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ENVIRONMENTAL LAW

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I INTRODUCTION

DURING THE year under survey, there have been number of judgments pertaining to the environmental issues delivered by the Supreme Court of India and also various high courts including the National Green Tribunal (NGT). Though many of them were relating to mining operations the other issues were concerned with a wide range of issues like the feasibility of establishing nuclear power plant (NPP) in view of environmental concerns, regulation of slaughter houses and brick-kilns across the country, eco-centrism versus anthropocentrism, management of human waste and responsibility of local self government, rights of scheduled tribes and traditional forest dwellers as to forest produce and minerals, and the impact of illegal constructions on ecology and environmental protection. Some of the most important judgments and their impact have been discussed hereunder.

II JUDICIAL PRONOUNCEMENTS

Sustainable development and possibility of restoration of environmental protection-compensation for causing pollution.

In *Sterlite Industries (India) Ltd.* v. *Union of India*,[2] the apex court dealt with the issue of the validity of environmental clearances granted to the appellant company by the Ministry of Environment and Forests (MoEF), Government of India, and the consent orders under the Air Act, 1981and the Water Act, 1974 granted by the state pollution control board for setting up for setting up a copper smelter plant in Melavittan village, Tuticorin in the year 1995. In 1996 the said clearances were challenged by the National Trust for Clean Environment in the Madras High Court. While these writ petitions were pending, the appellants set up the plant and commenced production in 1997. Another writ petition was then filed

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1 (2013) 4 SCC 575.

by praying for *inter alia* a direction to the appellants to stop forthwith the operation of the plant. A division bench of the high court heard the writ petitions and by a common judgment which allowed and disposed of the writ petitions with the direction to the appellant-company to close down its plant at Tuticorin. Aggrieved, the appellant company filed the present appeals against the common judgment of the Division Bench of Madras High Court. The court while considering the contentions of the appellant company noted that the impugned judgment of the high court directing closure of the plant was based on the following among other grounds:[3]

i. that while the TNPCB had stipulated in the Consent Order of 1995 that the appellant-company has to ensure that the location of the unit should be 25 kilometers away from the ecologically sensitive area but as per the report of National Environmental Engineering and Research Institute (NEERI) of 1998 submitted to the High Court, the plant is situated within 25 kilometers from four of the twenty one islands in the Gulf of Munnar.

ii. that the 25 kilometers stipulation was made in the Consent Order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecological sensitive areas within 25 kilometers of the industry, but in the Consent Order issued in 1996 to operate the industry, this stipulation was removed.

iii. this being a project exceeding Rs.50/- crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant-company.; and

iv. that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to Indian drinking water standards.

The appellants contended that none of the grounds given by the high court in the impugned judgment for directing closure of the plant of the appellants are well-founded and sought relief to set aside the impugned judgment of the high court and allow the appeals. It was submitted that the plant of the appellants produces 2,02,000 metric tons of copper which constitute 39% of the total of 5,14,000 metric tons of copper produced in India and that 50% of the copper produced by the plant of the appellants is

2 *Ibid.*

consumed in the domestic market and the balance 50% is exported abroad. It was also submitted that the plant provides direct and indirect employment to about 3000 people and yields huge revenue to both the Central and state governments that closure of the plant of the appellants, therefore, would also not be in the public interest.

On the other hand the original writ petitioners supported the impugned judgment of the high court on the grounds that:[4]

i. that the TNPCB in its No Objection Certificate as well as in its Consent Order of 1995 under the Water Act clearly stipulated that the appellant- company shall ensure that the location of its unit should be 25 kilometers away from ecological sensitive area and that the Government of Tamil Nadu in their affidavit have also stated that all the 21 islands including the four near Tuticorin in the Gulf of Munnar Marine National Park are ecologically sensitive areas.

ii. that NEERI in its report of 1998 has observed that four out of twenty one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, are at distances of 6 kilometers, 7 kilometers and 15 kilometers respectively from Tuticorin. …. merely because a condition has been subsequently imposed on the appellant-company by TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 kilometers distance from ecological sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a Marine National Park and extending financial assistance for the development of its ecology.

iii. that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 meters width around their plant as stipulated in the No Objection Certificate of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 meters width. …. considering the grave adverse impact on the environment by the plant of the appellants, a 250 meters width of green belt was absolutely a must but the TNPCB very casually reduced the green belt from 250 meters width to 25 meters; and

iv. that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contain high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment.

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3 *Id.* at 587-588.

The writ petitioner, National Trust For Clean Environment, in writ petition of 1996 before the high court, submitted that:[4]

i. the appellants had made a false statement in the Special Leave Petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint.

ii. that the Supreme Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development in many previous judgments.[5] He submitted that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts.

iii. that, in the present case, the appellants have relied on the Rapid Environmental Impact Assessment (EIA) done by Tata Consultancy Service, but this Rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production, the quantum and nature of pollutants, air, liquid and solid and handling of the waste.[6]

Thus the original petitioners vehemently argued that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. They submitted that it is not correct as has been

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4 *Id.* at 589-590.

5 *Vellore Citizens Welfare Forum* v. *Union of India* (1996) 5 SCC 647; *Tirupur Dyeing Factory OwnersAssociation* v. *Noyyal River Ayacutdars Protection Association* [(2009) 9 SCC 737] and *M.C. Mehta* v. *Union of India* (2009) 6 SCC 142.

6 See, decision of the Lords of the Judicial Committee of Privy Council in *Belize Alliance of Conservation Non-governmental Organizations* v. *The Department of the Environment and Belize Electric Company Limited* (2004) 64 WIR 68 para 69 in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision maker to the effect of the activity on the environment and the consequences to the community. He also relied on the judgment of the Supreme Court of Judicature of Jamaica in *The Northern Jamaica Conservation Association* v. *The Natural Resources Conservation Authority* [Claim No. HCV 3022 of 2005] to argue that a public hearing was a must for grant of environmental clearance.

submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardize the environment. He therefore submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the high court has rightly directed closure of the plant of the appellants.

As regards the contentions advanced on behalf of the authorities including the Tamil Nadu Pollution Control Board (TNPCB) and Central Pollution Board (CPCB), it was submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are ecologically sensitive areas. It was also submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act,1974 to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge, that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained.

The contentions of the intervener included the submission that a marine biosphere is an ecological sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 kms from ecological sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment.

After appreciating the facts of the case and counter arguments of the parties and intervener, the Supreme Court opined that the high court has though appreciated the relevant decisions of the Supreme Court on Sustainable Development, Precautionary and Polluter Pays Principles and Public Trust Doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well recognized principles of judicial review as has been held by a three judge bench of the court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*.[7] Coming to the ground of irrationality the court found that no materials have been produced before it to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision.

The court after appreciating the arguments and the relevant evidence categorically held that:[8]

> i) it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued there under to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

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7 (2011) 7 SCC 338.

8 *Id.* at 380.

ii) On one hand, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 kilometers of four of the twenty one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 kilometers away from ecological sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 kilometers from ecological sensitive area. Since, however, the Consent Order was granted to the appellant-company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant-company had violated the Consent Order and directed closure of the plant on this ground.

iii) that the Gulf of Munnar is an ecological sensitive area and the Central Government may in exercise of its powers under clause (v) of sub-section (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar Marine National Park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

4) that the emission and effluent discharge affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants.

As regards the submission that the court should not grant relief to the appellants because of misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from the Supreme Court in 2010, the court held there is no doubt that there has been misrepresentation and

suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure *etc.* The plant of the appellants has about 1300 employees and it also provides employment to large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to Central and state governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin port. For these considerations of public interest, the court did not think that it would be a proper exercise of its discretion under article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition.

In the result, the appeals were allowed and the impugned common judgment of the high court was set aside. The appellants, however, were directed to deposit within three months from a compensation of Rs.100/- crores with the Collector of Thoothukudi District, which would be kept in a fixed deposit in a nationalized bank for a minimum of five years, renewable as and when it expires, and the interest there from will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilize the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, and Government of Tamil Nadu. By this judgment, the apex court had only set aside the directions of the high court in the impugned common judgment and made it clear that this judgment would not stand in the way of the TNPCB issuing directions to the appellant-company, including a direction for closure of the plant, for the protection of environment in accordance with law. The court also made it clear that the award of damages of Rs. 100/- crores by this judgment against the appellant-company for the period from 1997 to 2012 would not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law.

An analysis of the judgment shows that the Supreme Court has applied the Precautionary Principle and the Polluter Pays Principles apart from the principle of Sustainable Development in directing the appellant company to pay a compensation of Rs.100/- crores which appears to be unparalleled in recent years. This decision is an eye-opener to the large companies which suppress the material facts and try to take shelter behind the technicalities.

Kudankulam nuclear power plant (KNPP) environmental issues

It may be noted that renewed momentum against the setting up of NPPs picked up fast after accidents at the Three Miles Island Power Plant in USA, Chernobyl in Ukraine and Fukushima in Japan. Primary reason for such opposition seems to be on the issues of the impact of nuclear installations on life and property, environment, flora and fauna, marine life, nuclear waste disposal, health,

displacement of people *etc*. which has a direct link with article 21 of the Constitution of India and the environmental laws of the country.

The apex court has delivered a landmark judgment in *G.Sundarrajan* v.*Union of India*[9] dealing with the NNP and development of nuclear energy on one hand and the right to life, safety and environmental/ecological protection on the other hand. The appellant in the instant case maintained the stand that unless and until the plant conforms to the environmental protection laws, the same shall not be allowed to be commissioned which gives threat to the life and property of the people who are staying in and around the plant and it will have adverse effect on the environment as well as marine life.

An issue of considerable national and international importance, pertaining to the setting up of a nuclear power plant in the south-eastern tip of India, at Kudankulam in the State of Tamil Nadu was considered by a division bench consisting of KSP Radhakrishnan and Dipak Mishra JJ in this judgment. The court acknowledged that the policy makers consider that the nuclear energy remains as an important element in India's energy mix for sustaining economic growth of natural and domestic use. One of the reasons for preferring nuclear energy as an alternative source of energy is that it is a clean, safe, reliable and competitive energy source which can replace a significant part of the fossil fuels like coal, oil, gas *etc*. Oil and natural gas resources might exhaust themselves. Coal is also not an effective substitution since forests are also no longer able to satisfy the energy requirements. Major source of electricity generation, about 66%, is still contributed by fossil thermal powers, like coal.

The bench initially noted that the national and international policy of the country is to develop control and use of atomic energy for the welfare of the people and for other peaceful purposes. NPP has been set up at Kudankulam as part of the national policy which is discernible from the Preamble of the Act and the provisions contained therein. The court appears to have been influenced by the well established principle that it is not for courts to determine whether a particular policy or a particular decision taken in fulfillment of a policy, is fair. Reason is obvious; it is not the province of a court to scan the wisdom or reasonableness of the policy behind the statute.[10]

While adverting to the facts of the case, it may be noted that for establishing the NPP at Kudankulam, India had entered into an inter-governmental agreement with the erstwhile USSR in November 1988 followed by a supplementary agreement on 21.06.1998 signed by India and Russia which is in tune with India's National Policy.

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9 (2013) 6 SCC 620.

10 See *Vacher & Sons* v. *London Society of Compositors*, (1913)AC107(118)HL; *CCSU* v. *Min*. (1984) 3 All ER 935 (954) HL; *M.P. Oil Extraction* v. *State of M.P* (1997) 7 SCC 592; *M/s. Ugar Sugar Works Ltd*. v. *Delhi Administration* (2001) 3 SCC 635; Dhampur Sugar *(Kashipur) Ltd.* v. *State of Uttaranchal* (2007) 8 SCC 418 and *Delhi Bar Association* v. *Union of India* (2008) 13 SCC 628.

The court took cognizance of the argument that a lot of scientific literatures, experts opinions *etc.* have been produced before it to show the NPP's dangers, harm it may cause to human health, environment, marine life and so on not only on the present generation but on future generation as well. Further, it was also pointed out that due to growing nuclear accidents and the resultant ecological and other dangers, many countries have started retreating from their forward nuclear programmes. However the learned judges have indicated that these issues are to be addressed to policy makers, not to courts because the destiny of a nation is shaped by the people's representatives and not by a handful of judges, unless there is an attempt to tamper with the fundamental Constitutional principles or basic structure of the Constitution.

At the same time, the court was deeply concerned with the safety and security of the people of this country, its environment, its flora and fauna, its marine life, ecology, bio-diversity and so on which the policy makers cannot be on the guise of national policy, mutilate or rob of, in such an event the courts can unveil the mask and find out the truth for the safety, security and welfare of the people and the mother earth.

After considering the arguments related to the safeguards and security, Atomic Energy Agency Board (AERB) Safety Codes, international conventions, bilateral treaties including the Convention on the Physical Protection of Nuclear Material,[11] which makes it legally binding for states parties to protect nuclear facilities and material for peaceful domestic use, storage as well transport, the court also noted that though India is not a party to any of the liability conventions, specifically, International Atomic Energy Agency (IAEA) Vienna Convention on Civil Liability for Nuclear Damage, India has enacted the Civil Liability for Nuclear Damage Act, 2010 (Nuclear Liability Act) which aims to provide a civil liability for nuclear damage and prompt compensation to the victims of a nuclear accident through No- Fault Liability to the operators

The court finally held that:[12]

i. It cannot sit in judgment over the decision taken by the Government of India, Nuclear Power Corporation of India Ltd. (NPCIL) etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russia agreement and also cannot stand in the way of the Union of India honouring its Inter-Governmental Agreement entered into between India and Russia.

ii. As regards the Safety and Security Code of Practices laid down by AERB, IAEA and its supports so as to allay the apprehension or fears expressed from various quarters on the safety and security of KKNPP and its effect on human life, property and environment, adequate and effective protection measures are in place.

iii. Disaster Management Plan (DMP) is of paramount importance, since NPP is a substance which has huge potential of causing immense damage to

11 A dopted on 26.10.1979 and was signed at Vienna and at New York on 3.3.1980.

12 *Supra* note 9 at 646-712.

human beings and to the environment, which may cross over generations after generations. After the accidents in Three Mile Island, Chernobyl and Fukushima, there has been uproar all over the world including India for adopting sufficient safety measures for handling nuclear/radiological emergencies which may or likely to occur in various NPPs situated in the country. Any radiation incident resulting in or having a potential to result in exposure and/or contamination in excess of the respective permissible limits can lead to a nuclear/radiological emergency. Situations are, of course, not bound to occur quite often, but one must be prepared to face nuclear/radiological emergencies because of high population density in a country like India. Nuclear/radiological emergencies can occur due to factors beyond the control of the operating agencies, for example, human error, system failure, sabotage, earthquake, cyclone, flood etc. Noticing the above factors, the Parliament enacted the Disaster Management Act, 2005 (DM Act), following that, the National Disaster Management Authority (NDMA) was constituted with the Prime Minister as the Chairperson. Similar authorities have been created in various States with their Chief Ministers as the Chairpersons. NDMA has assumed the responsibility of strengthening the existing nuclear/radiological emergency management framework by involving all stake holders in a holistic approach through a series of mutually interactive, reciprocal and supplementary actions to be taken on the basis of a common thread â•" the National Guidelines. Following that, NDMA, after conducting a detailed discussion with all the stake holders, issued the National Disaster Management Guidelines, 2009, which has the concurrence of the DAE, AREB. The guidelines recommended a series of actions on the part of various stake holders at different levels of administration that would (i) mitigate the accident at source; (ii) prevent deterministic health effects in individuals and limit the probability of stochastic effects in the population; (iii) provide first aid and treatment of injuries; (iv) reduce the psychological impact on the population; and (v) protect the environment and property

iv. Sustainable Development and CSR are inseparable twins, integrated into the principles of Inter and Intra-Generational Equity, not merely human-centric, but eco-centric. CSR is much more when the Project proponent sets up NPPs, thermal power plants, since every step taken for generation of energy from such hazardous substances, is bound to have some impact on human beings and environment, even though it is marginal. The Department of Public Enterprises (DPE), recently, issued a Comprehensive Guidelines on CSR for Central Public Sector Enterprises, which includes NPCIL, to create, through the Board Resolution, a CSR budget as a specific percentage of net profit of the previous year. CSR is envisaged as a commitment to meet its social obligations by playing an active role to improve the quality of life to the communities and stake-holders on a sustainable basis, preferably, in the project area where it is operating. CSR strategy has to be put in practice in line with the millennium development goals as lodged by United Nations and adopted by the

Government of India in the 11th Five Year Plan i.e. 2007-2012, which could cover the areas of education, health, drinking water/sanitation, environment, solar lighting system, infrastructure for backward areas, community development and social empowerment, promotion of sports and traditional forms of arts and culture, generation of employment opportunities and livelihood to be a part of the National/Local initiatives to provide reliefs/rehabilitation in terms of natural disaster, calamities etc. NPCIL has allocated funds for providing health, education, infrastructural development under CSR at Kudankulam for utilization of funds by NPCIL during the last three years and the current year.

v. The Atomic Energy Regulatory Board (AERB) issued a Code of Management of Radioactive Waste on June 22, 2007, the objective of that is to establish the requirements, which shall be fulfilled for the safe management of solid, liquid and gaseous radioactive waste from generation through disposal. The code specifies basic requirements for the safe management of radioactive waste from nuclear and radiation facilities such as mining and milling and processing of uranium and thorium ores; fuel fabrication; nuclear power plants; research/experimental reactors; fuel reprocessing; medical, industrial, agriculture and research facilities using radionuclides; and other facilities handling radioactive materials. The safety code also deals with the requirements for radiation protection aspects in design, construction and operation of waste management facilities and the responsibilities of different agencies involved…… Clause 2.3.2 of the Code categorically requires that the Radioactive discharges to the environment (aquatic, atmospheric and terrestrial route) shall not exceed the limits prescribed by the regulatory body. Further under Clause 2.4.1 of the Code the facility shall implement approved environmental monitoring and surveillance programme for the identified exposure pathways to meet the requirements set by the regulatory body. The programme shall include pre-operational, operational, closure, and post-closure monitoring and surveillance.

vi. After noting that the approval of Environment Ministry from environmental angle is accorded subject to compliance with certain stringent conditions and that the United Nations Conference on Human Environment at Stockholm (Stockholm Conference) not only brought into focus the human rights approach to the problem of environmental protection but also recognized the linkage between the development and environment from which the concept of sustainable development has emerged. The Conference noticed that while man is both creature and moulder of this environment, rapid advances in science and technology had invested man with the potent power to transform his environment in countless ways and on an unprecedented scale. The benefits of development and opportunity to enhance quality of life, if wrongly or carelessly used, man could do incalculable harm to human beings and to the environment. The responsibility of the people to protect and improve the environment for

> the present and the future generations was also recognized. Later the Nairobi Conference and Declaration 1982 re-stated the principles of Stockholm Conference and high-lighted the importance of intensifying the efforts at the global, regional and national levels to protect and improve environment. The United Nations General Assembly (UNGA) in October 1982 adopted the World Charter For Nature and laid down general principles of environmental protection, action plan and implementation of scheme which high-lighted the conservation principles.

Radhakrishnan J therefore concluded that the KKNPP has, been set up as part of India's National Policy so as to develop, control and use of atomic energy for the welfare of the people of India. Policy makers consider nuclear energy as an important element in India's energy mix for sustaining economic growth of natural and domestic use. For setting up the project, the project proponent has taken all safety requirements in site and off site and has followed the code of practices laid down by AERB, based on nationally and internationally recognized safety methods. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have become a central part of nuclear law. Adequate measures have, therefore, to be taken for storage of NSF at site, and also for the physical safety of stored NSF. Of the seventeen safety measures, suggested by AERB *etc*., twelve have already been implemented and the rest, in a phased manner have to be implemented which the experts say, are meant for extra security. DMP is already in place, so also the emergency preparedness plan, off site and on site and all programmes under CSR are progressing in the right direction with the co- operation and assistance of the district administration.

He further observed that the NPCIL has also received necessary environmental clearance from MoEF, TNPCB, *etc.*, for units 1 to 6. No violation of CRZ is also noticed. Desalination plant is also established after following rules and regulations and there is no violation of CRZ. Experts say that there will be no impact on the marine eco-system due to discharge of + 7ºCC, CCW over and above the ambient temperature of the sea. Radiation impact on the eco- system is also within the standard set by AERB, MoEF, and Economic Advisory Council (EAC), Pollution Control Board *etc.*, so opined by the experts. In other words, all the expert teams are unanimous in their opinion of the safety and security of the KKNPP both to life and property of the people and the environment which includes marine life. Court has to respect national nuclear policy of the country reflected in the Atomic Energy Act and the same has to be given effect to for the welfare of the people and the country's economic growth and it is with these objectives in mind KKNPP has been set up.[13]

Dipak Misra J the other judge on the bench while concurring with the opinion of KSP Radhakrishnan J gave a separate judgment. He held that it is borne out from the material on record that two aspects have weighed with many a nation while thinking of a nuclear energy plant, namely, the caution and circumspection

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13 *Id*. at 720.

at the time of operation and how to deal with radioactive waste. The present case is one where there is need for nuclear energy for the welfare of the public and for other welfare of the people of India and for peaceful purpose. Definitely, the interest of the economy and the interest of safety are to be the real concerns of a welfare state. While referring to the nuclear energy development and doctrine of balance and proportionality *vis- à-vis* safety, the learned judge stated that the safety of the people residing in Kudankulam and the areas in its vicinity and also the people who are likely to be affected because of radioactive generation has to be respected, for their human dignity is their divinity.

The bench, therefore, fully endorsed the view taken by the division bench of the high court, however, in the facts and circumstances of the case, was inclined to give the following among other directions:

> The plant should not be made operational unless AERB, NPCIL, DAE accord final clearance for commissioning of the plant ensuring the quality of various components and systems because their reliability is of vital importance.
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> AERB should periodically review the design-safety aspects of AFR feasibly at KKNPP so that there will be no adverse impact on the environment due to such storage which may also allay the fears and apprehensions expressed by the people; and
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> The AERB, NPCIL, MoEF and TNPCB would oversee each and every aspect of the matter, including the safety of the plant, impact on environment, quality of various components and systems in the plant before commissioning of the plant. A report to that effect be filed before this Court before commissioning of the plant.

The observation of Misra J towards the end of the judgment before issuing certain directives is self explanatory of the importance of life and the larger interest of the society. The observation is as under:

> Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of some• can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person

> perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different. I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be zero regard being had to the nature's unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good.

Thus the Supreme Court appeared to have followed the principle of sustainable development, and also the doctrine of public trust permitting the KKNPP to become operational. It is gratifying to note that environmental protection has been given the highest priority in the judgment even though no elaborate discussion was made relating to ecology and environment.

Mining leases and necessity of obtaining environmental clearances

In *State of Orissa* v. *M/s MESCO Steels Ltd.*[14] the apex court dealt with an appeal filed against the direction of the Orissa High Court to the Government of Orissa to execute a mining lease for an area measuring 1519.980 hectares in favour of the respondent-company. It appears from the record that the respondent company had applied for mining lease in response to the notification issued by the state government dated 23rd August, 1991, as the Government of Orissa de-reserved and threw open iron/manganese ore areas spreading over 282.46 square miles in five blocks located in Keonjhar and Sundergarh districts in the State. Applications were then invited from interested private parties in terms of Rule 59 of the Mineral Concession Rules, 1960 for grant of prospecting licenses and mining leases in respect of the said blocks.

By an order 07.01.99 the Government of India, Ministry of Steel and Mines, Department of Mines, conveyed the approval of the Central Government for grant of the mining lease for extraction of iron ore from an area measuring 1011.480 hectares in villages Kadakala and Luhakala besides an area measuring 508.500 hectares in villages Sundara and Pidapokhari in district Keonjhar for a period of 30 years. The approval was subject to the state government ensuring compliance of the amended provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the rules made there under besides the provisions of

14 [2013] INSC 293.

the Forest (Conservation) Act, 1980 and notification dated 27.01.94 issued in terms thereof.

By a letter dated 19.06.00 addressed to the respondent-company the state government pointed out that the company had failed to submit the required mining plan and obtain the approval of MoEF, Government of India, in regard to forest land involved in the proposed mining lease despite extension of time allowed to the respondent- company by the government. The respondent-company acknowledged receipt of the letter above mentioned and, *inter alia*, pointed out that the mining plan for the entire area had been prepared and submitted separately on 31.01.00. It was also pointed out that out of the total extent covered by the proposed lease only 508.500 hectares was forest land for which extent alone was a diversion proposal required to be submitted. As the clearance of the project and the grant of a no objection by the MoEF under section 2 of the Forest (Conservation) Act, 1980 are essential pre-conditions for carrying on the mining operations in forest areas, the apex court had set-aside the writ of mandamus issued to the State government for executing the mining lease in favour of the respondent company. The court also relied upon its earlier decision in *T.N. Godavarman Thirumulkpad* v. *Union of India*,[15] this judgment reinforces the environmental concerns which are paramount in mining operations.

In *Orissa Mining Corporation Ltd*. v. *Ministry of Environment & Forests*,[16] the Orissa Mining Corporation (OMC), a State of Orissa Undertaking, has approached the Supreme Court seeking a writ of *Certiorari* to quash the order passed by the MoEF in 2010 rejecting the stage-II forest clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa and also for other consequential reliefs. For a change a state owned mining corporation and a private company were on the same side in assailing the validity of the decision of the MoEF. The court observed for the record in this judgment that the *Sterlite*[17] case, State of Orissa and OMC had earlier unconditionally accepted the terms and conditions and modalities suggested by the court in *Vedanta*[18] case under the caption 'Rehabilitation Package' and the court accepted the affidavits filed by them and granted clearance to the diversion of 660.749 hectares of forest land to undertake the bauxite mining in Niyamgiri Hills and ordered that MoEF would grant its approval in accordance with law.

In this judgment, the Supreme Court had focused its attention on the earlier judgment given in a case involving the parent company of one of the appellants, the alleged violations of the terms of the environmental clearance granted by MoEF earlier to the appellants and the need to rectify the same. The significance of this judgment lies in highlighting the need to effective implementation of the Forest (Conservation) Act, 1980, the Environmental (Protection) Act, 1986, the scheduled

15 (1997) 2 SCC 267.
16 (2013) 6 SCC 476.
17 *Supra* note 1.
18 (2013) 6 SCC 476.

tribes (ST) and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and other laws. The greater focus was on the implementation of the Forest Rights Act, 2006 which has been enacted mainly for protection of the rights of the scheduled tribes and the traditional forest dwellers(TFDs).The court rightly stated that the Forest Rights Act, 2006 was enacted by the Parliament to recognize and vest the forest rights and occupation in forest land in forest dwelling STs and other TFDs who have been residing in such forests for generations but whose rights could not be recorded and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The Act also states that the recognized rights of the forest dwelling STs and other TFDs include the responsibilities and authority for sustainable use, conservation of bio-diversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling STs and other TFDs. The Act also noticed that the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period as well as in independent India resulting in historical injustice to them, who are integral to the very survival and sustainability of the forest ecosystem.

The court emphasized that the state government should ensure that the forest rights under section 3(1)(i) of the Act relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages and the titles are issued as soon as the prescribed forms for claiming Rights to Community Forest Resource and the Form of Title for Community Forest Resources are incorporated in the rules. Further under section 6 of the Act, *Gram Sabha* shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both and that may be given to the forest dwelling STs and other TFDs within the local limits of the jurisdiction.

The court also noted that the Orissa Legislature has passed the Panchayats (Extension of the Scheduled Areas) Act, 1996 (PESA Act) to provide for the extension of the provisions of part IX of the Constitution relating to panchayats to the scheduled areas. Section 4(d) of the Act says that every *Gram Sabha* shall be competent to safeguard and preserve the traditions, customs of the people, their cultural identity, community resources and community mode of dispute resolution. Therefore, *Grama Sabha* functioning under the Forest Rights Act, 2006 read with section 4(d) of PESA Act has an obligation to safeguard and preserve the traditions and customs of the STs and other forest dwellers, their cultural identity, community resources *etc.*, which they have to discharge following the guidelines issued by the Ministry of Tribal Affairs.

After analyzing the above provisions the Supreme Court had given the following directions which acknowledge a greater role of *Gram Sabhas* under the Forest Rights Act in protecting not only the ecology and environment in local areas but also in ensuring the protection of local customary and religious rights:[19]

19 *Id*. at 513-514.

> We are, therefore, of the view that the question whether STs and other TFDs, like Dongaria Kondh, Kutia Kandha and others, have got any religious rights i.e. rights of worship over the Niyamgiri hills, known as Nimagiri, near Hundaljali, which is the hill top known as Niyam-Raja, have to be considered by the Gram Sabha. Gram Sabha can also examine whether the proposed mining area Niyama Danger, 10 km away from the peak, would in any way affect the abode of Niyam-Raja. Needless to say, if the BMP, in any way, affects their religious rights, especially their right to worship their deity, known as Niyam Raja, in the hills top of the Niyamgiri range of hills, that right has to be preserved and protected.
>
> The Gram Sabha is also free to consider all the community, individual as well as cultural and religious claims, over and above the claims which have already been received from Rayagada and Kalahandi Districts. Any such fresh claims be filed before the Gram Sabha within six weeks from the date of this Judgment. State Government as well as the Ministry of Tribal Affairs, Government of India, would assist the Gram Sabha for settling of individual as well as community claims.; and
>
> We are, therefore, inclined to give a direction to the State of Orissa to place these issues before the Gram Sabha with notice to the Ministry of Tribal Affairs, Government of India and the Gram Sabha would take a decision on them within three months and communicate the same to the MOEF, through the State Government. On the conclusion of the proceeding before the Gram Sabha determining the claims submitted before it, the MoEF shall take a final decision on the grant of Stage II clearance for the Bauxite Mining Project in the light of the decisions of the Gram Sabha within two months thereafter.

The court has also advised the Alumina Refinery Project to take steps to correct and rectify the alleged violations by it of the terms of the environmental clearance granted by MoEF. And suggested that while taking the final decision, the MoEF shall take into consideration any corrective measures that might have been taken by the Alumina Refinery Project for rectifying the alleged violations of the terms of the environmental clearance granted in its favour by the MoEF.

Finally the court held that the proceedings of the *Gram Sabha* shall be attended as an observer by a judicial officer of the rank of the district judge, nominated by the Chief Justice of the High Court of Orissa who shall sign the minutes of the proceedings, certifying that the proceedings of the *Gram Sabha* took place independently and completely uninfluenced either by the project proponents or the Central Government or the state government. It appears that this direction was given to enable the *Gram Sabha* to exercise its powers under the relevant Acts to take a fair and independent decision. One can see that this judgment reinforces the

principle that in the sphere of environmental protection in case of mining and other forms of industrialization, the rights of the STs and TFDs in forest areas get precedence, thus recognizing the principle of people's sovereignty over biological diversity.

In *Pandurang Sitaram Chalke* v. *State of Maharashtra*,[20] the NGT ordered for the auction of the illegally mined stone and to use that amount for development of green belt in the area and held that mining shall be done only after obtaining environmental clearance. The subject matter of the application relates to the issue of illegal mining in the agricultural areas as well as forest and non forest areas in Sukvali Village, Taluka Khed, Ratnagiri district, Maharashtra. The applicant submitted that respondents from 9 to 13 have been excavating minor minerals (Black stone) for more than 20 yrs and the respondents 9-11 are operating stone crushing. The dust particles from the stone crushers are spread over and have been affecting paddy crops of adjoining agricultural lands and for the last several years the land owners have stopped growing paddy crops due to reduction in fertility of the soil and their adjacent lands have become completely barren and useless for any agricultural activity. The applicant alleged that the respondents are not taking any precautions while carrying out blasting activities for mining of black stone, resulting in hazardous pollution, damages and irreparable loss to the fields and house of the villages of Sukivali. The applicant has made representation to various authorities about the environmental damages, the concerned authorities have conducted some investigations but failed to control the environmental damages and held that the complaint have no basis and then the applicant approached the NGT. Even the Lokayukta based on the report of the Collector, Ratnagir disposed the complaint *vide* letter dated 31.12.11 saying that the complaint is not having any basis.

The respondents claimed that they are carrying out their business activities in a legal manner with necessary permissions from all the regulatory authorities and in regular compliance of the conditions mentioned in the permissions and averred that they are carrying out the mining activities for last several years and did not cause any nuisance to the villagers.

In view of the decision of the Supreme Court of India in *Deepak Kumar* v. *State of Haryana* [21] that all the mining projects of minor minerals including their renewal irrespective of their period of lease are now required to obtain prior environmental clearance and the clear stand taken by the state pollution control board that till the moratorium imposed by MoEF, Government of India is continued, the respondent 9 to 13 cannot be allowed to continue their mining operations presently, as the validity of the mine lease, in all the five cases has already expired, and after considering the submissions of both the parties the tribunal held that:

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20 *Available at*: http://www/greentribunal.gov.in/judgement/14-2012(WZ)(App)-1ost2013-final-order.pdf(last visited on Aug 10th 2014)

21 (2012) 4 SCC 629.

> The stone mining activities as well as crushers are no doubt, the polluting activities, however, there are regulations and standards which have been prescribed for sustainable operations of these activities which needs to be adhered to by the project proponent in order to ensure the environmental safety.

The environmental governance principle of 'Precautionary Principle' has led to the special principle of burden of proof' in the environmental cases where project proponent has been entrusted with responsibility of proving that the project activities will not cause any injurious effect of the pollution on the environment. This is very important principle as this is often termed as reversal of the burden of proof because otherwise in the environmental cases the common citizen will be asked to provide the scientific and technological data in order to preserve the "status quo" and for opposing or raising concerns of the environmental degradation. The concept of sustainable development also entrust the responsibility to the regulating authorities that while permitting the development, not only to ensure that no substantial damage is caused to the environment but also, to take such preventive measures which would ensure no irretrievable damage to the environment, even in the future. The NGT held that the state pollution control board was expected to provide necessary information and data on the pollution caused due to mining and crushers and also any environmental damages thereof in a scientific manner and not by the applicants. The doctrine of public trust is one of the settled principles of the environmental governance. The regulatory authorities are expected to play a pro-active role in the enforcement and compliance of the environment regulations in order to avoid conflicts.

The NGT directed that the illegally mined 888.23 brass of stone metal shall be auctioned and the amount shall be used for developing necessary plantation in the village particularly to develop green buffer area between the mining and stone crushing activities and the habitation area. This decision is to be welcomed as a bold decision in the direction of environmental protection in India.[22]

Disposal of waste including human waste by government and local bodies -a public duty

In *State of Kerala* v. *R Sudha,*[23] the apex court dealt with the duty of the State Government of Kerala appeal filed against the direction of the Kerala High Court in Public interest litigation filed by R Sudha alleging dumping of waste, human excreta and other rubbish in rivers and in forest in and around Munnar and the failure of the state government to arrest such a trend. The high court held that unless the state or the municipal or panchayat authorities provide space and facilities for treatment and disposal of sewage, toilet waste and other rubbish, people will continue to dump all these waste in rivers, water bodies or public places including

22 See also *Pranav Kumar* v. *State of UP*, 2014(4) FLT 125.

23 (2013) INSC 715.

Forest in the night as it is being done presently and asked to submit a detailed report within 3 weeks regarding above issue.

The court commented that the urban authorities are not bothered to find out where it is dumped and that only few cases of offence are registered. The court held that the problem has to be sorted out by providing space for treatment and disposal of sewage and other waste at various centers in the state and only licensed agencies should be engaged in cleaning operations and directed the state environment ministry to take a decision in consultation with the ministry of local self government and held that the Constitution under article 48A specifically casts a duty on the government to protect the environment. Before the impugned order was passed, various orders were passed by the high court from time to time. The Supreme Court while entertaining appeal passed an interim order stopping further proceedings in the high court. During the course of arguments in final hearing, the learned counsel appearing for the appellants submitted that though the State Government is committed to implementation of the project, its implementation is adversely affected due to wide spread protests against setting up of sewage treatment plants and are therefore not in a position to comply with the directions of the high court.

The Supreme Court held that the submission made by the counsel is not satisfactory and have not exercised their powers to resolve the problem and vacated the interim order earlier passed by the court and left the matter to the High Court of Kerala to continue the proceedings and monitor the case and get appropriate affidavits from the authorities in implementation of all its orders and directions issued earlier. It may be recalled that way back in 1980 also the apex court speaking through V.R.Krishna Iyer J gave similar directions in the celebrated case of *Municipal* Council, *Ratlam v. Shri Vardhichand* [24]

Doctrine of public trust and construction of hotels and resorts on banks of river

In *Association for Environment Protection* v. *State of Kerala*,[25] the Supreme Court while discussing the *public trust doctrine* and its applicability in different situations and also considered the correctness of the judgment of a Division Bench of the Kerala High Court .The court found that the Division Bench of the Kerala High Court, which dealt with the writ petition filed by the appellant for restraining the respondents from constructing a building (hotel/restaurant) on the banks of river Periyar within the area of Aluva Municipality skirted the real issue and casually dismissed the writ petition only on the ground that while the appellant had questioned the construction of a hotel, the respondents were actually constructing a restaurant as part of the project for renovation and beautification of Manalpuram Park.

The brief facts of the case are as follows. The appellant is a registered body engaged in the protection of environment in the State of Kerala and it has undertaken

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24 AIR 1980 SC 1622.
25 (2013) 7 SCC 226.

scientific studies of environment and ecology, planted trees in public places and published magazines on the subjects of environment and ecology. In 2005, Aluva Municipality reclaimed a part of Periyar river within its jurisdiction and the District Tourism Promotion Council, Ernakulam decided to construct a restaurant on the reclaimed land by citing convenience of the public coming on *Sivarathri* festival as the cause. The proposal submitted by the district tourism promotion council was forwarded to the state government by the director, department of tourism by including the same in the project for renovation and beautification of Manalpuram Park. In 2005, the state government accorded administrative sanction for implementation of the project at an estimated cost of Rs.55, 72,432/-. When the district promotion council started construction of the building on the reclaimed land, the appellant filed a writ petition and prayed that the respondents be restrained from continuing with the construction of building on the banks of river Periyar and to remove the construction already made based on the following assertions:[26]

a) Periyar river is a holy river called Dakshin Ganga, on the banks of which famous *Sivarathri* festival is conducted.

b) The river provides water to lakhs of people residing within the jurisdiction of 44 local bodies on its either side.

c) In 1989, a study was conducted by an expert body and Periyar Action Plan was submitted to the Government for protecting the river but the latter has not taken any action.

d) In December, 2005, Aluva Municipality reclaimed the land which formed part of the river and in the guise of promotion of tourism; efforts are being made to construct a hotel.

e) The construction of hotel will adversely affect the flow of water as well as the river bed.

f) The construction of the building will adversely affect Marthanda Varma Bridge.

g) The respondents have undertaken construction without conducting any environmental impact assessment and in violation of the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001; and

h) The construction of hotel building is ultra vires the provisions of notification issued in 1978 issued by the State Government, which mandates assessment of environmental impact as a condition precedent for execution of any project costing more than Rs.10,00,000/-.

On the other hand the respondents made the following averments:

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26 *Id*. at 233.

(i) District Tourism Promotion Council has undertaken construction of a restaurant and not a hotel as part of the project involving redevelopment and beautification of Manalpuram Park.

(ii) The State Government has accorded sanction in 2005 for construction of a restaurant.

(iii) The restaurant is meant to serve large number of people who come during *Sivarathri* celebrations.

(iv) The construction of restaurant will neither obstruct free flow of water in the river nor cause damage to the ecology of the area.

(v) There will be no diversion of water and the strength of the pillars of Marthand a Varma Bridge will not be affected.

The division bench of the high court took cognizance of the sanction accorded by the state government in 2005 for renovation and beautification of Manalpuram Park and dismissed the writ petition by simply observing that only a restaurant is being constructed and not a hotel, as claimed by the appellant. Aggrieved by the judgment of the Kerala High Court, this appeal was filed before the Supreme Court. While disposing of the appeal the court made number of pertinent observations relating to the doctrine of public trust. The court held that there is no record to show that the department of tourism had furnished a detailed comprehensive environmental impact statement for the project so as to enable the committee to make appropriate review and assessment. Therefore, it must be held that the execution of the project including construction of restaurant is *ex facie* contrary to the mandate of G.O. dated of 1978, which was issued by the state in discharge of its constitutional obligation under article 48-A. The court also frowned upon the cryptic manner in which the division bench of the high court dismissed the writ petition by observing that, Unfortunately, the division bench of the high court ignored this crucial issue and casually dismissed the writ petition without examining the serious implications of the construction of a restaurant on the land reclaimed by Aluva Municipality from the river.

As regards the public trust doctrine, the court traced its origins to the ancient Roman Empire which developed a legal theory known as the doctrine of the public trust. It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. 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 exploitation to satisfy the greed of few. The court relied upon the judgments of various courts including its own earlier judgments[27] and reiterated that:

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27 See *M.C. Mehta* v. *Kamal Nath* (1997) 1 SCC 388: *Illinois Central Railroad Co.* v. *People of the State of Illinois*[1892] USSC 229, 146 US 387; *Gould* v. *Greylock Reservation Commission* 350 Mass 410 (1966); *Sacco* v. *Development of Public*

> … (n)atural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.

Over exploitation, if not indiscriminate and rampant mining and systematic plunder of natural resources by a handful of opportunists- impact on environment

In *Samaj Parivartana Samudaya* v. *State of Karnataka*[28] the Supreme Court pondered over as to what should be the appropriate contours of the court's jurisdiction while dealing with allegations of systematic plunder of natural resources by a handful of opportunists seeking to achieve immediate gains. This is the core question that arose in the present proceeding in the context of mining of iron ore and allied minerals in the State of Karnataka. In this judgment the court noted that over exploitation, if not indiscriminate and rampant mining, in the State of Karnataka, particularly in the district of Bellary, had been purportedly engaging the attention of the state government from time to time. In the year 2006, U.L. Bhat J committee was appointed to go into the issues which exercise, however, did not yield any tangible result. Thereafter, the matter was referred to the lokayukta of the state and a report was submitted in 2008 which, *prima facie*, indicated indiscriminate mining of unbelievable proportions in the Bellary district of the state. It is in these circumstances, that the petitioner, *Samaj Parivartana Samudaya* had instituted the present writ petition under article 32 of the Constitution complaining of little or no corrective action on the part of the state; seeking the court's intervention in the matter. The petitioner sought reliefs including a direction to stop all mining and other related activities in forest areas of Andhra Pradesh and Karnataka which are in violation of the earlier orders the Supreme Court and the Forest (Conservation) Act, 1980.

The writ petition was entertained and the Central Empowered Committee (CEC) was asked to submit a report on the allegations of illegal mining in the Bellary region of the State of Karnataka. The initial reports submitted by the CEC in response to the orders of the court having indicated large scale illegal mining at

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Works, 532 Mass 670; *Robbins* v. *Deptt. of Public Works* 244 NE 2d 577 and *National Audubon Society* v. *Superior Court of Alpine County* 33 Cal 3d 419, *M.I. Builders Pvt. Ltd*. v. *Radhey Shyam Sahu* (1999) 6 SCC 464; *Intellectuals Forum, Tirupathi* v. *State of A.P*. (2006) 3 SCC 549; *Fomento Resorts and Hotels Ltd.* v. *Minguel Martins* (2009) 3 SCC 571.

28 (2013) 8 SCC 154.

the cost and to the detriment of the environment, a stage came when by order dated 29.7.2011 a complete ban on mining in the district of Bellary was imposed. Extension of the said ban was made in respect of the mining operations in other districts in 2011. As the materials placed before the court[29] indicated large scale encroachment into forest areas by leaseholders and ongoing mining operations in such areas without requisite statutory approval and clearances, a joint team was constituted by the Supreme Court[30] to determine the boundaries of initially 117 mining leases which number was subsequently extended to 166 by inclusion of the mines in Tumkur and Chitradurga districts. The result of the survey by the Joint Team revealed a shocking state of depredation of nature's bounty by human greed. Objections of the lease holders to the survey came early and were subjected to a re-examination by the special team itself under orders of the court dated 23.9.2011 in the course of which 122 cases were re-examined and necessary corrections were effected in 33 cases.

Thereafter, the CEC submitted its report termed as the final report, which is significant for two of its recommendations. The first was for categorization of the mines into three categories, *i.e.*, A, B and C on the basis of the extent of encroachment in respect of the mining pits and over burden dumps determined in terms of percentage qua the total lease area. The second set of recommendations pertained to the conditions subject to which reopening of the mines and resumption of mining operations were to be considered by the court.

In the result, The Supreme Court accepted almost all the recommendations of the CEC in this regard including the categorization, it was held that the categorization made does not fail the test of reasonableness and would commend for the court's acceptance. The court also observed that in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the authorities have not taken into account the macro effect of such wide-scale land and environmental degradation caused by the absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above area till statutory provisions for restoration and reclamation are duly complied with.

The court categorically laid down that environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the above area on sustainable development principle which is part of articles 21, 48-A and 51-A (g) of the Constitution of India. In fact, these articles have been extensively discussed in the judgment in *M.C. Mehta* case[31] which keeps the option of imposing a ban in future open. The issue is not one of application of the above principles to a case of cancellation as distinguished from one of suspension. The issue is more fundamental, namely, the wisdom of the exercise of

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29 including the report of the *lokayukta* dated 18.12.2008.

30 by order dated 6.5.2011.

31 (2004) 12 SCC 118.

the powers under article 32 read with article 142 to prevent environmental degradation and thereby effectuate the Fundamental Rights under article 21.

The court cracked its whip against the illegal mining companies of the worst order by observing that: [32]

> Illegal mining apart from playing havoc on the national economy had, in fact, cast an ominous cloud on the credibility of the system of governance by laws in force. It has had a chilling and crippling effect on ecology and environment. It is evident from the compilation submitted to the Court by the CEC that several of the Category C mines were operating without requisite clearances under the Forest Conservation Act or even in the absence of a mining lease for a part of the area used for mining operations. The satellite imageries placed before the Court with regard to environmental damage and destruction has shocked judicial conscience. It is in the light of the above facts and circumstances that the future course of action in respect of the maximum violators/polluters, i.e., Category C mines has to be judged. While doing so, the Court also has to keep in mind the requirement of Iron Ore to ensure adequate supply of manufactured steel and other allied products.

This judgment is laudable because the apex court has continued its quest for prevention of plundering national wealth by unscrupulous persons and at the same time accorded sufficient importance to the protection of forests and ecology.

Survival and protection of rare species from extinction anthropocentrism *v* eco-centrism

It may be recollected that the apex court had *vide* its judgments delivered in 2012 advocated the concept of eco-centrism as opposed to anthropocentrism in ensuring survival and protection of rare species of animals and plants. Continuing the same tradition, the Supreme Court in *Centre for Environmental Law, WWF-I* v. *Union of India*[33] the necessity of a second home for Asiatic Lion (Panthera leo persica), an endangered species, for its long term survival and to protect the species from extinction as issue rooted on eco-centrism, which supports the protection of all wildlife forms, not just those which are of instrumental value to humans but those which have intrinsic worth.

The brief facts of the case before the apex court in the instant case are as follows. The Wildlife Institute of India (WII), an autonomous institution under the MoEF, Government of India, through its wildlife biologists had done considerable research at the Gir Forest in the State of Gujarat since 1986 to collect and provide data which would help for the better management of the Gir forest

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32 *Supra* note 28 at 194.

33 (2013) 8 SCC 234.

and enhance the prospects for the long term conservation of lions at Gir, a single habitat of Asiatic lion in the world. The data collected by the wildlife biologists highlighted the necessity of a second natural habitat for its long term conservation. Few of the scientists had identified the Asiatic lions as a prime candidate for a re-introduction project to ensure its long term survival. In October 1993, a Population and Habitat Analysis Workshop was held at Baroda, Gujarat. Various issues came for consideration in that meeting and the necessity of a second home for Asiatic lions was one of the issues deliberated upon in that meeting. Three alternative sites for re- introduction of Asiatic lions were suggested for an intensive survey, the details of which are given below: i) Darrah-Jawaharsagar Wildlife Sanctuary (Rajasthan), ii) Sitamata Wildlife Sanctuary (Rajasthan), and iii) Kuno Wildlife Sanctuary (Madhya Pradesh). The Research Advisory Committee of WII recognized the need for a prior survey to assess the potential of those sites. Accordingly, a field survey was conducted. Surveys of the three sites were made during winter as well as summer, to assess water availability during the summer and also to ascertain the changes in human impact on the habitat during the seasons. The surveyors concentrated on ascertaining the extent of forest area in and adjoining the chosen protected areas with the aim of establishing the contiguity of the forested habitat. Attempts were also made to establish the relative abundance of wild ungulate prey in the three sites based on direct sightings as well as on indirect evidence. An assessment of the impact on the people and their livestock on habitat quality in all three sites was also made. Of the three sites surveyed, Kuno Wildlife Sanctuary (Kuno) was found to be the most suitable site for re- introduction in establishing a free ranging population of Asiatic lions. The report revealed that the Kuno was a historical distribution range of Asiatic lions. Report also highlighted the necessity of a long term commitment of resources, personnel and the necessity of a comprehensive rehabilitation package, adequate staff and facilities.

An analysis of the judgment shows that when the State of Madhya Pradesh initiated the process[34] of preparing the Kuno Wildlife Sanctuary as the second home of the Asiatic lions by their translocation, the lack response from the State of Gujarat led to the filing of the present public interest litigation (PIL) seeking a direction to the respondents to implement the re-location programme as recommended by WII, and approved by the Government of India. Before the Supreme Court the State of Gujarat raised several contentions against the relocation of the Asiatic Lions to Kuno mainly arguing that:[35]

i. there is no necessity of finding out a second home for Asiatic lions, since the population of Asiatic lion has been properly protected in Greater Gir forest and also in few other sanctuaries near Gir Forest

ii. translocation of Lions made in earlier occasion during early 20th century and during 1956, especially to the Chandraprabha Wildlife Sanctuary in

34 Crores of rupees were spent by the Government of India for re- location of villages, de-notifying the reserve forest and so on

35 *Supra* note 33 at 243-250.

Uttar Pradesh was unsuccessful and therefore the present translocation also would not yield much results is not correct.

iii. Kuno Palpur has a population of 6 to 8 tigers and co-existence of large cats of almost equal size was unlikely

iv. Lions world over are known to prefer grasslands in sub-topical to near sub-tropical climates with normal temperature during hot period below 42 degree C. (approx) while Kuno is known to have hot climate during summer with temperature exceeding 45 degree C. for a number of days.; and

v. prey base at Kuno is also not adequate enough for the lions. Lions are increasing in number and geographical distribution in vicinity of Gir in Amreli & Bhavnagar districts. This is a natural increase in home range of lions, which is well received by local population etc.

It was also vehemently argued by the Gujarat State Board for Wildlife constituted under the Wildlife Protection Act, 1972 and the State of Gujarat that Asiatic Lion being a family member is beyond and higher than the scientific reasoning and hence be not parted with.

On the other hand the State of Madhya Pradesh highlighted the steps taken by the State of Madhya Pradesh for pushing the project forward for completing the first phase of the project. It was submitted by the state that necessary sanction has already been obtained to declare Kuno as Sanctuary under the Wildlife Protection Act. MoEF has already granted its approval under section 2 of the Forest (Conservation) Act for diversion of 3395.9 hectare of forest land for the rehabilitation of eighteen villages located inside Kuno, subject to fulfillment of certain conditions. The area at Kuno was increased to 1268.861 Sq. Km in April 2002 by creating a separate Kuno Wildlife Division. For the above purpose, a total amount of Rs.1545 lakh had been granted by the Government of India and utilized by the state government. It was also pointed out that altogether 24 villages and 1543 families were relocated outside Kuno by the year 2002-2003 and the lands abandoned by them have been developed into grass lands.

The Additional Solicitor General submitted that the population of Asiatic lion is increasing at Gir, but there are conceivable threats to their survival; man-made, natural calamity as well as outbreak of epidemic, which may wipe out the entire population, due to their small population base and limited geographical area of spread. It is under such circumstances, the need for a second home for lions was felt, for which Kuno was found to be the most suitable habitat. However, it was pointed out that the lions could be translocated only if sufficient number of ungulates is available and after taking effective measures, such as, control of poaching, grassland management, water management, building rubble wall around the division *etc.* Reference was made to the study conducted by the experts of WII and Wildlife Trust of India of the programme of re-introduction of Cheetah in Kuno, on import from Namibia. Referring to the correspondence between the Ministry of State (External Affairs) and Chief Minister of Madhya Pradesh, it was

pointed out that subsequent re-introduction of lions is in no way expected to affect the cheetah population, which would have established in the area, by that time.

The *Amicus Curiae* apprised the court of the extreme urgency for the protection of the Asiatic lion which has been included in the Red List[36] published by the International Union for Conservation of Nature (IUCN) as critically endangered species, endorsed by the National Board for Wildlife (NBWL) in various meetings. NBWL, being the highest scientific statutory body, it commands respect and its opinion is worthy of acceptance by the MoEF and all the state governments. Also referred to article 48 and article 51-A of the Constitution of India and submitted that the state has a duty to protect and improve environment and safeguard the forests and wildlife in the country, a duty cast upon all the states in the Union of India.

After considering the arguments advanced by the interested parties, examining the legal mechanism under the relevant laws like the Wild Life (Protection) Act 1972, the Constitution of India,[37]the Biological Diversity Act, 2002, the Washington Convention also known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973[38] and various policies and action plans such as the National Forest Policy (NFP) 1988, National Environment Policy (NEP) 2006, National Bio-diversity Action Plan (NBAP) 2008, National Action Plan on Climate Change (NAPCC) 2008 and the integrated development of wild life habitats and centrally sponsored scheme framed in the year 2009 and integrated development of National Wild- life Action Plan (NWAP) 2002-2016 etc the Supreme court held that: [39]

> The MoEF's decision for re-introduction of Asiatic lion from Gir to Kuno is that of utmost importance so as to preserve the Asiatic lion, an endangered species which cannot be delayed. Re-introduction of Asiatic lion, needless to say, should be in accordance with the guidelines issued by IUCN and with the active participation of experts in the field of re- introduction of endangered species. MoEF is therefore directed to take urgent steps for re-introduction of Asiatic lion from Gir forests to Kuno.

The court also held that: [40]

> the decision taken by MoEF for introduction of African cheetahs

36 Included the critically endangered species in India, according to the International Union for Conservation of Nature.

37 Art.48A &51-A (g)

38 CITES entered into force on 1st July, 1975. It aims to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species in the wild, and it accords varying degrees of protection to more than 33,000 species of animals and plants. Appendix 1 of CITES refers to 1200 species which are threatened with extinction. Asiatic lion is listed in Appendix 1 recognizing that species is threatened with extinction.

39 See *Supra* note 33 at 265.

40 *Id*. at 264.

> first to Kuno and then Asiatic lion, is arbitrary an illegal and clear violation of the statutory requirements provided under the Wildlife Protection Act. The order of MoEF to introduce African Cheetahs into Kuno cannot stand in the eye of Law and the same is quashed

The significance of this judgment lies in the fact that the apex court has reiterated the importance of eco-centrism as compared to anthropocentrism. The following observations amply demonstrate the same:[41]

> Approach made by SWBL and the State of Gujarat is an anthropocentric approach, not eco-centric though the State of Gujarat can be justifiably proud of the fact that it has preserved endangered specie (sic) becoming extinct. We are, however, concerned with a fundamental issue whether the Asiatic lions should have a second home. The cardinal issue is not whether the Asiatic lion is a family member or is part of the Indian culture and civilization, or the pride of a State but the preservation of an endangered species for which we have to apply the species best interest standard. Our approach should not be human-centric or family-centric but eco-centric. Scientific reasoning for its re-location has to supersede the family bond or pride of the people and we have to look at the species best interest especially in a situation where the specie is found to be a critically endangered one and the necessity of a second home has been keenly felt.

The court also utilized this occasion to highlight the necessity of an exclusive parliamentary legislation for the preservation and protection of endangered species so as to carry out the recovery programmes before many of the species become extinct and gave the following directions:[42]

(a) The National Wildlife Action Plan (NWAP) 2002-2016 has already identified species like the Great Indian Bustard, Bengal Florican, Dugong, the Manipur Brow Antlered Deer, over and above Asiatic Lion and Wild Buffalo as endangered species and hence we are, therefore, inclined to give a direction to the Government of India and the MoEF to take urgent steps for the preservation of those endangered species as well as to initiate recovery programmes.

(b) The Government of India and the MoEF are directed to identify, as already highlighted by NWAP, all endangered species of flora and fauna, study their needs and survey their environs and habitats to establish the current level of

41 *Id*. at 258.
42 *Id*. at 265.

security and the nature of threats. They should also conduct periodic reviews of flora and fauna species status, and correlate the same with the IUCN Red Data List every three years.

(c) Courts and environmentalists should pay more attention for implementing the recovery programmes and the same be carried out with imagination and commitment.

In another significant judgment delivered by the Madras High Court in *E. Seshan* v. *Union of India*,[43] a division bench of the court dealt with a new kind of human-wildlife conflict which is becoming a critical threat to the survival of many endangered species like wild buffalo, elephants, tigers, lions *etc*. In the instant case, a PIL was filed against the proposed action of the government of Tamil Nadu to capture six wildlife elephants from a village lying in Tiruvannamalai and Vellore districts and to separate them to distant places in adjacent districts. The petitioner was particularly concerned with the proposal to cage each of them individually in cages technically called "Kraal" the size of which will be little more than the size of the elephant which will be trapped until it is tamed and obeys the commands of the mahouts. He further contended that the six elephants which were part of a bigger herd have lost their home range due to human intervention. He also pointed out that the elephants are endangered species included in schedule–I of the Wildlife Protection Act, 1972 and that the Union of India has been spending huge amounts for protecting wild animals in India in association with the international organizations like International Union for Conservation of Nature (ICUN) and as a signatory to various international treaties to protect Asian elephants.

On the other hand the respondents submitted that the behavior of the six elephants were tracked for quite some time and since they started raiding human habitats also caused huge loss to the crops raised by the farmers and causing death of human lives, and further started venturing into the nearby towns also, a decision has been taken to capture and relocate them. It was also submitted that the respondent authorities had already obtained prior permission from the concerned authorities based on expert opinion to locate the six captured elephants in the nearby *Topslips* and *Mudumalai* areas.

The high court after considering the arguments of parties on both the sides and analyzing the impact of various judgments of the Supreme Court like T.*N.Godavarman Thirumulpad* v. *Union of India*[44] relating to human-wildlife conflict and the need to drift away from the principle of anthropocentrism to eco-centrism to ensure environmental justice, made a conscious decision in the instant case to uphold the action of the respondents to capture, cage and relocate the six

43 2014 (4) EFLT 1(Mad.,H.C).

44 2012 (2) FLT 600 (SC) relating to human-wildlife conflict and the need to drift away from the principle of anthropocentrism to eco-centism to ensure environmental justice

elephants with the hope that the respondent authorities would periodical assessment as to the need of keeping the elephants in the camps; and to release the into their natural habitats at the earliest.

Illegal and deviated constructions of flats and houses-impact on environment

Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition'. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non- compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders

This is an observation made by the apex court in *Friends Colony Development Committee* v. *State of Orissa*.[45] A similar situation arose recently in Mumbai which put many flat and house owners to untold miseries due to the commissions and omissions of the certain builders and authorities of the local self government. In *Esha Ekta Apartments Co-operative housing society ltd.* v. *Municipal Corporation of Mumbai* [46] the court noted that the builder knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built-up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorized. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation.

In *Shanti Sports Club* v. *Union of India*[47] the Supreme Court explained the adverse impact of unplanned growth, the menace of illegal and unauthorized constructions and encroachments on the environment in the following words:[48]

45 (2004) 8 SCC 733.
46 (2013) 5 SCC 357.
47 (2009) 15 SCC 705.
48 *Id*. at 743.

> The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air- conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions.

A somewhat similar question was considered last year in *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corporation.*[49] While setting aside the order of the Division Bench of the Calcutta High Court, the court referred to the provisions of the Kolkata Municipal Corporation Act, 1980 in the context of construction of additional floors in a residential building in violation of the sanctioned plan and observed:[50]

> What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/ zonal plan. The reports of demolition of hutments and *jhuggi jhopris* belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power Sor unholy nexus with the power corridors.

It appears that the Supreme Court has relied upon the ratio of the aforementioned judgments in the instant Mumbai case, the brief facts of which are as under:[51]

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49 (2012) 10 SCALE 29.

50 *Id.* at 36.

51 *Supra* note 46 at 369.

> The Municipal Corporation of Mumbai (the Corporation) leased out the plot in question, of which land use was shown in the development plan as General Industrial to M/s. Pure Drinks (the lessee) in January, 1962. The lessee constructed a factory and started manufacturing cold drinks under the brand name *Campa Cola*. After about 16 years, the lessee engaged an architect for utilizing the land for construction of residential buildings. The architect made an application under section 337 of the Mumbai Municipal Corporation Act, 1888 (the 1888 Act) for sanction of plans of the proposed residential buildings. The same was rejected by the planning authority in 1980 on the ground that the required NOCs had not been obtained and the competent authority had not given exemption under the Urban Land (Ceiling and Regulation) Act, 1976. Another application made by the architect was rejected by the planning authority on similar grounds.

It was further held:[52]

> In view of the above development, the lessee made an application to the corporation for change of land use from general industrial to residential. The latter forwarded the same to the state government along with a proposal for modification of the development plan of the area. The state government accepted the proposal of the corporation and passed an order in December 1980 under section 37(2) of the Maharashtra Regional and Town Planning Act, 1966 (the 1966 Act) in respect of 13049 square meters leaving the balance 4856 sq. meters for industrial use. This was subject to the condition that development shall be as per the Development Control Rules for Greater Mumbai, 1967 (the D.C. Rules) and other relevant statutory provisions. Thereafter, the architect engaged by the lessee submitted revised plans for construction of residential buildings. The planning authority granted approval in June 1981 for construction of 6 buildings comprising basement, ground and 5 upper floors. The commencement certificate was issued on 10.6.1981 and on 27.6.1981, the additional collector and competent authority granted permission under section 22 of the Urban Land (Ceiling and Regulation) Act for demolition of the structure and redevelopment in accordance with the provisions of the D.C. Rules.

In 1983, the lessee secured permission from the then chief minister of the state to raise the height of the buildings up to 60 feet. However, the revised plans

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52 *Ibid.*

submitted for construction of separate buildings comprising stilt and 24 upper floors; stilt and 16 upper floors with additional 6th and 7th floor on building no.2 and additional 6th floor on building no.3 were rejected by the planning authority *vide* its order in 1984. Notwithstanding rejection of the revised building plans, the developers/builders continued to construct the buildings. Therefore, Executive Engineer, A.E. Division of the corporation issued a stop work notice in 1984 under section 354A of the 1888 Act mentioning therein that if the needful is not done, the construction will be forcibly removed. However it appeared that the authorities of the corporation buckled under pressure from the developers/builders and turned blind eye to the illegal constructions made between 1984 and 1989.

Thereafter, after executing agreements with the developers/builders, the prospective buyers formed different cooperative housing societies. Although the members of the housing societies knew that the construction had been raised in violation of the sanctioned plan and permission for occupation of the buildings had not been issued by the competent authority, a large number of them occupied the illegally constructed buildings. After this, the housing societies started litigation in one form or the other.

The court stated that section 3 of the Environment (Protection) Act, 1986 *inter alia* provides that the provisions of the Act and any order or notification issued under the said Act will prevail over the provisions of any other law. The court finally held that that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas. This judgment has once again demonstrated that planned development in urban areas is a *sine qua non* for protection of environment.

Constitution of state committees for slaughterhouses in states and union territories

It is well known that slaughterhouse generate substantial quantities of effluents and solid wastes. They also cause nuisance by way of foul smell due to improper handling. This is a regards the environment. On the other hand there is a need to implement effectively the provisions of the Prevention of Cruelty to Animals Act, 1960 and the Rules made there under and also the provisions of the Environmental (Protection) Act 1986 .The Supreme Court dealt with a PIL relating to the above issues in *Laxmi Narain Modi* v.*Union of India*.[53] The court noted in this PIL that the Central Pollution Control Board(CPCB) submitted that all the slaughterhouses in the country should comply with the prescribed standards relating to modernization of their operations with greater emphasis on utilization of waste to reduce environmental problems and to maintain hygienic conditions.

Having noted the need to have a uniform set of rules and also the need to comply with the environmental protection, and in view of the similar opinion

53 (2014) 1 SCC 241 decided on July 09 2013 by KSP Radhakrishnan & P.C.Ghose JJ which refers to number of related court proceedings reported in (2014)1 SCC 243 and (2014) 2 SCC 417.

expressed by the Union Ministry of Environment and Forests, the Supreme Court directed all the state governments and the Union territories to constitute the state committees for slaughterhouses for the purpose of identifying and preparing a list of all the slaughterhouses located within the local self government including the municipal corporations and panchayats, modernization of slaughter houses, relocating them if they are located within or in close proximity of a residential area, recommending measures for dealing with solid waste, water and air pollution and for preventing cruelty to animals meant for slaughter etc. After the court was informed that such committees have been constituted the court again directed the chief secretaries of the state governments and administrators of the Union Territories to take follow-up action for effective functioning of the committees. This is the culmination of a matter pending for a number of years. It is hoped that the concern of the apex court will be taken care of by the stakeholders concerned in the larger interest of environmental protection.

Critically vulnerable coastal areas & pollution due to constructions

In *Vaamika Island (Green Lagoon Resort)* v. *Union of India*,[56] the apex court dealt with a very important issue relating the protection of critically vulnerable coastal areas (CVCA) in India which support exceptionally large biological diversity. The facts leading to the filing of this SLP are as under. Vembanad Backwaters in Kerala is a CVCA which houses large biological diversity and is the second largest wetlands in India. In the instant case the court was concerned with an island named Vettila Thuruthu in Vembanad Lake in the State of Kerala. This lake plays an important role in the ecology and economy of the South-West coast of India. It is a complex system of backwaters, marshes, lagoons, mangrove forests, reclaimed land and an intricate network of natural and manmade canals. The lake is fed by six rivers flowing from Western Ghats and was declared as a *Ramsar* site in 2002 thus acquired a new status at the national and international level for India's contribution towards achieving sustainable development.

More importantly the lake has been included in the coastal zone management plan prepared by the Kerala Coastal Zone Management Authority under the provisions of the Coastal Zone Regulation Notification of 2011.The grievance of the petitioner company in this SLP is that an area measuring approximately 5.21 acres was wrongly included in the map of the coastal zone management plan and that consequently the constructions made by it were directed to be demolished by the High Court of Kerala. The court after hearing the parties and appreciating the facts placed before it concluded that the lake is important in terms of its recognition at national and international level for its most productive ecosystem. It was also noted that the CRZ notification was issued by MoEF in February 1991 as part of the Environment (Protection) Act, 1986 with an object to protect the coastal area from eroding and to preserve its natural resources. It was also noted that the map was prepared based on the guidelines of MoEF, taking care of the maps prepared

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54 (2013) 8 SCC 760.

by the Survey of India and cadastral maps prepared by the Survey Department of Government of Kerala.

The court found that there was no illegality in the maps so prepared by Kerala Coastal Zone Management Authority as well as the techniques employed to ascertain that the buildings/constructions were made in violation of CRZ 1991 as well as 2011.Thus the court upheld the directions issued by the Kerala High Court for demolition[55]of the buildings constructed in the area included in the map. The court relied upon the earlier judgments of the court[56]and also with a view to save ecologically sensitive areas undergoing severe environmental degradation due to increased human intervention.

III JUDICIAL RESPONSE IN OTHER RELATED AREAS

Business of flesh, leather and bones of dead animals in residential areas-impact on environment.

In *Shakeel Ahmad* v. *State of U.P*.[57] the Allahabad High Court was called upon to decide the validity of the order passed by a sub divisional magistrate (SDM) ordering the closure of the business of flesh, leather and bones of dead animals in a locality on the ground that such businesses are polluting the atmosphere of the locality and that it had become very difficult for the residents of that locality to live in that area due to foul smell. Such an order was passed under section 133(1) of the CPC by the SDM for removing the public nuisance. On the other hand the petitioner businessmen contended that the notice earlier issued by the SDM under section 133 suffers from illegality as it was passed without taking evidence, and that this business by the petitioners of storing bones and leather of dead animals had been carried out at the given place for a long time, and further that even taxes in respect of the said business were paid to the concerned municipality. On perusal of facts of the case and application of the relevant provisions of the Code of 1973, the learned single judge of the high court upheld the earlier conditional order of the SDM which was made absolute, thus rejecting the arguments of the businessmen causing pollution due to their commercial activity in a residential locality.

Water pollution due to discharge of toxic effluents by sugar factory

The National Green Tribunal (Western Zone) Bench, Pune, while dealing with the application of *Mr. Vitthal Gopichand Bhungase* v. *Gangakhed Sugar & energy ltd.*,[58] passed an interim order directing the respondent sugar factory to deposit Rs 50, 00,000/- with the office of the district collector, for disbursement and

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56 *Indian Council for Enviro-Legal Action* v. *Union of India* (1996)5 SCC 281, and *Piedade Filomena Gonsalves* v. *State of Goa* (2004) 3 SCC 445.

57 2014 (4) FLT 11.

58 *Available at*:http://www.greentribunal.gov.in/judgment 37_2013%28 MA%29_ 20 Dec2013_final_order.pdf. (Last visited on Aug. 18th 2014).

ordered for attachment of property of the sugar factory with stock and barrel if the amount is not deposited within 4 weeks from the date of the order.

The subject matter of the applications is about water pollution being caused by Gangakhed Sugar and Energy Ltd., by releasing /discharging toxic effluents in Mannath lake situated at Gangakhed Taluk leading to continuous damage to the environment and ecology and also causing loss to aquatic life in the lake. The effluent discharge by Gangakhed Sugar factory caused water pollution not only of lake but also in the surrounding areas which affected the health of the villagers. The main grievance of the fisher men was that due to discharge of untreated and contaminated effluents from the distillery the aquatic life of Mannath Lake is endangered.

The respondent on the other hand argued on technical grounds apart from the environmental issues questions regarding "*Legal Right*" of the applicant and "failure to frame of Preliminary issues" by tribunal before passing any order and before going to the merits of the main application. It was argued by the respondent that main application is liable to be dismissed on the ground of absence of *locus standi*. The NGT clarified on the above issue that "the *locus standi* of a person in environmental dispute is not according to his legal rights". Such a person may not have any personal interest or may not be a stake holder, yet may be competent to file the application. It was also observed that in case of litigation involving environmental disputes one cannot be oblivious of the settled legal position that such litigation is not adversarial in nature. It is rather quasi-adversarial, quasi-investigative and quasi- inquisitive in nature. Such litigation is not cabined and cribbed within strict procedural framework of the rules of the CPC.

The NGT clarified that "there is no inherent right available to the respondent (Gangakhed Sugar Factory) to urge the NGT to frame the preliminary issues as sought. In other words, applicant Gangakhed Sugar Factory cannot insist that without framing such preliminary issues, the main application shall not be proceeded with. It is the discretion of the tribunal to either frame preliminary issues or to call upon the parties to go ahead with the trial of the matter for final adjudication. For the law itself has set out limitation of six months as expected duration for disposal of such application. The intention of legislature therefore clearly is to avoid procedural impediments and to ensure expeditious final decision in such matter.

Relying upon the reports of food, hygiene-and health laboratory which indicated that the aquatic life may not survive in such water, due to contamination, the tribunal applied "Polluter Pays" principle and directed the respondents to deposit an amount of 50,00,000/- with the office of Collector, Parbhani, so that such amount will be available for disbursement and held that "in case the application is allowed it may direct disbursement of such amount as may be required, and in case the application is dismissed the amount will be refunded to the Respondents".

Water pollution due to immersion of Idols made of plaster of paris and tazias:

In *Dr.Subhash C. Pandey* v. *State of M.P.*,[59] the NGT dealt with a very significant issue relating to water pollution due to immersion of idols made of Plaster of Paris

59 2014(4)FLT 154 (NGT,CZ.,Bhopal) .

(PoP) and also in the water bodies of Madhya Pradesh, Rajasthan and other states. Dr. Subhash C. Pandey filed this application stating that though the Central Pollution Control Board (CPCB), New Delhi issued guidelines[60]on immersion of Idols and Taziyas in the water bodies, the State Governments of Madhya Pradesh, Chhattisgarh & Rajasthan as well as the respective state pollution control boards are not taking effective steps for preventing pollution of the water bodies caused due to the immersion of idols during festivals and the idols of Gods and Goddesses are continued to be made with Plaster of Paris (PoP) instead of eco-friendly clay. Hazardous chemicals, paints and colours are used in decorating the idols during the festivals and no concrete action is being taken by the respondents to prevent immersion of such idols in the water bodies. It is estimated that in the upper lake and lower lake of Bhopal city alone about 14,400 idols are immersed every year resulting in deposition of about 400 tons of PoP and clay causing enormous pollution to these two lakes. Almost 70% of idols are made with PoP and for making each idol of 5 feet height; about 50Kg of PoP and about 2 Kg of toxic colours are used. Metals, ornaments, oily substances, synthetic colours, chemicals are used to make polish and decorate idols for worship and when these idols are immersed in the water bodies aquatic and surrounding environment gets severally affected. After appreciating the facts and submissions and also in view of the earlier guidelines, the NGT issued the following directions which are self-explanatory in nature.

It was held: [61]

> ……(P)eople should be encouraged to go for smaller size idols. Larger sized idols not only consume huge quantity of raw material including decorative material for their making, their immersion also requires huge machinery such as heavy duty cranes. Immersion of such idols results accumulation of huge quantity of solid waste even if the CPCB guidelines are followed and they are immersed in the designated spots with synthetic liners. Removal of accumulated material from the bottom of the designated immersion spots is a time consuming and costly task. Further, to immerse such large sized idols in the designated sites near the water bodies requires retention of huge quantity of water of considerable depth which always may not be possible particularly when there is a deficit rainfall. Therefore people have to be sensitised on this issue and once demand for such large sized idols comes down, the idol makers will be left with no option except to make smaller size idols.

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60 See CPCB guidelines of June 2010 and also in Application No. 65/2012 in the matter of *Sureshbhai Keshavbhai Waghvankar* v. *State of Gujarat* under the judgment dated 09.05.2013 to all the state pollution control boards in this behalf.

61 *Supra* note 59 at 164.

> … since at most of the public places communities erect pandals, no such pandals should be allowed to be erected without permission of the local authorities and municipalities and while seeking such permission, guidelines which have been quoted above, should be made as part of the permission and the responsibility in case of non-observance should be fixed on the persons seeking permission for erection of such pandals for the aforesaid activities and if necessary, strict action should be taken against those who do not observe and violate the guidelines. The Pollution Control Boards are authorized under Section 5 of the Environment (Protection) Act, 1986 to issue directions and we would direct the State Pollution Control Boards to issue directions to the District Administration, the local authorities including the municipalities for observance of the above guidelines with the stipulation that in case of any breach, prosecution in accordance with Section 15 of the Environment (Protection) Act 1986 can also be initiated. As we have already noticed pollution levels, as a result of the aforesaid immersion, are much higher in the lakes, steps should be taken in accordance with the guidelines quoted hereinabove for creating separate temporary immersion bodies outside the lakes for the aforesaid purpose of immersion and in no event should the District Administration permit direct immersion of idols and *Taziyas* into the lakes/tanks. For this purpose, it would be the responsibility of the District Administration to create such designated spots. Such designated temporary ponds by the district administration and local authorities including municipalities shall be constructed observing the precautions given in the CPCB guidelines beforehand ensuring removal of the debris within 48 hours in accordance with Para 2.2 (i) to (iv) of the guidelines.

Establishment of Brick-Kilns and Adverse Impact on Environment-Award of Exemplary Costs

In *Shiv Shankar Yadav* v. *State of UP* [62] a Division Bench of Lucknow Bench of the Allahabad High Court considered the question of establishment of brick-kilns in the periphery of residential areas and the probable impact it would have on the environment. While dealing with the validity of a No Objection Certificate (NOC) issued by the Uttar Pradesh Pollution Control Board to certain persons to run brick-kilns in alleged utter disregard to statutory provisions and the concerned Rules, the high court found that there was collusion between the PCB and the persons permitted to run the brick-kilns in getting the NOC issued. The court found that, from the bye-laws regulating the establishment of brick-kilns during the period in question, no brick-kiln could have been established within 200 meters

62 2014 (4) FLT 181 decision dated Dec. 2013

of Abadi (residential area), public building, hospital, and school. Further no brick kiln could have been established from East and west side of the mango grove within the distance of 1.5 kilometers and North –South side within the distance of 300 meters.

In view of the emissions from brick kilns in the form of Sulphur Dioxide, Carbon Monoxide, Oxides of Nitrogen and Ash and Ethylene causing even fatal and serious deceases to human beings as they have a fundamental right to live with quality, fresh air and polluted water etc, the court struck down the NOC given by the PCB and also directed the closure of brick kilns within a week. The court also directed the respondent brick-kiln operators and also the officials of the PCB responsible for issuing the NOC illegally to pay costs of Rs.500/-. This direction though appears to be unusual could be justified on the basis of the 'polluter pays principle'. It could be hoped that the authorities would be cautious and vigilant hereafter in granting permissions to brick-kilns without following the necessary guidelines.

As regards the other significant cases decided last year, a Division Bench of the Karnataka High Court clarified in *Environment Support Group, Bangalore* v. *National Biodiversity Authority, Chennai* [63] that the NGT has jurisdiction to decide all substantial questions relating to enforcement of any legal right arising out of implementation of the Biological Diversity Act, 2002.

In *U.A.L. Industries Ltd.* v. *State Bank of Bihar*,[64] the high court held that the guidelines framed by the state pollution control board meant for protection of environment and prevention of possible health hazards to people for generations, have to be followed by all entrepreneurs including those who want to set up asbestos manufacturing units.

IV CONCLUSION

An analysis of the aforementioned judgments and trends relating to the year under survey makes it clear that the judiciary in India has not disappointed the common man as to his right to live in a pollution free environment. The court has time and again stressed the importance of the doctrine of public trust which enjoins the State to act as a trustee as to the natural resources for the benefit of all the human beings. The principle of anthropocentrism has been reiterated by the Supreme Court and the other courts with regard to the preservation of rare animals and their translocation. Doctrine of 'Sustainable Development' has been applied while dealing with the feasibility of nuclear power plants, and also in allowing some of the giant industries which already commenced their operations by substantial compliance with the environmental regulations as could be seen in the a *Sterlite* judgment. The concept of peoples' sovereignty over natural biological resources has been highlighted by the court while referring to the rights of scheduled tribes and traditional forest dwellers. One could see even certain traits of judicial activism in the decisions that imposed heavy precautionary costs to a tune of Rs.100

63 2014(4) FLT 233(Kar.,HC).
64 2014(4) FLT 237(Pat.,HC).

crores, and costs to an extent of Rs.5 lakhs where grave violations were noticed. Guidelines have been laid down as to the immersion of idols in water bodies, and running of brick-kilns. The illegal mining has been effectively brought under control thanks to the proactive role of the Supreme Court and the constructive role of the Central empowered Committee. On the whole the apex court, certain high courts and the NGT have played an effective role as watchdogs and also as supervisors in the area of environmental protection in the year 2013.