of Maharashtra*[131] and *Manchegowda Vs. State of Karnataka*[132] and therefore, the same rules of construction of giving a wider interpretation to the expression "person" used in Section 3(1)(a) of the Regulation should be adhered to.

216. Mr. Sudhir Chandra, learned counsel appearing for the respondent on the other hand contended that the Regulation in question prior to its amendment does not prohibit transfer of land by any person in favour of non Scheduled Tribe person but merely postulates that such a transfer must be with the consent of the competent authority. Though after the amendment in 1970 a more stringent measure has been adopted but all the restrictions are in relation to the land belonging to a Scheduled Tribe. A statutory presumption has been brought in so that whenever within the Agency tract any immovable property is found to be in possession of a non-Scheduled Tribe person then burden would be on the non-Scheduled Tribe person to establish that he has not come in possession of the land by way of a transfer from the Scheduled Tribe person.

The aforesaid stringent provision has obviously been made to achieve the main objective to save the tribals from the exploitation by non-tribals. But by no stretch of imagination the restrictions contained in Regulation 3(1) even after its amendment can be said to apply to the State Government in respect of the government land. According to the learned counsel, Mr. Sudhir Chandra, if interpretation as to the word "person", as contended by Dr Rajeev Dhavan, learned Senior Counsel is accepted then it would lead to absurdity and the provisions of Section 3(1)(a) would be meaningless. The learned counsel further contended that there is intrinsic evidence in clause (a) itself to hold that the word "'person" does not include State. Lastly the learned counsel urged that bearing in mind the object with which the Constitution has conferred power on the Governor to frame Regulations and the object with which the Governor has framed the Regulation, there is no imperative to construe the word "person"' in Section 3(1)(a) of the Regulation to include the State Government. Such an interpretation according to the learned counsel for the respondents would go against the concept of upliftment of the tribals within the tribal area inasmuch as even the State Government would be denuded of its power of transferring government land in favour of any non Scheduled Tribe person or organisation even for the purpose of setting up of a hospital or any other philanthropic purpose. When mines and minerals lie in abundance mostly in the tribal areas and vest in the State Government, if the embargo contained in Regulation 3(1)(a) applies to the State Government by interpreting the word "person" to include the State Government then there cannot be any exploitation of mineral resources in the country unless it is done either by the State itself or through the Scheduled Tribe person and such interpretation would be grossly detrimental to the general upliftment of the tribal people and, therefore, the counsel suggests that such an interpretation would not be given to the word "person" in Regulation 3(l)(a).

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[130] (1988) 3 SCC 433: 1988 Supp (1) SCR 433
[131] (1985) 1 SCC 479
[132] (1984) 3 SCC 301

217. In view of the rival submissions at the Bar the crucial question that arises for consideration is how the word "person" in first part of Regulation 3(1)(a) is to be interpreted? In other words the very word "person" used in Regulation 3(1)(a) itself whether should be interpreted differently and whether such an interpretation is necessary to subserve the object for which the Regulation has been brought forward. As has been stated earlier, the history of legislation as discussed, treating the tribal areas different from the other areas is basically intended to save the tribal people from being exploited by the non-tribal. It is with that objective Article *244* of the Constitution made the Fifth Schedule applicable to administer Scheduled Area and tribal area and the Fifth Schedule to the Constitution, in turn, conferred power on the Governor to notify the laws made by Parliament or by the legislature of the State to apply or not to apply and further Governor has been conferred power to make Regulations for the peace and government of any area within a State. Such wide power has been conferred upon the Governor which is plenary in nature so that Governor can by regulation prevent exploitation of the tribals from the non-tribals when such legislations made by Governor in exercise of power has been challenged Courts have upheld the validity of the same on the ground that it is intended to save the tribals from the other non-tribal in the area who usually take advantage of the simplicity and ignorance of the tribal people. But it is difficult to accept the contention of Dr Rajeev Dhavan, learned Senior Counsel appearing for the appellant, that the constitutional scheme intended total prohibition of transfer of even the government land in favour of the non-tribal. In *P. Rami Reddy case*[133] this Court after tracing the history of the Regulation, namely, the Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 (Regulation I of 1959) and the subsequent amendment thereto in the amending Regulation of 1970 came to the conclusion that 1959 Regulation was amended as difficulties were experienced by the Government in implementing the ejectment procedures under the said Regulation, inasmuch as it was not always easy for the authority concerned to ascertain the origin of the right under which tribal is claiming possession and whether the land under possession of a tribal was previously acquired from a tribal or not. According to the learned Judges the changes effected by the amended Regulation were: (SCC pp. 437-38, para *5)*

(i) A rule of presumption was introduced to the effect that unless the contrary is proved, where a non-tribal is in possession of land in the Scheduled Areas, he or his predecessors-in-interest, shall be deemed to have acquired it through transfer from a tribal;

(ii) Transfers of land in Scheduled Areas in favour of non-tribals shall be wholly prohibited in future;

(iii) Non-tribals holding lands in the Scheduled Areas shall be prohibited from transferring their lands in favour of persons other than tribals. Only

[133] P. Rami Reddy Vs State of A.P., (1988) 3 SCC 433: 1988 Supp (1) SCR 443

partitions and devolution by succession of lands held by them shall be permitted; and

(iv) Where a tribal or non-tribal is unable to sell his land to a tribal or reasonable terms, it shall be open to him to surrender the land to the Government who shall thereupon be obliged to acquire it on payment of appropriate compensation.

218. Thus the changes brought about by the amended Regulation 1970 were essentially intended to facilitate effective enforcement of 1959 Regulation and the object of the amended Regulation cannot be held to be total prohibition of alienation of all land including a government land to the Scheduled Area in favour of a non-tribal. Being in mind the aforesaid object of the amended regulation and the constitutional scheme to the word "person" used in Regulation 3(1)(a) has to be construed and while so construing certain principles of statutory interpretation have also to be borne in mine.

Whether the word "person" in the Regulation should be interpreted differently and in the first part of Regulation 3(1)(a) it should be interpreted to include State whereas in the other part it should be interpreted to mean a natural person

219. Dr. Rajeev Dhavan, learned Senior counsel appearing for the appellant, contended that the word "person" occurring in the first part of Section 3(a) of the Regulation should be construed to mean the "State" so that the real object of prohibiting alienation of any land within the Scheduled Area in favour of a non-tribal person can be achieved. According to the learned counsel it is a permissible rule of construction of a statute to construe the same words used in the same statute differently depending upon the context in which it is used and the object sought to be achieved. Mr. Sudhir Chandra, learned counsel appearing for the respondents, on the other hand contended that ordinarily a particular word used in a particular statute should receive the same meaning unless and until it is necessary to ascribe a different meaning to achieve any particular objective for which the statute is intended. But according to the learned counsel it was not the intention of the Constitution-makers to prohibit alienation of any land within the Scheduled Area in favour of a non-tribal person and on the other hand the objective was to put restrictions on the tribal people from transferring their land in favour of non-tribal person so that the tribal people can be saved from being exploited by the sophisticated non-tribal people. This being the objective, there is no necessity to construe the word "person" in the first part of clause 3(1)(a) of the Regulation to include the State Government also.

220. It is a cardinal rule of construction of statues that the statute must be read as whole and construction should be put to all the parts together and not to any one part only by itself. Every clause of a statute is required to be construed with reference to the context and other clauses of the Act so that so far as possible the meaning of the enactment of the whole statute would be consistent. When the legislature uses the same word in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout. It was so held by this Court in the

following cases: *Suresh Chand Vs. Gulam Chist*[134], *Mohd. Shafi Vs. Addl. Distt. & Sessions Judge VII*[135], *Raghubans Narain Singh Vs. U.P. Government*[136]. But the aforesaid presumption can easily be displaced by the context in which the particular word is used. In *Farrell Vs. Alexander*[137] it was stated that where the draftsman uses the same word or phrase in *similar context,* he must be presumed to intend it in each place to bear the same meaning. *Venkatarama Ayyar; J.* in the case of *Shamrao Vishnu Parulekar Vs. Distt. Magistrate, Thana*[138] discussing the aforesaid rule has said:

> *"The rule of construction contended for ... is well settled but that is only one element in deciding what the true import of enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute."*

221. In *Madras Electric Supply Corp. Ltd. Vs. Boarland (Inspector of Taxes)*[139] Lord Mac Dermott pointed out:

> *"The presumption that the same word is used in the same sense throughout the same enactment acknowledges the virtues of an orderly and consistent use of language, but it must yield to the requirements of the context and it is, perhaps, at its weakest when the word in question is of the kind that readily draws its precise import, its range of meaning, from its immediate setting or the nature of the subject with regard to which it is employed."*

But this Court has accepted the principle that the same word used at different places in the same clause of the same section may not bear the same meaning at each place having regard to the context of its use. In fact in the case of *Maharaj Singh Vs. State of U.P.*[140] the word "vest used in the same section of the U.P. Zamindari Abolition and Land Reforms Act was interpreted to mean although the vesting in the State was absolute but the vesting in the Sabha was limited to possession and management. This case illustrates that even a word which is used more than once in sub-section of a section may connote and denote divergent things depending upon the context. Therefore, though on principle the contention of Dr. Rajeev Dhavan, learned Senior Counsel appearing for the appellant, that the word "person" used in Section 3(1)(a) of the Regulation can be given a different meaning in the first part than the meaning to the same word given in the second part of the Regulation may not be, taken exception, but the question arises whether in the constitutional scheme under which the

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[134] (1990) 1 SCC 593: (1990) 1 SCR 186
[135] (1977) 2 SCC 226: (1977) 2 SCR 464
[136] AIR 1967 SC 465: (1967) 1 SCR 489
[137] (1976) 2 All ER 721: (1976) 3 WLR 145
[138] AIR 1957 SC 23: 1956 SCR 644
[139] (1955) 1 All ER 753: (1955) 2 WLR 632
[140] (1977) 1 SCC 155: (1977) 1 SCR 1072

Regulation has been framed by the Governor, does it warrant to give a different meaning to the same word "person" in a different part of the Regulation. It may not be out of place to bear in mind the normal rule that general words in a statute must receive a general construction unless there is something in the Act itself such as the subject-matter with which the Act is dealing or the context in which the words are used to show the intention of the legislature that they must be given a restrictive or wider meaning.

222. Let us examine some of the authorities cited at the Bar in this regard. In *Applin Vs. Race Relations Board*[141] the word "person" was defined to include a local authority in the context in which the word has been construed. In the case of *Printers (Mysore) Ltd. Vs. Asstt. CTO*[142] relied upon by Dr Rajeev Dhavan, learned Senior Counsel appearing for the appellant, the question for consideration was whether the expression "goods" occurring in Section 8(3)(b) of the Central Sales Tax Act within the phrase "for use by him in the manufacture of processing of goods for sale" does take within itself the newspaper and this Court answered the question agreeing with the view taken by the Madras and Kerala High Courts that the term "goods" does include newspaper. This Court relied upon the ration in *T.M. Kanniyan case*[143] and *Pushpa Devi case*[144] and held that it is well settled where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not he mechanically applied. In *Dr. M Ismail Faniqui Vs. Union of India*[145] on which Dr Rajeev Dhavan relied very strongly, the majority view held that the word "vest" in Section 3 of the Act has shades taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting being limited in title as well as duration. It was further held the meaning of the word "vest" used in Section 3 has to be determined in the light of the text of the statute and the purpose of its use. Ultimately the Court held while upholding the statute that the vesting of the disputed area in the Central Government by virtue of Section 3 of the Act is limited as a statutory receiver, with the duty for its management and administrator according to Section 7 requiring maintenance of status quo therein in sub-section (2) of Section 7 of the Act. Whereas the vesting of the adjacent area other than the disputed area acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with subsection (1) of Section 7 of the Act till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The minority view, however, construing Section 3 and 4(1) held that the area includes the whole bundle of moveable and immovable property under the area specified in the Schedule and all other rights and interests therein or arising thereof and the whole bundle of property and rights vests by reason of Section 4(2) in the Central

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[141] (1974) 2 All ER 73: (1974) 2 WLR 541
[142] (1994) 2 SCC 434
[143] T.M. Kanniyan Vs. ITO, AIR 1968 SC 637: (1968) 2 SCR 103: (1968) 68 ITR 244
[144] Pushpa Devi Vs. Milkhi Ram, (1990) 2 SCC 134
[145] (1994) 6 SCC 360

Government free and discharged from all encumbrances and held the Act to be unconstitutional as the provisions of Section 3, 4 and 8 were held to be invalid. The majority view of the Court expressed through Verma, J. held that a construction which a language of the statute can bear and promote larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord. But on examining the provisions of Section 3(1)(a) of the Regulation after its amendment I am unable to persuade myself to interpret the word "person" used in Section 3(1)(a) of the Regulation differently as in my view neither the context in which the word has been used calls for such an interpretation nor the interpretation of giving a literal meaning to the word would lead to any absurdity or unintended result nor even it can be said to be promoting larger national purpose.

In *P. Rami Reddy case*[146] the validity of Section 3(1) of the amended Regulation had been assailed and this Court tracing a short history of legislation came to hold that a legislation which in spirit, sense and substance aims at restoration of the tribal land which originally belonged to the tribals but which passed into the hands of non-tribals cannot be characterised unreasonable. The Court sustained the legislation on the ground that in the absence of protection, economically stronger non-tribals would in course of time devour the available lands and wipe out the very identity of the tribals who cannot survive in the absence of the only source of livelihood they presently have. The Court also noticed the fact that under the pre-amended provisions of the Regulation (Regulation 1 of 1959) transfer of immovable properties situated in the Scheduled Areas from a member of a Scheduled Tribe to non-tribals without previous sanction of the State Government was prohibited. The amendment in question in the year 1970 was introduced to facilitate effective enforcement of the Regulation of 1959. In other words, transfer of land in Scheduled Area in favour of non-tribals became prohibited and non-tribals holding land in the Scheduled Area were prohibited from transferring the land in favour of persons other than tribals and further the statutory presumption was introduced in Regulation 3(l)(b) casting burden on the non-tribals when he is found to be in possession of a land within the Scheduled Area to establish that he has not acquired the same from a Scheduled Tribes. In the aforesaid case the Court did not accept the argument advanced on behalf of the non-tribal that the expression “land” has been used in its restricted sense in para 5(2)(a) of Schedule V to the Constitution.

223. In the aforesaid *P. R. Reddy case*[147] the Court also took note of the earlier case in *Manchegowda Vs. State of Karnataka*[148] where the constitutional validity of a similar provision in respect of the tribal area of Karnataka was under challenge and the Court upheld the constitutionality with an eye to preserve and protect the tribals in the tribal areas. But in none of the aforesaid cases the question of power of the Government to transfer the government land had come up for consideration. The constitutional

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[146] P. Rami Reddy Vs. State of A.P., (1988) 3 SCC 433: 1988 Supp (1) SCR 443

[147] P. Rami Reddy Vs. State of A.P., (1988) 3 SCC 433: 1988 Supp (1) SCR 443

[148] (1984) 3 SCC 301

scheme embodied in Article 15(4) and Article 46 as well as the power conferred upon the Governor of the State under Schedule V to the Constitution are intended to preserve and protect the interest of the tribals in the tribal areas. It cannot be said by any stretch of imagination that all lands within the tribal areas vest in the tribal people. State is the paramount owner of lands and in the garb of preventing the exploitation of tribals from the non-tribals so far as the lands belonging to the tribals are concerned the State cannot be denuded of its power to exploit resources which vest with the State. Judged from this angle there is no justification for interpreting the word "person" in the first part of the Section 3(1)(a) of the Regulation to include State and, therefore, the prohibitions and restrictions contained in the Regulation would not apply to the lands belonging to the State. The word "person"' used in the federal statute imposing tax on persons selling liquor came up for consideration in the case of *State of Ohio Vs. Guy Helvering*[149] wherein it was held that the State engaging in the selling of spiritual liquors is not immune from the excise tax imposed by the Federal Government on those engaging in such business, since in doing so it is not performing any governmental function. It was also held that a State is embraced within the meaning of the term "person" as used in a statute imposing as excise tax on persons selling liquor and the word person shall be construed to mean and include a partnership, association, company or corporation, as well as a natural person. In the case of *United States of America Vs. Cooper Corpn.*[150] the word "person" used in Section 7 of the Sherman Anti-trust Act came up for consideration and it was held that United States is not a person entitled to maintain an action for treble damages within the meaning of Section 7 of the Act. It has been held in the aforesaid case that it may be assumed, in the absence of any indication to the contrary, that the term "person" when used in different sections of a statute, was employed throughout the statute in the same, and not in different senses. It was also held in the aforesaid case that it is not for the courts to indulge in the business of policy-making in the field of Federal anti-trust legislation, but their function ends with the endeavour to ascertain from the words used, construed in the light of the relevant material, what was in fact the intent of the Congress. In the case of *Union of India Vs. Jubbi*[151] the question that arose for consideration is whether under the provisions of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 whether tenants under the Union of India as the landowner can acquire proprietary rights. Repelling the arguments advanced by the Union of India that the Act is not intended to be applicable to the lands of the Union this Court held that the object of the Act was to abolish big landed estate and alleviate the conditions of occupancy tenants by abolishing the proprietary rights of the landowners in them and vesting such rights in the tenants and that being the object of the legislature it is hardly likely that it would make any discrimination between the State and the citizens in the matter of the application of the Act. The ratio of all the aforesaid cases can he summed up thus: Though ordinarily a particular word used in a statute should be given the same meaning but it is permissible to construe the said word

[149] 292 US 360: 78 L Ed 1307 (1933)
[150] 312 US 600: 85 L Ed 1071 (1940)
[151] AIR 1968 SC 360: (1968) 1 SCR 447

differently depending upon the object of the Act and the scheme of the Act and the purpose sought to be achieved by the Act.

224. Coming now to the core question of interpretation of the word "person" in Regulation 3(1)(a) under the Amended Act if the word "person" used in Section 3(1)(a) is interpreted to mean to include the State then the expression "whether or not such a person is a member of a Scheduled Tribes" becomes meaningless as the State can never be a member of the Scheduled Tribes. If a literal meaning to the word "person" is given in Section 3(1)(a) of the Regulation then the prohibitions or restrictions contained therein would apply with full force to interest transfer of land between the Scheduled Tribe and non-Scheduled Tribe and such an interpretation would sub serve the main object of the legislation, namely, to save the tribal people from being exploited by the non-tribal people. If the constitutional scheme embodied in Article 15(4) and 244 as well as in the Fifth Schedule is intended to save the tribal people from being exploited by the non-tribal both in relation to their lands as well as in the matter of taking loans from the moneylenders, there is no obligation to construe the word "person" to include the State in the first part of Section 3(1)(a) of the Regulation.

In view of the history of legislation already traced in the earlier part of this judgment it is crystal clear that the prohibitions and restrictions were never intended for the lands belonging to the Government and the provisions both prior to the Constitution and the Constitution are intended to deal with the tribal people separately so that better attention can be bestowed for their social and economic upliftment. It is with this objective that the Fifth Schedule to the Constitution conferred power on the Governor not only to indicate which laws made by Parliament and the State legislature would apply within the Scheduled Area and which laws would not apply, but further to make regulation for administration of the tribal areas for peace and good government in respect of Scheduled Area. The matters indicted in subsection (2) of Section 5 of the Fifth Schedule to the Constitution as well as the general power of the Governor to frame regulations contained in subsection (1) of Section 5 of the Fifth Schedule, neither expressly nor by necessary implication prohibit transfer of government land in favour of non-tribal within the Scheduled Area nor is there any mandate embodied in Article 15(4) or in Article 244 prohibiting the transfer of government land in favour of non-Scheduled Tribe person within the Scheduled Area. In this respect I do not find any force in the contention of Dr. Rajeev Dhavan to interpret the word “person" in the first part of Regulation 3(1)(a) to include the State and to interpret "person" in the second part of said Section 3(l)(a) of the Regulation to mean on ordinary individual. In my considered opinion the expression "person" used in Section 3(1)(a) of the Regulation should have its natural meaning throughout the section to mean "natural person" and it does not include the State. In other words, the State is not denuded of its power in the matter of exploiting its mineral resources within the Scheduled Area by grant or renewal of lease even in favour of non-tribal persons and the restrictions and embargo contained in Regulation 3(1)(a) are not applicable to the State in dealing with the land belonging to the State.

225. In this view of the matter, it must be held that the provisions of the Regulation have not been contravened by granting mining leases in favour the non-Scheduled Tribe person within the Scheduled Area.

226. Notwithstanding my conclusion that the word "person" occurring in Section 3(1) of the Regulation does not include "State" and as such the mining leases granted in favour of different persons do not contravene the provisions of the Regulation but I am inclined to agree with the observations made by Brother Ramswamy, J. that the lessees should be required to spend a part of the profit for the upliftment of the tribals and for maintaining ecology in Scheduled Areas. Notwithstanding the constitutional obligation of the Governor to make special provision for ameliorating economic status of the tribal people so as to assimilate them into the nation mainstream, nothing tangible appears to have been achieved in this regard even after 50 years of independence. The tribal people who constitute a substantial majority of the Indian population still spend their time in jungles and other inaccessible areas and sufficient legislative and executive measures have not been taken for improving the living conditions of these tribal people. Since the mining activities are being carried out mostly within the Scheduled Areas it is the duty of the State to see that a part of the profits earned by the lessees should be spent for ameliorating the living conditions of the tribals by lessees themselves. It is in this context Brother Ramaswamy, J. has made some observations in paras 112 and 113 of the judgment which have my general concurrence but the said objective has to be achieved by appropriate legislation making it compulsory for the lessees within the tribal area to spend a portion of the income arising out of the mining business for the general upliftment of the living conditions of the tribal people. This should be in addition to the royalty and other cess under different legislations. The State should also consider the question of incorporating some provisions in the leases itself for achieving the aforesaid objectives.

Grant/renewal of mining leases and continuance of the mining operations whether contravenes the provisions of the Conservation Act?

227. Dr. Dhavan, the learned Senior Counsel for the appellant, contended that the Conservation Act has been enacted for conservation of forest and for matters connected therewith or ancillary or incidental thereto. Deforestation having caused ecological imbalance and having lead to environmental deterioration, with a view to checking further deforestation, the President promulgated the Forest (Conservation) Ordinance, 1980 on 25-10-1980. The said Ordinance had made the prior approval of the Central Government necessary for deforestation of reserved forests or for use of forest land for non-forest purposes. The aforesaid Ordinance was replaced by the Forest (Conservation) Act, 1980 (No. 69 of 1980). Under Section 2 of the said Act which begins with a non obstante clause to the effect "Notwithstanding anything contained in any other law for the time being in force in a State" no State Government except with the prior approval of the Central Government can direct that any forest land or any portion thereof could be used for any non-forest purposes. Explanation to Section 2 provides the meaning of the expression "non-

forest purpose". Clause (b) of the said Explanation stipulates that any purpose other than reafforestation would be a non-forest purpose. This being the position and mining activity being admittedly a non-forest purpose, the land in question could have been permitted to be used for such non-forest purpose without the prior approval of the Central Government as required by Section 2 of the Conservation Act. The High Court according to the learned counsel, committed serious error in coming to the conclusion that the Conservation Act applies only to the reserved forests. Dr. Dhavan contended that the word "forest" must be given a wider meaning and should include all forests commonly known as forest and, therefore, even if the area on which mining activities are carried on by the respondent do not form a part of reserved forests inasmuch as to notification under Section 20 of the Indian Forest Act has been issued but all the same the provisions of the Forest (Conservation) Act would become applicable. The Conservation Act was further amended by Act 69 of 1988 with Presidential assent on 17-10-1988 and was published in the Gazette of India on 19-12-1988. By way of amendment clause (iii) was inserted in Section 2 which reads thus:

> *"2. (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government."*

228. Dr. Dhavan the learned counsel contended that in view of the aforesaid provision no lease could be granted or renewed after 19-12-1988 in favour of any authority without the prior approval of the Central Government. Consequently the impugned leases must be held to be invalid as having contravened the provisions of Section 2 of the Conservation Act. The High Court in the impugned judgment, however, proceeded on the basis that the Conservation Act is applicable only to the reserved forests and does not apply to any other category of forests. Bearing in mind the objects sought to be achieved by the Conservation Act, we see no justification to give a restrictive meaning to the expression "forest land" used in Section 2 of the Conservation Act. On the other hand the expression "forest land" should be given an extended meaning to cover a tract of land covered with trees, shrubs, vegetation and undergrowth mingled with trees and pastures, be it of natural growth or man-made forestation. This Court in the case of *Supreme Court Monitoring Committee Vs. Mussoorie Dehradun Dev. Aty.*[152] has held that the term "forest land" has not been defined under the Indian Forest Act, 1927 or the 1980 Act and, therefore, have to be understood as including an extensive tract of land covered with trees and undergrowth sometimes intermingled with pastures, i.e. it will have to be understood in the broad dictionary sense. So understood any area which the State considers to be a forest and is governed under that law will also be subject to Section 2(ii) of the 1980 Act. Viewed in this light, any land which the State of U.P. by notification declares to be a forest would be governed under Section 2(ii) of the 1980 Act. In *T.N.*

[152] WP (C) No. 749 of 1995

Godavarman Thirumulkpad Vs. Union of India[153] the question relating to protection and conservation of the forests throughout the country was considered by this Court and the Court observed:

> *"The forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership of classification thereof."*

The Court in the aforesaid case gave a general direction to the following effect:

> *"In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non forest activity within the area of any 'forest'. In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw-mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest (Conservation) Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith. "*

In the case of *Divisional Forest Officer Vs. S. Nageswaramma*[154] this Court has held that renewal of any mining lease could be done only in accordance with the law prevailing on the date of renewal and, therefore, if any renewal of mining lease has been done in violation of Section 2 of the Forest (Conservation) Act, inasmuch as no prior approval of the Central Government has been obtained, then such renewal is invalid and inoperative.

229. In view of the aforesaid legal position it is difficult to sustain the conclusion of the High Court in the impugned judgment that the Conservation Act applies only to a reserved forest. The said conclusion of the High Court therefore is set aside. Consequently, it must be held that no mining activities can continue on any forest land

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[153] WP (C) No. 202 of 1995
[154] (1996) 6 SCC 442

unless prior approval of the Central Government is obtained as required under Section 2 of the Conservation Act. Mr. Sudhir Chandra, learned counsel appearing for the respondents, contended that he does not dispute the proposition that the expression "forest land" in the Conservation Act should be given wider meaning and that mining activities over the forest land cannot continue unless prior approval of the Central Government has been obtained in accordance with Section 2 of the Conservation Act. He vehemently contended that the mining activities of the respondents are not over any forest land and the appellants have not produced any material from which this Court can come to the conclusion that it forms a part of the forest even going by the extended meaning of the term "forest". As has been stated earlier while narrating the pleadings of the parties, the private respondents have all along asserted that the mining activities in question and their leasehold area over which mining activities are continuing do not form a part of the forest. The State Government though has filed an affidavit but no assertion has been made as to whether the mining areas with which we are concerned in these appeals formed a part of the forest land and they required the previous approval of the Central Government for being used of mining purpose. On the other hand, the affidavit of the Government indicates that the mining leases in favour of the private respondents have been granted in accordance with the provisions of the Act and the Rules and there has been no contravention of the provisions of the Forest (Conservation) Act.

230. In this state of affairs even though we are of the considered opinion that the forest land in Section 2 of the Conversation Act would receive extended meaning to include within its sweep an extensive tract of with covered with trees, shrubs, vegetation and undergrowth undermingled with trees with pastures, be it of natural growth or man-made forestation, yet unless and until it is so determined by the State Government that the mining activities of the respondents are being carried on over forest land it will not be possible to hold that the provisions of Section 2 of the Conversation Act get attracted. In this view of the matter, the only possible direction which this Court can issue in the facts and circumstances of the present case is that the State of Andhra Pradesh through its officers of the Forest Department should immediately inspect the mining areas of the private respondents and find out whether the lands covered under the mining leases in question form a part of the forest land and if it comes to the conclusion that it is a part and parcel of the forest land and no prior approval of the Central Government has been obtained for carrying out the mining activities then immediate direction should be issued to the respondents to stop the mining activities which would be in consonance with the general direction issued by Court in *Godavarman case*[155]. We are forced to issue such direction in the case in hand as on the materials produced before us by the appellant and in view of the denial in the counter-affidavit filed by the private respondents as well as the affidavit filed on behalf of the State of Andhra Pradesh, it has not been possible to come to the conclusion affirmatively that the land in question formed a part and parcel of the forest land.

[155] T.N. Godavarman Thirumulkpad Vs. Union of India WP (C) No. 202 of 1995)

Whether the leases can be said to be in violation of the Environment (Protection) Act, 1986.

231. The aforesaid Act (hereinafter referred to as the "Environment Act") was enacted by Parliament as it was thought necessary to protect and improve the environment and to prevent hazards to human beings and other living creatures, plants and property. A decision in this respect had been taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972 and India had participated in the said Conference. The Objects and Reasons of the Act indicates that the decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life-support systems and, thereof world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on Human Environment held in Stockholm in June 1972. Though in India there were several legislations for environmental protection but a need for a general legislation became increasingly evident and, therefore, an enactment was passed. At the outset it may be made clear that in the writ petition filed before the High Court no complaint has been made with regard to the violation of the provisions of Environment (Protection) Act in the matter of granting lease or allowing the mining operation to be carried on. In this Court, however, Dr. Dhavan, learned Senior Counsel appearing for the appellant, contended that the large-scale mining operations within the tribal area pollutes the environment in the tribal area and, therefore, the Central Government is under a statutory obligation to protect the environment and coordinate the activities of the State Government in the matter of granting mining leases within the tribal area which must be subject to the provisions of the Environment (Protection) Act. And since no steps have been taken by the State Government in this regard, the leases must be held to the invalid. According to Dr. Rajeev Dhavan, learned Senior Counsel when several industries have been closed down by this Court on the ground that the existence of such industries is hazardous to human life and thereby violates Article 21 of the Constitution, the mining leases within the tribal areas must also be annulled. As the mining activities pollute the tribal atmosphere, endanger the natural flora and fauna of the area and becomes hazardous to the human life within the tribal area, the said activities must he stopped. In support of this contention the learned counsel placed reliance on the decisions of this Court in the case of *Tarun Bharat Sangh Vs. Union of India*[156], *Subhash Kumar Vs. State of Bihar*[157]. Mr. Sudhir Chandra appearing for the respondents contended that neither in the High Court nor in the special leave petition in this Court basic facts have been averred to indicate how the mining lease in question infringes upon the provisions of the environmental laws. He further contended that the decisions relied upon by the learned counsel for the appellant cannot have any application particularly in the absence of any basic facts. Having examined the rival contentions on this score, we find sufficient

[156] 1992 Supp (2) SCC 448
[157] (1991) 1 SCC 598: AIR 1991 SC 420

force in the contention of Mr. Sudhir Chandra. It is undisputed that no averment has been made in the writ petition filed before the High Court alleging infraction of the environmental laws and necessarily, therefore, no argument had been advanced and the High Court had not considered this question at all. Even in the special leave petition filed in this Court only infringement of the provisions of the Conservation Act and the provisions of the Scheduled Area Land Transfer Regulation and the provisions of Section 11(5) of the Mines and Minerals Regulation and Development Act have been alleged.

In para 2 of the special leave petition the questions of law enumerated for consideration also do not contain any question on the violation of environmental laws. In the absence of any allegation and basic data and consequently lack of opportunity to the respondents to prove the same, it would not be safe for this Court to embark upon an inquiry and come to a conclusion as to whether allowing the mining operations within the tribal area has resulted in the infringement of Environment (Protection) Act. It would, therefore, be unnecessary to deal with the decisions cited by Dr. Rajeev Dhavan in support of his contention. The Environment Act consists of four Chapters with 26 sections therein. Chapter I contains the definitions, Chapter II contains general power of the Central Government, Chapter III contains the prevention, control and abatement of environmental pollution, Chapter IV contains miscellaneous provisions. Environmental pollution has been defined in Section 2(c) to mean the presence in the environment of any environment pollutant. "Environmental pollutant'' has been defined in Section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment. Section 7 prohibits person carrying on industry from emission or discharge of environmental pollutant in excess of such standards, as may be prescribed. "Prescribed" has been defined in Section 2(g) to mean prescribed by rules made under this Act. Thus according to the Rules standard has to be indicated, permissible limit of emission of environmental pollutant has to be indicated. Section 8 deals with the embargo on handling of hazardous substance. Section 10 confers power on the persons empowered by the Central Government to enter and inspect any of the premises for the purposes enumerated under clauses (a) to (c) of sub-section (1) of Section 10. Section 15 provides the penalty for contravention of the provisions of the Act and the rules made thereunder. Section 19 confers power on the Court to take cognizance of any offence on a complaint being made on that behalf. Section 24 is the over riding provision of the Act notwithstanding anything inconsistent therewith contained in any enactment. The combined reading of the aforesaid provisions indicate that there must be necessary particulars to find out whether there has been any emission of the environmental pollutant in excess of the standard fixed under the rules and it is only then the question of complaining before a Court and taking cognizance of the same would arise. If the averments in the special leave petition are examined from the aforesaid point it would be seen that there is no iota of material to come to the conclusion that on account of the mining operations conducted by the respondents there has been any emission of environmental pollutant in excess of the standard prescribed under the Rules, nor is it possible to hold that there has been any environmental pollution on

account of carrying on the mining operations. In our considered opinion, on the facts alleged it is not possible to embark upon the enquiry as to whether the grant of lease within the tribal area are in violation of the provisions of the Environment (Protection) Act nor the leases can be annulled on that score. The contention of Dr. Dhavan on this score accordingly must be rejected.

Whether the leases in question are contrary to the provisions of the Minerals and Minerals Regulation and Development Act (for short "MMRD Act")

232. Dr. Dhavan, learned Counsel appearing for the appellant, contended that in view of Section 11(5) of the MMRD Act as amended to mining leases can be governed in favour of any person who is not a member of the Scheduled Tribes. Section 11(5) of the MMRD Act reads thus:

> *"Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled Areas to any person who is not a member of the Scheduled Tribe, provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government or to a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964, which is composed of members of Scheduled Tribes."*

233. There cannot be any dispute that on and after coming into force of Section 11(5) of the MMRD Act no mining leases can be granted or renewed within the Scheduled Area to any person who is not a member of Scheduled Tribe within the State of Andhra Pradesh. The only exception being as contained in the proviso, namely, an undertaking owned or controlled by the State or Central Government or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act which is composed of members of Scheduled Tribes are excluded from the rigours of sub-section (5) of Section 11. Therefore, after 1991 if any mining lease is granted in favour of any non Scheduled Tribe person then the said lease would be void being repugnant to Section 11(5) of the Act but the said provision does not affect the subsisting leases and, therefore, the leases in favour of the respondents cannot be said to be invalid on the ground of infraction of Section 11(5) of the MMRD Act. The provision is prospective in operation and would be applicable to any or renewal of a lease subsequent to the enactment of Section 11(5) of the MMRD Act. The leases of the respondents being prior to the aforesaid enactment these are not hit by the said provisions and therefore, Dr. Dhavan's contention on this score cannot be sustained.

234. My conclusion on different questions, as discussed above, are summed up as under:

(1) Under the British rule though steps had been taken to make provision for special administration of the tribal areas but there had been no prohibition for transfer of government land in favour of non-tribal within the Scheduled Area.

(2) Under different laws and regulations operating in different tribal areas prior to coming into force of the Constitution there was restriction in relation to transfer of lands belonging to the tribals in favour of non-tribal within the Scheduled Area but no such restriction was there so far as the government land was concerned.

(3) The legislative history and the debates in the Constituent Assembly culminating in engrafting of Schedule V to the Constitution conferring power on the Governor to make Regulations for administration of tribal area were all aimed to prevent the tribals from exploitation by non-tribals and the prohibition/restrictions were all in relation to the transfer of lands belonging to the tribals in favour of non-tribals and it never intended to have any such prohibition in relation to government land.

(4) A combined reading of Article 244 and Schedule V to the Constitution would indicate that there is no constitutional obligation on the Governor to make regulation prohibiting transfer of government land in favour of a non-tribal within the Scheduled Area.

(5) The word "person" used in Section 3(1)(a) of the Andhra Pradesh Scheduled Area Land Transfer Regulation as amended in 1970 has to be construed to convey the same meaning throughout the section and the said expression does not include the State Government.

(6) Neither the legislative history nor the object with which special power has been conferred on the Governor under the Fifth Schedule to the Constitution make it necessary to construe the word "person" in the first part of Section 3(1)(a) differently from the remaining part of the section so as to include the State Government within the said expression.

(7) Though under Section 2 of the Forest (Conservation) Act use of any forest land for any non-forest purpose is prohibited without the prior consent of the Central Government and as such mining activities being a non- forest purpose would attract the mischief of said Section 2 of the Conservation Act, but in the absence of any materials to conclusively come to the conclusion that the land over which the respondents are carrying on the mining activities form a part of the forest land, it would not be proper for this Court to issue any direction prohibiting the mining activities. At the same time it would be proper to direct the State of Andhra Pradesh through its Forest Department to examine whether the mining activities are being carried on over the forest land and if it comes to the conclusion that the lands do form a part of the forest land then immediate steps should be taken prohibiting continuance of the mining activities until the Central Government in exercise of power under Section 2 agrees to the same, and we accordingly so direct.

(8) The petitioner has not been able to make out any case of violation of the provisions of the Environment (Protection) Act in the case in hand.

(9) Section 11(5) of the MMRD Act being prospective in nature will have no application to the existing mining leases and, therefore, the leases of the respondents cannot be annulled on that score.

235. The appeals are disposed of with the aforesaid observations and directions.

Civil Appeal No. 4603 of 1997

236. Leave granted.

237. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court dated 27-8-1993 in *Samata Vs. State of A.P.*[158]. The present appellant was Respondent 6 before the High Court. SAKTI, a voluntary social organisation for the upliftment of tribals in East Godavari District filed the writ petition in the Andhra Pradesh High Court praying therein that the mining activities which are carried on by Respondents 6 to 10 in the said writ petition should be immediately stopped as the grant of mining leases in their favour is in contravention of Section 3 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (hereinafter referred to as "the Reggulation") as well as Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the "the Conservation Act"). It was averred in the writ petition that the villages where the mining activities were being carried on were notified as protected forests under Section 24 of the Andhra Pradesh Forest Act, 1967 with effect from 8-9-1975 and within the said forest area it is not permissible to continue any mining activity in view of the provisions of the Conservation Act which prohibits the user of forest land for non-forest purpose.

238. Respondents 1 to 4 before the High Court, who were the public officers of the State Government supported the case of the petitioner and took the stand that a joint inspection report had been conducted after surveying the area over which the mining activities are being carried on by Respondents 6 to 10 and the said report reveals that mining leases have been granted over the forest area which is prohibited under the Conservation Act without prior approval of the Central Government.

239. Respondent 6, the present appellant took the stand that the lease having been granted much prior to the area in question was included as a protected forest, the embargo contained in the provisions of the Conservation Act will not apply and in this connection reliance was placed on the decision of this Court in the case of *State of Bihar Vs. Banshi Ram*[159]. It was also contended that Section 3 of the Regulation has no application to a transfer by the Government in respect of its land in favour of a non--tribal and the word "person" in Section 3 of the said Regulation will not include the Government. It is not necessary for us to examine the stand taken by other private respondents, namely Respondents 7 to 10.

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[158] (1995) 2 Andh LT 233 (DB)
[159] (1985) 3 SCC 643: 1985 Supp (1) SCR 345

240. The High Court by the impugned judgment came to the conclusion that the transfer of any land in Scheduled Area to a non-tribal is void under Section 3 of the Regulation, and therefore, the lease in favour of Respondent 6 within the Scheduled Area is void. The High Court came to the conclusion that the word "person" in Section 3 of the Regulation includes the Government and therefore, leases granted by the State Government in a Scheduled Area to a non-tribal are void. On the question of applicability of the Conservation Act the High Court also relied upon the decision of this Court in *Banshi Ram case*[160] and came to the conclusion that for grant of mining lease in a protected forest area for non-tribal purpose the prior approval of the Central Government is mandatory and since the Government did not obtain the approval of the Central Government, leases are in contravention of Section 2 of the Forest (Conservation) Act, 1980. Having considered the judgment of this Court in *Ambica Quarry Works Vs. State of Gujarat*[161] and taking into account the fact that Respondent 6 had completed the mining operation over 42 acres the High Court permitted the said Respondent 6 to remove the dug up mineral in the presence of the Joint Collector of the District, the Assistant Director of Mines and Geology and the District Surveyor of Forests. Respondent 6, the present appellant was prohibited from mining operation in the area with the aforesaid conclusion and thus the appeal by special leave.

241. Learned Counsel for the appellant argued with vehemence that the conclusion of the High Court that the word "person" in Regulation 3(1)(a) includes the State Government and the transfer of any land within the Scheduled Area in favour of a non-tribal is null and void is wholly erroneous as the embargo in question is applicable in respect of transfer of land belonging to the Schedule Castes and Scheduled Tribes and not to land belonging the State Government. The learned counsel also urged that the restrictions and prohibitions in the Conservation Act will have no application to an existing lease and the lease in favour of the appellant having been granted much prior to the coming into force of the Conservation Act, the High Court committed error in holding that the leases are in violation of the Conservation Act. Both these questions have been considered in detail by us in Civil Appeals Nos..... arising out of SLPs (C) Nos. 17080-81 of 1995 and for the reasons given therein and in view of the conclusions in the said appeals to the effect that the word "person" used in Section 3(1)(a) of the Regulation does not include the State Government, and therefore, the prohibitions contained in the said Regulation with regard to transfer of land in favour of a non-tribal will not apply to the transfer of land made by the Government for the purpose of mining lease, the conclusion of the High Court on this score is erroneous. But so far as the question of applicability of the Conservation Act is concerned, in view of our conclusion on the said question in the appeals arising out of SPLs referred to earlier *(Samata Vs. State of A.P.)* the conclusion of the High Court in the impugned judgment has to be sustained. In view of the inquiry report and the stand taken by the State officials the land over which the appellant was

[160] (1985) 3 SCC 643: 1985 Supp (1) SCR 345
[161] (1987) 1 SCC 213: (1987) 1 SCR 562

permitted to carry on mining activities is a forest land and before the grant of lease in favour of the appellant no approval of the Central Government has been taken. It is no doubt true that the Conservation Act came into force much later than the grant of mining lease in favour of the appellant, but in view of the general directions issued by this Court in *T.N. Godavarman Thirumulkpad Vs. Union of India*[162], the mining activities being a user of the forest land for non-forest purpose has to be stopped and in case it is intended to continue the mining activities the same can be done only after referring the matter to the appropriate authority of the Central Government and getting the permission of the same. In this view of the matter the conclusion of the High Court in the impugned judgment so far as violation of Conservation Act is concerned is unexceptionable, and therefore, the said conclusion is upheld. Necessarily, therefore, the ultimate direction given by the High Court remains unaffected notwithstanding the conclusion of the High Court on the first question with regard to the applicability of the provisions of the Regulation having been reversed by us. In the premises as aforesaid this appeal is dismissed but in the circumstances there will be no order as to costs.

Social Welfare Association v. Haryana Urban Development Authority
1997 ELD 716
Civil Writ Petition No. 11947 of 1992, decided on 14-10-1996
Justice R.L. Anand

(I) Green Belt- Constitution of India, Article 21 - Once the area has been earmarked for a green belt for the purpose of environment, ecological balance, free from pollution of air - it cannot be allowed to be used by the Khokhawalas or by any other person who tries to put it to use in a different manner under the grab of poverty etc.

(II) Haryana Urban Development Authority - Approved lay out plan clearly establishes that some areas were earmarked for green belts and some areas were earmarked for parking purposes - Initial purpose could only be changed with the approval of the State Government - It becomes the duty of the HUDA to stand by their own commitment - By non conversion of site into a green belt would create ecological imbalance - Directions given to develop the green belt, parking places and to provide basic amenities - Directions given for the removal of all encroachments in the shape of khokhas and other encroachment.

Referred to:

1. AIR 1991 SC 1902, Bangalore Medical Trust v. B.S. Muddappa. 2. (1995-1) 109 PLR 591 (SC), Vrender Gaur v. State of Haryana.

[162] Writ Petitions(C) No. 202 of 1995

3. (1994-3) 108 PLR 630, The Ambala Urban Estate Welfare Society, Ambala City v. Haryana Urban Development Authority.
4. AIR 1986 SC 180, Olga Tellis v. Bombay Municipal Corporation.
5. AIR 1994 SC 988, Union of India v. Hindustan Development Corpn.
6. AIR 1995 SC 922, Consumer Education and Research Centre v. Union of India.

ORDER

R.L. Anand, J.:-(14th October, 1996) - Social Welfare Association, SCF No. 46, Near Bus Stand Pehowa, through its General Secretary Amar Chand and Ashwani Kumar, son of Kulwant Rai, petitioners, have filed the present writ petition earlier against respondents Nos. 1 to 4 but later on respondents Nos. 5 to 7 were added and the prayer contained in the writ petition filed under Articles 226/227 of the Constitution of India is for the issuance of the writ of mandamus directing the official respondents i.e. respondents Nos. 1 to 4) to develop and maintain the space as green belt in the shopping Complex No. 1 & 2 and also provide other amenities as laid down in the enclosed map (P4) and a further direction be issued to respondents No. 1 to 4 to prevent the encroachment of the space meant for these amenities by the illegal Khokhawalas, who have constructed their khokhas in an illegal manner over the area earmarked for green belt in the scheme.

2. The case set up by the petitioners is the plot/house owners/SCF owners of Shopping Complex No. 1 & 2 new Mandi Township, Pehowa, have formed an association known as Social Welfare Association with its office in SCF No. 46, Near But Stand, Pehowa. The petitioner-Association *vide* its resolution dated 31.07.1990 decided to file the present writ petition and has authorised its General Secretary Shri Amar Chand to file the same. Petitioner No. 2 is the owner of SCF No. 44, which is located in the same area and he is filing the present writ petition in his individual capacity, being a plot holder.

3. Father of Petitioner No. 2 *vide* his bid in the auction held on 24.07.1970 purchased SCF No. 44 in the New Mandi Township at Pehowa. Subsequently, the Urban Estates in the state of Haryana came under the jurisdiction of Haryana Urban Development Authority (for short, `the HUDA'). The petitioner approached the HUDA for the transfer of this plot, and the plot was transferred in the name of petitioner no. 2 *vide* Annexure P2. Petitioner No. 2 was to abide by the terms and conditions of the allotment letter and also the provisions of Haryana Urban Development Authority Act, 1977, and the instructions/guidelines and the rules and regulations thereunder. The conditions of re-allotment are contained in Annexure P3. Petitioner No. 1 is the association in which all the plot owners in Shopping Complex No. 1 and 2 of New Mandi Township Pehowa, are members and they have united together in order to see that this area is developed by the authorities concerned and necessary amenities are provided as detailed in the lay out plan. The scheme under which the plots were allotted is laid in/described by the respondent authority in the plan (Annexure P4), which is self-explanatory and speaks of roads, verandah, pavement road, parking places and green belt etc., which are to be use by the plot holders.. The respondent-authorities earmarked the open space between the Shopping

Complex No. 1 and Ambala Hissar Road, which has been shown in green colour in the map, and this is to be developed as green belt. The spots shown in red colour were to be developed as parking places. The respondents on the basis of the plan (Annexure P4) again auctioned more sites in the year 1990 in New Mandi township, Pehowa, and the concerned officers promised at the time of auction that the complex would be developed as laid down in the plan (Annexure P4) but nothing was done. The space meant for being developed as green belt was used by respondent No. 3 as Chara Mandi and respondent No. 4 encouraged the encroachment of the space meant for green belt and parking places by Khokhawalas. The drainage system was not developed, roads, were not constructed, pavement was not constructed and no water supply and electricity was provided. Without providing and of the amenities respondent No. I sent the penalty notices for non-construction, to the plot-holders who had not constructed their plots.

4. Petitioner No. 1 made a representation on 5.12.1990 to respondent No. I bringing to its notice the inaction on the part of the Department by not providing the necessary amenities. In this letter (Annexure P5) it was specifically brought to the notice of the authorities about the pitiable condition of the Complex. It was also brought to the notice of the authorities that in Shopping Complex No. 2 neither electricity nor water supply, nor proper drainage of water had been provide. The illegal encroachment by the Khokhawalas and the Chara Mandi People has not been removed in spite of repeated requests in respect therewith. In spite of the representation given to respondent No. 1 personally, and in spite of the fact that assurance was given, nothing was done. Reminders were given to respondent No. 1. On the reminders some official communication took place between respondents No. 1 and 2 and some action was also taken by the respondents and a few amenities were provided, but the development of Green Belt/Parking Places was not done at all. In fact; slowly and with the passage of time the place mean for green belt and the parking area was encroached by the illegal Khokhawalas and it became a den of anti-social elements, with the active/passive connivance of the respondent -authorities. The matter was brought to the notice of respondent No. 2 about the nuisance created by the Khokhawalas and the trespassers. The authorities were requested to develop this area as green belt, but no action was taken in spite of the letters of request, copies of which have been annexed with the writ petition.

In para No. 12 of the writ petition it has been specifically averred by the petitioners that the respondents have provided the necessary amenities, nor they have developed the space meant for development as green belt in spite of numerous deputations and several written requests; rather the authorities are conniving with the Khokhawalas, by putting the space for some alternative use. In para No. 13 of the writ petition a plea has also been taken that the act of respondent No. 2 would encourage ecological and environmental imbalances and respondent No. 1 is encouraging the illegal encroachment of the open space, which can result in traffic hazards. The indecent acts on the part of the Khokhawalas make it difficult for the young girls and the house-wives to pass through the streets.

5. With the above averments, prayer has been made that the respondents be directed to set up the green belt and the respondents be also restrained from putting the land in question for some other alternative use during the pendency of the writ petition.

6. Notice of the writ petition was given to the respondents. Respondents Nos. 1 and 2 filed a written statement and it was, *inter* alia, pleaded that the matter in issue pertained to the area, which was alleged to be under encroachment by certain khokhawals. In the absence of the persons who are likely to be affected with the outcome of this writ petition, it is liable to be dismissed for their not having been joined as necessary parties. It may be stated here that on his objection, respondents Nos. 5 to 7 were added, who are representing the different Khokhawalas. It was also pleaded by respondents Nos. 1 and 2 that the Khokhawalas, who encroached upon the land in question, filed Civil Writ Petition No. 7789 of 1991, pleading that some similarly situated Khokhawalas have been accommodated on the adjoining land by allotting certain booths/shop sites and that they may accordingly be also accommodated on the land in question. Some of the Khokhawalas, who were on the land owned by the Market committee, Pehowa near Anaj Mandi, have been accommodated by the Market Committee by selling shop/booth sites. C.WP No. 7789 of 1991 was disposed of by the Division Bench of this Court on 10.9.92 by giving directions to the official respondents that in case the writ petitioners of that writ petition apply for allotment of plots, the respondents would consider their request for allotment of plots/sites as has been done with respect to the other Khokhawalas. Pursuant to the aforesaid directions, the matter is under process on the representation of the Khokhawalas. Since there is no other land available with HUDA for accommodating the Khokhawalas and the green belt as per zoning plan cannot be interfered with, it may not be possible to accommodate the Khokhawalas. It was averred by these respondents that it has become difficult for them to remove the Khokhawalas from the green belt, with they have encroached upon. On merits it has been pleaded that the area on the main road as per site plan (Annexure R1 equivalent to P1) was meant to be kept as green belt, it was also admitted in para No. 4 of the reply that in some portion of the green belt on the main road some 'chara trucks' are off loaded but that may be due to inaction on the part of the inhabitants of the shopping centre, who should also ensure that such things do not happen. Also it was averred that the matter regarding removal of encroachment of the green belt is linked with the accommodation of Khokhawalas in accordance with the directions of this Court, already referred to above. It has been specifically pleaded by respondents Nos. I & 2 that there is no other land available with them and for this reason the matter with respect to the accommodation of Khokhawalas could not be finalised. It was also stated that the answering respondents were making all efforts to clear the encroachment but the Khokhawalas brought the matter to the High Court, due to which it has become not possible to clear out the encroachment as there is no land available with the HUDA for allotment to the khokhawala, as demanded in their writ petition. It has been admitted by these respondents that open space/green belt has been left in front of the shopping centre, which has been encroached upon by the Khokhawalas and the matter in this respect is pending consideration. Respondents Nos. 1 & 2 further pleaded that the plot holders are entitled to their area, which was allotted to them, but they have no vested right in respect of the green belt/open space which can be used by the competent authorities in the manner in which consider it appropriate. There is no application of

the principle of promissory estoppel, as alleged by the writ petitioners. With the said main averments, respondents Nos. 1 and 2 have prayed for the dismissal of the writ petition.

7. On behalf of the added-respondents a separate written statement was filed by Shri Sohan Lal, who stated that the present writ petition is a case of bare necessity versus luxury. The Khokhawalas are earning their livelihood. The petitioners are seeking the fulfilment of their desire for development of the land in question in the form of park etc. The khokhawalas would not be able to earn their livelihood in case the claim of the petitioners is accepted and in view of the said circumstances the writ petition may be dismissed. It was pleaded that the added respondents and other, Khokhawalas are doing small business for the last more that 20 years on the site in dispute, to the knowledge of the petitioners and there was no objection on their side. Moreover, respondent No. 4 had been collecting tax from them in the form of The Bazari. The Haryana State Electricity Board has also provided electricity connections to a number of Khokhawalas without any objection. The answering respondents and other Khokhawalas are not to be blamed as they are not at fault under any circumstances. The filing of earlier writ petition, i.e., C.W.P. No. 7782 of 1991, was admitted and it was pleaded that in pursuance of the directions given by the Hon'ble Division Bench of this Court, the Khokhawalas applied to respondents Nos. 1 and 2 for the allotment of shop sites. The matter is under active consideration of the competent authorities. The claim of the answering respondents was genuine. Some of the petitioner have not raised the construction as per the approved site plans and as such they are themselves responsible for the present state of affairs. Some of the plot-holders are facing penal consequences because of their unauthorised construction.

8. No separate written statement was filed on behalf of respondents Nos. 3&4.

9. I have heard Shri Rakesh Gupta, Advocate, on behalf of the petitioners and Shri Rameshar Malik, Advocate, on behalf of the added respondents Nos. 5 to 7. No assistance has been provided on behalf of the respondents Nos. 1 to 4.

10. Learned counsel for the petitioners has invited my attention to the approved plan (P4) and also to the written statement filed on behalf of respondents Nos. 1 and 2, and contended that it is established that the petitioners are the holders of the plots and they have constructed their shops-cum residences. The approved original plan (Annexure P4) clearly establishes that certain spaces were earmarked for the development of green belt and parking areas. The petitioners while paying the price of their plots have also acquired an interest in the spaces earmarked for the purposes of green belt and parking because while claiming the developmental charges and while calculating the price of the plots, the authorities always take into consideration the area which are to be left for the purpose of development, such as roads, parks, green belts etc. It has been pleaded that it is no excuse on the part of respondents Nos. 1 to 4 or on the part of respondents Nos. 5 to 7 to allow the creation of unauthorised khokhas nor the khokhas could be constructed or installed over those sites which have been earmarked for green belt. By installing these Khokhas a nuisance is being caused because the petitioners cannot make proper use of the properties of which they are the full owners. So much so, an imbalance has been created in the

atmosphere with the non-commitment of the obligation on the part of the authorities by not creating a green belt.

11. On the contrary, it has been submitted by Shri Rameshwar Malik that his clients and other Khokhawalas are in existence for the last 20 years to the knowledge of the petitioners and it was never objected by the petitioners for the removal of the khokhas at the time of the purchase of the plots by them and now it is not open for them to seek any directions from the Court regrading the removal of the khokhas and for the creation of the green belt. It is also submitted by Shri Rameshwar Malik that earlier some of the Khokhawalas approached this Court and sought directions against the HUDA to allot sites for the boots, like the other Khokhawalas who accommodated and the High Court gave the directions to consider the representations of such Khokhawalas in order to accommodate them. Shri Malik submitted that any adverse directions, if given by this Court, would seriously hamper interests of the Khokhawalas, who are small businessmen and who are earning their livelihood.

12. After considering rival contentions of the parties, this court has come to the conclusion that the submissions made by Shri Malik are more based on sympathy grounds, rather than on legal premises. It is established on the record that the writ petitioners are the owners of the plots. The approved lay out plan clearly establishes that some areas were earmarked for parking purposes. The initial purpose for which these areas were earmarked could only be changed by the authorities with the approval of the State Government and it is not on the record that the HUDA authorities have obtained the permission from the State Government for the change of the user so as to accommodate the Khokhawalas. It, rather, becomes the duty of the HUDA authorities to stand by their own commitment because when the site was auctioned or allotted to various persons, a categorical undertaking was given that a particular site would be converted into a green belt or would be used for parking purposes. By allowing the persons to put up khokhas in an illegal or unauthorised manner would then amount to encouraging a nuisance and by non-conversion of a site into a green belt would create ecological imbalance, which is not permitted under the law. The added respondents have failed to establish on the record that they are occupying the green belt area under any valid allotment. The HUDA authorities have also not been able to establish that any approval was obtained from the State Government for the conversion of the earmarked spaces. In Bangalore Medical Trust v. B.S. Muddappa and others, AIR 1991 SC 1902, it was held that a writ petition by the inhabitants of the locality is maintainable if their is a conversion of a development scheme by converting a public park into a private nursing home. The Hon'ble Supreme Court also held that the executive of administrative authorities must not be oblivious of the fact that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exercise or of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society are involved. Here in the present case the interests of the plot holders of the scheme are involved. The sites were left for the benefit of the inhabitants of the surrounding areas with a clear commitment on the part of the authorities that it would be converted into a green belt and the authorities cannot show their helplessness by making an excuse that it has been encroached on the

Khokhawalas. It is the specific stand of respondents Nos. 1 and 2 in their written statement that the sites in question were earmarked to be developed as green belt and in these circumstances it was obligatory on the part of the authorities to preserve that area for the said purpose and not to encourage the encroachment or allow any person to encroach the area meant for green belt or parking purpose.

13. Attention of this Court has also been invited to Virender Gaur and others v. State of Haryana and others, (1995-1) 109 P.L.R. 591 (SC), wherein it was held as under:-

> ".....Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contracts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment as whole. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safe-guard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the environment man-made and the natural environment."

In this very citation it was held that once the land having been taken from the citizens for a public purpose to maintain ecology, the Municipality is required to use the land for the protection or preservation of hygiene conditions of the local residents and it cannot be used for any other public purpose. It cannot be used or allotted for building purposes though housing is a public purpose. In the present case once the area has been earmarked for a green belt with a purpose for the preservation of environment, ecological balance free from pollution of air, it cannot be allowed to be used by the Khokhawalas or by any other person who tries to put the use in a different manner under the garb of poverty etc.

14. In the Ambala Urban Estate Welfare Society, Ambala City v. Haryana Urban Development Authority and others, (1994-3) 108 ... PLR 630, it was held that when the petitioners were given the plots as the respondent authorities had not provided the amenities resulting in pollution of environment, directions should be given to the authorities to provide all the amenities so that the "right to life" as guaranteed under the Constitution does not become illusory.

15. Mr. Rameshwar Malik, learned counsel appearing for respondents No. 5 to 7, relied upon Olga Tellis and others v. Bombay Municipal Corporation and others, AIR 1986 SC 180, and submitted that this court can watch the interests of the Khokhawalas in the

eventuality of their removal from the site earmarked for the green belt. Mr. Malik submitted that his clients and other Khokhawalas have also the right to live and in case they are deprived of their livelihood, they would face starvation. Mr. Malik submitted that in spite of the directions given by the High Court, the case of his clients as well as other Khokhawalas has not been considered so far and some directions should also be given to the HUDA authorities or to the marketing Board to dispose of the representations with a specified time by allotting suitable sites, so that his client may be able to run the business. As already observed above, the submissions of Mr. Rameshwar Malik are on moral grounds rather than on legal grounds. In the writ petition filed by the Khokhawalas, in which some directions were given, the plot-holders were not parties. These plot-holders/owners of the booths-cum-flats are basing their claim on a vested legal right provided to them by the authorities when the scheme was carved out and the planning was done. Simply that the added respondents would suffer hardship along with their colleagues, i.e., Khokhawalas, is no ground to reject the relief claimed in the present writ petition. Equally it is true that there is a solemn duty upon this court to watch the directions in the subsequent portion of this judgement. At this stage I have to say that the citation relied upon by the learned counsel for the respondents is not applicable to the facts in hand.

16. Learned counsel for the respondents has also pressed into service Union of India and others v. Hindustan Development Corpn. and others, AIR 1994 SC 988, and my pertinent attention has been invited to paras Nos. 27, 28 and 33-36 thereof. The counsel also relied upon Consumer Education and Research Centre and others v. Union of India and others, AIR 1995 SC 922. With due respect to the learned counsel, all these citations have given the guidelines which may not come to his rescue, keeping in view the peculiar facts and circumstances of the present case. An encroacher cannot defeat the legitimate rights of a lawful owner and the vested rights of the holders of the property which have been acquired by them in a legal manner.

17. In the light of the above discussion, this writ petition is allowed. Directions are hereby given to respondents Nos. 1 to 4 to make concentrated and joint efforts to develop the green belt, parking places and to provide other basic amenities as shown in the approved plan (Annexure P4). Directions are also given to the respondent authorities to take such necessary steps permissible under the law within six months from the date of the passing of this order for the removal of all the encroachments in the shape of khokhas or any other encroachment over the site earmarked for green belt and parking areas. Further directions are given to the authorities not to allow further encroachments in order to complicate the matters.

18. It is further expected from the respondent authorities to give proper respect to the directions given by this court in CWP No. 7789 of 1991, and the respondent authorities would try to accommodate the Khokhawalas on such land as is available to them, so that they may also earn their livelihood in a respectful manner. The authorities can also consider the viability to acquire some land so that these oustees may be accommodated in due course of time. It is also expected that necessary legal action would be taken against the trespassers/encroachers of the green belt area by resorting to legal methods

within the stipulated period referred to above. This Court further expects that due sincere and earnest efforts would be taken by the respondent-authorities for the development of the scheme, which was earlier carved out for the benefit of the plot holders.

19. There will, however, be no order as to costs.

Petition allowed.

South Calcutta Hawkers Association v. Government of West Bengal
1997 ELD 504
F.M.A.T. No. 4119 of 1996, decided on 20-12-1996
B. P. Banerjee and Vidya Nand, JJ.

(A) Constitution of India, Arts. 226, 122 - Jurisdiction - Scope - Committee formed by legislative assembly to tackle problem of street-hawker - Recommendation made by it - Assembly cannot be directed by Court to accept it.

(Para 5)

(B) Constitution of India, Art. 19(1)(g) - Street-hawkers - Hawkers squatting on footpath and making constructions - No action taken by authorities for years - That does not create any right in favour of the hawkers and/or squatters to construct the stalls and structures on the footpath and continue their business from there.

(Para 10)

(C) Constitution of India, Arts. 19(1)(g), 14 - Public street - Nobody can put up stalls and structures on road or pavement - Removal of such structures - At least 24 hours notice should be given to stall holders - Authorities should not discriminate between hawkers of one areas and other.

(Para 15(1))

(D) Constitution of India, Art. 19(1)(g) - Street hawkers - Regulation - State to decide articles that could be sold on pavements - State and Municipal authorities can deny benefit or right to hawkers selling costly luxury goods on pavement.

(Para 15(2))

(E) Constitution of India, Art. 21 – Public street – Use to which it can be put.

The public has a right to pass along the highway for the purpose of legitimate travel. This certainly does not mean that travellers have to be in perpetual motion when he is in pubic street. It may be essential for him to stop sometime for various reasons he may have to alight from a vehicle and pick up friend and collect certain articles and unload goods or has to take some rest after a long and strenuous journey. What is required of him is that the he should not create any unreasonable obstruction which may cause inconvenience to other persons having similar right to pass. He should not

make excessive use of rights to the prejudice of others. Liberty of an individual comes to end when the liberty of another commences.

(Paras 15(4)(9))

(F) Constitution of India, Art. 19(1)(g) - Right to trade - Hawkers - Right to do business while going from place to place - Recognised since long - Right however is subject to proper regulation in the interest of general convenience of the public including health and security considerations.

(Para 15(6))

(G) Constitution of India, Art. 19(1)(g) - Right to trade on street pavements - Cannot be denied on ground that streets are for passing and repassing only - Proper regulation is necessary.

(Para 15)

(H) Calcutta Municipal Corporation Act (59 of 1980), S. 372 – Street hawkers – Eviction – State not enjoined to provide alternative accommodation before eviction – Being welfare State should however frame scheme for rehabilitation of hawker.

(Para 15)

South Calcutta Hawkers Union v. State of West Bengal
1997 ELD 514
No. 18375 (W) of 1996, decided on 3-12-1996
Nripendra Kumar and Bhattcharyya, J.

(A) Constitution of India, Art, 226 – Writ petition claiming to be hawkers earlier decision of single bench holding petitioners to be stall holders and trespassers – Decision not appealed against – Another Single Bench, sitting in coordinate jurisdiction cannot differ with said view – That will be against all norms and judicial discipline.

(B) Constitution of India, Arts. 226, 14-Necessary parties – Petition on ground of legitimate expectation – Certain holders of stall on pavement claiming right to trespassers earlier by Court – To prolong and continue with all illegal and unauthorised act, cannot constitute legitimate exception – Further, residents of city who have a right to continue to use thoroughfares and whose right cannot be curtailed, not given notice under O.1,R. 8 or by public notification – Similar matter pending before another bench and decision awarded – Writ petition is not maintainable.

(Para 3)

State of Tripura v. Sudhir Ranjan Nath
AIR 1997 Supreme Court 1168 (From Gauhati)
Civil Appeal No. 772 of 1997 (arising out of Special Leave Petition (Civil) No. 4863 of 1992), D/-13-2-1997
B. P. Jeevan Reddy and Mrs. Sujata V. Manohar, JJ.

(A) Forest Act (16 of 1927), S. 41- Tripura Transit Rules, R. 3(5) -Export duty Levy of under R. 3(5) on timber/firewood - Invalid.

(B) Forest Act (16 of 1927), S. 41(2) (c) - License fee - Levy of, under R. 3(3) and (4) of Rules - Is regulatory and not compensatory - Not a tax - Not invalid.

C. R. No. 184 of 1990, D/-11-10-1991 (Guahati), Reserved.

Tripura Transit Rules, R. 3.

Constitution of India, Art. 265.

(C)Forest Act (16 of 1927), S. 41 - Tripura Transit Rules, R. 3(2) - Scope -Rule providing for license for removal of timber or firewood from within the State to any place outside the State and also for setting up or establishing a trading depot within State - Is within the four corners of S. 41 -S.76 which empowers State Government to make rules generally to carry out provision of this Act also serve as an authority for said sub-rule.

(Para 16)

(D) Forest Act (16 of 1927), S. 41 - Tripura Transit Rules, R. 3(8) -Validity - Rule empowering State to prohibit export of timber and firewood to cater needs of people of State - Is valid.

(E) Forest Act. (16 of 1927), S. 41- Tripura Transit Rules, R. 3-Validity- R. 3 regulating transit of forest produce is not violative of Art. 301 of Constitution - Nor is it required to comply with requirement of the proviso to clause (b) of Article 304 of Constitution.

Constitution of India, Arts. 301, 304 (b).

(Para 22)

(F) Constitution of India, Arts. 226, 133 - Additional evidence - proceedings/orders relied on by State not produced before High Court or in appeal before Supreme Court for many years - State cannot reasonably ask for more time to produce the same when the matter has come up for final hearing.

(Para 23)

Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority
(1997) 11 Supreme Court Cases 605
A.M. Ahmadi, C.J. and Sujata. V. Manohar, and K. Venkataswami, JJ.

ORDER

1. BY OUR ORDER DATED 10.7.1996 We had Passed an interim order to the effect that construction which has begun at the site but had not proceeded beyond the plinth shall not be permitted to be started till we know the stand of the State of U.P. and Union of India as regards the applicability of the provisions of the Forest (Conservation) Act, 1980 and the Rules made there under. We had also noticed the submissions of the counsel for MDDA that the provisions of the said statute has limited application, in that it prohibits breaking up or clearing of any forest land or portion there of , for the cultivation of tea, coffee , spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants for any purposes other that afforestation excluding any work relating or ancillary to conservation, development, management of forest and the establishment of check - posts etc. The question which this Court is required to consider is whether the area in question is a forest and stands covered under the 1980 Act, to prevent building activity on open areas within the forest. MDDA had then contended that according to its understanding the activity which is not covered under the explanation to section 2 of the 1980, Act is permissible.... The allegations against these 27 parties were that they had raised construction within the forest area in violation of the provisions of the 1980 Act without obtaining clearance from the Central government. So far as State of U.P. and MDDA are concerned they were at that relevant point of time of the opinion that the permission of the Central Government was not required if the building activity did not, in any manner, require felling of trees or causing any harm to the existing trees. This is what is found to have been stated in the letter of the conservator of Forests, Yamuna Circle, dated 13.9.1988.

That is, however, a matter of the past. What is important is that the stand now taken by the State of U.P. as well as MDDA is that in view of Section 2(ii) the clearance from the Central Government was necessary. That provision states that notwithstanding anything contained for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose and the explanation states that non-forest purposes shall mean the breaking up or clearing of any forest land or portion thereof for cultivation of a tea, coffee, spices, rubber palms, oil-bearing plants, horticulture crops or medicinal plants for any purpose other than afforestation but does not include any work relating or ancillary to conservation, development and management of forest. It is, therefore, clear from this provision which has over riding effect on all laws for the time being in force in a State that no State Government or other authority which would include MDDA can make any order without the approval of the Central Government for the user of any forest land or any portion thereof for any non-forest purpose as explained by the explanation thereto. **The term "forest land" therefore, has to be understood as including an extensive track of land**

covered with trees and under growth, sometimes intermingled with pasture, i.e., it will have to be understood in the broad dictionary sense. So understood any area which the State Act considers to be a forest and is governed under that law will also be subject to section 2(ii) of the 1980 Act. Viewed in this light, many land which the State of U.P. by notification declares to be a forest would be governed under section 2(ii) of the 1980 Act.

2. Mr. Ahmad, the learned ASG appearing for MDDA, very fairly stated that on a true construction of Section 2(ii) of the 1980 Act before permitting any non-forest activity it was required to obtain the prior approval of the Central Government. Mr. Sehgal, the learned counsel for the State of U.P. did not contest this proposition. That being so it is obvious that if MDDA or the State Government granted permission to the user of any area notified and declared to be a forest area under the U.P. Private Forest Act, 1948 without obtaining the prior approval of the Central Government, that was prima facie in violation of Section 2(ii) of the 1980 Act. The question then is to ascertain what non-forest activity has been permitted by MDDA or the State of U.P. without the prior approval of the Central Government. **Any building activity permitted within the forest area would certainly be a non-forest activity, which requires the prior approval of the Central Government.** We are also told that residents of Mussoorie have applied for permission to use some portions of the forest area for building purposes but MDDA has not taken any decision thereon. That is what the association of estate owners in Writ Petition No. 469 of 1996 complains of. In the circumstances we think it appropriate to give the following directions:

1. The State of U.P. as well as the MDDA will enlist cases in which they gave permission to make use of any forest land for non-forest purposes without seeking the prior approval of the Central Government. All those cases will be forwarded to the Central Government for seeking ex-post facto approval in the matter, which will be considered in accordance with the Rules framed under the 1980 Act. While examining the question regarding grant of ex-post facto approval, the Central Government will also enquire into the matter whether these permissions were granted on extraneous considerations they will try to identify the officer/person responsible for the same and also ascertain if the action of that person amounts to an offence under any provision of law and if yes, to take consequential action.

2. All applications pending with the State Government or MDDA seeking permission to use forest land for non-forest purposes shall be processed under Section 2(ii) of the 1980 Act read with the Rules framed thereunder. This would be necessary where the State Government or MDDA is of the view that permission should be granted subject to prior approval by the Central Government. The said order of this Court will operate so long as prior approval of the Central Government is not obtained.

3. We are told that the Central Government has also issued directions to the State Government to take action against the officers responsible for granting permission without obtaining the prior approval of the Central Government.

That process may continue but that may not cover cases where the permission was granted for extraneous considerations. That is the reason why we have directed that the Central Government will bear this aspect in mind also while dealing with the First category of cases where permissions were granted and non-forest user has taken place without the prior approval of the Central Government.

4. As this is an urgent matter we would expect the State Government, MDDA as well as the Central Government to swing into action immediately so that an early end can be put to the present writ petitions.

5. List these matters after 10 weeks.

T.N. Godavarman Thirumulpad v. Union of India
AIR 1997 Supreme Court 1228
Writ Petition (Civil) No.202/95 with Writ Petition (Civil) No. 171/96; Decided on 12-12 1996
J.S. Verma and B.N. Kirpal, JJ.

(A) Forest (Conservation) Act (69 of 1980), S. 1 - Applicability - Act is enacted to check deforestation - Applies to all forests irrespective of nature of ownership or classification thereof - Word 'forest' - To be understood as per its dictionary meaning.

(Para 4)

(B) Forest (Conservation) Act (69 of 1980), S. 2 - Forest land - Not only includes forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

(Para 4)

(C) Forest (Conservation) Act (69 of 1980), S. 2 - Non-forest activity - Running of Saw Mills of any kind including veneer or ply-wood mills and mining - Are non-forest activities - For doing such activity in forest prior permission of Central Govt. is necessary - All states directed to ensure total cessation of any such unapproved activity forthwith.

(Para 5 I/1)

(D) Forest (Conservation) Act (69 of 1980), S. 2 - Forest of Tirap and Changlang in Arunachal Pradesh - Felling of any kind of tress - Banned - Saw, veneer and ply-wood mills in Tirap, Changlang and in Assam directed to be closed.

(Para 5 I/2)

(E) Forest (Conservation) Act (69 of 1980), S. 2 - Forest - Felling of tress banned - Except as per working plan of State Govt. - Movement of cut trees from North-Eastern States totally banned with certain exceptions.

(Para 5 I/3)

(F) Forest (Conservation) Act (69 of 1980), S. 2 - Forest conservation - States

directed to constitute expert committees - For identifying forests, to access sustainability of State forests qua saw mills and timber based industries and to oversee compliance of order of Supreme Court.

(Para 5 I/5, I/7, I/9)

(G) Forest (Conservation) Act (69 of 1980), S. 2 - Forest conservation - Specific directions for States of J & K, State of H.P., Hill Region of U.P. and W.B., and T.N. issued.

(Para 5 II, III, IV)

(H) Forest (Conservation) Act (69 of 1980), S. 2 - Conservation of forest - Saw mills and wood based industries - Directed to be closed by interim order of Supreme Court - Employees of such mills/industries to continue to receive full emoluments despite closure - Employees not be retrenched or removed from service.

(Para 7)

Cases Referred:	**Chronological Paras**
(1996) W.P. (C) No. 749 of 1995, D/-29-11-1996 (SC) Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority	4
AIR 1989 SC 594: 1989 Supp (I) SCC 504	4
AIR 1987 SC 1073: (1987) I SCC 213	4
AIR 1985 SC 814: (1985) 3 SCC 643 (Expln.)	4

ORDER

In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all them. We have heard the learned Attorney General for the Union of India, learned counsel appearing for the States and the parties/applicants and, in addition the learned *Amicus Curiae,* Shri H.N. Salve, assisted by Sarvashri U.U. Lalit, Mahendra Vyas and P.K. Manohar. After hearing all the learned counsels, who have rendered very able assistance to the court, we have formed the opinion that the matters require a further in-depth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel, and, therefore, we defer the continuation of this hearing for sometime to enable the learned counsel to further study these points.

However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the learned Attorney General and the other learned counsel on these aspects.

It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short the 'Act') and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect

of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance: and therefore, the provisions made therein for the conservation of forest and for matters connected herewith must apply to all forests irrespective of the nature of ownership or classification thereof. *The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily 'recognized forests', whether designated as reserved, protected or otherwise for the purpose of Section 2(1) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.* This aspect has been made abundantly clear in the decisions of this court in *Ambica Quarry Works v. State of Gujarat* (1987 (1) SCC 213). *Rural Litigation and Entitlement Kendra v. State of U.P*. (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in W.P. (c) No. 749/95 *(Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and Ors.). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi and Ors.* (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct as under:-

I. GENERAL

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. *In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980.* Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the Sate of Arunachal Pradesh, there would be a complete ban, on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. *All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms. from its border, in Assam, should also be closed, immediately*. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. *The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by* the *Central Government.* In the absence of any working plan in any particular state, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. *There shall be a complete ban on the movement of cut trees and timber (or veneer) from any of the seven North- Eastern States to any other State of the country either by rail, road or water-ways. The Indian Railways and the State Governments are directed to take all measure necessary to ensure strict compliance of this direction.* This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private Plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an expert committee to:
   (i) Identify areas which are 'forests' irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest;
   (ii) Identify areas which were earlier forests but stand degraded, denuded or cleared; and
   (iii) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months file a report regarding:-
   (i) the number of saw mills, veneer and plywood mills actually operating within the state, with particulars of their real ownership;
   (ii) the licensed and actual capacity of these mills for stock and sawing;
   (iii) their proximity to the nearest forest;
   (iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:
   (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
   (ii) the number of existing saw mills which can safely be sustained in the State;
   (iii) the optimum distance from the forest, qua that state, at which the saw mill should be located.

8. The Expert Committees so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another senior officer to oversee the compliance of this order and file status reports.

II. FOR THE STATE OF JAMMU & KASHMIR

1. There will be no felling of trees permitted in any 'forest' public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu & Kashmir and in such plantations, felling will be strictly in accordance with law.

2. In 'forests', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu & Kashmir Wild Life Protection Act , 1978 or any other law banning such felling or removal of trees.

3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS officer posted in the State of Jammu & Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation (as Member secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased any dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.

4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the THEIN Dam.

5. All timber obtained, as aforesaid or otherwise, shall be utilized within the State, preferable to meet the timber and fuel wood requirements of the local people, the Government and other local institutions.

6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D. Railways and Defence. Any such movement for such use will:-

   (a) be effected after due certification, consignment – wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources: and

   (b) be undertaken by either the Corporation itself, the Jammu & Kashmir Forest Department or the receiving agency.

7. The State of Jammu & Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D. Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.

8. No saw mill, veneer or plywood mill would be permitted to operate in this state at a distance of less than 8 kms. from the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL.

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest', and which has not been converted from an earlier 'forest'. This ban will not apply to permits granted to the right holders for their *bona fide* personal use in Himachal Pradesh.

2. In a 'forest', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or, any other Act banning such falling or removal of trees.

3. For this purpose, the State Government is to constitute an expert committee comprising a representative from MoEF , a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees and felled and removed are in accordance with this norms.

4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

IV. FOR THE STATE OF TAMIL NADU

1. There will be a complete ban on felling of trees in all 'forest areas'. This will however not apply to:-

   (a) trees which have been planted and grown, and are not of spontaneous growth, and

   (b) are in areas which were not forests earlier but were cleared for any reason.

2. The State Government, within four weeks from today, is to constitute a committee for identifying all 'forests'.

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

   (a) The felling of shade trees in these plantations will be-

      (i) limited to trees which have been planted, and not those which have grown spontaneously;

      (ii) limited to the species identified in the TANTEA report;

      (iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and;

      (iv) under the supervision of the statutory committee constituted by the State Government.

   (b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of Shade trees, and the further action for felling them will be as per that report. Meanwhile, eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

   (c) The state Government is directed to ascertain and identify those areas of the plantation which are a 'forest' and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas.

   (d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of 'forests'.

5. As far as the trees already cut, prior to the interim orders of this court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam Land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one time measure.

6. Insofar as felling of any trees in Janmam Lands is concerned (whether in plantations or otherwise) the ban on felling will operate subject to any order made in the Civil Appeal Nos.367 to 375 of 1977 of C.A. Nos. 1344-45 of 1976. After the order is made on the I.As pending therein, if necessary, this aspect may be re-examined.

7. This order is to operate and to be implemented notwithstanding any order at variance, made or which may be made by any Government or any authority tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue until further order. This order will operate and be

complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

We are informed that the Railways authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to be use of wood.

I.A. Nos.7, 9, 10,11,12,13 and 14 in Writ Petition (civil) No.202 of 1995 and I.A. Nos. 1,3,4,5,6,7,8, & 10 in Writ Petition (civil) No.171 of 1996 are disposed of accordingly.

T.N. Godavarman Thirumulpad v. Union of India
Interlocutory Application 15-59 in Writ Petition (Civil) No. 202/95; Decided on 11-02-1997
J.S.Verma and B.N. Kirpal, JJ.

No eviction be made from any land or building containing machinery and equipments etc. on the basis of the court's order dated 12-12-1996 – No disturbance in the existing status – Where the Government of Madhya Pradesh to file replies against the allegations made, supported by an affidavit of the Chief Secretary or officer of equivalent rank – Within one week.

Madhya Pradesh – Bastar District – State Government directed to ensure that no trees are felled.

ORDER

All the State Governments are required to file their response before the next date of hearing.

Learned Attorney General stated that there is no particular difficulty felt for the present by the Central Government in implementation of this court's order dated 12-12-96. He added that on receipt of reports from the State Governments before the next date, namely, 25-2-97, the Central Government would further examine the matter and make the necessary submissions thereafter.

Learned counsel appearing for some of the applicants submitted that direction be given to the effect that no eviction may be made from any land or building containing machinery and equipment or any other facilities for housing, school or dispensary etc., in the meantime on the basis of this court's order dated 12-12-96. We consider it appropriate to do so. *It is accordingly directed that our earlier order dated 12-12-96 is not to be construed to mean that it directs any such eviction in the meantime having the consequences of disturbing the existing status.*

In view of the serious allegations made in the I. A. which are supported by documents including copies of letter written by the Collector of District Bastar to the State Government, we direct that the reply be filed by the Government of Madhya Pradesh within a week. The reply is to be supported by the affidavit of the Chief Secretary to the State Government or an Officer of an equivalent rank conversant with the facts of the case. The affidavit must also mention the action taken by the State Government in this matter. In the facts and circumstance giving rise to the filing of this I. A. and the nature of allegations contained therein. We direct the State Government to ensure that no trees are felled in the forest of the Bastar District, even under any permission granted by the local administration until further orders.

T.N. Godavarman Thirumulpad v. Union of India
Writ Petition (Civil) No. 202/95 with Writ Petition (Civil) No. 171/96, Writ Petition (Civil) No. 897/96; Decided on 04-03-1997
J.S. Verma and B.N. Kirpal, JJ.

Constitution of High Power Committee to oversee the implementation of the Court's order in North-East – Powers and Functions of Committee Stipulated.

Clarification – Order dated 12-12-1996 not to apply to minor forest produce including bamboos etc.

Meghalaya – Directed to file affidavit with full and complete details about forest dependence.

Maharashtra & Uttar Pradesh – All unlicensed saw mills, veneer and plywood industries to be closed forthwith.

Mining Matters – Directions issued.

General Directions – Order dated 12-12-1996 to be obeyed by Union and State Government notwithstanding any order or direction passed by any Court or Tribunal to the Contrary.

Autonomous District Council – Orders of this Court including order dated 12-12-1996 to apply.

ORDER

1. After hearing Mr. Harish N. Salve, the Learned *Amicus Curiae*, Learned Attorney General and Learned counsel appearing for the States and other parties in these matters, it is clear that no substantial variation in the earlier order dated 12-12-1996 is required to be made as an interim measure: and that some minor variation to the extent indicated hereinafter is all that is required to be done at present.

We are satisfied that there is need to constitute a High Power Committee to oversee the strict and faithful implementation of the orders of this court in the North Eastern Region and for certain ancillary purposes. Accordingly we direct as under:-

(i) There shall be a Committee as under:-

(a) Shri T. V. Rajeshwar, Chairman

(b) Shri R.N. Kaul, Retd, I. G. of forests Member and

(c) One representative nominated by the Ministry of Environment and Forest (MoEF) Member Secretary Shri T. V. Rajeshwar and Shri R. N. Kaul have given their consent for the purpose.

(ii) This Committee shall oversee preparation of inventory of all timber in all forms (including timber products).

lying in the forest or in transit depots, and

(a) lying in mill premises.

The inventory should wherever possible, indicate the origin and source of the timber.

The committee may for this purpose select suitable persons who would be made available by the concerned State Government at its request.

As far as possible, such inventory should be prepared within eight weeks from today.

(iii) The Committee may, if it considers appropriate permit the use or sale of any part of the timber or timber products. Any sale shall be affected through the Forest Corporation of the State under overall supervision of the committee.

(iv) The net sale proceeds after deduction of the transaction related costs and payment of wages to the labour and staff shall be deposited by or through the Forest Corporation Forest Department. in designated account.

The modalities will be worked out by the committee.

(v) The Committee may, through the *Amicus Curiae*, apply for such directions from time to time as it considers appropriate.

(vi) The MoEF will make available as far as possible within a week suitable office space and provide secretarial and all other related facilities in Delhi (including local transport and telecommunication) befitting the stature of the committee.

2. The MoEF will make arrangements for the meet expenses of travel of the Committee. All arrangements for stay etc, of the Committee (outside Delhi) as may be necessary, would be the responsibility of the State Government concerned.

The Assam Government will make similar office and other facilities available in Gauhati.

It is for the sake of convenience at this stage that the Central Government and the State Government are being directed to make certain payments and meet all the expenses. However, the question of liability for payment of these amounts would be considered at

the final hearing and suitable directions for the purpose given at that stage indicating the principle for determining the liability for making the payment.

It is clarified that the directions contained to the order dated 12-12-1996 and this order would not apply to minor forest produce, including bamboos etc.

3. The State of Meghalaya has asserted in its affidavit that a significant quantity of timber is required for use in the State itself by the rural tribal population. It has also asserted that there is a loss of revenue to the State Government on account of restrictions placed by the order of 12-12-1996: and a large number of people of the State have been deprived of the employment. The State is directed to file an affidavit with full and complete particulars of:

(i) the quantity of timber which comes from its forest for use by the rural tribal population, the extent to which it is made available to the rural tribal population including the terms on which it is so made available.

(ii) the revenue derived by the State by way of royalty from the minerals, mines and forest areas, purchase tax on export of timber ,sale value of timber drawn from the Government forests and the extent and quantity of such sale and the manner of sales:

(iii) the number of wood-based industries within the State and the number of persons employed in such industry.

4. All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission / licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission / licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.

5. A total of 5322.97 cubic meters of timber presently held by the private parties in their stock purchased from the J & K State Forest Corporation as per Annexure D to the Affidavit dated 18th February, 1997 filed on behalf of the Government of J & K is permitted to be moved; and any such movement be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources (as per para 6(a) at page 11 of the earlier order date of 12-12-1996). The stocks of kail, chir and fir in the depots of the Forest Corporation are permitted to be disposed of by the Forest Corporation in any manner which would include movement and disposal of the same even outside the State as per the requirements as indicated in above said para 6(a). All this would be done by the Forest Corporation itself.

The above directions are to be read along with those contained in the order dated 12-12-1996.

MINING MATTERS

We direct that-

1. Where the lesser has not forwarded the particulars for seeking permission under the FCA, he may do so immediately.

2. The State Government shall forward all complete pending applications within a period of 2 weeks from today to the Central Government for requisite decisions.

3. Applications received (or completed) hereafter would be forwarded within two weeks of their being so made.

4. The Central Government shall dispose of all such applications within six weeks of their being received. Where the grant of final clearance is delayed, the Central Government may consider the grant of working permissions as per existing practice.

GENERAL DIRECTIONS

It is made clear that the order passed by this Court in these matters, including the order dated 12-12-1996 and the present order shall be obeyed and carried out by the Union Government as well as the State Governments, notwithstanding any order or direction passed by a court, including a High Court or Tribunal to the contrary.

We further direct the Registrar General to communicate the order dated 12-12-1996 as well as the present order to the Registrar of all the High Courts to ensure strict compliance. *It is also clarified that the orders passed by this court including the order dated 12-12-1996 and this order will apply to all Autonomous Hill Councils in the North – Eastern States as well as the Union Territories.*

It is made clear that all the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the State Governments. An efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these matters.

T. N. Godavarman Thirumulpad v. Union of India
Interlocutory Application 60 of 1997 in Writ Petition (Civil) No. 202/95; Decided on 05-03-1997
J. S. Verma and B. N. Kirpal, JJ.

Illegal felling in Bastar District- Lokayukta of the State to make inquiry into allegations – Registrar (Judicial) of state to furnish material documents to Lokayukta forthwith.

ORDER

Taken on Board.

The allegations made in the applications are of a serious nature suggesting complicity of not only the then Commissioner of Bastar Division Shri Narayan Singh but also of several other highly placed persons in the State Administration. The Affidavit filed on behalf of the State of Madhya Pradesh by a Secretary to the State Government also admits certain facts which provide the foundation for some of the allegations made in the application. There is thus a strong prima facie case appearing from the facts admitted on behalf of the State Government itself to suggest serious irregularities committed by some persons in the State Administration or those having close proximity with some men in power in the State. In our opinion, such a situation calls for a prompt impartial inquiry into these allegations to enable the court to decide the nature of the orders required to be made on this aspect of the matter in the present proceeding. This is necessary in public interest.

In these circumstances, *we request the learned Lokayukta of the State of Madhya Pradesh to make an inquiry into these allegations either himself or in any other manner he may does fit his expeditiously as possible.* On receipt of the report of the learned Lokayukta of the state of Madhya Pradesh, the matter would be taken up for further consideration.

The Learned *Amicus Curiae* as well as the learned counsel for the State of Madhya Pradesh may furnish to the Registrar (Judicial) all documents which are required to be transmitted to the learned Lokayukta of Madhya Pradesh. A copy of this IA together with the affidavit field on behalf of the State of the Madhya Pradesh and other material documents supplied by learned counsel together with a copy of this order be sent by the Registrar (Judicial) to the Learned Lokayukta forthwith.

It is made clear that the earlier orders made in this behalf continue until further orders.

T. N. Godavarman Thirumulpad v. Union of India
Writ Petition (Civil) No. 202/95 under Article 32 of the Constitution of India
T. N. Godavarman Thirumulpad v. Union of India
Writ Petition (Civil) No. 897/96
T. N. Godavarman Thirumulpad v. Union of India
Decided on 22-04-1997
Sujata V. Manohar and B. N. Kirpal, JJ.

Affidavit of the State not very clear – State directed to file comprehensive statement of the past activity and the future programme to tackle degradation of forest.

Research Foundation for Science, Technology and Ecology and Bombay Environmental Action Group to file affidavits through *Amicus Curiae.*

Action against Forest Officers- States directed to file affidavit on action against erring officials.

Arunachal Pradesh – Further directions issued.

ORDER

In respect of most of the State, if not all, it is not clear from their affidavits as to what is the exact programme of that state in respect of the subject matter of these writ petitions and the extent to which steps have already been taken to do the needful. In order to deal with the several I.As which have been filed seeking interim directions/ modification of the interim directions already made *it is necessary to have comprehensive statement of all the States about the past activity and their future programme to tackle the problems and prevent degradation and degeneration of the forests.* After hearing the learned Attorney General, the *Amicus Curiae* and the Learned Counsel for the several States, it does appear that the time is needed by the States to file a comprehensive statement as above and the matters can be heard only thereafter. The learned Attorney General submits that the Central Government also involved in performance of the necessary exercise including the study required for the formulation/revision of the national Forest Policy and that this exercise will take some more time to complete. We are also inferred by the learned *Amicus Curiae* that the report of the Rajeshwar Committee is likely to be submitted by the end of this month. The common request of all the learned counsel including the learned Attorney General of that the hearing of these matters be deferred for the time being to enable completion of the exercise by all the concerned authorities so that the court is required to have and directs only these aspect of these matters which therein after heard. The exercise has been successfully decided.

They also submitted that hearing for the purpose of some interim directions alone may be required but that too may be done early next month.

All the States are required to file the comprehensive statement as above on or before 3rd May, 1997.

In order to save time, Shri Rajeshwar is requested to handover his Report to the learned *Amicus Curiae* Shri Harish N. Salve who would then furnish copies of the same to the learned Attorney General and counsel for the States concerned.

Research Foundation for Science Technology and Ecology and Bombay Environmental Action Group are permitted to file their affidavits through the *Amicus Curiae*.

There are certain further directions which may be required to be given. These are as follows:

(a) the States were required to file an affidavit on the action taken against erring forest officials in the last 5 years.

(b) it may be clarified that any person giving any false information to any of the committees appointed by this court would be guilty of perjury as well as be liable to be hauled up for contempt of court.

1. There has been some modification by way of dilution of the guidelines under the Forest (Conservation) Act, 1980. The Central Government, be asked to file an affidavit regarding the current state of the guidelines.

2. In relation to Arunachal Pradesh, the following further directions are suggested.

ARUNACHAL PRADESH

(a) the ban on felling of trees as already imposed shall continue.

(b) as directed by the HPC, the State Government, shall take all measures necessary to bring the felled timber lying in the forest to the depots, and have it stacked.

(c) after the process of investigations is over, the HPC may permit saw mills and other wood based industry to utilize their own legitimate stocks of timber for conversion into finished produce. Such finished produce may then be disposed of by these mills under supervision of the HPC and the State forest department. The permission granted by the HPC to these mills shall be on suitable terms to ensure that no mal practice occurs in the future, and the mills shall be required to file and undertaking to comply with such terms, any breach thereof having the same consequence as a breach of the order of the Hon'ble Court. The HPC also may order the closer of any mill if it has reason so to do.

(d) after the inventory of the felled timber gathered at the depots is complete, the HPC may permit sale of such rounded timber for utilization within the state to the extent it is from a lawful source. The movement of rounded timber within the state as well as the movement of finished timber within and without the state shall be under transit passes – the issuance and disposal of which will be under the overall supervision of the HPC.

(e) the Central Government should endeavour to provide adequate forces as may be sought by the state for effective enforcement of law in the forests.

(f) no person other than a Forest Officer or Police Officer or any other official of the State Government on official duty shall be permitted to enter the reserved forest except in accordance with permission in writing issued by the PCCF.

T.N. Godavarman Thirumulpad v. Union of India
Interlocutory Application 225/95 in Writ Petition (Civil) No. 202/95; Decided on 16-12-1997
B. N. Kirpal and V. N. Khare, JJ.

Arunachal Pradesh – Illegally felled timber to be auctioned under supervision of High Power Committee – Modification of Order relating to movement of timber

outside north east modified only to this extent – Modalities for sharing of sale proceeds.

Madhya Pradesh – Bastar District – Interim report of Lokayukta –Misuse of authority by Forest Ministers of Madhya Pradesh – Chief Secretary directed to file affidavit stating action if any, against concerned officials.

Uttar Pradesh – Large scale mining in forest area in Mirzapur District and Doon Valley – Application taken on Board – Committee constituted to ascertain facts.

Madhya Pradesh – Copy of report of Lokayukta to be sent to Director Central Bureau for Investigation.

ORDER

Heard Shri Anil Dewan, learned counsel for the applicant M/s. Wimco Limited, Attorney General and Mr. Harish Salve, *Amicus Curiae*. The applicant company is permitted to close their operation in Dhubri factory in Assam in accordance with law applicable in this behalf. IA stands disposed of accordingly.

IA 108/97

No further order on this IA is necessary. It, therefore, stands disposed of.

IA 260/97

Heard Shri Raju Ramchandran, learned counsel for the State of Arunachal Pradesh, the learned Attorney General for the Union of India and Mr. Harish Salve, learned *Amicus Curiae.* There are several relief claimed in this IA. One of them relates to illegally felled timber which is lying in the depots of the State and elsewhere within the forest areas. The other relief relate to the legally felled timber saw timber and veneer. We are of the view that at this stage an appropriate order should be made only in respect of the illegally felled timer lying anywhere within the forest area including the depots. The questions relating to the so-called legally felled timber, etc. shall be considered later after the exercise with regard to utilization / disposal of the illegally felled timber has been completed. This order is, therefore, confined only to the utilization / disposal of the illegally felled timber.

(Arunachal Pradesh Ownership of Illegal Felled Timber)

It is clear that the ownership of all illegally felled timber within the forest area including that in the depots is of the state of Arunachal Pradesh and, therefore, the proceeds thereof must go to the State. In order to fetch a proper price for the same, it is necessary to make suitable directions for the disposal utilization of all such timber in a manner so that the proceeds thereof are available to the state Government. *We, therefore, direct that all the illegally felled timber within the forest area including the depots would be sole by public auction at Delhi under the supervision of the High Powered Committee (HPC) after permitting inspection of the same at the site to the intending bidders.* The modalities for the performance of this exercise would be laid down by the HPC and the entire exercise of permitting inspection of the timber and its auction, after due advertising, would be under the supervision of the HPC. We also direct the State of Arunachal

Pradesh and Union of India would render full assistance to the HPC in the performance of this exercise including the facilities for the removal of the purchased timber by the buyers thereof. *The prohibition against movement of timber outside the North East Region enforced by the earlier orders and modified only to this extent. The total sale proceeds of the felled timber would go to the State of Arunachal Pradesh which will realize one half of that amount for raising plantation by local tribal population within the State so that this part of the amount would be utilised only for the purpose of forestry and assistance to the local tribal population. The remaining one half of the total sale proceeds, after deduction of the expenses therefrom, would go to the State welfare for other developmental activities in the State.* On getting a report from HPC of the completion of this exercise the IA shall be taken up for further orders.

The other Northern-eastern States which want any order to be used in respect of the timber in their State may respond to the statements of the HPC made in relation to it and also approach the HPC with their request to enable HPC to give its comments thereon. The request so made by the concerned North-eastern States together with the comments of the HPC would then be considered for issuing the appropriate directions, if any. The State, desirous of seeking any direction in this behalf, should approach the HPC within a week. The HPC is requested to give its comments till 5th January, 1998.

IA NOS. 71, 79, 104, 105, 107, 113, 121, 166, 261/97

This interim report of the Lokayukta of Madhya Pradesh clearly states that six trees in "Bare Jhar Ka Jangal" have been permitted to be felled for the benefit of one person, namely, Shri Viren Netam younger brother of Shri Arvind Netam, former Minister of the State Government and Shri Shiv Netam, Forest Minister, Government of M.P. particulars of the benefit derived by the Netam family have also been indicated. The report suggest that this happened because of the misuse of authority by these persons. We consider it expedient to know from the State of M.P. the action, if any taken by it against these persons and the others named in the report including Shri Narayan Singh, Former Commissioner of Bastar and some other Government officials who facilitated the illegal felling of trees in the Bastar Forest. We, therefore, direct the Chief Secretary of the State to state on affidavit the steps, if any taken by the State Government in this behalf. The affidavit be filed within two weeks. A copy of the report to be furnished by the Registry to the standing counsel for the State of M.P. Copies thereof be also furnished to the learned Attorney General and *Amicus Curiae.*

ORDER

I. IA of 1998 in WP (C) No. 202/95

Taken on Board

Learned *Amicus Curiae* stated that he has been informed by Shri A.M. Khanwilkar, advocate that he himself saw large scale mining in forest area and reckless denuding of forests in villages Atri, Banjari and Panwari under Police Station Haia in District

Mirzapur, which is in flagrant violation of the orders made by this Court from time to time.

(Appointment of Committee on Illegal Mining)

Shri Anand, Secretary, Ministry of Environment, who is personally present, also informs us of illegal mining activity continuing in Doon Valley in spite of the orders made by this Court to prevent that illegal activity. These are matters which require urgent directions after ascertaining full facts. For this purpose we appoint a Committee consisting of Shri A. M. Khanwilkar and Shri Gopal Shing, advocates of this Court and an officer of the Ministry of Environment be nominated by the Secretary. The Committee is requested to immediately visit those villages in Mirzapur District as well as the Doon Valley and to submit its report at the earliest. In the first instance, the expenses for the visits of the Committee would be incurred by the Government of India which will also make all the necessary arrangements. The directions to the Government of U. P. to pay the amount so spent would be made latter. The District Magistrate and the Superintendent of Police will render all assistance needed by this Committee for the performance of its task.

If the above allegations be true, it is indeed surprising that the Government U. P. has not taken the preventive action so far. The Government of U. P. must report on affidavit of an officer of the rank not lower than Secretary to the Government, the factual position as well as the action, if any, taken by the Government of U.P. so far. This be done by 12-1-1998.

II IA .....of 1998 in WP (C) No. 202/95

Taken on board

Learned *Amicus Curiae has* moved this application wherein it is suggested that each of the States and the Union territories furnish the information called for in the questionnaire filed along with the application. We think it is necessary that this is done. Accordingly, it is directed that each of the States and the Union Territories furnish the information as required in the questionnaire within two months.

III. IA 60 of 1997 in WP (C) No. 202/95

Taken on board

Learned *Amicus Curiae* prayed for directions being issued as mentioned in the application. Shri G. L. Sanghi, learned counsel for the State of Madhya Pradesh has no objection to grant of prayers (1) and (3) in the IA while the matter covered by prayer (2) is left by Government of Madhya Pradesh to the discretion of this Court for making such orders as it may consider appropriate. Shri Sanghi also stated that the Government of Madhya Pradesh has been actively pursuing the matter and is doing all that is necessary in the light of the report of the Lokayukta of Madhya Pradesh, but because of certain constraints, it has not been possible for the State Government to do all that is necessary in

this behalf. Shri Sanghi state on instructions that the Government of Madhya Pradesh has no reservation in the matter and is committed to a full investigation into the matter identification of all the culprits and necessary action including prosecution of the culprits so identified.

We are also informed that the Board of Revenue of Madhya Pradesh is seized of the matters in which validity of the transactions of transfers by tribals is under consideration so that the question of restoration of the land to the original owner (tribal) on annulment of those transactions would depend on the outcome of those matters. Shri Sanghi stated that the appropriate procedure would be adopted to request the Board of Revenue to hear and decide all those matters at the earliest so that necessary action could be taken by the State Government as a follow up measure in the interest of the tribal land owners who have been duped in this manner by the transferees in contravention of the statutory provisions. In view of this statement made by learned counsel for the state of Madhya Pradesh, no order at this stage is called for on prayers (1) and (3) in the application. The same would be taken up for consideration after decision is rendered by the Board of Revenue in those matters. The Government of Madhya Pradesh will report to this Court the decision of the Board of Revenue as soon as it is rendered.

Prayer No. (2) in the application is for a direction for investigation to be made by the Central Bureau of Investigation (CBI) in the facts and circumstance of this case. We take note of the fact that the State Government in spite of this desire as reported to us, has been unable to deal with the matter expeditiously and have it investigated in the manner required in spite of the report of the Lokayukta of Madhya Pradesh. In these circumstances, to uphold the rule of law, it is necessary that investigation into the entire matter covered by the report of the Lokayukta of Madhya Pradesh be made by the CBI and that the necessary follow up action including prosecution of the persons found involved should be made by the CBI. In view of the stand taken by the Government of Madhya Pradesh and its obvious inability to complete the task expeditiously, we make this direction and require the CBI to undertake this and complete it expeditiously.

A copy of the report of the Lokayukta of Madhya Pradesh and the connected papers be sent to the Director, CBI with a copy of this order for prompt action.

Liberty is granted to the Director, CBI to seek any further directions which may be found necessary.

Tamil Nadu Aqua culturists Federation v. Union of India
1997 ELD 422
Writ Petition (Civil) No. 140 of 1997, decided on 29-7-1997
Suhas C. Sen and S.P. Kurdukar: JJ.

Environment (Protection) Act 1986 – Shrimp Culture – Notification dated 19.2.1991 – Held these writ petitions being an attempt to get rid of judgment in S. Jagannath v. Union of India and Others, must be dismissed in limine – Case was decided after wide publicity and hearing all shrimp/aqua farms and so plea of writ petitions about not receiving notice rejected – Writs not maintainable – Held further that validity of notification of 19.2.91 not challenged at that time and cannot be agitated now – whether aqua farming is an industry and which will be examined in the pending Review Petitions.

Tarala V. Patel v. Union Territory of Pondicherry
1997 ELD 425
Kuldip Singh, S. B. Majmudar and S. Saghir Ahmad, JJ.

Environment – Pondicherry Distiller – Pondicherry Government files an affidavit stating that the Distillery will be relocated – Court orders that the said Distillery shall not operate from the present site beyond April 30, 1997 irrespective of the fact whether the new Distillery has started functioning or not.

Vishaka v. State of Rajasthan
AIR 1997 Supreme Court 3011
Writ Petition (Criminal) Nos. 666-70 of 1992, D/-13-8-1997
J. S. Verma, C.J.I, Mrs. Sujata V. Manohar and B. N. Kripal, JJ.

Constitution of India, Arts. 14, 19, 21, 32 - Sexual harassment of working woman - Amounts to violation of rights of gender equality and right to life and liberty - Also as a logical consequence amounts to violation of practice any profession, occupation or trade - Victim is therefore entitled to remedy of Art. 32.

Constitution of India, Arts. 14, 21, 10

Guarantee of gender equality and write to work with human dignity - Nature and ambit – Construction - International Conventions and norms can be relied upon.

Constitution of India, Art. 32, 141, 14, 21 - Gender equality and Guarantee against sexual harassment and abuse more particularly of working women at work places - Law for effective enforcement absent - Supreme Court in exercise of powers under Art. 32 laid down guidelines and norms to be treated as law declared under art. 141 - Applicable to both public and private sector.
