

CASE BOOK

[INDIAN CASES IN THE 90's]

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Prologue

Law, Technology & Biodiversity : The Interface in Twenty-first century

The study of history is predominantly marked by the demarcation of the past into various periods and an endeavour to bring out the most important characteristic of each of the period. One of the major areas of disagreement amongst the intellectuals of the world growing today revolves around a simple problem B to delineate what is the most important thing that happened in the 20th century. Some of the major views are the following:¹

- § Economic change affecting large number of masses. (Bradford de Long).
- § Emergence of democracy as a political norm. (Amartya Sen).
- § The growing realisation that the *self-realisation* of the individual is a greater goal than loyalty to any group like the family, religion, race, ruling dynasty or nation. (Peter Berger).

¹ S.A. Aiyar, AMost important event of the 20th Century@, The Times of India, Bangalore, November 26, 2000, p. 12.

A closer look at any of the conclusions make it quite clear that the only yardstick to measure the most important aspect of the 20th century is the number of people affected by *one particular* phenomenon. One may disagree on the most important aspect of the 20th century but it might not be unreasonable to believe that an aspect that has remained constant throughout human history is B change.² The most important harbinger of change has been the increasing advancement in the field of technology. Improvement and novelty in technology have always produced gains. Nevertheless, history is testimony to the fact that these gains have almost invariably been overwhelmingly been appropriated by the ruling elites.³

² Indeed, it is quite common to cite the great thinker Karl Marx to have retorted once that the only aspect of life which is permanent is change.

³ *Supra.* n. 1.

It is generally believed that through most of the history the living standards for vast majority of people were low and unchanged. However, the 20th century witnessed a perceptible change in fortunes for a sizeable chunk if not for the majority of the people. The level of income went up while the working hours fell down 72 hours per week to just 36 hours per week in Europe and North America. Indeed, in some of the developed countries, the very concept of poverty and low income was redefined and restated with more stringent standard.⁴ Some of the counties like Singapore and Korea went from poverty to real prosperity.⁵ At the same time for some of the countries, poverty became a saleable item as the multi-national companies sought to relocate their manufacturing units from the high-wage country to low-wage country.⁶ It is this time-tested faith in the effectiveness of technology that prompts management *gurus* like CK Prahalad to see the poor as untapped market and evolve products for them.⁷

The advancement in technology has not left a single aspect of the human life untouched. Indeed, one of the important areas of influence has been *agriculture*. Long before the state and research institutions found the field of agriculture worthy enough to invest and innovate, our farmers have been utilising their conjured skills to feed the burgeoning population.⁸

⁴ For instance, the poverty line in the USA is now defined at \$14,000 per year. If the same standards are followed in India, nearly 90 percent of the population would fall below the poverty line.

⁵ Rajeshwar, *As Asian Economies Quake*, 13 *Chartered Financial Analyst* 11(1998), at p. 11.

⁶ It needs to be noted, however, this trend has not gone uncontested and has been subjected to criticism. *See*, Thomas E. McCarthy, *Transnational Corporations and Human Rights*, Reading Material for Law, Poverty & Development, National Law School of India University, Bangalore, 2000, pp. 50-60. Nevertheless, it has been sought to be established by some experts that this trend has *at least* raised the level of minimum wages in these countries. It has been said that even in Africa and other failed regions, living standards rose only because technology yielded new goods and services never available before in history. *See*, *Supra*. n.1. Mr. Aiyar puts forth a simple example. In the 19th century, only a few rich people could listen to philharmonic orchestras playing Bach. Today poor villagers in remotest Africa can do so, listening to the radio and tape recorders. Indeed, benefits of growth is finally trickling down!

⁷ *See generally*, <http://www.financialexpress.com/fe/daily/19980120/02055194.html>

⁸ *See generally*, A.R. Desai, *Social Background of Indian Nationalism*, Popular Prakashan, Bombay, 1996, pp. 1-6.

Indeed, the most spectacular achievement of post-independent India could indubitably be said to be the quadrupling of its annual food grains output from 50 million tonnes in the early fifties to over 205 million tonnes currently. The feat is all the more remarkable in light of the realisation that most of the farmers are illiterate and the fact that India has 16 percent of world=s population and 15 percent of its farm animals, but occupies only two percent of the geographical area and receives only one percent of its rainfall. .⁹ However, it is quite evident that notwithstanding these colossal constraints, the farmers in India have not only preserved the bio-diversity already available but also contributed to the development of new varieties through employment of latest technologies.

However, in a time period of merely half a century the negative aspects of this technological advancement, too, have come to the fore. The quality of land has started deteriorating; existing arable land, natural water etc. has started shrinking, food produced have started becoming tasteless with the result that growth in agriculture has slowed down¹⁰. In recent times even Genetically Modified (GM) food have come under severe attack. These questions are very intricately linked to the question of preservation of bio-diversity.

All these aspects also raise a question about food security of the nation. Indeed, the National Agricultural Policy points out that India needs to double food production in the next ten years to ensure our food security. Notwithstanding the ill effects of the technology pointed out above, the solution might very well at the end of the day lie in technology itself B for technology cannot be understood to be an end itself but as a means to an end, the end being the larger development of the human beings.

Moreover, technology cannot be understood be neutral for, it is not the technology *per se* but the use of it that poses the problem. The use that a particular technology is put to is always dependent upon who controls the technology. It is such considerations that have led to the emergence of a dichotomy between farmers= rights and breeders rights.

Under the commitments that the developing countries have taken under the TRIPs Agreement, protection of plant varieties would have to be provided by using patents or an effective *sui generis* system for the protection of plant varieties, or a combination of both. At

⁹ This is the kind of urban-rural divide which appears to be driving the farmers in Andhra, Karnataka and Maharashtra on the path of suicide. According to one estimate in the last three years 1000 farmers have committed suicide.

¹⁰ Ashok Gulati & Seema Bathla, AA Revolution waiting in the wings@, The Economic Times, Bangalore, October 26, 2000, p. 6.

the same time it was felt that while the plant breeders could secure their rights in the new regime of intellectual property protection, the traditional farmers who have conserved and improved the planting material through centuries and have made these available to the breeders, stand to receive no recognition. This gave rise to the concept of 'Farmers' rights', which has been seen as a mechanism that can counter balance the breeders' rights.

In the interest of development of the society at large, the task of law is to strike a balance between the competing interests. Indeed, the issue of 'Farmers' rights' has been taken forward by the Food and Agricultural Organisation (FAO) through the process initiated for the revision of the International Undertaking on Plant Genetic Resources that was adopted in 1983. Article 15 of the proposed International Undertaking recognises the 'enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources, which constitute the basis of food and agricultural production throughout the world.'¹¹. The proposed 'Farmers' rights' would include the following principal elements:

- § Protection of traditional knowledge relevant to plant genetic resources for food and agriculture.
- # Right to equitably participate in the sharing of benefits arising from the utilisation of plant genetic resources for food and agriculture.
- # Right to participate in the decision making, at the national level, pertaining to matters related to conservation and sustainable use of plant genetic resources for food and agriculture.

¹¹ See, Biswajit Dhar, 'Will breeders trip farmers' rights?', The Economic Times, Bangalore, October 19, 2000, p. 8.

Although 'Farmers' rights' as delineated above have generally been accepted, one of the major problems is the *modus operandi* of the equitable sharing of benefits. For, several problems may arise if one tries to fit in the 'Farmers' rights' within the conventional notions of intellectual property rights which is clearly based on ideas of individualism and does not recognise community rights¹². It needs to be kept in mind that unlike in the case of formal innovation system where the inventor is clearly identifiable, in the field of informal innovations such as those carried out by the farmers for developing new varieties of crops, it is well nigh impossible to indicate who amongst the farmers had made the 'real' contribution.

¹² As outlined earlier in this paper, Peter Berger puts the growing realisation of individual autonomy as the major achievement of the 20th century. But the same notion when applied in the context of community rights of the farmers creates problems. Like any other theory, even Berger's appear to stand testimony to the fact that reality is far too complex to be captured by any of the theories 'left, right or centre'. Even those seemingly successful ones are constructs fast trying to catch up with the reality.

It is here that the limitations of the dominant paradigm of legal jurisprudence comes to the fore. Communities are not recognised as legal category by the system of jurisprudence that is currently in vogue. The concept of collective rights no doubt existed in traditional societies but this has long been abandoned in favour of the Western system in which legal categories are very deeply influenced by the notions of individuals as rational members of the society who exercise choices.¹³ The level of the influence of the dominant paradigm is such that of the various theories in Jurisprudence only a largely obscure theory of personality named 'Realist Theory of Personality' tries to recognise groups as the bearers of rights and duties.¹⁴

The negotiations of the Agreement on Agriculture (AoA) stand as the prime instance of politics at the global level. The developed countries who inevitably happen to be the technology-wielding countries are calling the shots. One wonders as to when the Southern countries are being asked to negotiate for the natural resources owned by the communities why can't the Northern countries follow suit in the case of private corporate bodies? Isn't the duplicity in approach reflective of the power that they wield?¹⁵ In such a scenario one only tends to agree with Kothari¹⁶ when he states that the world's elite have an incalculable past and continuing debt to traditional communities all over the world. Such realisations necessitate to have conceptual clarity with respect to nuances of bio-diversity. ***The present case book intends to provide a basic framework containing fundamental concepts of biodiversity along with cases in the decade of 90s so as to provide a holistic picture.***

¹³ See generally, Andrew Ashworth, *Principles of Criminal Law*, 3rd ed., Oxford University Press, 1999, p. 60.

¹⁴ The 'Realist' theory of personality asserts that juristic persons enjoy a real existence as a group. Moreover, it asserts the theory that the group tends to become a unit and to function as such. The theory is of German origin and very clearly reflects the situation of that time. History tells us that until the time of Bismarck Germany consisted of large number of separate states. Unification of these large of small, fragmented states was the ideal of many of the statesmen of that time. The spirit of this movement towards unification had assumed almost the character of the crusade. The main exponent of this theory has been Otto Von Gierke and has been supported by Maitland in this endeavour. The basic theme of this theory, is the reality of group personality as a legal and social entity, independent of state recognition and concession. The fundamental distinction that Gierke draws is between *Sozialrecht* and *Individualrecht*. The former is concerned with the claim of the society, while the latter is concerned with the claims of the individual. See generally, Otto Von Gierke, *Natural Law and the Theory of Society*, Cambridge University Press, Cambridge, 1958, pp. lvii-lxxvii. See also, Rahul Singh, 'The Realist Theory of Personality',

¹⁵ The duplicity in approach is prominent when the western countries expect the developing ones to open up the bio-diversity in the interest of humanity at large but refuse to buy the same arguments when it comes to Intellectual Property Rights over the life-saving drugs which have shot the prices beyond the reach of common masses.

¹⁶ See generally, Ashish Kothari, *Understanding Biodiversity: Life, Sustainability and Equity*, Orient Longman, Hyderabad, 1997, pp. 82-85.

AN INTRODUCTION TO BIO-DIVERSITY

Realisations such as those delineated above lend credence to belief nurtured by numerous commentators that while oil and food grains ruled the world in the 20th century, the developments this century would be ruled by the negotiations over access to biological and genetic resources. The law governing such negotiations now forms the centre-stage of debate and discussion at national as well as international levels. From the point of view of an environmental lawyer, there are crucial issues relating to conservation and sustainable use that need to be addressed. In addition to this, the new challenges posed by advances made in science and technology also raise many issues in relation to biodiversity. While some of the issues may be settled through existing legislation, most of them need to be addressed through new laws. India being one of the biodiversity rich countries will have to deal with many legal issues

There is a growing national and global awareness of the need to conserve biodiversity, and increasing action to achieve this. The Convention on Biological Diversity which came into force on 29 December 1993 provides the global mechanism to ensure the conservation and sustainable use of bio-diversity for the present and future generations.. The Strategy recognises bio-diversity as globally significant and that its conservation will bring benefits to all.

The Scientific Understanding of Biological Diversity

Biological diversity or bio-diversity refers to the variety of life forms: the different plants, animals and microorganisms, the genes they contain, and the ecosystems they form. This living wealth is the product of hundreds of millions of years of evolutionary history. The process of evolution means that the pool of living diversity is dynamic: it increases when new genetic variation is produced, a new species is created or a novel ecosystem formed; it decreases when the genetic variation within a species decreases, a species becomes extinct or an ecosystem complex is lost. The concept emphasises the interrelated nature of the living world and its processes.

Biological diversity is usually considered at three different levels: genetic diversity, species diversity and ecosystem diversity.

Genetic diversity refers to the variety of genetic information contained in all of the

individual plants, animals and microorganisms. Genetic diversity occurs within and between populations of species as well as between species.

Species diversity refers to the variety of living species.

Ecosystem diversity relates to the variety of habitats, biotic communities, and ecological processes, as well as the tremendous diversity present within ecosystems in terms of habitat differences and the variety of ecological processes. ¹⁷

GENETIC DIVERSITY

Genetic diversity refers to the variation of genes within species.

New genetic variation is produced in populations of organisms that can reproduce sexually by recombination and in individuals by gene and chromosome mutations. The pool of genetic variation present in an interbreeding population is shaped by selection. Selection leads to certain genetic attributes being preferred and results in changes to the frequency of genes within this pool.

The large differences in the amount and distribution of genetic variation can be attributed in part to the enormous variety and complexity of habitats, and the different ways organisms obtain their living.

One estimate is that there are 109 different genes distributed across the world's biota, though they do not all make an identical contribution to overall genetic diversity.

SPECIES DIVERSITY

Species diversity refers to the variety of species. Aspects of species diversity can be measured in a number of ways. Most of these ways can be classified into three groups of measurement: species richness, species abundance and taxonomic or phylogenetic diversity.

Measures of species richness count the number of species in a defined area. Measures of species abundance sample the relative numbers among species. A typical sample may contain several very common species, a few less common species and numerous rare species.

The species level is generally regarded to be the most appropriate to consider the diversity

between organisms. This is because species are the primary focus of evolutionary mechanisms and therefore are relatively well defined. At the global level, an estimated 1.7 million species have been described to date; current estimates for the total number of species in existence vary from five million to nearly 100 million..

On a broad scale species diversity is not evenly distributed across the globe. The single most obvious pattern in the global distribution of species is that overall species richness is concentrated in equatorial regions and tends to decrease as one moves from equatorial to polar regions. In general, there are more species per unit area in the tropics than in temperate regions and far more species in temperate regions than there are in polar regions. In addition, diversity in land ecosystems generally decreases with increasing altitude. Other factors which are generally believed to influence diversity on land are rainfall patterns and nutrient levels. In marine ecosystems, species richness tends to be concentrated on continental shelves, though deep sea communities are also significant.

ECOSYSTEM DIVERSITY

Ecosystem diversity encompasses the broad differences between ecosystem types, and the diversity of habitats and ecological processes occurring within each ecosystem type. It is harder to define ecosystem diversity than species or genetic diversity because the 'boundaries' of communities (associations of species) and ecosystems are more fluid. Since the ecosystem concept is dynamic and thus variable, it can be applied at different scales, though for management purposes it is generally used to group broadly similar assemblages of communities, such as temperate rainforests or coral reefs. A key element in the consideration of ecosystems is that in the natural state, ecological processes such as energy flows and water cycles are conserved.

The classification of the Earth's immense variety of ecosystems into a manageable system is a major scientific challenge, and is important for management and conservation of the biosphere. At the global level, most classification systems have attempted to steer a middle course between the complexities of community ecology and the oversimplified terms of a general habitat classification.

Generally these systems use a combination of a habitat type definition with a climatic descriptor; for example, tropical moist forest, or temperate grassland. Some systems also incorporate global biogeography to account for differences in biota between regions of the world which may have very similar climate and physical characteristics.

The measurement of ecosystem diversity is still in its infancy. Nevertheless, ecosystem diversity is an essential element of total biodiversity and accordingly should be reflected in any biodiversity assessment.

Importance of bio diversity

Today, as ever, human beings are dependent for their sustenance, health, well-being and enjoyment of life on fundamental biological systems and processes. Humanity derives all of its food and many medicines and industrial products from the wild and domesticated components of biological diversity. Biotic resources also serve recreation and tourism, and underpin the ecosystems which provide us with many services.

While the benefits of such resources are considerable, the value of biological diversity is not restricted to these. The enormous diversity of life in itself is of crucial value, probably giving greater resilience to ecosystems and organisms. Biodiversity also has important social and cultural values.

Generally, benefits arising from the conservation of components of biological diversity can be considered in three groups: ecosystem services, biological resources and social benefits. Some examples of these benefits follow.

1) ***U. P. Legal aid and Advise Board, v. the State of U. P.*** AIR 1991 All 281

(Bench: R. R. K. TRIVEDI, J.)

The proceedings were initiated for protecting the rights and interests of Adivasis and Banvasis living in Dudhi and Robartsganj tahsils of district Mirzapur. This was done under the order of the Supreme Court in the case of Banvasi Seva Ashram v. State of U. P. AIR 1987 eSC 374 in which it was held:

^In regard to lands notified under Sec. 4 of the Act, even when no claim has been filed within the time specified in the notification as required under Sec. 6 (c) of the Indian Forest Act, 1927¹ such claims shall be allowed to be filed and dealt with@

The Supreme Court had granted an extra time and mandated wide publicity for the land to be covered under the notification so that illiterate and ignorant Adivasis and Banwasis of the area can be duly informed and be protected.

The controversy in the present writ petition was regarding the procedure that was followed. The primary contention of the petitioner was that the observations of the Additional district and sessions judge, Mirzapur regarding the procedure adopted by forest settlement officer was incorrect and misconceived. They contended that their claim has been rejected on technicalities and hence Adivasis and Banvasis shall suffer irreparable loss and injury. It was further submitted that if the order of the judge is maintained, the object and purpose of the directions given by the Supreme Court to protect the interest and claims of the Banwasis and Adivasis shall be frustrated.

The respondent contended that the Supreme Court had granted relaxation to the petitioners only in respect of steps which could be taken under Sec. 6 following under Sec. 4 of the Act but the claims could only be decided in accordance with the procedure laid down for the same in the Acts and the rules and the various manuals. Hence, the decision the judge is correct and legal.

¹Hereinafter referred to as >the Act= for the sake of brevity.

The court came to the conclusion that as per the order of the Supreme Court as well as the provisions of the Act, the Forest settlement officer was under legal obligation to enquire into all the claims including those of which could be ascertained from the records of the Government and the evidence of any persons acquainted with such claim. Hence, the order of Judge rejecting the claims on the ground that the objection in writing were not filed, was unjustified.

The court also noted that all the objections taken up by the Judge to the handling of the matter by the forest settlement officer was very technical and of narrow view. Hence, the court rejected objections such as non-framing of issues, non application of other rules provided in Code of Civil Procedure etc., exclusion of land left in favour of gram sabha, absence of stamp on applications And objections etc.

However, the court came to the conclusion that cases wherein the rights have been granted in favour of the dead persons etc. needs to be re-examined by the Forest settlement officer.

Thus, on the basis of the above, the court touched its final verdict in the following terms:

- 1) The order of the Additional District and Sessions judge rejecting the claims on the grounds of non-filing of written objections, non-framing of issues, not making local inspection and on ground of deficiency in stamp duty in objections and applications is set aside and the orders of Forest settlement officer are restored. Such claims which have already been accepted need not be opened and inquired into again.
- 2) The exclusion of such area, regarding which orders were already passed by competent courts and the orders had gained finality, shall be maintained, but full particulars regarding such orders passed by competent courts shall be thoroughly checked and inquired into and recorded in the order for better reference in future.
- 3) The area which existed between the holdings and which has been left in favour of Gram Sabha shall also be maintained.

- 4) The remaining cases in respect of which number and other details have been mentioned by the Judge in the order, shall be inquired into again in the light of observations made and discrepancies noted therein and such claims shall be decided afresh in accordance with law after giving opportunity to the concerned parties. In case of dead persons an opportunity shall be given to their heirs and legal representatives.

- 5) After the orders are passed by the Forest settlement officer, the record shall be again placed before the Additional District Judge, for his orders as appellate authority has been directed by the Hon=ble Supreme Court.

Since a considerable delay was already there, the court directed the Forest Settlement officer to deal with the matter within six months.

Thus, the writ petitions were allowed in part with directions to the Forest Settlement Officer to decide afresh in the light of the observations made in the judgement.

The decision challenged in this case raises an important question in relation to environmental justice and human rights.

Compliance to technicalities vis a vis justice delivery to the common man is the crux of this case.

The claims by the Petitioners are obvious as they are illiterate and ignorant adivasis.

2) **STATE OF MAHARASHTRA V. KISAN, AIR 1991, Bom. 398**

(Bench: W. M. Sambre, J.)

The non-applicants were transporters of Narpathi, Zhakni, Sarak, Tawdi and Chattai etc. They had filed suits in the lower courts praying that the appellant be restrained by issuing ad interim injunction from any way obstructing them in transporting any of the above mentioned products. Lower courts had granted relief in the favour of the non-applicant. Hence, aggrieved by orders passed by the courts below the revisions came to be filed by the State of Maharashtra praying that the order of injunction granted in favour of the non-applicants be vacated.

The main ground of contention of the non-applicants in the original plaint, was that the products mentioned are finished goods and hence they are not forest produce within the provisions of law. Hence, no transit pass or money receipts could be said to be required for the purpose of a transporting or storing the said goods.

The agreements of the applicant were the following:

- 1) Pursuant to circular issued by the Government on 24th Oct. 1986, it has been clarified that narpathis, chatais, pertares are forest produce within the meaning of section 24(b) (i) read with section 2(6) and 2(7) of Indian Forest Act, 1927. Through the Circular, the parties were also directed to produce money receipts or transit pass while making any transport of the forest produce.
- 2) Given the circumstances, the State Government has issued the said notification in order to preserve the forests. Hence production of transit passes as well as money receipts as mandated by the circular ought to be made mandatory.
- 3) The reliance of the non-applicants on the Gujarat High Court decision reported in AIR 1987 Guj 9 declare chaltai etc. *>as not a forest produce=* is misplaced, as the situations in both the States were quite different. Unlike Gujarat, bamboos are not freely

available in Maharashtra and moreover, preparation of chattai etc. does not bring about any drastic changes in the original forest produce. Thus, chattai etc. are forest produce within the definition of Section 2(4) (a) (b) and (7) because it is prepared from the bamboo itself.

- 4) In an earlier case, filed before the same High Court, challenging the validity of the circular, the court had specifically refused to stay the operation of the circular. Hence, the circular is in operation and ought to be applied.

The non-applicants rebutted the above arguments on the following grounds:

- 1) The Government cannot change its stand without assigning any reasons. In the present case, since no reasons have been given for treating the hitherto free goods as forest produce, the circular is illegal and inapplicable.
- 2) Even if the circular is applicable to the non-applicants, chattai etc. are very clearly not a forest produce as they involve draftsmanship.
- 3) As the Gujarat High Court in the Case reported in AIR 1987 Gujarat 9 has held chattai etc. not to be a forest produce, the said decision should be followed and the circular should be quashed. Even different circumstances existing in both the cases does not change the definition arrived at by the court.
- 4) Instead of taking action against the persons who prepare the mattings, the Government by insisting upon money receipts and transit passes is simply harassing the businessmen.

The Court adverted to the above contentions and came to the conclusion that the circumstances have very clearly changed after the issuance of 1986 circular and mattings etc are forest produce. The court relied upon the decision of Supreme court in *Kishanlal v. State of Rajasthan AIR 1990 SC 2269*, which dealt with the definition of *agricultural produce* to show that definition here is inclusive and conclusive of all material facts. Moreover, it said that in view of the different circumstances, court decision cannot be applicable. Hence everybody produce, a

transit pass for transport of any forest goods under Sec. 41 of the Indian Forest Act.

The Court held that the object of the circular is clearly to protect and preserve the fast depleting forests cover. In case of any opposing view the intention of the government by issuance of circular and its object will be clearly frustrated, and unauthorised persons will be encouraged to take recourse to unauthorised business

Hence, on the basis of above reasoning, the court allowed all the revision applications and quashed the orders passed by the lower courts. The order of injunction granted in favour of the non-applicant was vacated.

**3) *M/s. Hanuman Vitamin Foods Ltd., v. State of Orissa, AIR 1992 Ori 274*
(Bench: D. P. Mohapatra, and J. M. Mohapatra J.J.) (Judgement delivered by:
J.M. Mohapatra J.)**

The petitioner, a private company with head office in Bombay was engaged in collection of mango kernels in Orissa as well as other states during last several years and in manufacturing solvent extract, mostly for foreign export. On 12/4/1985, the State Government on the recommendation of a High Level committee, decided to grant lease of several items of minor forest produce including mango kernel to a joint venture company that would be floated by IPICOL. With a brief period of termination of lease because of the change of Government, the lease was restored on 14/12/1990 by the new government. The lease was continuing when the petition was filed.

The petitioner=s allegation was the following:

- i) Mango kernel is not a forest produce in terms of the provisions of the Orissa Forest Act, 1972 and hence leasing out by the Government is illegal and without jurisdiction.
- ii) The State Government cannot have any control over mango kernel in the matter of collection and hence it cannot put any restriction on those engaged in collection or collect any royalty whatsoever.
- iii) The abrupt restriction put on the business activity being carried out since least 15 to 20 years is violative of Arts. 14 and 19 of the Constitution.

Though the State Government did not file any reply, party no. 4, which happened to be the beneficiary of the lease vehemently contested the allegations and averred that the idea of giving long term lease of minor forest produce was to generate employment in the scheduled caste and scheduled tribe communities living in the interior of the State and for promoting the economic upliftment of the State.

The Court referred to the definition of 'forest produce' given in section 2(g) of the Orissa Forest Act, 1972 and noted that even within clause (ii) of the section which provides for **'flowers and fruits when found in or brought from a forest'**, **mango kernel** cannot be said to be 'forest produce'. The court averred that Cl. (ii) of the definition refer to the wild flowers and wild fruits which normally grow inside the forest and which do not require any care, protection or nurturing.

In the instant case, the Court noted that most of the mango trees of good variety were planted several years ago and cannot be said to have had wild growth. The court, furthermore, noted that even if mango fruits which are found in or brought from a forest, is taken as a forest produce, the number of such trees and fruits would be very insignificant when compared with mango trees and fruits grown outside the forest areas. The court, therefore, considering the position about the growth, situation and plantation of mango trees and general availability of mango fruits in the state, concluded that mango fruits cannot be said to be a forest produce.

The court noted that the mango fruit undergoes a long process of transformation before it is utilised as a kernel. It observed that even if mango fruit is grown inside a forest, after consumption of the fruit and extraction of the kernel from inside the fruit, the kernel does not possess the characteristic of the mango fruit in the original form. Keeping these considerations in mind, the court held that though mango kernel is contained inside mango fruit, it is a separate entity.

The court also noted the fact that at some stage in the decision making process, prior to grant of long term lease, top ranking forest officers like the Principal CCF, Orissa, had subscribed to the view that mango kernel is not a forest produce. Moreover, for past several decades no restrictions had been imposed by the State Government through its forest department for collection of mango kernels indicating that mango kernel was never treated as a forest produce in the past.

The court distinguished on facts the case of *Gangadhar Sahu v. State*, O.J. C. Nos. 1162 and 1128 of 1990 relating to the case of siali leaves, and held the case to be inapplicable.

Thus, the court held the following:

- 1) Mango Kernel is not a forest produce as defined in the Orissa Forest Act, 1972.
- 2) Thus, the petitioners would have no restriction in his right to collect and transport mango Kernel throughout the State.
- 3) The grant of lease by the State Government in favour of opposite party No.4 in respect of mango kernel is invalid, and hence quashed.
- 4) ***S. R. I. Roller Mills pvt. Ltd and etc. v. Union of India and others***,
AIR 1992 Bom 79 (Bench: Mrs. Sujata Manohar and Srikrishna JJ)
(Judgement delivered by: Mrs. Sujata Manohar)

Writ Petitions no.s 1810 1990, 30 of 1991 and 1483 of 1991 were clubbed together. These writ petitions challenged the levy of inspection and supervision fees in respect of inspection, inter alia, of plants and seeds imported into India. These fees were levied under Clauses 3(12) and 12 of the Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989,² issued in exercise of the powers conferred on the control government by Sec. 3 of the Destructive Insects and Pests Act, 1914³.

The petitioner in writ petition no.1810 of 1990 and 30 of 1990 had imported timber logs. They contended that timber logs do not come within the definition of 'Plant' or 'Seeds' under clauses 2(1) of the order. However, the court relied on the case of *Sardar Plywood Ltd., v. Union of India*, (1991) 33 ECC 29(SC) which had clearly held that timber logs fall within the definition of the term 'Plant' under the order.

The petitioner in writ petition No.1483 of 1991 had imported pulses. He contended that pulses do not fall within the definition of the term 'Seeds' under the Order. Moreover, they contended that the Act applies only to crops and since pulses are not crops, the Order cannot apply to pulses.

Adverting to the second contention, the Court referred to S. 3 of the Act and held that import of any article likely to infect crops can be either banned or regulated. The actual article imported need not be a 'Crop'.

With respect to the first contention, the court referred to definition of 'seeds' as given clause 2(1) of the Order and definition of 'Pulse' as given in Oxford English Dictionary and held that pulses are seeds of agricultural or horticultural crops.

The court approved the contention of petitioners based on the cases of *Venkata Sukkarao V. State of A. P.*, AIR 1965 SC 1773; *Municipal Corporation of Greater Bombay v. Noshor Sharpruji Dhabhar*, (1990) 92 Bom LR 462; *Synthetics and Chemicals v. State of U. P.*,

²hereinafter referred to as the 'the order'.

³hereinafter referred to as 'the Act'.

(1990) 1 SCC 109; *M/s. Hoeschst Pharmaceuticals v. State of Bihar* AIR 1983 SC 1019 and concluded that power to regulate does not include a power to levy a tax etc a fee. The power requires to be expressly conferred. In this context, the court also noted the scheme of 7th schedule of the Constitution which provides for separate entries for levy of fees and taxes indicating that the power to buy a tax or a fee is not a power ancillary to the general power to regulate any activity.

The court referred to the cases of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282; *Sri Jagannath Ramanuj Das v. State of Orissa*, AIR 1954 SC 400 and drew parallel between tax and fee held that imposition of both taxes as well as fees have to be authorised by law.

Based upon above reasoning, the Court came to the conclusion that the provisions of S. 3(1) of the Act does not confer authority on the Central Government to levy inspection fees in respect of timber logs and pulses imported into India. Allowing the petition, the Court held:

- 1) Clauses 3(12) and 12 of the Plants, Fruits and Seeds (Regulations of Imports into India) Order, 1989 is *ultra vires*, the powers conferred on the Central government under S. 3(1) of the Destructive Insects and Pests Act, 1914 and is hence struck down.
- 2) The Respondents are directed to refrain from levying and collecting inspection fees at the rate of Rs.40/- per m.tonne or at any other rate on the consignments of pulses and timber logs imported by the petitioners under the Plants, Fruits and Seeds (Regulation of Import into India) order 1989.
- 3) In writ petition no.1810 of 1990, the respondents are directed to refund to the petitioner a sum of Rs.31,840/- already paid as inspection fees.
- 5) ***K. K. Vasant v. State of Karnataka, AIR 1992 Kant.256***
(Bench: M.P. Chandrakantaraj Urs and B. Jagannatha Hegde, JJ)
(Judgement delivered by: Chandrakantaraj Urs, J.)

The Writ petition was filed by one K. K. Vasant a practising Advocate of Bangalore. In

his writ petition he had generally pointed out the inadequacy and the conflicting nature of provisions and Acts relating to environment in Karnataka. The petitioner made the following allegations:

- 1) The provisions made under the Forests enactments in Karnataka and the Rules framed thereunder do not make provisions for declaring certain areas as 'Core forest' or 'Virgin Forest', particularly in the hill ranges on the western side of the Karnataka State.
- 2) Forest produce has been allowed to be exploited by forest based industries without sufficient precaution being taken by the State Government to preserve the forest wealth in allowing such exploitation.
- 3) Legislation governing the subject of preservation of forests and protection of animals therein falls short of the requirements of cultivation and scientific exploitation of the forests.
- 4) Exploitation of forests should be totally stopped and the forest produce based industries must be de-licensed and prevented from utilising the forest produce.
- 5) No provision is made by the State Government to take steps for sufficient afforestation to compensate for the loss due to ill-planned exploitation of the forests by the State Government as well as by the individuals and licenses in exploiting the forest produce.

In a nutshell, the State's contention was that the reliefs asked for are not tenable; that the state Government had taken adequate precaution to protect and preserve its forest wealth; the enactments made such as Karnataka Forest Act, 1963 the Rules framed thereunder, Karnataka Preservation of Trees Act and the Rules framed thereunder, the Forest (Conservation) Act, 1980 and the Environment Protection Act, 1986 are adequate to meet all requirements in respect of which the petitioner complains.

The State submitted that by intensifying its activities in the conservation of forests in

general and striking a balance between industrialisation in production as well as preservation of forests and development of irrigation and allied projects as a comprehensive development plan, it has done its duty and the provisions of law in that behalf are adequate.

The court quoted extensively from *Rural Litigation and Entitlement Kendra v. State of U.P.* AIR 1988 SC 2187 to show that under the scheme of separation of powers envisaged by the founding fathers of the Indian Constitution, the three wings of the Government must function in the respective spheres independently of each other. Thus, the petitioner's request could not be so construed as to conferment of powers by the constitution to interfere with the daily routine administration of the state or in the making of laws by the legislature. Judicial review must be strictly understood to protect the rights of the citizens, when their legal or constitutional rights are affected by any order or legislature enactment and not otherwise. Where it relates to matters of policy of the Government, where it relates to making of laws, the court has no role whatsoever to play. It must be always left to the executive will and the wisdom of the legislature.

Without doubting the corrections of the assertions made in the statement of objections filed by the State, the Court relied upon *State of Himachal Pradesh, v. A Parent of a student of Medical College*, AIR 1985 SC 910 to exercise restraint in matters of Public Interest Litigation. The court expressed its inability to grant any prayers and very tangentially questioned the locus standi of the petitioner.

Nevertheless, the Court was kind enough to state that the judgement was not to discourage the public spirited people like the petitioner who evince interest the environment protection.

However, it was noted that those who move the Court in the name of PIL must be equally aware of the limitations the Courts have imposed on themselves in order to work within the framework of the Constitution and in harmony with the other wings of the government.

The Court advised the petitioner to move the concerned legislators who come from the Western Ghats to take initiative and to fill up the lacuna, if any, pointed out by any Expert

Committee and get the relief which the court is unable to give.

The court dismissed the petition and also refused to grant a certificate of fitness to appeal.

6) ***Tarun Bharat Sangh v. Union of India 1992 Supp(2) SCC 448***

(Bench : M.N. Venkatachaliah and K.J Jaychandra Reddy, JJ.)

The Petitioner, Tarun Bharat Sangh, was a social Action Group concerned with protection of environment. The area in question was Sariska Tiger park, declared as a Games reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951, a reserved forest under the Rajasthan Forest Act, 1953 and a Sanctuary under Sec. 35 of the Wildlife (Protection) Act, 1972.

The petitioner alleged that despite notifications and the clear mandate against carrying on of mining operations in this protected area, the Government of Rajasthan has, illegally and arbitrarily, issued about 400 mining privileges, to various persons enabling them to carry on mining operations of lime and dolomite. The petitioner submitted that the activities undertaken during mining leave deep scars on the landscape and degrade and diminish the ecology of the area. The mining activity is also a threat to the habitat of wild life.

The petitioner relied upon the reports of environmental researchers of the Indian Institute of Public Administration, New Delhi and sought inter voluntary interdiction of the mining operations in the protected area during the pendency of this writ petition.

Initially, the State took refuge, under the cloak of confusion, as to the exact boundaries of the protected area and mining operations. But, it ultimately acknowledged that the mining areas, are within the protected area and that appropriate action to enforce the statutory

notifications is necessary.

>Zila Khaniz Udyog Sangh= - a representative body of the mining operations of the area sought impleadment and alleged that the notification under S. 29(3) of the Rajasthan Forest Act, 1953, declaring sariska as a protected forest itself was issued under doubts as to the statutory entitlement of their State to promulgate such notification. They said that till inquiries as to the nature and extent of rules are completed, no prohibition sought in the interlocutory prayer could be granted.

The Court declared that since the minors derive their rights under a grant from the State, the inquiry contemplated by the notification has nothing to do with the mining privileges claimed by the members of the Zilla Khaniz Udyog Sangh.

The Court adverted to the fact that, purpose of declaring the area as Game Reserve, Sanctuary or Protected Forest under various Acts is to protect the forest wealth and wild life of the area. It was added that the State Government while professing to protect the environment by means of these notifications and declarations was at the same time, permitting degradation of the environment by authorising mining operations in the protected area.

The Court referred, for a direction to prepare a list of mining leases falling within the protected area before Dec. 31, 1991 and was granted the authority to recommend to the State Government alternative mining sites to those exposed to hardship owing to the termination of their operations in the protected area.

The committee was also directed to assess the damage done to the environment and suggest remedial measures along with financial outlays.

All concerned authorities were directed to extend whole hearted support to the committee. The State of Rajasthan was, in the meanwhile, prohibited from granted any mining

leases or renewals thereof in respect of the protected area.

Judicial activism in environmental protection has opened a new dimension in social justice.

7) ***The Goa Foundation v. The Konkan Railway Corporation,***
AIR 1992 Bom 471 (Bench: M. L. Pendse and G. D. Karnat, JJ.)

The petitioner was a society registered under the Societies Registration Act and claimed to protect and preserve the natural environment including forests, lakes, river and wild life and to have compassion for living creatures. The petitioner had filed the petition under Art.226 of the Constitution and alleged the following with respect to the proposed 760 kilometers railway line from Bombay to Mangalore.

- 1) The Konkan Railway Corporation (KRC) has not undertaken an adequate Environment Impact Assessment (EIA) and an Environment Management Plan (EMP)
- 2) The proposed alignment done by the KRC is wholly destructive of the environment and the eco-system and hence violates citizen=s rights under Art. 21.
- 3) Keeping in mind the damage on ecology that would ensue, the KRC ought to be compelled to procure environment clearance for the alignment passing through the State of Goa from the Ministry of Environment and Forests, as required under the provisions of the Environment (Protection) Act, 1986.
- 4) The KRC cannot ignore the Notification dt. Feb. 19, 1991 issued under S. 3(2) (v) of the Environment (Protection) Act, 1986, putting restrictions upon the setting up or extension of industries, operations or processes in the Coastal Regulation Zone (CRZ) as prescribed.

The KRC vehemently contested the allegations by stating that due care had been taken with respect to environmental concerns. Indeed, a committee under Mr. M. Menzes, an eminent engineer from Goa and retired chairman of the Railway Board was constituted to look into objections with respect to alignment. Moreover, Rail India Technical and Economic services

(RITES), an internationally recognised consultancy firm was commissioned to probe the adverse effects on the environment and ecology. Furthermore, necessary correctional measures were undertaken pursuant upon suggestions. Thus, the respondents pointed out that claim of the petitioner was totally a figment of imagination and objections had been raised with ulterior motives.

While the Government of Goa and the Conservator of Forests supported the claim of the KRC, the Ministry of Environment made it clear that the ministry is fully conscious of the mitigative steps taken by the corporation and necessary precaution will be taken to ensure that ecology and the environment of the places from where the alignment passes is not disturbed.

Specifically with respect to allegation regarding adverse impact on centuries old man made environment of Khazan lands (spread over 227 hectares), the Court rejected the allegations and noted that even otherwise, the extent of damage was extremely negligible (affecting only 30 hectares).

The court noted:

“The courts are bound to take into consideration the comparative hardship which the people in the region will suffer by stalling the project of great public utility. The cost of the project escalates from day to day and as pointed out by the Corporation, the extent of the interest and cost which will be suffered by the Corporation every day is to the tune of Rs. 45 lakhs. No development is possible without some adverse effect on the ecology and environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests.....”

The Court noted that prior approval of the Central Government had been taken and hence there is no question of violation of Environment (Protection) Act. Moreover, the Court noted that proviso to Section 1 of Railways Act, 1989 makes it clear that Environment Act has no application in respect of work undertaken by railways. The Court also concluded that the notification on which reliance was placed by the petitioners was misconceived and illogical as the expression “industries, operations or processes etc” cannot bring within its sweep the

activities of providing a rail line.

Reacting to the issues of adverse effect on churches and temples, the Court remarked that everyone ought to realise that providing a rail line is neither a political nor a religious issue but is undertaken for providing basic necessity of cheap and quick mode of transport so that speedy development of backward areas can take place.

The court said that the writ jurisdiction is meant to advance the cause of justice and not defeat exercises undertaken by the Government for the public benefit, and hence declined to exercise writ jurisdiction in the case.

**8) *Tehri Bandh Virodhi Sangarsh Samiti and Others V. State of U. P.* 1992
Supp(1) SCC 44
(Bench: K. N. Singh and
Kuldip Singh, JJ.)**

The petition was in the nature of PIL under Art. 32 of the Constitution of India. The petitioners prayed that the Union of India, State of U. P. and the Tehri Hydro Development Corporation be restrained from constructing and implementing to Tehri Dam.

The ground of attack was two - fold. *Firstly*, the petitioner alleged that the safety aspect has not been taken into consideration in preparing the plan for the Tehri Dam project. *Secondly*, if the dam is allowed to be constructed, it will be a serious threat to life, ecology and the environment of the entire northern India, as the site of the dam is prone to earthquake. The petitioner contended that the Government of India has not applied its mind, to important aspect of seismic activity in the region in spite of adverse opinions of, experts both, within the country and abroad.

The Jt. Secretary, Ministry of Energy, contested the allegations of the petitioner and deposed before the Court that the Government of India has at every stage, considered all relevant data and fully applied its mind to the safety and various other aspects of the project.

The project was initially considered by the Environmental Appraisal Committee, of the Ministry of Environment and Forests. The Committee of Secretaries, then referred the matter to a High level committee of experts, to examine the issues relating to the safety aspects of Tehri Dam project.

The High level committee of Expert under the chairmanship of Sri D. P. Dhoundial, Director General, Geological Survey of India went into the following aspects:

- 1) Whether the earthquake potential of the zone in which the dam is being located has been fully taken into account, while designing the dam?
- 2) Whether the proposed dam would be safe, as designed vis-a-vis earthquake potential of the area.
- 3) whether there would be any threat posed by Reservoir Induced Seismicity (RIS) to the dam or civilian structures in the vicinity.
- 4) Have all potential dangers arising out of, seismicity been taken note of, and adequate precautions taken, in planning all aspects of project? If there are any lucunae in these respects, the same may be elaborate upon and action required in this regard spelt out.

The Committee of Secretaries found on a consideration of the report of the High level committee, that the Tehri Dam as designed was safe and seismic potential of the site was taken into consideration by the experts.

However, in the meanwhile, Dr V.K. Gaur, a member of the High level committee of

experts, who had earlier agreed with the unanimous report, expressed dissent. The government referred the points raised by Dr. Gaur for further consideration of the committee. The subsequent report of the committee endorsed the earlier view - this time by a majority with Dr. Gaur's dissent urging that the entire matter be referred to an independent seismological expert of international repute.

Prof. Jai Krishna, a renowned expert, of international repute, examined the report of the High level committee as well as the dissenting note of Dr. Gaur. Dr. Krishna concurred with the conclusions, arrived at by the High level committee of experts and disagreed with views expressed by Dr. Gaur. Prof Krishna confirmed that the recommendations were accord with international experience and opined that the design of the dam was quite safe against the strongest expected earthquake in the region.

The light of the above facts, the court held that the Union of India has applied its mind to the relevant aspects of safety of the dam.

Adverting to the petitioner's contention of excluding Prof. Jaikrishna's opinion and take into consideration opinion of that it does not possess the requisite expertise to render any final opinion on the rival contentions of the experts.

Therefore, keeping in mind the fact that the government had already fully considered every aspect of the project including its safety, the petition was dismissed without any order as to costs.

9) ***Niyamavedi V. State of Kerala Air 1993 Ker 262 (M. M. Pareed Pillay, J.)***

The Petitioner Niyamavedi, Kalavathy, Kochi; had filed a PIL under different petitions challenging the action of the respondent to establish a biological park in >Agasthyavam=. Different petitions were clubbed together in view of identical reliefs sought.

The contention of the petitioners were manifold. They are as follows:

- 1) The proposed project for biological park would result in denudation of forest.
- 2) the project poses a serious threat to the environment and ecology as there is likelihood of thousands of valuable forest areas being removed.
- 3) No independent expert committee has considered the viability or feasibility of the project. Even the State committee on Science, Technology and Environment was not consulted.
- 4) Construction of buildings in the Noyyar Wildlife Sanctuary would destroy Agasthyamala and its environments which have been identified as one of the Biosphere Reserves by International Agencies, like International Union for Conservation of Nature (IUCN). Moreover, construction of buildings is the violation of the provisions of the Forest Conservation Act and the diversion of the forest area for >non-forest purpose= is illegal.
(It was asserted that places where buildings are proposed to be constructed fall inside Noyyar sanctuary area which is within the proposed Agasthyamala Biosphere Reserve.
- 5) Adivasi settlements face the danger of eviction because of the project.
- 6) A letter sent by Joint Director (WLI), Government of India, Ministry of Environment and Forests, to the principal Chief Conservator of Forests stating that, no forest canal should be diverted for any other purpose, ought not have been ignored. The attitude of the respondents is totally ignoring the letter, in brings centre-state relationships as envisaged in the constitution and is, against the spirit of Environmental Protection Act.

The allegations of the petitioner were vehemently contested by the respondent on factual as well as legal terms. It was contended that the primary purpose of the project was actually afforestation and protection of forests. It was asserted that no tree would be removed and the apprehension that forest wealth will be destroyed is without any basis. In fact, the State Government submitted that the major area where the biological park was to be established, was a degraded forest and a haven for boot beggars and anti-social elements. They averred that when the project becomes a fait accompli, anti-social elements alone would be hit.

The court found that a high-powered committee of experts had indeed been set up to go into the nitty-gritty of the project. The project was in fact the result of the study conducted by the committee. Moreover, since committee on Science and Technology has only advisory functions, it is upto the government to take their consideration. Nevertheless, some of the members of the separate committee were, members of science and technology committee as well.

It was submitted on behalf of the respondent that the place known as Agasthyamala and the proposed project area of Agasthyahanam are two different areas.

Adverting to the submission by the respondent that only 16% of the total outlay is earmarked for staff quarters and that for the effective conservation of the flora and fauna, strict vigilance is necessary, the Court came to the conclusion that, considering the project as a whole, it is not possible to hold that its implementation would have any disastrous consequence as pictured by the petitioners. The court also noted the counter affidavit of the respondent that most of the buildings required for the project area proposed to be constructed would be outside the forest area and in the private land specifically acquired for that purpose.

The Court observed that the petitioner cannot invoke the provisions under the Wildlife (protection) Act as construction of roads is permitted under it. Moreover, roads would be necessary for protection of the biological park. Further more, though section 2 of Forest Conservation Act, 1980 imposes restrictions on the dereservation of forests or use of forests land non-forest purpose, the explanation to the section indicates that works relating to as ancillary to conservation, development and management of forests wildlife cannot be construed as non-forest purpose. Hence, there is no question of violation of provisions of Forest Conservation Act.

The Court concluded the following:

- 1) Decision to establish Biological park is an administrative policy decision.
- 2) By establishing biological park there is no violation of any statutory or constitutional provision.

In a separate petition challenging the acquisition of land, the petitioner had contended that government land, itself was available and so it was needless to acquire their property. Moreover, they submitted that in view of the fact that the project is under challenge, the acquisition cannot be said to be for public purpose.

The Court referred to a number of cases such as Raja Anand Pratima Shah v. State of U.P. AIR 1967 SC 1081, Ratilal v. State of Gujarat, AIR 1970 SC 984, Jage Ram v. State of Haryana, AIR 1971 SC 1033, etc. and said that only colourable exercise of power can be challenged. In the present case, they held, there is no colourable exercise of power as the construction of buildings is really indispensable for the success of the project.

The Court said that so long as the policy decision of the government does not offend provisions of any Statute or Constitution, it cannot interfere. It observed that as the state Government on a consideration of the opinion of the experts and scientists have decided that the establishment of the biological park would, really be conducive to the proper maintenance of the forest wealth and as it is a badly needed step for afforestation, the court cannot intervene in a matter which is completely within the executive powers of the government and which is purely administrative in nature, especially when there is no evidence of any patent abuse of power. For the scope of judicial review, the Court cited Ravi Industries and Saw Mills v. State of Kerala, 1983 Ker LT 560 and Bhukyan v. State of Kerala, 2981 Ker LT 560 and Bhukyan v. State of Kerala, 2981 Ker Lt (SN)87 Asif Hameed v. State of Jammu and Kashmir AIR 1989 SC 1899 and Shri Sitaram Sugar Co. Ltd., v. Union of India, (AIR 1990 SC 1277) Keeping in mind the above considerations, the petitions were dismissed.

On the face of this case, the Court has rightly decided, but considering the ecological fragility of the Western Ghats, this was a golden opportunity for the judiciary to lay down legal policies for the protection and conservation of bio-diversity.

**10) *Dhirendra Agrawal V. State of Bihar, Air 1993 Pat.109*
(Narbdeshwar Pandey and Choudhary S. N. Mishra, JJ.)**

The Petitioner was carrying out mining activity in one particular plot of land since 6/3/1976. Time and again, the lease was renewed by the government. On 17/1/1992, the petitioner, was, all of a sudden, stopped from carrying on mining activities and trucks and

other materials were seized. The reason cited was that **Section 2 of the Forest (Conservation) Act, 1980**⁴ stipulated prior approval of the Central Government for carrying out any activity for *anon-forest purpose* in any forest land.

The petitioner contended that since the initial lease was granted before the Act came into existence, there was no need for prior approval by the Central Government. Moreover, the petitioner argued that since he has a statutory lease, he has a fundamental right to carry on the mining operation over the leasehold land. Hence, proper notice and reasonable opportunity to be heard might have been granted.

It was contended on behalf of the respondents that since the area over which the petitioner was operating, the mines, was notified as Forest land, it came within the purview of Sec. 2 of the Act and hence any renewal of mining lease offer in 1981 (the Act came into force on 25/10/1980) was illegal and without jurisdiction, as no approval of the Central Government was taken.

The Court adverted to Sec.2 of the Act and laid down that, the provision casts statutory duty on the state government to obtain permission of the central government for

- a) dereservation of reserved forest
- b) for use of such land in non-forests purposes.

The main object of the Act, the Court said, is to prevent deforestation and to check the environmental deterioration. This seems to be a positive approach adopted by the court, and to be applauded.

In **Ambica Quarry Works v. State of Gujarat**, (AIR 1987 SC 1073), it was held that any renewal of mining lease, without prior consent of the central government with respect to a reserved forest is in direct conflict with section 2 of the Act. However, if the state government comes to an adverse conclusion as regards renewal of license, no prior approval is essential.

State of Bihar v. Banshi Ram Modi, (AIR 1985 SC 814) this case was concerned with

⁴Hereinafter referred to as the Act.

a mining lease granted prior to the Act. The lessee had applied to the State Government for permission to carry away, new mineral from a part of the forest area, which was already utilised for non-forest purpose, by carrying out mining operations. Moreover, the lessee had given undertaking that he would confine his mining only to a position of land, over which mining operation had already been carried out and will not sell or remove any standing trees thereon, without prior permission in writing, of the Central Government. Therefore in this background, the Supreme Court held that even in absence of prior approval of the central government, the lessee shall be permitted to carry on operation with respect to an area in the forest, which is broken up or cleared before the commencement of the Act.

The petitioner sought to rely on an unreported decision of the Patna High Court, *Bajjnath Singh v. State of Bihar* (C.W.J.C. No.1032 of 1992) where directions were issued to the Forest Department to restore the articles in the favour of the lessee. It was also observed that without complying with the relevant provisions, the respondents had no authority to obstruct the mining operation conducted by the lessee over the leased land.

However, the court differentiated the facts of the present case from *Bajjnath Singh=s* case and hence refused to apply the ratio.

The court came to the conclusion that no material was laid down before them so as to decide whether the petitioner is entitled to carry on the mining operation over a broken piece of land or land cleared before the commencement of >the Act= in terms of the judgement in *State of Bihar v. Banshi Ram Modi*.

Therefore, the court directed the Secretary, Dept. of Mines and Geology to examine whether on the basis of the ratio of *Banshi Ram Modi=s* case the petitioner can be permitted to carry on the mining operation over any area of the leased land.

Entire seized materials were directed to be restored to the petitioner in light of the fact that *no notice* or opportunity was given to the petitioner before seizure of the commodities.

- 11) ***Executive Engineer, Attappady Valley Irrigation Project, Agali and Ors. V. Environmental and Ecological Protection Samithy, Agate and Ors.,***

AIR 1993 Ker.320

(Bench: M. Jagannadha Rao, C.J. and K. Sreedharan J.)
(Judgement delivery by M. Jagannadha Rao, C. J.)

An area of land was acquired by the State for the Attapady Valley Irrigation Project. Heavy compensation under the Land Acquisition Act were paid. Bamboos standing on the said land were auctioned by the government. After the contractors had paid the bid amount, taxes etc. to the government and executed substantial work, through a writ petition in the High Court filed by the respondents (in the present case), work was stopped. The Court had directed appointment by the government of an expert committee to go into the question of environmental degradation. Finally, the judgement directed the appellants to forbear from the cutting and removing bamboo clusters and other vegetation.

The present writ petition was filed by the contractor with respect to the expenditure that he had incurred in the activity and the removal of the already cut bamboos (40 lorry loads). The respondent conceded that nether the provisions of the Forest (Conservation)Act, 1980 nor the provisions of the Environment (Protection)Act, 1986 apply. The contention was based solely upon Art.21.

The Court framed the following questions for the consideration:

- 1) What is the scope of the jurisdiction of this Court in matters pertaining to environmental protection in Public Interest Litigation?
- 2) Whether a writ of prohibition or other similar direction could be issued when the writ petition, as a public interest case is filed at a belated stage?
- 3) Is the committee report dated 19/2/1990 fundamentally defective?
- 4) Whether interference by this court is called for and if so, in what manner?
- 5) How are the equities to be worked out particularly when the contractor had paid

Rs.4,60,0000 on 7/9/1989 and claims to have spent Rs.1,86,000/- for cutting the bamboo for more than two months out of the three month period allotted for cutting?

As far as points No.1 and 2 are concerned, the Court adverted to Art.48A, 51A(g) of the Constitution, Sachidanand Pandey v. State of West Bengal,(AIR 1987SC 1109: paras 58,60, 62), Bandhua Mukhi Morcha v. Union of India, (AIR 1984 SC 802 : paras 62,63,65 and 66) and Ramsharan Autyanuprasi v. Union of India, (AIR 1989 SC 549) and summarised the position in the following words:

Environmental protection cases coming under the class of Public Interest Litigation must be handed carefully by the Courts both at the stage of granting interim order and also when the matters are finally disposed of. If stay is granted against the state or other public bodies care must be taken to see that public money or public funds or public property is not put in jeopardy, nor can the private parties whose rights are affected be made to suffer. The Court must ensure that the petitioner in public interest litigation is a *bonafide* litigant, really interested in public welfare and not a mere busybody seeking publicity. Interference in writ jurisdiction in environmental matters can be resorted to only if the Court is satisfied that the government or other body has not taken note or considered the relevant factors or parameters or if they have omitted to notice or failed to consider relevant factors. Courts must note that they can go only up to a limit, and not beyond that. What that limit should be would depend upon the facts and circumstances of the case. The Court cannot itself attempt, to nicely balance relevant considerations. Ultimately, if the question involves the balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority. While the courts could do a lot in this area within their true limits, they should not allow themselves to be abused by publicity - interested persons or those who attempt to blackmail and try to make some peculiar gain. *There may be cases where there is more than what meets the eye*. These remarks may set long precedent for may a such PIL=s filed in various High Courts.

As far as point no. 3 is concerned, the Court assailed the Committee report on numerous grounds. The primary reason stated was that, they did not go into the question as to what is ecology existing the area and how the cutting of the bamboo clusters in about 15 acres of land will affect the laid ecology. Moreover, the Court noted the fact that only aged bamboos were

supposed to be cut and the stumps of the bamboo plants were not going to be removed. Therefore, the court observed that since it is difficult to understand how the cutting of the bamboo cluster is to affect human life in an area which is already barren, arguments based upon Art.21 does not hold much water. This might look strange in a country, where no specific legislation on bio-diversity.

With respect to point No.4, it came to the conclusion that the Court ought to consider whether all factors relevant to the case has been considered by the Government. If the Court feels that relevant factors or considerations were not property adjusted, it could remit the matter to the government. It is for the government to decide whether or not the uncut bamboos can be allowed to be cut, at present when the age of bamboos have further gone up. In case of any such action, it would be appropriate for the government to hear the respondents as well as the contractor.

Moreover advertng to point no.5, the Court observed that it is for the government to decide the modalities of working out the equities that may be available in favour of the contractor, as he has already paid Rs.4,60,000/- apart form spending other >large amounts= for cutting the bamboos. However, it will be open to the contractor to seek such remedies by way of damages or otherwise against such persons, who the contractor believes are responsible for any loss incurred by him.

The contractor was, nevertheless, permitted to remove the already cut bamboos. In view of the delay, the government was directed to complete the entire exercise within four months from the date of the judgement.

Thus, the writ appeals were allowed and the earlier judgement of the single judge was set aside.

- 12) ***General Public of Saproon Valley V. State of Himachal Pradesh AIR 1993 HP 52 (Bench: V.K. Mehrotra, Actg. C.J. and Bhawani Singh, J.) (Judgment delivered by V.K. Mehrotra, Actg. C.J).***

Large scale damage was being caused to the local inhabitants on account of unscientific and unsystematic mining and transportation of minerals, some socially vigilant inhabitants lodged complaints with the government. Consequently, the Director of Industries surveyed the area and made correctional recommendations. On request from the lessees, the Assistant Geologist prepared mining plans for the SAPROON Valley.¹ It was then that a public interest litigation was filed by the petitioner through its president Murlidhar Sharma. The allegation was primarily, the reckless manner in which mining of limestone is being carried out in the valley, which is leading to spreading out of mine waste/debris. The consequences were quite adverse on water, agriculture and properties located on downslope. The grievance put forward was that most of inhabitants are agriculturists and the mining is affecting the crops.

The Petitioners submitted that the grant of leave for mining was in clear contravention of the Indian Forest Act, 1927, Forest Conservation Act, 1980, the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974, the Mines Act, 1952 and Environment. (Protection) Act, 1986 besides Articles 48-A and 51-A of Constitution. The respondents contested by saying that the state government has complied with all the codal formalities and no ecological imbalance has been noticed.

The Court, after hearing the matter at length directed, appointment of a High-Powered Committee consisting of experts from various field to examine the mining activity in the valley.

The Committee made a thorough research on the ongoing mining activity and based upon identified parameters classified the mines into two categories:

- 1) Category A: in which mining could be allowed to operate with certain stipulations as identified in the report itself. (Four limestone mines were identified in this category).
- 2) Category B: in which further mining operations may not be allowed because of the reasons mentioned in the report itself. (Four mines were identified in this category)

¹hereinafter referred to as the valley=

The Court agreed with the Committee's call for striking a balance between the needs of development and environment protection. The Report of the Committee called for effective monitoring at pre, post as well as during operation levels. The committee also set out guidelines for grant of limestone mining leases. The guidelines were based upon the following considerations:

- 1) Environmental Consideration
- 2) Geological and geomorphological considerations and
- 3) Technological consideration

The petitioners, initially accepted the report of the committee but later they changed their stance and urged the court to direct the closure of even category >A= mines on the ground that they too have failed to comply with the identified parameters.

On the other hand, the lessees of category >A= mines submitted they are not only willing to comply with parameters given by the Committee but also are prepared to undertake any further directions in this regard.

Even category >B= lessees averred that they are also prepared to comply with parameters and hence they should not be closed down.

The Court cited Rural. Litigation and Entitlement Kendra v. State of Uttar Pradesh, (AIR 1987 SC 95, per Ranganath Mishra J.) and Kinkri Devi v. State of Himachal Pradesh (AIR 1988 HP4) to reiterate the importance of ecology to the human beings, Constitutional mandate in this regard, and the need to strike a just balance between the tapping of the natural resources for socio-economic development and the preservation of environment.

The Court emphasised the necessity of expert advice in such matters and cited the case of M. C. Mehta v. Union of India, (AIR 1987 SC 965). Therefore, granting importance to the expert advice as contained in the report of the Committee, it rejected the plea of both the

petitioners and the lessees of category >B= mines.

The Court also noted that since limestone found in the area is not of high grade, the economic advantage was not very high and employment potential were not of very high order.

The Court followed *Rural Litigation and Entitlement, Kendra, Dehradun v. State of Uttar Pradesh*, (AIR 1985 SC 652), and refused to go into the correctness or otherwise of the conclusions of the Committee.

The attempt by the Counsel for the category >B= mines to draw a distinction based upon facts between the present case and that of AIR 1985 SC 652 was thwarted by the Court on account of the Committee report. The court averred that the Committee consisted of responsible people whose *bonafide* was not assailed and hence they decided to be guided by its recommendations.

The Court directed the setting up of a monitoring committee of experts to keep constant vigil upon the mining activities being undertaken in the valley. The committee was asked to approach the court in case any further action was needed. This case gave a new direction and approach to the cause of environment, wherein the court struck to the very idea of sustainable development.

13) **Niyamavedi v. State of Kerala, AIR 1993 Ker. 262**

(Bench: M. M. Pareed Pillay J.)

The Petitioner filed the petition challenging the action to establish a biological park in >Agastyavanam=. The petitioner=s contention were the following:

- 1) The proposal project for biological park would result in denudation of forest in the State of Kerala .
- 2) It would amount to violation of Forest Conservation Act as Central Government's consent has been not obtained for the project. Moreover, the consent of Zoo Authority of India has also not been taken.
- 3) With respect to the location of the project area an independent body should visit place and submit a report. Moreover, the State committee on Science, Technology and Environment ought to have been consulted before choosing the venture.
- 4) Biological park threatens the abode of six Adivasi settlements in the region of Agasthyavanam. No steps are being taken to rehabilitate them.
- 5) Construction of buildings in the area violate the provisions of forest Conservation Act as it is tantamount to diversion of forest area for non-forest purpose.

All the contentions were vehemently opposed by the respondents. They claimed that the sole purpose of the biological park was afforestation and preservation of forest wealth. It was asserted that no tree would be cut and removed unnecessarily and the apprehension that the forest wealth would be destroyed is without any basis. They further submitted that the major portion of the area where the biological park is sought to be established is a degraded forest and at present a heaven for boot-loggers and anti social elements. When the project comes into existence, it was submitted that anti-social elements alone would be hit as they would not be in a position to continue their nefarious activities.

The respondent also submitted a detailed account of appraisal of the project by the expert committee. The court noted the objectives of the biological park project report as outlined in one of the expert reports as hereunder:

- 1) Regeneration and eco-restoration of the degraded forest area of Kothnur Reserve in Thiruvananthapuram district.
- 2) Scientific conservation of the existing flora and fauna of the project area.
- 3) Restoration of those species which have gradually vanished from the project area and the introduction of other suitable western ghat species for the generation of maximum bio-diversity.
- 4) Breeding and enhancement of stock of rare and endangered species to ensure their permanent preservation and propagation.
- 5) Careful management and maximum sustainable utilisation of the available water and soil resources of the project area.
- 6) creation of a permanent treasure house of the bio-diversity of the western ghats.
- 7) Provision of facility for research on the flora and fauna of Kerala, continuous documentation of their details and the creation of reliable scientific data base.
- 8) Affording opportunity for Nature Education to students, and children in general, through personal observation, familiarisation and recreational activity.
- 9) Providing facilities for >eco-tourism= to people who love greenery .

The court noted that though wildlife tourism is also one of the objectives of the biological park, it cannot be held that the whole scheme is intended to promote tourism to the detriment of the very existence of the natural forest in the region.

The court also observed that in light of the fact that only 16% of the total outlay is earmarked for staff quarters, which in any case, is absolutely essential for vigilance purposes, it cannot be held that construction of some buildings will have any disastrous consequences.

The court also adverted to the contentions of the petitioner with respect to acquisition of their lands for the purpose of the biological park. The petitioner=s challenge was that since the project itself is under challenge, the proposal of acquisition cannot be said to be in public purpose.

The court relied on the cases of *Raja Anand Brahma Shah v. State of U. P.*, AIR 1967 SC 1081; *Ratilal v. State of Gujarat*, AIR 1970 SC 984; *Tage Ram v. State of Haryana*, AIR 1971 Sc 1033 and noted that since in the present case as the acquisition of land is very urgent,

process of acquisition cannot be said to be arbitrary or colourable exercise of power.

Adverting to second contention of the petition, the court held that the object of the biological park cannot be characterised as a non-forest purpose and hence prior approval of the Central Government is not necessary.

The court also referred to the case of Madhusudan Nair v. Govt. of Kerala, 1983 Ker. LT 1\43; Ravi Industries and Saw Mills v. State of Kerala, 1983 Ker LT 650; Bhuleyan v. State of Kerala, 1981 Ker LT (SN) 87 etc. and declared that so long as the policy decision of the government does not offend provisions of any statute or constitution the court cannot interfere indeed, in the present case, on a consideration of the project report, the court concluded that the objectives of the project are laudable and the apprehensions of the petitioners are based on incorrect data and information. Hence the petitions were dismissed.

The focus of this case is uncoordinated approach to environmental protection. There are two groups fighting for the protection of environment through a litigation. The intended objective of both the parties are same.

Environmental litigations often times are instituted without having any base. The conflicting issues precisely in this case is promotion of tourism and existence of natural forest.

14) ***Varkey Abraham V. Wildlife Preservation Officer, Thekkady,***
AIR 1994 Ker 304 (P.A. Mohammed,J.)

The Assistant Wild Life Preservation Officer, Vallakkadavu was not satisfied with the claim to the title of the petitioner in respect of a piece of teak wood timber, one almirah, one cot etc. Kept in his premises. The Officer seized the goods and forwarded to the authorised officer for necessary action.

On 25/7/1981 the petitioner filed a petition before the field Director (Tiger project), Kottayam praying to release seized goods. However, the officer ordered confiscation of the goods under section 61A (2) of the Kerala Forest Act, 1961¹.

¹Hereinafter referred to as >the Act=

The Petitioner, thereafter filed an appeal before the District Judge challenging the order of confiscation. The appeal was allowed and the order of confiscation was set aside. The department then, filed a writ petition in the High Court which allowed the authorities to continue further proceedings according to law.

Fresh inquiries were started and ultimately, the seized goods were found to be ;the properties of the government. Hence, confiscation was ordered. The confiscation order was again challenged by the petitioner under Sec. 61D of the Act. The District Judge dismissed the appeal.

The petitioner moved to the High Court praying for quashing the judgement of the District Judge by issuance of a writ of certiorari.

After perusing the pleadings and relief sought for by the petitioner, the Court came to the conclusion that the petition, substantially comes within the purview of Article 226 of the Constitution.

After considering the fact that the District Judge exercises the powers as provided under Sec. 61D of the Act and there is no provision in the Act prescribing the powers with regard to various procedural matters, the court concluded that the District Judge exercise all powers which are vested in a Court under the Code of Civil Procedure 1908 while dealing with an appeal under Sec.61D of the Act. Hence the judgement passed under Sec. 61D of the Act by the District Court is in effect a judgement of the Civil Court.

The Court cited *Union of India v. Vijaya Mohini Mills* (Division Bench, 1992(1) KLT404) and held that a writ of certiorari cannot be issued to a civil court. This seems to be a important view taken by the Court.

The petitioners plea of taking into consideration the decisions in *Mohd. Safi v. Addl. D.*

and S. J. Allahabad, (AIR 1977 Sc 836), *State of M. P. v. Babulal*, (AIR 1977 SC 1718) and *Naresh v. State of Maharashtra* (AIR 1967 SC1) was rejected on the ground that all these cases had been considered in the aforesaid decision in *Vijaya Mohini Mills case*. The court further said that a similar view was adopted in *Nallaya Kova v. Administrator*, 1968 KLT 60.

On the basis of above reasoning, the writ petition was dismissed on merits.

15) ***Rizwan International V. Union of India*, AIR 1994, Mad.112**
Bench: SRINIVASAN J.

Petitioner, a partnership firm recognised as an exporter of musical instruments, made out of red-sanders wood. Export of red sanders musical instruments and chips and powder and koto parts had been continuing for past several years on the basis of the licence issued by the Chief Controller of Imports and Exports, New Delhi. In fact, the policy was for the period from April 1990 to Mar. 1993. But in March 1992 the policy was suddenly changed and a new policy was framed. The new policy was for a period of five years commencing from 1/4/1992 ending with 31/3/1997. Under the new policy, export of red-sanders in any form was prohibited.

The petitioner asked for a clarification from the authorities whether musical instruments and other chips etc. which were being exported by then could be continued. The reply dt.14/5/1992 was to the effect that the export of red-sanders in any form was prohibited and hence the petitioner would not be able to continue the export.

The aggrieved petitioner filed a writ petition for quashing the communication dt. 14/5/92 and for the issue of mandamus directing the respondents to grant a licence for the value of U.S. \$ 75,000/- against the letter of Credit No.41/24/32445/031, the contract which had already been entered into by the petitioner on the basis of the earlier policy.

The primary contention of the petitioner was based upon the principle of promissory estoppel. The petitioner contended that they have already acted upon the representations made by the respondents in the earlier policy which was to be in force till 31/3/1993. They have suffered detriment by availing bans from financial institutions for the purpose of

purchasing red-sanders and manufacturing parts of musical instruments. Thus, it is not open to the respondents to change the policy all of a sudden and prevent the petitioner from fulfilling its contractual obligations.

Moreover, it was contended by the petitioner that the new policy is unreasonable and arbitrary in so far it relates to red-sanders already out and converted in to parts of musical instruments.

The plea of the respondent is that the principle of promissory estoppel will not apply to legislative action. The contention was that the import and export policy is a result of a legislative function exercised by the government under S. 3 of the imports and exports (Control) Act, 1947.²

Section 3(1) of the Act empowers the Central Government to make provisions by publishing an order in the official gazette prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the order. Sub-section (2) of S. 3 refers to S. 11 of the Customs Act and declares that all goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited under S. 11 of the Customs Act and all the provisions of that Act shall have effect accordingly. Sub-section (3) of S. 3 contains a non obstante clause and states that notwithstanding anything contained in the Act, the central government, may by order published in the official gazette, prohibit restrict or impose conditions, on the clearance whether, for home consumption or for shipment abroad of any goods or class of goods imported into India.

The counsel for the Central government contended that when the Central Government exercises its power under S.3 of the Act, it is legislative in character and hence the import and export policy will be outside the doctrine of promissory estoppel. The counsel placed reliance on the judgement of full bench of Delhi High Court in *Bansal Exports (P) Ltd., v. Union of India*, AIR 1983 Delhi 445, which held that the doctrine of promissory estoppel can be invoked, only against executive actions of the government, but not against legislature. The full bench

²Hereinafter referred to as >the Act=

referred to the earlier rulings of the Supreme Court and proceeded on the footing that the Supreme Court had categorically held in *Union of India v. Anglo Afghan Agencies*, AIR 1968 SC 718 that the Export Control Orders were legislative in character.

The court took into consideration, *M. P. Sugar Mills v. State U.P.*, AIR 1979 SC 621, *Jit Ram Shiv Kumar v. State of Haryana*, AIR 1980 SC 1285, *Motilal Padampat Sugar Mills Co. (P) Ltd., v. State of Uttar Pradesh* AIR 1979 SC 621, *Union of India v. God Fray Philips India Ltd.*, AIR 1986 SC 806, *Indian Express Newspapers (Bombay) Pvt. Ltd., v. Union of India*, AIR 1986 SC 525 *Pournami Oil Mills v. State of Kerala*, AIR 1987 SC 590, *Delhi Cloth and General Mills Ltd., v. Union of India*, AIR 1987 SC 414 *Vij Resins Pvt. Ltd., v. State of Jammu and Kashmir* AIR 1989 SC 1629, *Tapti Oil Industries v. State of Maharastra*, AIR 1984 Bom 161, *Union of Inda v. Hindustan Plantinum Pvt. Ltd, (1989) 44 ELT 443*, *Union of India v. Chakra Tyres Ltd., (1990) 45 ELT 3*, *Union of India v. J. K. Industries Ltd.*, AIR 1991 Raj.45 etc. and came to the following conclusion:

.....it is clear that the uniform view taken by all the High Courts and the Supreme Court is that the doctrine of promissory estoppel will be available as against the governmental action, though the said action has been taken in exercise of statutory power. There is also no doubt that the principle of estoppel is available against subordinate legislations and delegated legislations which cannot be placed on the same pedestal as an enactment passed by the legislative in exercise of the plenary powers.

The court took note of the fact that in the present case, the petitioner had produced the relevant records to show that they had acted in pursuance of the representations contained in the policy which was announced for the period from 1st April, 1990 to 31st Mar. 1993, and incurred detriment by borrowing loans from financial institutions. Apart from that, the court noted that, the petitioner had already prepared musical instruments parts by applying the necessary manufacturing process and made them ready for export. The court said that, it was at this stage that the government changed its policy and hence undoubtedly the principle of promissory estoppel would apply against the enforcement of new policy.

The Court also adverted to the ironical fact that though the export of instruments made out of red-sanders wood was banned, there was no ban on cutting the red-sanders wood itself. Hence, the avoided objective of maintaining ecological balance or conserving ecological

surroundings was clearly based upon a sticky wicket. Moreover, in the present case, since the goods are ready for export, if the export is stopped, it cannot in any way help in maintaining or conserving ecological balance in the area.

Furthermore, the court observed, that if the export of goods is banned for the purpose of conserving ecological balance, there is no substance in contending that the goods could be sold inside the country. Thus the purpose for which the policy is alleged to have been brought into force, will not be served in any manner, by the sale of goods inside the country, if the trees are cut and converted into such goods. Thus, the court held that the new policy in so far as it prohibits export of goods which are ready for export is unreasonable and arbitrary and it has no nexus whatsoever with the proclaimed object of the new policy.

Thus, a writ in the nature of mandamus was issued to the respondent to grant a license for the value of U. S. \$ 75,000/- as against the letter of credit No.41-2432445-021.

The court issued orders accordingly without any order as to costs. Thus we find that the rule of promissory estoppel could be applied even in cases of legislative exercises of power by the Government.

16) ***State of Jammu and Kashmir V. Mallik Abdul Ahad Shah, AIR 1994 J& K 39 (Bench V. K.gupta and A.m. Mir, J.) (Delivered by Gupta J.)***

The State of Jammu and Kashmir had filed an application under Sec. 52-B of the Jammu and Kashmir Forest Act, 1987³ before the one man Forest Authority under S. 52-C of the Act. The authority dismissed the claims of the State by an order dt. 28th Dec. 1989. Aggrieved by the dismissal of its claims, the State filed an appeal in the High Court under Section 52-G of the Act, on 21st Feb. 1991.

Since section 52-G of the Act prescribed a period of thirty days to file an appeal, an application was presented, whereby time for filing an appeal was sought to be extended. The primary footing on which the application rested was the fact that the impugned order was passed, announced and pronounced by the authority on Dec. 28th 1989 in its absence and hence they did not have any knowledge of the passing of the order. The appellants contended that, the

³hereinafter referred to as >the Act= for the purpose of brevity.

first time they derived the knowledge about the order, only on Jan.30, 1990, when the respondent met the principal Chief Conservator of Forests in his office and submitted his representations along with a copy of the order dt. 28th Dec. 1989. The authority had directed that its copy be sent to the Chief Conservator of Forests.

The Court cited the cases of Mohan Lal v. State of U.P. AIR 1975 SC 2085 and Harish Chandra v. Deputy Land Acquisition Officer, AIR 1961 SC 1500 and noted the fact that issue involved was quite similar to the present case at hand. The court held the following:

It is a cardinal principle of law that every party to the litigation before an appropriate forum is entitled to an adequate notice about the pronouncement and passing of a judgement or order against him or in his favour, particularly so, against him because only, after he comes to know of the passing of the adverse order, he sets in motion the process to file an appeal against such an order. It is essentially, fair and just that the said decision should be communicate to such a party because, the knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force.

Keeping the above aspect in mind, the court held that, if without notice of the date of pronouncement, an order is pronounced and the party concerned is absent, the order can be said to be made only when it is actually communicated to the parties later. Thus, the court said that since the knowledge of a party adversely affected by order, either actual or constructive, is an essential requirement of fair play and natural justice, the expression date of the order used in Sec. 52-G of the Act must mean the date when the order was either actually communicated to the party or was known by it either actually or constructively.

Hence, keeping the facts of the present case in mind, the court held that the date of order in the present case should be construed to mean 30th Jan. 1990 instead of 28th Dec. 1989.

Hence, the application was allowed as the new date made the appeal to be within the prescribed limit of 30 days.

(Bench: K. Ramaswamy and K. S. Paripoorman, JJ)

The petitioner had established a saw mill in Keonjhar district of Orissa. A notice under under Sec. 4(1) of the Orissa Saw Mills and Saw Pits (Control) Act, 1991¹ was issued to the petitioner to close down its operations with immediate effect.

The Petitioner=s primary contention in the High Court was based upon Article 14 (19(1) (g) and 301 of the constitution. They said that Sec. 4(1) of the Act violated the fundamental right to carry on trade and business and also discriminated between saw mills/saw pits situated in different districts. Moreover, the petitioner contended that the Act did not create any total ban but gave discretion to the licensing authority to grant or refuse the renewal of licence. Since, the authorities did not consider their application for renewal, direction to close down the mill was alleged to be arbitrary. The division bench of the High court relied upon its full bench judgement in Laxminarayan Saw Mill v. State of Orissa, AIR 1995 Ori 114, and negative the contentions raised by the petitioner. The petitioner appealed.

Sec. 4 of the Act reads as follows:

Establishment and operation of saw mill and saw pit_ (1) on and after the appointed day, no person shall establish or operate a saw mill or saw pit except under the authority and subject to the conditions of a licence granted under this Act:

Provided that no person shall establish or operate any saw mill or saw pit within a reserved forest, protected forest or any forest area or within ten k ms from the boundary of any such forest or forest area.

2) Notwithstanding anything contained in sub-section (1)

i) a saw mill or saw pit, established by the Orissa Forest Development corporation limited or by any other agency of the Government prior to the appointed day, may continue to be operated and shall be deemed to be a saw mill or saw pit, as the case may be, licensed under this Act,

¹hereinafter referred to as >the Act= for the sake of brevity.

- a) for a period of three months from the appointed day, or
- b) if an application made in accordance with Sec. 6 for a licence is pending on the expiry of the period specified in clause (a) , till the disposal of such application under sub-section (2) of section 7.e

It was admitted by the petitioner that the saw mill is indeed situated within the reserved forest or protected forest or forest area within 10 kms from the boundary of such forest area. Thus, the petitioner=s saw mill was situated within the prohibited area. Thus, the petitioner=s saw mill was situated within the prohibited area. Hence, the only question that needed to be decided by the Court was whether the prohibition contained in statute was valid in law?

The Court adverted to the nuances of consequences that sec. 4 of the Act entails and held that the right to carry on trade or business envisaged under Art.19(1) (g) and Art. 301 is subject to the statutory regulation. Thus, the proviso to section 4(1) puts a total embargo on the right to carry on trade or business in saw milling operation within the prohibited area.

Moreover, the Court referred to the Case f Narendra Kumar v. Union of India, AIR 1960 SC 430 and said that it a settled law that in the public interest restriction under Art. 29(1) (g) may in, rare cases include total prohibition.

The Court noted the adverse effects upon forest area and said that the preservation of the forest is a matter of great public interest and one of the rare cases that demanded the total ban by the legislature. Thus, the Act is neither arbitrary nor unreasonable. Moreover the court held that since it is a class legislation which makes the entire area covered within the prohibited zone a class as against the other area, it cannot be said to be discriminatory and hence it does not offend either Art. 14 or Art. 301 of the constitution.

Therefore, the law was held to be constitutionally valid.

- 18) ***South Kamrup (Meghalaya) Timber, Merchant Association, Mirza, v. State of Assam, AIR 1995 Gau. 86 (Bench: J. N. Sarma, J.)***

The Petitioner Association were the intermediary purchasers of timbers obtained from the neighbouring State of Meghalaya. They were aggrieved by the order of the Chief Conservator of Forests, Control Assam Circle prohibiting the movement of timber from Meghalaya through the State of Assam without transit passes issued by the Forest Department of the Government of Meghalaya.

The Petitioners relied primarily upon the fact unlike other states, forests in the state of Meghalaya are largely private owned. Hence, the government of Meghalaya has no control over any forest other than the Reserve Forest unlike Assam. Their view was endorsed by the Chief Forest Officer, Khasi Hills Dist. Council.

However the Court noted the fact that Meghalaya Forests Removal of Timber, (Regulation) Act, 1981² and the Rules³ framed thereunder operate in Meghalaya and the export transit permits issued by the District Council in Meghalaya have to mention species, piece marking, sale marking and property hammer mark so as to identify the timber that is removed from Meghalaya. Hence, the court noted that if timbers do not contain these requirements, they may not be allowed to be carried from Meghalaya through Assam.

The Court referred to the cases of State of Mysore v. h. Sanjeevaiah, AIR 1967 SC 1189; The District Collector of Hyderabad v. M/s. Ibrahim and Co., AIR 1970 SC 1275; State of Tamil Nadu v. M/s. Sangeetha Trading Co., AIR 1993 SC 2376 in the content of freedom of trade and commerce guaranteed under Art. 301, Art . 19(1) (g) etc. of the Constitution. In the instant case, the court concluded that the prohibition which is sought to be imposed by the 1981 Act and the Rules of 1982 are absolutely regulatory in nature. The court reiterated that the 1981 Act and the Rules of 1982 provide for export transit passes in accordance with the law and in the absence of those export transit passes, the petitioners are not entitled to removal of timbers from Meghalaya.

However, the conditions stipulated by the Conservator of Forests, Central Assam Circle, Guwahati in the impugned order was said to be inapplicable. The court held that the only thing

²Hereinafter referred to as the 1981 Act.

³Hereinafter referred to as the Rules of 1982.

on which the conservator of forests in Assam can insist for is regarding the export transit passes as provided in the Rules of 1982. If export transit passes are there the conservator of forest is bound to allow transportation of timber.

Thus, for the above mentioned reasons, the writ petition was disposed off with the direction that the state and the department of Forest in Assam would allow transportation of timber from Meghalaya if there is necessary transit passes issued in accordance with 1981 Act and Rules of 1982. It was also directed that the Conservator of Forest would not insist on other documents mentioned in his order.

This case relates to the movement of timber from one State to another and as such has no bearing on the environment.

There is a duty cast on the administrative authorities to identify and give proper marking on the timber otherwise they will not be allowed to be carried from Meghalaya through Assam. Will these marks sustain for a longer period of time is questionable.

The court in this particular case is not concerned with the destruction of forest trees for timber thus causing environmental harm but a compulsion to make available a transit pass. It has expressly stated that no other document except transit pass can be insisted by the Forest Conservator.

Wide gap exists between expressed attitude towards the environment and actual practice. The court partly attributes its intention towards regional environmental protection.

- 19) ***Pradeep Krishen v. Union of India, (1996) 8 SCC 599***
(Bench: A. M. ahmadi, C. J. and B. L. Hansaria and S. C. Sen, JJ.)
(Judgement delivered by: Ahmadi, C. J.)

The Petitioner, an environmentalist had filed a writ petition under Art. 32 of the Constitution of India. He challenged the legality and constitutional validity of an order dt. 28/3/1995 issued by the State of M. P., dept. of Forest, permitting collecting of tendu leaves from sanctuaries and National Parks by villagers living around the boundaries thereof with the

avowed object of maintenance of their traditional rights.

The petitioners contention was that, the action of the State government was ultra vires the provisions of the Wild Life (Protection)Act, 1972¹. The petitioner further contended that the action violated the fundamental rights guaranteed by Articles 14, and 21 of the Constitution. More over, the action was alleged to be inconsistent, with the Directive Principle contained in Art. 48A and the Fundamental Duty cast on every citizen under clause(g) of Article 51(A) of the Constitution of India. The petitioner further contended that the said order is malafide and against public interest.

The Petitioner brought to light the fact that National Parks and Sanctuaries in the State of Madhya Pradesh constitute 12.4% of the total forest area and it is shrinking day by day because of excessive grazing, reckless felling of trees and forest fires.

The petitioner contended that the impugned order was passed because of pressure from the business lobby. Secondly, he contended that, the order ignored the need to protect the flora and fauna as well as wild life. The presence of human beings, would not only adversely affect the flora and fauna but will also scare away wildlife as the collection of tendu leaves is a destructive process and coin cause extensive damage to ecology and regeneration of trees.

The petitioner contended that the destruction of organic matter is bound to affect the structure of the soil and there is real apprehension of forest fires.

The court framed the contentions of the petitioner in the form of two questions:

- 1) Whether an area declared as a Sanctuary and National Park under Sec. 18 and Sec. 25, respectively, of the Wild Life (protection) Act, 1972 can be exploited for the collection of minor forest produce in violation of the restrictions contained in the said Act?

- 2) Whether the State Government has the right to exploit minor forest produce from the

¹hereinafter referred to as >the Act= for the sake of brevity=

Sanctuaries and National Parks which have been so declared for the protection and preservation of ecology, flora, fauna and geomorphological natural or zoological significance?

The respondents contended that since no fundamental rights of the petitioner, has been violated, the petition is not maintainable under Art. 32 of the Constitution. Moreover, they said that the petitioner has no locus standi to challenge the impugned order on the strength of Articles 14, 21, 48A and/or 51A(g) of the Constitution of India. They further contended that the traditional rights of the villagers living in and around the boundaries of the National Parks and Sanctuaries in respect of which the final notification under Sec. 26A and 35 of the Wildlife Protection Act, 1972 has not been issued, cannot be questioned till the same has been acquired; due compensation has been paid and the villagers have been acquired; due compensation has been paid and the villagers have been rehabilitated. Moreover, they contended that the State government has the right to exploit minor forest produce under the Act.

Dealing with the petitioner contention regarding the depletion of the forest area, figures were quoted from the Forest Survey of India showing a gradual improvement in the forest cover from 1987 to 1991 with a marginal decrease between 1991 and 1993. However, the petitioner=s broad contention in regard to the depletion of the forest cover in the State of Madhya Pradesh remained unchallenged.

As far as the petitioner=s concern for setting fire to tender leaves is concerned, the deponent stated that the said practice has been completely stopped. In a nutshell, the deponent=s case about, protecting the forest from fire as well as ensuring that the ecology of the place and its bio-diversity are not adversely affected. Further, it was brought to the notice of the court that a special cell comprising police and forest officials under the control of the Inspector General of police has been set up to supervise the forest area. Therefore, there was no real danger to the flora and fauna. Hence, it was submitted that the entire petition is based on suspicion and misconceived apprehension.

The Petitioner filed a counter-affidavit and clarified that he does not challenge the right of the tribals living in and around the National Parks and the Sanctuaries to collect minor produce for their personal bonafide use, but only challenges the commercial exploitation thereof

by contractor. This, he said, was inconsistent with the object and spirit of the Act.

Three persons claiming to be tribals, intervened in the proceedings and averred that they do not disturb flora and fauna in any matter or cause fire through any of their actions. They said that earning through tendu leaves is barely enough for their sustenance and is not a big commercial exploitation thereof by contractors. This, he said, was inconsistent with the object and spirit of the Act.

They also contended that they have been enjoying their privilege since generations and the denial of this privilege would result in ruination of the entire tribal population since their survival is on minor forest produce only. They contended that the petitioner had totally overlooked the rights and privileges of the indigenous tribals.

The history of notifications with respect to collection of minor forest produce showed that it was quite chequered and vagaries of the government orders were quite manifest in it.

The Court adverted to the fact that the purport of the Act is to mainly protect wildlife and birds through creation of National Parks and Sanctuaries as the case may necessitate.

The court divert at length upon the nuances of sections 18, 21, 27, 28, 29,30, 31, 32, 33 (24(2) and concluded that the procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary or National Park has to be followed before a final notification under Sec. 26A or Sec. 35(1) is issued by the State Government. The Court said that in the instant case, it was not the contention of the petitioner that procedure for acquisition of rights in or over the land, of those living in the vicinity of the areas proposed to be declared as Sanctuaries and National Park under Sections 26A and 35 of the Act, has been undertaken. This was the reason because of which order dt. 28/3/1995 stated that since no final notification was issued under the said provisions, the State government was not in a position to bar the entry of villager living in and around the Sanctuaries and the National Parks. This cannot be done unless the final notifications under the aforesaid provisions were issued. Hence, the court concluded that the impugned notification does not violate any provision of law.

The Court noted the fact that the total forest cover in India is not of ideal level. Therefore, they said that the country cannot afford any further shrinkage and the inertia of the government in this regard to relocate the villagers/tribals is lamentable.

Hence, though the court did not quash the order of 28/3/1995, they directed the State government to decide on the question of completing the process for issuing final notifications and then take urgent steps to complete the procedure for declaring/notifying the areas as Sanctuaries and National Parks under Sec. 26A and 35 of the Act. They directed to the State government to conclude the matter expeditiously showing, the sense of urgency as is expected of a State government in such matters as enjoined by Art. 48A of the Constitution and at the same time keeping in view the duty enshrined in Art. 51 A (g) of the Constitution of India.

This case cleared, the idea of the minimum exploitation, of minor forest produce, by those who are depended upon it for subsistence and for fulfilling their daily basic needs.

20) ***Pradeep Krishen v. Union of India, 1996 (4) SCALE 566:***
Coram: A. M. Ahmedi, CJI, B. L. Hansaria and S. C.Sen, JJ.

The petitioner an environmentalist filed the petition under Article 32 of the constitution of India challenging the legality and constitutional validity of an order issued by the State of Madhya Pradesh, permitting collection of tendu leaves from sanctuaries and national parks by villagers living around the boundaries .Thus fulfilling avowed object of maintenance of their traditional rights.

The petitioner=s contention was the following:

- i) the act of the State Government is ultra-vires the provisions of the Wild Life (Protection)Act, 1972.
- ii) It violates Article 14 and 21 of the constitution.
- iii) It is inconsistent with the directive principle of state policy contained in Art. 48A and the fundamental duty cast on every citizen under Art. 51 A (g) of the constitution of India.
- iv) The said order is malafide and against public interest as it ignored the fact that the forest cover is shrinking as brought out by the report of the comptroller and Auditor

General of India and newspaper reports.

On the basis of the contentions of the petitioner, the Court formulated two queries:

- 1) Whether an area declared as a sanctuary and National Park under section 18 and section 35, respectively, of the Wild life (protection) Act, 1972, can be exploited for the collection of minor forest produce in violation of the restrictions contained in the said Act?

- 2) Whether the State Government has the right to exploit minor forest produce from the sanctuaries and National Parks which have been so declared for the protection and preservation of ecology, flora, fauna, geomorphological, natural or zoological significance?

All the contentions put forth by the petitioners were vehemently contested by the respondents. Even the locus standi of the petitioners were questioned. Dealing with the petitioner=s contention regarding the depletion of the forest area, figures were quoted from the forest survey of India showing gradual improvement in the forest cover from 1987 to 1991 with a marginal decrease between 1991 and 1993. However, the petitioner=s broad contention in regard to the depletion of the forest cover in the State of Madhya Pradesh remained unassailed.

Moreover, dealing with the petitioners apprehension that setting fire to tendu bushes may set the forest on fire, the deponent, Chief Conservator of Forest (production) Government of Madhya Pradesh, stated that the practice of setting fire to tendu bushes has been completely stopped.

In their rejoinder, the petitioner submitted that he does not challenge the right of the tribals living in and around the National Parks and Sanctuaries to collect minor forest produce for their personal bonafide use, but only challenges the commercial exploitation thereof. The petitioner particularly questioned the role of the contractors in this regard.

Three tribals intervened in the proceedings and countered all the allegations levelled by the petitioner against the tribals. They emphasised the fact that the activities were not

commercial in nature but only source of livelihood.

The court went into the history of government treatment of National Parks and Sanctuaries and found vagaries in government order from time to time at times permitting the tribals to use it for personal purposes and at other times not.

Finally, the court noted the fact that in light of admissions made by the petitioners as well as the practice adopted by the State of Madhya Pradesh as the allegations and apprehensions placed by the petitioner were baseless.

The court examined in detail the process of notification of the National park and concluded that State Government had not violated any provision of law in issuing the notification.

Adverting the question of shrinkage in forest cover, the court held:

“In our country, the total forest cover is far less than the ideal minimum of one-third of the total land. We cannot therefore, afford any further shrinkage in the forest cover in our country.

If one of the reasons for this shrinkage is the entry of villagers and tribals living and around the sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas.”

The Court, nevertheless, noted that if the only reason which compels the state government to permit entry and collection of tendu leaves is not having acquired the rights of villagers/tribals and having failed to locate any area for their rehabilitation, the inertia on that behalf ought to be shed off. The court wished that the government shows the sense of urgency as is expected of a state government in such matters as enjoined by Art.48A of the constitution and at the same time keeping in view the duty enshrined in Art. 51A (g) of the Constitution. The court ended on the note that the State Government would show the required zeal to expeditiously declare and notify the areas as Sanctuaries/National Parks.

It is very difficult to state principles of environmental protection in the form of legal right. What is the source of the claim that there is a fundamental environmental right and how is one to determine its content? Specific rights usually grow out of some core social values. Environmental claims are broad aspirational statements and it is necessary to see how

they fit in to the values underlying other basic right like Right to livelihood Vis a Vis Right to environment. The courts have not addressed the issue of harmonizing traditional environmental rights though it has been questioned .

21) ***Om Prakash Bhatt v. State of U. P AIR 1997 All 259***

(Bench: Ravi S. Dhavan and A. B. Srivastava, JJ.)

The petitioners were residents of the hill of Garhwal and brought to the notice of the court the harmful effects to the environment in that region. They alleged the following aspects having adverse impact on ecology of the area:

- 1) Garhwal Mandal Vikas Nigam has put up pre-fabricated lodging houses in the area of the hotel for tourists on the slopes of bugiyal (i,e, meadows and pasture land).
- 2) Indiscriminate use of import plastic and non-biodegradable materials in the region.
- 3) Tourists and trekkers throw non-biodegradable material on the slopes of the hills.
- 4) commercial activities like opening of bisons and tea shops.
- 5) fishing by use of explosives and dynamite.

The petitioners also drew the attention of the court that because of these activities even the glacier gimmick, the source of Ganga is exceeding. The assertion was supported with various news reports.

Rejecting the contention of the respondents that huge sum of money have been spent on the complex for the pilgrims of Tungnath Temple, the Court held that the expenditure was misplaced. Since it belongs to the people, it must be returned to the nature and no one can claim right to exploit it.

Adverting to second and third problems delineated by the petitioners above, the court declared that on the said routes between Gangotri Bhujvasa, Gomukh and Tapovan, there ought to be adequate facilities to receive garbage and prevent open defecation by the installation of public toilets.

The court noted that the state administration cannot run away from its obligations set in the constitution of India, part IVA, under Art. 51A for strict monitoring and protecting the environment and hence even the shops ought to be regulated.

The court spelled out the following safeguards and directions:

- 1) The route between Bhujvasa and Gomukh is too near the glacier and its unnecessary to have kiosks or tea shops on this route.
- 2) Between Gangotri and Bhujvas public conveniences as toilet facilities will be spread at periodic intervals of four kilometers.
- 3) Between Gangotri and chirkasa kiosks or tea shops will be managed, monitored and controlled by the Garhwal Mandal Vikas Nigam. On this route it will be located at two places only excluding chirbasa. At each of these places, there shall not be more than two kiosks. Adequate arrangements shall be made to receive the packaging material which is non-biodegradable and prevent the littering of it on the mountain side or the streams.
- 4) Every kilometer of the Gangotri- Gomukh - Tapovan route shall have properly marked containers, or bins to receive the throw away wastes of packaging whether biodegradable or otherwise.
- 5) Garhwal Mandal Vikas Nigam should use solar panels for electricity and a solar water heating system for hot water in its hotels.
- 6) The legislature of U. P. should show similar concerns on neighbouring Himachal Pradesh and should seriously consider banning plastic altogether.
- 7) Commissioner and the Chairman of the Mandal Vikas Nigam should present a plan so as to preserve the bugiyal without causing inconvenience to the tourists of this season.
- 8) The Government ought to work in the close co-ordination with the military at the village Harsil so as to prevent the pollution of the stream running through the village.

The Court expressed satisfaction upon the statement of the state of U. P. that the powers to frame a legislation to prevent, control and discourage plastic shopping bags etc. was already set in.

The court referred to the cases of Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446 and Pradeep Kishen v. Union of India, AIR 1996 SC 2040 etc. and exhorted all concerned to follow the mandate as delineated in Art. 48A and 51A(g) of the constitution. The court also directed the existing hotels and tourist lodges to follow the precautionary principle to carry on the concept of sustainable development.

The issue before the court is general in nature. The activities having adverse effect on ecology is mentioned in the petition. It is not clear what kind of adverse effect it will have on the environment. It is not clear how commercial activities like tea shops will have any kind of adverse impact on the environment. The court's order is based upon no reason with regard to regulating the shops.

It is not clear why the court has directed the Nigam to use solar energy?

The court is over sympathetic to environmental issues. How the legal issues were presented and settled before the court of law is questionable.

Should the courts be expansive on environmental protection without caring for what law provides?

22) ***Animal and Environment Legal Defence Fund v. Union of India, 1997 (2) SCALE 493 (Quorum: Ahmadi, CJI, Sujata v. Manohar and K. Venkataswami JJ.)***

The Petitioner was an association of lawyers and other persons concerned with the protection of environment. The present writ petition was filed in public interest challenging the order of the Chief Wildlife Warden, Forest Department, Government of M.P. granting 305 fishing permits to the tribals formerly residing within the Pench National Park for fishing in the Totladoh reservoir situated in the heart of the Pench National Tiger Reserve.

The primary contention of the petitioners was that the ancestors of the present tribals could not have acquired any fishing right in the Pench river. They alleged that the present permits which have been issued in lieu of traditional rights are unwarranted and must be cancelled or set aside.

The respondents claimed that during that time the procedure for issuing notification declaring the area to be National Park under section 35(4) of the Wild life (protection) Act, 1972 was underway nobody claimed their rights on account of illiteracy and unawareness. However, recently three applications regarding claims had been received pertaining to the traditional rights of villagers residing in 8 villages within the notified area which have now been relocated outside the National Park area. The villagers claimed that their traditional right of fishing should be preserved as this is their only source of livelihood.

Nevertheless, the petitioner along with the State of Maharashtra as a part of the National Park was situated in Maharashtra argued that if fishing is permitted in the heart of the National Park, the bio-diversity and ecology of the area will be seriously affected. Moreover, they

claimed that it is impossible to monitor 305 licenses as they indulge in ecologically harmful activities.

The court noted that while every attempt must be made to preserve the fragile ecology of the forest area, and protect the tiger reserve, the right of the tribals formerly living in the area to continue their peaceful existence together must also receive proper consideration. The court also noted the conditions subject to which permissions had been given. However considering the reservations voiced by the state of Maharashtra as well as the petitioner, the court thought it fit to clear some doubts and give some additional directions for properly implementing the licence conditions. The court directed the following:

- 1) Only the persons specifically named in the given annexure shall be given individual permits for fishing in Totladoh reservoir. Each permit holder will have a photo identify card with his photograph on it. This will be a personal right given to the identity card holder and the permit granted to him shall not be transferrable. The permit will also bear the photograph of the permit holder.
- 2) The permit holder will be entitled to enter the National park area only at Thuepani and shall be entitled to travel through the National Park only on the highway joining Thuepani to Totladoh. He will not have any right to enter or travel in the National Park area except along the said highway in order to have access to the Totladoh reservoir.
- 3) The wild warden and/or any other authority nominated by the Madhya Pradesh government shall demarcate the area of the reservoir over which these permit holders are allowed to fish.
- 4) It shall be made clear that the permit holders shall not be entitled to have access to the islands in the reservoir.
- 5) The state of M. P. shall maintain check posts along the route of these fisherman to ensure that the fisherman do not transgress into any other part of the National park.
- 6) A daily record of the entry and exit of each permit holder and the quantity of fish carried by him out of the National Park shall be maintained.
- 7) The fishermen will be prohibited from lighting fires for cooking or for any other purpose along the banks of the reservoir nor shall they throw any litter along the banks of the reservoir or in the water. They should ensure cleanliness of the place.
- 8) The M. P. State Government shall sanction an adequate member of personnel as also vehicles and boats for the purpose of monitoring the activities of these 305 permit holders. If monitoring squad shall be posted not merely at the entrance to the National forest area but also along the route or in other areas of the national forest or may be required to ensure that there is no poaching or other undesirable activity by the permit holders.

Jan Van Andolan Samiti, the intervener organisation was directed to explain the tribals the conditions subject to which fishing is allowed so that there is no damage to ecology.

The court also noted that if one of the reasons for the shrinkage in forest cover is the entry of villagers and tribals living in and around the sanctuaries and the National Park, urgent steps must be taken to prevent any destruction or damage to the environment. The state of Madhya Pradesh was hence directed to expeditiously issue the final notification under Sec. 35(4) of the Wild Life (protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

This case has a detailed judgement. Here the court considers the extent to which tribals are to be permitted in to the National Park area.

A NGO, Janvikas Andolan was directed by the court to explain the tribal conditions subject to which fishing is allowed to fish. So the court has also ensured that its judgement has to be well executed by asking the Government of M.P to make available the required vehicles for proper monitoring.

But the court has not come up with a time frame for issue of final notification and has given the scope for the Government to interpret the word expeditiously.

**23) *Animal and Environmental Legal Defence Fund V. Union of India (1997) 3 Scc 549 (Bench: A. M. Ahmadi, C. J. Sujata V. Manohar and K. Venkataswami, Jj)*
(Judgement delivered by : Sujata V. Manohar, J.)**

The Chief Wildlife Warden, Forest Dept. Government of M. P. granted 305 fishing permits to the tribals residing within the >Pench National Park= area¹ for fishing in the >Tottadoh Reservoir= situated in the heart of the >Pench National Park Tiger Reserve= . The petitioner, an association of lawyers, concerned with protection of environment, filed a PIL challenging the order of the Chief Wild life Warden.

¹This area was declared as a Reserved Forest under the Indian Forest Act, 1927.

According to the petitioner, keeping in mind sections 5 and 26(1) (i) of the Indian Forest Act, 1927, once a notification declaring an area to be reserved forest is issued, no right can be acquired in such land except by succession or grant or contract by the government. Since the ancestors of the present tribals could not have acquired any fishing right, the present permits issue in lieu of their traditional rights are unwarranted. Hence, they must be set aside.

The respondents stated that although the necessary proclamations were issued earlier as mandated by sections, 21, 22 of the wild life (protection) Act, 1972 no one came forward to claim their rights because of illiteracy and unawareness. However, recently three applications regarding claims were received from tribals pertains. The claims to the traditional rights of villagers residing in eight villages within the notified area. The villagers claimed that they had a traditional right of fishing, for their livelihood in the Pench river.

Under an order dt. 30/5/1996, the tribals were given permits to fish in the Totladoh reservoir which came into existence in 1986-87 on construction of a dam across the Pench river as a part of the Pench Hydro electric project.

The petitioner along with the State of Maharashtra were worried that the granting of fishing rights will seriously affect the bio-diversity and ecology of the area. They were concerned with the felling of trees, extinction of variety of fishes, lighting fires etc.

The Court appreciated the concern of the petitioner, but also noted that the fishing rights to the said tribals were given in lieu of their traditional rights, given in lieu of their traditional rights and any order to the contrary would seriously affect, their means of livelihood. Therefore, the court stated that while every attempt must be made to preserve the fragile ecology of forest area, and protect the tiger reserve, the right of the tribals formally living in the area, to keep body and soul together must also receive proper consideration.

Though the grant of permits in the first instance was subject to a number of limitations, as the petitioner and the State of Maharashtra opposed the fishing permits on ground of difficulty in monitoring the fishing activity, the court issued the following additional directions:

- 1) Only the persons named in Annexure-R-XVI to the affidavit of Respondent shall be given individual permits for fishing in Totladoh reservoir. Each permit holder will have a photo identify card. The permit shall be non-transferable.
- 2) The permit-holder will be entitled to enter the National Park area only at Theupani and

shall be entitled to travel through the National Park only on the highway joining Thuepani to Tottadoh. He will not have any right to enter or travel in the National Park area except along the said highway in order to have access to the Totladoh reservoir.

- 3) The Wildlife warden and /or any other authority nominated by the M. P. Government shall demarcate the area of the reservoir over which these permit holders are allowed to fish.
- 4) It shall be made clear that the permit holders shall not be entitled to have any access to the islands in reservoir.
- 5) The State of M. P. shall maintain check-posts along the route of these fishermen-to ensure that the fishermen do not transgress into any other part of the National Park.
- 6) A daily record of the entry and exit of each permit holder and the quantity of fish carried by him out of the national park shall be maintained.
- 7) The fishermen will be prohibited from lighting fires for cooking or for any other purpose along the banks of the reservoir nor shall they throw any litter along the banks of the reservoir or in the water.
- 8) The M . P. State Government shall sanction an adequate number of personnel as also vehicles and boats for the purpose of monitoring the activities of these 305 permit holders. A monitoring squad shall be posted not merely at the entrance to the National Forest area but also along the route or in other areas of National Forest as may be required to ensure that there is no poaching or other undesirable activity by the permit-holders.

The intervener organisation, Jan Van Andolan Samiti, Totladoh was coggod to impress upon the tribals, the need to protect environment.

The court reiterated the observations in *Pradeep Kishen v. Union of India* (1996), 8 SCC 599, and urged the State Government to act with a sense of urgency in matters enjoined by Article 48A of the Constitution keeping in mind the duty enshrined in Art. 51A(g). The court, therefore, directed the State of M. P. to expeditiously issue the final notification. Under Sec. 35(4) of the Wild Life (Protection) Act, 1972, in respect of the

area of the Pench National Park falling within the State of M. P.

24) ***T. N. Godavarman Thirumurkepad V. Union of India, (1998) 2 SCC 341 (Bench: J. S. Verma, C. J. and B. N. Kripal and V.N. Khare, JJ.)***

Various IAs were taken into consideration by the court in W.P. No. 202 of 1995. Firstly, illegal mining activities continuing in Doon Valley and Mirzapur district inspite of orders made by the Supreme Court was brought to light by public-spirited lawyers.

To ascertain the full facts, a committee comprising lawyers as well as officials of the Ministry of Environment was constituted.

The court expressed surprise that the government of U. P. has not taken preventive action so far.

In another IA, the *amicus curiae* suggested that each of the State and Union Territories furnish the information called for in questionnaire along with application. The court directed accordingly.

In yet another, IA, validity of the transactions of transfers by tribals was under consideration. In view of the lethargy demonstrated by the State of M.P. the court ordered investigation as well as necessary follow-up action including prosecution by the CBI.

25) ***Dr. Ashok V. Union of India (1997) 5 Scc 10 (1997) 5 Scc 10 (Bench : S. C. Agarwal and G. B. Pattanaik JJ.) (Judgement delivered by Pattanaik, J.)***

One Dr. Ashok wrote a letter to the Chief Justice of India stating that most of the insecticides and pesticides used in the country were hazardous and in fact were carcinogenic. A list of 21 such items (to which 19 were added later) was put along with the letter. It was also brought to the notice of the court that the listed items were either banned in the developed countries or they were in the process of being banned.

Notices were issued to Union of India, Ministry of Health and Family Welfare, Ministry of Environment and Forest, Ministry of Agriculture, Association of India, Asbestos, Cement Products Manufacturers= Association etc. The court also transferred to itself writ petitions from Madras and Allahabad High Court.

Initially affidavits were filed only with respect to 21 items but after direction by the Court, consolidated affidavit dealing with 40 items of chemicals and the steps taken by the Govt. of India either prohibiting and/or allowing restricted manufacture use of chemicals on a thorough study by experts etc. was filed.

The Court traced the historical moorings of man=s tryst with chemicals= utilisation and noted that though most of them are harmful for the ecosystem, not much study and research upon the harmful effects have been done in India. Moreover, the Court noted that chemicals are needed for increasing productivity but one will have to weigh the benefits with the costs involved.

The Court adverted to Art. 21 of the Constitution of India and cases of *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, *Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni*, (1983) 1 SCC 124, *Ramsharan Autyanuprasi v. Union of India*, 1989 Supp (1) SCC 251, *M. C. Mehta v. Union of India*, (1987) 4 SCC 463 etc. **The Court noted that aRight to life@ in Art. 21 means something more than mere animal existence. It includes all those aspects of life which go to make a man=s life meaningful, complete and worth living such as tradition, culture, heritage etc. More over life, public health and ecology have priority over problems of unemployment and loss of revenue.**

The Court referred to the United Nations Conference on the Human Environment held at Stockholm in 1972 and the case of *Vincent Panikwilangara v. Union of India*, (1987) 2 SCC 165; *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161 and said that health hazards would definitely incur the wrath of Art. 21.

Adverting to the problem at hand, i,e, banning of harmful insecticides and pesticides, the court expressed satisfaction with the government= steps to prohibit and restrict the use of 40 items given in the affidavits. Nevertheless, the Court directed that a committee of four Sr. officers from different ministries (involved in the present case) should be setup to review the situation once in every three months.

The Court then proceeded to deal with the cases transferred from Madras and Allahabad High Court. In these cases, the manufacturers had challenged the notification dt. 1/1/1996 of the Central Government issued in exercise of powers under sub-section (2) of sec. 27 of the Insecticides Act, 1968 phasing out progressively the manufacture and use of Benzene Hexachloride (BHC). The notification cancelled all the certificate of registration. The primary contention of the manufacturers= was that, the authority to cancel the certificate of registration, was beyond the powers of the central government under Sec. 27(2) of the Insecticides Act. Moreover, Consultation with Registration committee was not done. Neither was there any investigation as far as risk with respect to chemicals was concerned.

The only contention which the Union of India put forth was that the Court must adopt a construction which would effectuate the objects of the statute instead of adopting a construction which would defeat its objects, the respondents referred to *Whitney v. IRC*, 1926 Ac 37, *Craies on Statute Law*, Maxwell on the Interpretation of Statues and the principles of *Aut res magis*

vabat quam pereat. Moreover, they contended that consultation with registration committee was already done in 1994.

The Court went into the anatomy and effects of Benzene hexachloride on the human beings. It referred to the Tripathy Committee Report which enumerated the harmful effects of BHC.

After examining the provisions of the Insecticides Act at length, the court came to the conclusion that those of the certificates of registration granted to the petitioner in respect of any formulations namely BHC 10% DP and BHC 50% WP, the order of the Central Government cancelling certificate registration was well within the jurisdiction and there is no legal infirmity. But, in respect of BHC which is one of the substances specified in the schedule and as such is an insecticide within the meaning sec 3(e) (i) there is no power with the Central Government under Sub-section (2) of Section 27 to cancel the certificate of registration. Further, the court observed that as far as the question consultation with the registration certificate issued in respect of the same substance even if on scientific study it appears that the substance is grossly detrimental to the human health.

The court observed that this is a lacuna in the legislation and therefore, steps should be taken for appropriate amendment to the legislation.

This is a landmark judgement of the Apex Court, which put a permanent ban on the use of two toxic and dangerous chemicals DDT and BHC, has today made the Indian agriculture is that much free, from these, for a more healthier and nutritious living.

26) **Shankar Traders V. State of Bihar, AIR 1998 PAT. 68**

(Bench: Sachidanand Jha and M. Y. Eqbal, JJ)

(Judgement delivered by S. N. Jha, J.)

The petitioner, a firm engaged in the business of timber, sought a declaration that the authorities of the forest department of the state government have no authority to interfere with the movement of timber of foreign origin from one place to another within or through the State of Bihar.

The Petitioner's primary contention was that although earlier the import of timber was banned, now it is not so and import of timber from Nepal is freely allowed after notifications from Ministry of Finance and Commerce. Nevertheless, the petitioner informed the divisional Forest Officer, Mithila Forest Extension division, Darkhaya about the purchase and requested them to inform whether any permit was necessary. They also requested them to issue transit permit if it was necessary. Though the authorities told the petitioner to keep the goods in the concerned godown and intimate them in case of movement, no transit permit was issued.

The writ petition was filed on 14th Aug. 1991 seeking declaration that the respondent authorities of the Forest department should be restrained from putting any obstruction on the movement of wagons. However, the authorities seized the khair woods of the petitioner on Aug. 16, 1991.

The respondent controverted the claim of the petitioner about the origin of the khair wood. Moreover, the notifications of the Ministry of Finance and Commerce were stated to be irrelevant as they were only with respect to payment of customs duty and had nothing to do with free flow of timber. Moreover, even in the matter of import, for the purpose of customs duty, it was stated that, under the Bangkok Agreement 1976 and the customs Tariff (Determination of Origin of goods under the Agreement on global of preference among developing countries) Rules, 1989, any produce cannot be treated as the produce of a country unless a certificate of origin duly signed by the competent authority of the exporting country is produced by the Importer at the time of importation. In this case, it was alleged that no certificate of origin was produced and all the documents on which the petitioner has placed reliance are fabricated.

The petitioner advanced contentions based upon the assumption that the wood was of foreign origin. In any case, it was said, that since all the domestic Acts relating to forest produce are inapplicable the origin, the authorities cannot effect search and seizure.

The respondent claimed that the presumption is always in favour of domestic origin and the onus is upon the petitioner to show otherwise. Moreover, the definition of the term >forest produce= under section 2(4) (a) of the Indian Forest Act was said to be wide enough to include produce of a forest lying outside the purview of the Act.

The point for consideration which the court framed for itself was; assuming that the khair wood was of Nepali origin, was the impugned action of the respondents in making search and seizure of the wood without any authority of law and therefore, illegal.

The Court referred to the case of *Kashi Prasad v. State of Orissa*, AIR 1963 Ori 240, which was relied upon in *State of Tripura v. Sashi Mohan Malakar*, 1977 Sri. L. J. 1663, and *Peter Bara V. State of Bihar* 1994(1) PLJR 620. Section 2(4), 52 of the Forest Act and Bihar Forest Produce (Regulation of Trade) Act, 1984 were also adverted to by the Court.

The Court held that since Khair wood is a specified forest produce under clause (a) of

Section 2(4) of the Indian Forest Act, 1927, Bihar Forest Produce (Regulation of Trade) Act, 1984 and the Bihar Timber and other Forest Produce (Transit Regulation) Rules, 1973, movement of Khair Wood is subject to the regulatory provision of the said two Acts and the Rules framed there under. If the power to regulate the transit of forest produce alleged to be of foreign origin is denied to the authorities, illicit trade would be facilitated.

Moreover, the Court found in the present case that even the Nepali authorities had denied that the petitioner was bonafide purchaser of Khair wood. Thus, it was held that the respondents were not only entitled to intercept the goods in order to satisfy themselves about the legality and bonafide of the movement of khair wood in question, but were justified in effecting the seizure of the wood.

The writ petitioner, was therefore, dismissed.

27) ***M. S. Bhargavi Amma V. State of Kerala, AIR 1998 Ker***

(Bench: B. M. Thulasidas, C. S. Rajan and K. V. Sankaranarayanan, J. J.)

(Judgement delivered by: Thulsidas, J.)

Conflicting views of the High Court were there, with respect to the powers of the Forest Tribunal acting under S.8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971¹

In one case, the Tribunal had held that under relevant provisions of the Act and the rules made thereunder its powers are not as wide as that of a Civil Court. The tribunal in various cases had held that under Rule 3 of the Tribunal Rules an application under S. 8 of the Act has to be filed within sixty days from the date of publication of the notification under Rule 2-A of the rules framed under the Act. Hence, the tribunal was of the view that the applications should have been filed within 60 days, and since they had been filed later, they are time barred.

In another case, where the dispute was with respect to, whether a particular area was Private Forest or not (when notification had not been issued), the Court had held relying upon the decision in 1992(2) Ker LT 26 that the dispute did not fall within its purview and dismissed the petition.

Conflicting points of view were noticed in the following decisions of the High Court:

1) In Ranga Sesha Hills (P) Ltd., v. State of Kerala (1991) 2 Ker LT 49, the court held that

¹Hereinafter referred to as =the Act= for the sake of brevity.

R-3 of the Tribunal Rules does not preclude an aggrieved party from moving an application even if a notification had not been issued. The court had observed:

¶The mere fact that the appellant takes the position that the notification issued under the Act does not take in his land, cannot preclude the operation of sub-sec (1) of S. 8. Whether the appellant's land is included in the notification or not is the very essence of the dispute in the case and that dispute has to be resolved in accordance with the scheme provided by the Act.¶

2) In an unreported decision in M.G. A. No.510 of 1984, the Court had observed: ¶ It is open to an aggrieved person to file a petition under S.8 of the Act if his possession is threatened and even without a notification. In such a case, the petition will be in time. It is open to an aggrieved person to wait for the publication of notification. In such a case, he has to file the petition within 60 days from the date of publication of notification.¶

3) On the other hand, in the ***State of Kerala v. Komalavally***, (1995) 2 Ker LT 26, the court held:

¶When there was no notification under Rule 2-A of the vesting Rules in respect of a land over which the dispute was raised on or after 6/10/1981 than the Forest Tribunal has no jurisdiction to deal with the dispute concerning the land. If so, civil Court has ample jurisdiction to determine the dispute. We cannot stretch the swipec of the ban beyond the contours of S. 13 of the vesting Act.¶

The Court considered all the above cases and came to the conclusion that the Tribunal's jurisdiction is all comprehensive and admits of no restriction in regard to disputes coming under sub section (2) and (3) of S. 3, which are comprehended by clause (a) and (b) of S. 8 whether it pertained to notified or non-notified properties. The Court categorically held that a dispute is what it is under the Act and not that it should also have originated subsequent to or as a consequence of the notification published under Rule 2-A read with Section 6 of the Act, whose scope and purpose seem to have been overemphasised to dilute the wide reach of S. 8 and unsettle generally, the very scheme of the Act itself. Thus, it was held that the publication of the notification is not a condition precedent to entertain the application by the tribunal. Therefore, it was held that the existence of the dispute is not to be found from whether there was or not a notification, but from the allegations contained in the petition.

The Court, thus, came to the conclusion that the decision in Komalavally's case, (1996) 2 Ker LT 26, with respect to jurisdiction of the tribunal in regard to non-notified properties is incorrect. Hence, the Civil Courts will not have any jurisdiction to entertain disputes coming within clauses (a) and (b) of the Act, even if they pertained to properties which had not been notified.

Thus, the orders of the tribunal were set aside and remanded back to the tribunal so that they could be decided in accordance with the law.

28) ***M. C. Mehta (Ii) V. Union of India (1998)*** 1 SCC 471
(Bench: E. S. Venkataramaiah and K. N. Singh JJ)
(Judgement delivered by Venkataramaiah, J.)

In an earlier decision¹ with respect to polluting a tannery industries situated in Kanpur, the Court had directed that the case of Municipal Court had directed that the case of Municipal Corporations and the industries which were responsible for the pollution of Ganga would be taken up later. In this regard, the Court took up the case of Kanpur Nagar Mahapalika first.

The court referred to the powers, duties and functions of the municipal bodies under U. P. Nagar Mahapalika Adhiniyam, 1959 (particularly under sections 114, 251, 388, 396, 397, 398, 405 and 407) and came to the conclusion that the Nagar Mahapalikas and the Municipal Boards are primarily responsible for the maintenance of cleanliness in areas under their jurisdiction and the protection of their environment.

The Court also referred to the Water (prevention and control Pollution Act, 1974 as well as Environment (protection) Act, 1986 which imposes duties on the Central and State Boards (constituted under the Water Act) and the municipalities for prevention and control of pollution of water.

After the petition, U. P. Pollution Control Board had filed an affidavit setting out the information which the Board was able to collect regarding the measures taken by the local bodies and also by the U. P. Pollution Control Board in order to prevent the pollution of Ganga. The information revealed that 274.50 million litres a day of sewage water was being discharged

¹M. C. Mehta v. Union of India, (1987) 4 SCC 463 delivered on September 22, 1987

into the river Ganga was being discharged into the river Ganga from the city of Kanpur. Causes for pollution were clearly identified in the form of tannery effluents, cattle waste, human waste, dhobighats etc. The affidavit also stated U. P. Jal Nigam, the U. P. Water Pollution Control Board, the National Environmental Engineering Research Institute, the Central Leather Research Institute, The Kanpur Nagar Mahapalika, the Kanpur Development Authority and the Kanpur Jal Sansthan have already started taking action to minimise the pollution of Ganga, by identifying the reasons and initiating correctional measures. Financial assistance is being provided through central government, state government, the World Bank, the Dutch government etc.

The petitioner Shri M. C.Mehta, relied on reports of Industrial Toxicology Research Centre, Council of Scientific and Industrial Research which clearly showed after a detailed analysis that the water in Ganga is not fit for drinking, fishing and bathing purposes. The situation was particularly shown to be worse at Kanpur.

The Court referred to Lal's Commentaries on Water and Air Pollution Laws (2nd Edition) and highlighted the dangers of water-borne diseases especially in a tropical country like India. The court also referred to >Water Pollution and Disposal of Waste Water on Land= (1983) by U. N. Mahida, and enunciated the problem of water pollution, the benefits of control of pollution and the urgency of the problem.

The Court referred to the case of *Pradeep Dorbiya and Derbyshire Angling Association Ltd. v. British Celanese Ltd., (1953) 1 All ER 179* and noted that in common law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river, insufficiently treated sewage, from discharging such sewage, into the river.

The court noted the correctional measures undertaken by the authorities in this case and hoped that the work will be done expeditiously. The Kanpur Nagar Mahapalika was directed to submit its proposals for sewage treatment works within six months to the State Board constituted under the Water Act.

The Kanpur Nagar Mahapalika was directed to take care of cattle waste, sewers in the labour colonies, construction of free public latrines, urinals etc.

The High Courts were directed ordinarily not to grant orders of stay of criminal

proceedings in cases of prosecution of industrialists for pollution of Ganga as the problem of pollution of the water in the river Ganga has become very acute. The High Courts were requested to take up hearing of all cases where such orders have been issued under Section 482 of the Code of Criminal Procedure, 1973, staying prosecutions under the Water Act within two months.

The Kanpur Nagar Mahapalika and the Police authorities were directed to ensure, that corpses and semi-burnt corpses are not thrown into the river.

Existing industries were directed to adhere to pollution norms and new applications, to open industries, were directed to be refused unless they complied with adequate safeguards.

Adverting to fundamental duty mandated in Art. 52-A (g) of the Constitution of India, the Court directed the Central Government to spread awareness about the environment through compulsory lessons in educational institutions, text books, training of teachers, organising. ^AKEEP THE CITY/TOWN/VILLAGE CLEAN[@] week etc. The need of the hour, it was noted, was that of a concerted effort by the authorities to create national awareness.

Copies of the judgement was directed to be sent to all Nagar Mahapalikas, Municipalities

29) ***M. C. Mehta (II) v. Union of India, (1988) 1 SCG 471***
(Bench: E. S. Venkataramaiah and K. N. Singh, JJ.)
(Judgement delivered by Venkataramaiah J.)

In an earlier decision¹ with respect to polluting tannery industries, situated in Kanpur, the Court had directed that the case of, Municipal Corporations and the industries, which were responsible for the pollution of Ganga would be taken up later. In this regard, the Court took up the case of Kanpur Nagar Mahapalika Adhinyam, 1959 (particularly under Sections 114, 251, 388, 396, 397,398, 405 and 407) and came to the conclusion that the Nagar Mahapalikaas and the Municipal Bards are primarily responsible for the maintenance of cleanliness in the areas under their jurisdiction and the protection of their environment.

The Court also referred to the Water (Prevention and Control of Pollution) Act, 1974 as well as Environment (Protection) Act, 1986 which imposes duties on the Central and State Boards (constituted under the Water Act) and the municipalities for prevention and control of pollution of water.

After the petition, U. P. Pollution Control Board had filed an affidavit setting out the information which the Board was able to collect regarding the measures taken by the local bodies and also by the U. P. Pollution Control Board in order to prevent the pollution of Ganga. The information revealed that 274.50 million litres, of a day of sewage water was being discharged into the river Ganga from the city of Kanpur. Causes for pollution were clearly identified in the form of tannery effluent, cattle waste, human waste, dhobi ghats, etc. The affidavit also stated U. P. Jal Nigam, the U. P. Water Pollution Control Board, the National Environmental Engineering Research Institute, the Central Leather Research Institute, the Kanpur Nagar Mahapalika, the Kanpur Development Authority and the Kanpur Jal Sansthan have already started taking action to minimise the pollution of Ganga by identifying the reasons and initiating correctional measures. Financial assistance is being provided through Central Government, State Government, the World Bank, the Dutch Government etc.

The Petitioner, Shri M. C. Mehta, relied on reports of Industrial Toxicology Research Centre, Council of Scientific and Industrial Research which clearly showed after a detailed analysis that the water in Ganga is not fit for drinking, fishing and bathing purposes. The situation was particularly shown to be worse at Kanpur.

The Court referred to Lall's Commentaries on Water and Air Pollution Laws (2nd edition) and highlighted the dangers of Water-borne diseases especially in a tropical country like India. The court also referred to *A Water Pollution and Disposal of Waste Water on Land* (1983) by U. N. Mahida, and enunciated the problem of water pollution, the benefits of control of pollution and the urgency of the problem.

The Court referred to the case of *Pride of Derby and Derbyshire Angling Association Ltd. v. British Celanese Ltd.*, (1953) 1 ALL ER 179 and noted that in common law. The municipal corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river.

The Court noted the correctional measures under taken by the authorities in this case and hoped that the work will be done expeditiously. The Kanpur Nagar Mahapalika was directed to submit its proposals for sewage treatment works within six months, to the State Board, constituted under the Water Act.

The Kanpur Nagar Mahapalika was directed to take care of cattle waste, sewers in the labour colonies, construction of free public latrines, urinals. Etc.

The High Courts were directed ordinarily not grant orders of stay of criminal proceedings in cases of prosecution of industrialists for pollution of Ganga as the problem of pollution of the water in the river Ganga has become very acute. The high courts were requested to take up hearing of all cases where such orders have been issued under Section 482 of the Code of Criminal Procedure, 1973 staying prosecutions under the Water Act within two months.

The Kanpur Nagar Mahapalika and the police authorities were directed to ensure that corpses and semi-burnt corpses are not thrown into the river.

Existing industries were directed to adhere to pollution norms and new application to open industries were directed to be referred unless they complied with adequate safeguards.

Adverting to fundamental duty mandated in Art. 52 A (g) of the Constitution of India, the Court directed the central government to spread awareness about the environment through compulsory lessons, in educations institutions, text books, training of teachers, organising >KEEP THE CITY/TOWN/VILLAGE/CLEAN= week etc. The need of the hour, it was noted was that of a concerted effort by the authorities to create national awareness.

Copies of the judgement was directed to be sent to all Nagar Mahapalikas municipalities within whose areas Ganga river flows. Hence, the case against the Nagar Mahapalikas and Municipalities in the State of U. P. was directed to be adjourned. Within that time, all the local bodies in the State of U. P. through whose areas the river Ganga flows, were directed to file affidavits in the court explaining the various steps they have taken for the prevention of pollution of the Water in the river Ganga in light of the judgement. By this judgement of the Court, things in the environmental jurisprudence, in this country had taken a positive step, when and where the legislative functionaries had failed to conserve and protect the purity of the river Ganges.

30) ***Mithanlal Mishra V. State of M. P.***

AIR 1998 M.P. 67 (Bench ; R. S. GARG, J.)

The Petitioner, filed a petition under Arts. 226 and 227 of the Constitution of India, challenging the constitutional validity of S. 52 of the Indian Forest (M. P. amendment) Act, 1983. However, at the very inception of the argument, the challenge was withdrawn.

The petitioner had also challenged the order of confiscation of his truck (dt. 7/1/1987)

consequent upon a raid by the Forest Ranger on 4/12/1986. The main ground for challenge was that the order was passed without hearing the petitioner.

The respondent's response was that they did not know that the petitioner was the owner of the truck and hence no notice was issued to them. But, since the notice was issued to the driver of the truck, it was sufficient notice to the agent of the petitioner and hence to the petitioner too.

The court adverted to Sec. 52 of the Forest Act which provides (for the complete procedure in relation to seizure and confiscation of the property), and held that it is always the duty of the Forest Department to inquire about the ownership of the property, so that the person having interest or interested in the property is issued a notice. When the law provides that notice has to be issued, so that the person whose property is under threat of confiscation, may prove that the property was used without his knowledge or connivance, (S.52(4)(b)) then non-issuance of notice and non-grant of an opportunity to such person, would certainly vitiate the order of confiscation. Moreover, since the ground of *absence of knowledge* is available to the owner, notice to servant or agent of the owner of the property cannot be sufficient notice to the owner of the property.

Thus, the order as to confiscation of the truck was quashed, but the order of confiscation of timber was maintained. The concerned authority was directed to issue a fresh notice to the petitioner and decide the matter in accordance with law after providing reasonable opportunity of hearing to the petitioner.

31) ***Sarat Kumar Malu V. State of Orissa AIR 1992 Ori 128***

The Petitioner filed a writ application against the State of Orissa before the Orissa High Court challenging the constitutionality of S. 56 (2.a) of the Orissa Forest Act, 1972, which was introduced by an amendment in 1983. As per the provisions of the section, in case of illegal trading in forest produce, the departmental officer was given the power to order the confiscation of the goods or file a report before the magistrate to initiate criminal proceedings or both actions. The petitioner challenged this amendment as being violative of Art. 14 of the Constitution as it vested in the Government authority unchecked discretionary power, without even any guidelines as to the circumstances and manner in which the discretionary power could be exercised. The 3 grounds of challenge were:

- a) Absence of guidelines
- b) provision for confiscation or criminal prosecution subjected the person to double jeopardy.
- c) That the provision for confiscation was larger than the procedure for trial before a

criminal court.

The main issue before the Court was whether absence of guidelines or the fact that confiscation was hurdles than procedure for criminal trial amounted to Sec. 56 (2.(a) being ultra virus Art. 14 of the Indian Constitution.

The Court in deciding the case, drew a parallel with similar provision under the M. P. General Sales Tax Act, where the commission, tax was due, could order the collection of a fine over and above the amount due, as penalty or take proceedings for trial of the dealer. The provision was challenged in the case, *Consumer of Sales Tax v. Radhakrishnan*, AIR 1979 K 1588, as being ultra vires the Constitution as it is vested in the commissioner's discretionary power without any guidelines. The Court in this case drew a parallel with similar provision under the Army Act, S. 125 which authorised the officer, to decide a case by Court martial or by an ordinary court or a criminal court, without prescribing any guidelines. On the basis of *Ram Sarup v. Union of India* AIR 1965 SC 247, the court held :

- 1) the discretionary power
- 2) guidance will have to be inferred from the policy of the law, itself that is if on particular facts of case an officer of high standing in exercise of his discretion comes to the conclusion that more drastic remedy should be taken, the exercise of that option can not be termed as unconstitutional.

Based on the decision in Radhakrishnan case, the Court held that given the forest degradation problem that India was facing it was necessary to confer on the forest official authority to *confer discretionary power* to initiate suitable action against the offender, based on the gravity of the offence. The provision was therefore held, not violative of Art. 14 of the constitution. The Court illustrated the point, by stating that, in case where a tribal would take some twigs and such minor thing from the forest, thinking of the forest as his own resource, it would be unfair for the law to initiate criminal proceedings and hence, it was necessary for the officer to be given discretionary power. Parallel was also drawn to S. 95 of IPC, as per which trivial incidents cannot be labelled as offences under IPC.

Hence, it was held that S. 52 A was not ultra virus Art. 56 (2-A)

Brief Analysis: This case demonstrates two aspects;

- 1) The scepticism of the people that arbitrary power vested in the government may be misused.
- 2) The problem of effective governance that needs to be addressed by the government.

The court has examined all the issues related to the effective governance.

32) ***V. R. Thirumalaiswamy Gounder V. Chief Conservator of Forests, Trivandrum, Air 1996 Ker 213*** (Bench: M. M. Parcel Pillay, C. J. and Balasubramanyam J.)
(Judgement delivered by Balasubramaniam J)

The Petitioner was a partner in a firm, which had a lease in respect of certain lands for cultivating cardamom. While in possession of that land, the petitioner firm encroached a major chunk of adjacent forest land and later petitioned the government to regularise it. The Government decided to lease a part of the trespassed land for a period of 20 years from the date of the order. The only stipulation attached was that the lease shall not cause any damage whatsoever to the forest tree growth in the area. A penal rent was to be recovered from the petitioner for the encroachment he had earlier made.

Before any effective action could be taken, the Forest (Conservation) Act came into force on 25/10/1980. The Government took refuge under the new Act and rejected the petitioner=s claim for execution of the lease on the ground that the lease in question was hit by the Forest (Conservation) Act, 1980.¹ When challenged before a single Judge Bench, the Court directed the Conservator of Forests and the State to examine the question whether the forest lands in dispute had already been broken up, the provisions of the Act will not have any application to the instant case. Nevertheless, the government passed an order on 8/10/1988 holding that the condition regarding forest lands having already been broken up and cleared prior to the coming into force of the Act was not satisfied in this case. The request of the firm to execute the lease was thus rejected.

The main issue of contention, therefore, was the question whether the forest land was broken up, prior to commencement of the Act, thus obviating the necessity of a prior central Government approval under S.2 of the Act. Conflicting authorities were cited from both the sides.

The Court noted the cases such that of *State of Bihar v. Banshi Ram*, AIR 1985 SC 814, *Ambica Quarry Works Case*, AIR 1987 SC 1073, *Rural Litigation and Entitlement Kendra v. State of U. P.* AIR 1988 SC 2187 etc.

The Court noted that contrary to *Ambica Quarry* and *Rural Litigation Case*, in the present

¹hereinafter referred to as >the Act=for the sake of brevity.

case, there was no substrating lease of forest land as on the date of the Act. Since a grant a lease was sought, the lease could not be granted without complying with the mandate of section 2 of the Act.

Moreover, the Court held that in the absence of any specific pleading on the side of the firm that the forest had been cleared prior to the relevant date, the land in question cannot be said to have leased to be forest for the purpose of the Act.

Thus, the Court concluded that the Act does apply to the land in question and hence the prayer of the firm to direct the government to execute the lease was rejected.

33) *V. Satyam Reddy V. Union of India, AIR 1996 AP 175*

(Bench: C.V.N. Sastry, J.)

The Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad had allegedly granted permission to Mr. Yerri Naidu to carry out preliminary experiments, survey-cum-exploitation of the valuable precious stones, in the district right from Visakhapatnam to East Godavari including parts of Srikakulam and Khammam.

Two practising advocates filed a writ petition by way of a public interest litigation questioning the legality of the permission as well as seeking inquiry into the actual damage caused to the reserved forest area in violation of the provisions of Forest (Conservation) Act, 1980.

The Petitioner alleged that Mr. Naidu had used his influential position as a M. L. A. of the locality to get the permission to exploit the forest area. Nevertheless, after the grant of permission indiscriminate exploitation of forest areas for the purpose of collecting precious stones (worth crores of rupees) is being done. There is no check on illicit mining operations, no accounts are being furnished to the department with regard to the quantum of the mineral exploited. In this process, it was alleged, that the reserved forests are being destroyed by felling the trees indiscriminately.

Moreover, the permission accorded to Mr. Naidu in the first place was challenged to be illegal and in violation of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, Mineral Concession Rules, 1960 A. P. Minor Mineral Concession Rules, 1966 and the Forest (Conservation) Act, 1980. Further more, the principal Chief Conservator of Forests was alleged to have no jurisdiction or power to grant any such permission. Hence, the

whole action was alleged to be arbitrary, illegal and mala fide. Further more, it was contended that since no prior permission of the central government was taken, it was in contravention of section 2 of the Forest (Conservation) Act, 1980 to allow any person to use the forests for any non-forest purposes.

The Advocate General of the State of Andhra Pradesh vehemently contested the whole fact situation. The primary contention was that a special team comprising of government officials along with Mr. Versan Naidu (On account of his local knowledge) was constituted for the purpose of carrying out experimental prospecting operations by the government. The minutes of the meeting held by the Chief Minister was produced in the Court. Hence, they said, there was no question of allowing any person to mine precious stones. Further, there was no order to this effect to the principal conservator of Forest¹ by the Chief Minister and it was alleged that the PCF acted on his own. As a punishment, therefore, he had been transferred the moment the irregularities came to their notice.

Hence, in view of the above statements, it was submitted that there was no question of violation of Mines and Minerals (Regulation of Development) Act or the Forest (Conservation) Act or acting in illegal manner or in mala fide.

Questions were also raised with respect to the locus standi of the petitioner. However, the court adverted to the landmark cases of S. P. Gupta v. Union of India AIR 1982 SC 149, and Bihar Legal Support Society v. Chief Justice of India, AIR 1987 SC 38 and held that the concept of locus standi has been expanded and since in the present case the petitioner does not have any personal area to grind, they have the locus standi to approach the Court.

The Court then referred to the minutes of the meetings convened by the Chief Minister and statements of the PCF. It came to the conclusion that there was no reason to doubt the authenticity of the minutes and gave the PCF a benefit of doubt.

The Court prima facie concluded that no permission was granted to Mr. Yerru Naidu to carry out any mining operation but he was merely associated with the experimental prospecting operations carried on by the official team constituted by the Directors of Mines and Geology of the State Government.

The Court further more held the following:

¹hereinafter referred to as the Act for the sake of brevity.

- 1) Since second proviso to section 4 of the Mines and Mineral (Regulations and Developments) Act, 1957 exempts any prospecting operations taken by governmental agencies from the wealth of S. 4, there was no violation of the said Act in the present case.
- 2) Since no trees have been felled in the courses of the prospecting operations undertaken by the official team, there has been no violation of the provision of the Forest Conservation Act, 1980. The guidelines issued by the Government of India, Ministry of Environment and Forests in regard to the application of Forest (Conservation) Act, 1980, has clearly stated that investigations and surveys carried out in connection with development projects such as transmission lines, hydro electric projects, seismic surveys, exploration for oil drilling etc. would not attract the provisions of the Act as long as these surveys do not involve any clearing of forest or cutting of trees.
- 3) Since there is no material to show that the permission to Mr. Naidu had been given for mining or he has mined any quantum of precious stones, the whole basis of the writ petition crumbles and there is no need for any investigation by the Central Bureau of Investigation in this regard.

Therefore, since no prime facie case was made out, the Court dismissed the writ petition.

- 34) ***Shri. Chiekhutso V. State of Nagaland and Others*, AIR 1996 Gau 30
(Bench: W.A. Shishak, J.)**

The petitioner impugned a Government Notification dt. 29th June, 1989 issued in exercise of powers conferred by Section 33(2) (h) of Nagaland Forest Act 1968¹ by which rates of royalty leviable on all classes of forest produce removed from any forest in Nagaland had been prescribed.

The main contention of the petitioner was that under the aforesaid provision of law, no royalty can be imposed on timber/logs or any forest produce extracted from village lands or individual lands (forest). Moreover it was contended that the provisions of the Act would govern only Government Reserved Forest and would not include private lands whatsoever.

¹hereinafter referred to as >the Act=.

The petitioner contended that under the guise of the above notification royalty has been levied from forest produce of individuals as well as village of the Phek District. The petitioner prayed that since the above mentioned provision does not govern royalty from private lands, the impugned notification must be quashed.

A counter affidavit was filed by the government admitting the mistake that the notification of the royalty rate ought to have been due under a separate Act altogether. However, no further notification was issued correcting the admitted mistake.

In view of the above facts, the court concluded that the impugned notification had no validity and hence was liable to be quashed. Moreover, it held that unless there is a valid notification, unless relevant provisions of law by which the Government is authorised to levy royalty, no royalty as such could have been imposed on the basis of the impugned notification. Therefore, the petition was allowed and the notification dated June 29th, 1989 issued by the Government was quashed.

35) Shri Lakshmi Chowhan and Others V. State of Assam and Others,
AIR 1996 Gau 35 (Bench: V. K. Khanna, C. J. and A. Dev, J.)
(Judgement delivered by:Khanna, C. J.)

The petitioner/appellant stated that by an order dated 7/1/67, the Under Secretary to the Government of Assam, Forest Department, directed Conservator of Forest for settlement of two hundred bighas of land to twenty five families on 26/7/1979, the petitioner/appellants were allotted two bighas of land. The Conservator of Forests, by a further order directed the increment of land to five bighas.

However, on 21/9/79, the Divisional Forest Officer stayed the order and directed the Range Officer not to handover possession of lands allotted.

A Writ Petition filed before a single judge was dismissed on the ground that the proposed allotment and handing over possession of the lands would cause loss to the Reserve Forest.

The Division Bench, on appeal, averred that the impugned land falls within Reserved Forest and hence provisions of the Forest (Conservation) Act, 1980¹ would apply. The court adverted to the fact that no materials had been placed before it with respect to prior sanction of the central government as mandated under Section 2 of the Act. Hence, the Court concluded

¹hereinafter referred to as the Act for the sake of brevity.

that no relief in favour of the plaintiff/appellant could be granted.

The Court noted that the allotment of the land in the reserved forest appeared to have been done without taking into consideration the provisions of the Forest (Conservation) Act, 1980, the Indian Forests Act and the Rules and Regulations applicable thereunder. Therefore, the Court expressed derive that a certified copy of the judgement would be sent to the Chief Conservator of Forests (within two weeks from the date of the judgement) who would conduct an enquiry in the matter and pass appropriate orders in accordance with law applicable for allotment of lands in the reserved forest. The court also expressed opinion that the Chief Conservator of forests would independently after enquiry record a finding as to who are the persons who are legally entitled to occupy any part of the Reserved Forest without taking into consideration the observation made by the single judge so as to avoid prejudice.

36. ***Jairaj A. P. V. the Chief Conservator of Forests (Wild Life), Thiruvananthapuram, AIR 1996 KER 362***

(Bench: K. T. Thomas, Ag: C. J. and S. Sankarasubbau, J.) (Judgement delivered by: Thomas, Ag. C. J.)

The State Government proposed to construct a "Forest Lodge" in the Parambikulam Wildlife Sanctuary. The appellant a bird watcher, filed an original petition under Art. 226 of the constitution to issue a writ of prohibition against proposed construction. As the original petition was dismissed by a single judge bench the petitioner appealed to the division bench.

The appellant's main contention was that the proposed construction of the lodge was without prior approval of the central government and is hence violative of section 2 of the Forest (Conservation) Act, 1980.¹

¹hereinafter referred to as "the Act" for the sake of brevity.

The respondent's contentions were two fold: firstly, they contended that there was no act of breaking up or clearing of forest land for the purpose of constructing the forest lodge. Secondly, the contention was that the construction of forest lodge is a work ancillary to conservation, development and management of forests and wildlife.

The court rejected the first contention saying that at least some trees obviously have to be felled. Adverting to the second contention, the court referred to explanations attached to Section 2 which explain the words "Ancillary to the conservation, development and management of forests and wildlife". The court said that a reading of the clause shows that the last residuary words i.e., other like purposes include only those activities which are analogous or similar to the other activities such as establishment of check posts, construction of facing, construction of dams etc.

The court also referred to the contention of the appellant that the communication sent by the Ministry of Tourism should be treated as the approval of the Central Government mandated under Sec. 2. The Court noted that the procedure for government approval framed under the Forest (Conservation) Rules was not followed in the present case and hence it cannot be said to be prior approval envisaged under sec. 2 of the Act.

The Court also noted that the requirement in Sec. 2 for prior approval of Central Government must be strictly construed as any relaxation would be perilous to the fast depleting forest wealth of the country. Moreover, it is in consonance with the constitutional mandate contained in Art. 48A and Art. 51 A(g) of the Constitution of India.

On the basis of above reasoning, a writ of Prohibition against the respondent was issued prohibiting them from proceeding with the proposal for the construction of Forest Lodge in the Parambikulam Wildlife sanctuary. However, the judgement, made it clear that it was without any prejudice to the right of the respondents to obtain the approval of the Central Government as envisaged in Section 2 of the Act. The State Government was directed to pay a sum of Rs.2,500/- as advocate's fee to the counsel for the appellant.

- 37) *Vishnu Kumar Khatar v. State of Bihar*, **AIR 1995 Pat 168**
(Bench: B. N. Agarwal, S. B. Sinha and Radha Mohan Prasad, JJ)
(Judgement delivered by : B. N. Agarwal J.)
Radha Mohan Prasad and S. B. Sinha, J. Separately

The petitioner was carrying on mining activities in lands situated in village Ratanpur in the

district of Nawalah. As the period of lease was going to expire, the petitioner filed an application on 22/7/1985 (when the Forest Conservation Act, 1980) had already come into effect for the renewal of the lease. The collector though initially approved the renewal later rejected the application for renewal on the ground that the approval of the central government as required under S. 2 of the Act was not obtained for renewal of the lease. Mines commissioner, before whom a revision petition was filed, upheld the order of the collector and hence a writ application was filed. Since there were apparent conflict between two division bench judgements, the matter was referred to the Full Bench.

The Contention of the Petitioner were primarily two:

- 1) That the collector had no jurisdiction to recall his earlier order;
- 2) That, it was incumbent upon the State Government to refer the matter to the Central Government for according approval under Sec. 2 of the Forest (Conservation) Act, 1980.

The respondent cited the cases of *Ambica Quarry Works v. State of Gujarat* (AIR 1987 SC 1073) and *Rural Litigation and Entitlement Kendra v. State of U.P.* (AIR 1988 SC 2187) and contended that the approval of the central government was necessary even in case of renewal of the lease.

Moreover, they contended that since the petitioners have not applied for any renewal of the lease in the year 1990, the writ would become infructuous and no useful purpose would be served.

The Court adverted to the fact that even if a direction is given to state government to refer the application filed by the petitioner in the year 1985 for grant of renewal of lease and approval is accorded by Central Government, the petitioner can not carry out mining operation on the basis of the said order, as the period has already expired in Nov. 1990, in view of the fact that no application was filed on the petitioner=s behalf in the year 1990 for further renewal of the mining lease for the period of five years from Nov. 1990.

For the above reasons, the court concluded that the writ application had become infructuous and hence it was dismissed.

- 38) ***Kerala Nature Preservation Society, Trisur v. Livestock Research Centre and others, AIR 1995 Ker. 154***
(Bench: K. G. Balakrishnan, J.)

The respondent Agriculture University owned 400 hectares of land and had floated tenders to cut about 200 odd trees. The petitioner society claimed to be interested in the preservation and

conservation of nature. They alleged that all the trees proposed to be chopped off very clearly come under the Nilgiri Biosphere Reserve and since preservation of bio-sphere is necessary, the respondent University should not be allowed to cut the trees.

The respondent University vehemently denied the allegations of the petitioner. They denied that the land comes under Nilgiri Biosphere Reserve. They clearly stated that all the trees were on the land owned by the University, most of the trees were planted by them and chopping off of the proposed trees was essential to carry out the research needs of the University. The respondents further stated that the trees were being cut not for the purpose of earning revenue and if any delay was occasioned in the removal of trees it would adversely affect the various research activities and development programme of the University.

The Court referred to the map of the Nilgiri biosphere and came to the conclusion that the impugned area cannot be said to be part of it.

The Court also went into the research needs of the University and concluded that since they need more areas of land pursuant upon increase in the number of cattle, clearing of isolated trees was perfectly reasonable.

The Court referred to the cases of *M. C. Mehta v. Union of India*, AIR 1988 SC1115; *Rural Litigation and Entitlement Kendra v. State of U. P.* AIR 1988 SC 2187; *Shri Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109 and declared in unambiguous terms that the court in the present case was satisfied that the respondent University had considered the matter properly and had taken a decision to cut and remove the trees having due regard to all relevant circumstances.

On petitioners last contention that such a position may lead to corruption, the Court held that the respondent being a Government enterprise has in-built mechanism of auditing to find out any irregularities.

Therefore, the respondent was directed to comply with all legal formalities before the cutting of trees was fully implemented. Thus, the Court refused to restrain the University from proceeding with notification for cutting and removal of the trees standing in the farm area.

39) ***Bishwanath Boro v. State of Assam, AIR 1995 Gau 46***
(Judgement delivered by J. N. Sarma, J.)

The status of a particular land viz, K. P. Patta No. 131 with Page No. 291 for an area of 4Bs. 1K. Was in question.

The State claimed the land to be a forest reserved land and hence submitted that the Forest Department had a right to claim royalty on the trees. On the other hand, the petitioner claimed the land to be his personal land.

The Petitioner contended that the trees on land were planted by him and they grew on the land during the pendency of the lease, they further submitted that by virtue of Rule 21 (d) of the Rules under the Assam Land and Revenue Regulation, 1886 the petitioner shall be exempted from payment of all royalty even if sold, bartered, mortgaged given or otherwise transferred or removed or transferred.

The court adverted to the evidence adduced and came to the conclusion that land belonged to the petitioner. The court further declared that as the land belongs to the petitioner and the trees were grown by the petitioner by virtue Rule 21(d) the petitioner was not liable to pay any sort of royalty.

40) ***Md. Jinhath Gouri v. Chief Conservator of Forest, AIR 1995 Gau 111***
(Bench: D. N. Baruah and B. N. Singh Neegam, JJ.)

The appellant had bought Sal and Teak logs from a vender. The Vender brought it from an auction by the authorities. The vender had also endorsed the transit passes in favour of the appellant.

However, subsequently, when the appellant was crossing the border of Assam, he was prevented from doing so by the authorities. Even the copy of District Forest Officer's order preventing transportation of timber was denied saying that the order was confidential

The appellant approached the Gauhati High Court through a Writ Application. The learned single judge decided that the vendor had no right to sell the transit passes in as much as such transit passes cannot be subjected to sale. The single judge decided that the question of transferring the transit passes in favour of the appellant did not arise at all under the Law. Aggrieved by the judgement, the appellant appealed.

The main contention put forth by the appellant were the following:

- 1) Since the logs are movable property, the vender can transfer the transit passes to the appellant.
- 2) The respondents had no jurisdiction to restrict or prevent the appellant from free trade, commerce and intercourse in the absence of any law passed by the parliament or the legislature.

The respondents, on the other hand, contended that the forest produce could not be treated like other goods which could be usually transported from one place to another. They submitted that forest produce were precious property, and therefore certain restrictions were required to be imposed in respect of movement of the forest produce like timber, logs etc.

The Court referred to section 40 of Chapter VI of Assam Forest Regulation 1891 and the rules framed thereunder. The court declared that the purpose of issuing permits was two fold; firstly it was issued only on the ground that the person owns the timber log and secondly, the authority before issuing the permit inquires as to whether the persons to whom the transit passes are issued are genuine persons and that they are not likely to do mischief regarding the forest produce.

Therefore, it was held that person having sold the forest produce cannot transfer the transit passes to the purchaser; the subsequent vendor ought to get a fresh transit pass from the authorities.

In view of the above conclusion, the court held the opinion of the Learned Single Judge to the right in holding that the transit passes were non-transferrable and hence dismissed the appeal.

- 41) ***Kailashchand v. State of Madhya Pradesh, AIR 1995 MP1***
(Bench: U. L. Bhat, C.J. and P. P. Naolekar, J.) (Judgement delivered by: U. L. Bhat, C. J.)

Various petitions were put together for disposal. The petitioners were owners of motor vehicles such as trucks, jeeps, tractors, state carriage vehicles etc. These vehicles had been seized by Forest Officers on the allegation that they have been used for removing forest produce contrary to the law.

In the above cases, confiscation proceedings had been initiated or about to be initiated. In most of the cases, action was being taken under the provisions of the Indian Forest Act,

1927¹ (as amended by the Indian Forest (M. P. Amendment) Act, 1983² . The M. P. Vanu paj (Vijapar Viniyaman) Adhinyam, 1969³ (as amended by the Amendment Act 15 of 1987⁴) etc.

The petitioners submissions were

- i) Section 52(3) of the 1927 Act, as amended in M. P. is unjust, unfair and arbitrary and violates Art. 14 of the Constitution.
- ii) Conferral of power of confiscation on authorised officer is arbitrary. He is made judge in his own cause which violates principles of natural justice. There is violation of Articles 14, 19(1) (g) and 21 of the Constitution.
- iii) Section 52(3) of the 1927 Act provides for confiscation and leaves no discretion to the Forest Officer to impose any penalty less than that of confiscation. Hence, it is arbitrary, unjust and unfair.
- iv) Section 52C of the 1927 Act bars jurisdiction of Courts in regard to disposal of property. It is arbitrary and violates Articles 14, 19(1) (g) and 21 of the constitution. Moreover legislative encroachment into judicial powers is bad in law.
- v) Absence of provision for interim release of vehicles or time limit for keeping vehicles in custody renders the scheme of the Act arbitrary.
- vi) There is repugnancy between sections 52(3) and 55 (1) of the 1927 Act.
- vii) Section 15 of the 1969 Act, as amended, is violative of Art. 14 of the constitution.
- viii) In cases governed by 1969 Act, (as amended by the 1987 Act) release of vehicles cannot be refused on the basis of Section 52-C of the 1927 Act (as amended by 1983 Act) in view of Section 22 of the 1969 Act.

¹hereinafter referred to as >the 1927 Act=

²hereinafter referred to as >the 1983 Act=

³hereinafter referred to as >the 1969 Act=

⁴hereinafter referred to as >the 1987 Act=.

- ix) Amendments to 1969 Act, introduced by Amending Act of 1987 have no retrospective effect.

The Court referred to the whole scheme of the 1927 Act as well as the 1983 Act and answered the above mentioned submissions in the following manner:

Point No. (i): The court went into the scheme of the 1927 Act and adverted to cases such as *D. F. O. and another v. G. V. Sudhakar Rao and others*, AIR 1986 SC 328; *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75; *Kathi Raning Rawat v. State of Saurashtra*, AIR 1952 SC 123; *Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri*, AIR 1954 SC 545; *Kangshari Halder v. State of West Bengal*, AIR 1960 SC 457; *Gokihishan v. Asst. Collector Customer Raipur*, AIR 1967 SC 1298; *M. Chaggnalal v. Greater Bombay Municipality etc.* AIR 1974 SC 2009; *Commissioner of Sales Tax v. Radhakrishnan*, AIR 1979 SC 1588; *Ashoka Marketing Ltd. v. Punjab National Bank*, AIR 1991 SC 855; *Sharad Kumar v. State of Orissa*, AIR 1992 Ori 128 etc.

The Court referred to the contention that there are two modes of confiscation prescribed one, through the instrumentality of the authorised officer and the other of the Magistrate. The court held that the criminal prosecution before the magistrate is not an alternative to confiscation proceedings. The two proceedings are parallel proceedings, each having a distinct purpose and object.

The Court said that the object of confiscation was to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence. The object of the prosecution is to punish the offender. The Court, thus held, the contention that the procedure for confiscation is more drastic than the procedure for prosecution to be equally untenable. The court declared that in one case, confiscation may result if the authorised officer is satisfied that a forest offence has been committed. In the other, the Magistrate must be satisfied that the charge has been established beyond reasonable doubt.

Moreover, the court declared that adequate safeguards are present for the persons subjected to confiscation procedure. The magistrate is informed about the confiscation proceeding. Show Cause notice is given inviting representation. Principles of natural justice are followed. Further more, appeal lies to a superior officer, namely conservator of forests. Revision lies to the sessions court whose decision i,e, final. The court said that the existence of these substantial safeguards negatives any possibility of denial of justice.

The Court on the above grounds, therefore, repelled the contention of the petitioners and held that S. 52(3) of the 1927 Act is not arbitrary.

Point No. (ii): With respect to this aspect, the Court noted that according to the Act, the power to seizure vests with Forest officer or Police officer. The power to confiscate is vested neither with the Forest Officer nor with the Police officer. It is vested with the authorised officer, i.e, an officer not below the rank of an, Assistant Conservator of Forests, duly authorised by the State government. Thus, the authorised officer, while discharging his statutory function in regard to confiscation cannot be regarded as Judge in his own cause.

Moreover, the Court noted that the decision of the Authorised Officer is subject to appeal before the Conservator of Forests and to revision before the Court of Session. The appellate and revisional authorities have ample power to correct the order of confiscation. There is nothing in the provision which even remotely, to be regarded as violations of Art 19(1) (g) or Art. 21 of the constitution.

Point no. (iii) : The Court referred to the cases such as State of A. P. v. Bather Prakasa Rao, AIR 1976 SC 1845; Ram Sarup v. Union of India, AIR 1965 SC 247; Commission of Sales Tax v. Radhakrishnan, AIR 1979 SC 1588; State of Kerala v. Sukumara Panicket, 1987(2) KLT 341; State of Madhya Pradesh v. Azad Bharat Finance Co., AIR 1967 SC 276; Gurdev Singh Rai v. Authrised Officer, AIR 1992 Ori 287. The Court declared that the order of confiscation is not mandatory in all cases where the authorised officer is satisfied about the commission of the forest offence and use of the vehicle in the commission of the offence. There may be circumstances which justify the order of confiscation is not mandatory in all cases where the authorised officer is satisfied about commission of the forest offence and use of the vehicle in the commission of the offence. There may be circumstances which justify the order of confiscation, at the same time, there may be circumstances which do not justify the order of confiscation.

Moreover, the Court declared that confiscation proceeding is quasi-judicial proceeding and not a criminal proceeding. Confiscation proceeds, on the basis of the >satisfaction= of the authorised officer in regard to the commission of forest offence. This does not mean that innocent owner of the vehicle will be subjected to unjust action. Sub. Section (5) of S. 52 protects owner of tools, boats, ropes, chains, vehicles etc. If the person concerned proves to the satisfaction of the authorised officer that such tools, vehicles etc. were used without his knowledge or connivance or all the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions has been taken against the use of objects aforesaid for commission of forest offence. This is a safeguard against arbitrary action. Therefore, the Court held that the absence of power in the authorised officer to impose

fine as an alternative to confiscate does not render S. 52(3) unjust or unfair or arbitrary.

Point No.(iv): The Court adverted to the cases of Ashok Marketing Ltd., AIR 1991 SC 855; B. Johnson Bernard v. C. S. Naidu, AIR 1986 MP 72 etc. and declared that it is settled that merely because the other forum is manned by an executive officer, instead of a judicial officer, it cannot be said that it results in violation of Art. 14. Moreover, mere availability of two procedures, one under the ordinary law and other under the impugned provisions do not by themselves, attract the vice of discrimination, unless one of them is so harsh or onerous as to suggest that a discrimination would result, if resort is made to it, instead of the ordinary remedy under the general law.

The Court declared that the impugned provision does not offend Articles 14, 19(1) (g) or 21 of the constitution.

Point No.(V): The Court declared that the alternative scheme of confiscation proceedings has been provided partly to overcome the adverse consequences resulting from delay in disposal of criminal prosecutions involving confiscation. Though the provisions do not prescribe time limit for termination of confiscation proceedings, yet it would be reasonable to expect that the authorised officers, who have to deal with confiscation proceedings, whose number is small compared to the number of criminal prosecutions pending in the State, would be in a position to dispose of the proceedings within a reasonable time. Moreover, the Court noted that under Sec. 53 of 1927 Act, Forest Officer of a particular level has power to release the property. Forest officer, the appellate authority and the revisional authority also have power to pass orders regarding temporary custody or disposal of the property.

On the above basis, the contention of the petitioners was rejected.

Point No. (vi): The Court referred to the fact that under S. 52(3) of the 1927 Act, the authorised officer can order confiscation of property on being satisfied that forest offence has been committed in respect thereof and under S. 55(1), property is liable to confiscation upon conviction of the offender. The Court declared that conviction may result in sentence of improvement involving deprivation of liberty and other serious consequences, while order of confiscation under S. 52 does not have such grave or serious consequence. The scheme of the Act providing for a separate confiscation procedure has a substantial public purpose to serve and is in tune with Articles 48A and 51A(g) of the constitution of India.

On the basis of above reasoning, the court declared that there is no repugnancy.

Point No.(vii): Adverting to their point, the court noted that originally the 1969 Act did not contain any provision for confiscation. The court, therefore, held that since the scheme of confiscation procedure as introduced in the 1969 Act by the 1987 Act, only such provisions can be applied to specified forest produce in specified area after 1987. Thus, after the 1987 Act, confiscation proceeding in relation to specified forest produce, as defined in the 1969 Act, has to be initiated under the provisions of that Act.

Point No. (viii) : The court declared that Section 15C of the 1969 Act, bars the jurisdiction of the Magistrate in the same way as S. 52C of the amended 1927 Act which bars the Magistrate=s jurisdiction. Hence, magistrate cannot invoke his powers under the Code of Criminal Procedure on account of S. 15c of the amended 1969 Act.

Point No. (ix): The court noted the facts of the case which showed that alleged forest offence by the petitioner was committed after the 1927 Act was amended but before the 1969 Act was amended; Clearly, at the time of commission of the alleged offence, the 1969 Act did not provide for confiscation proceeding by authorised officer. Therefore, the court decided that the provisions of the amended 1927 Act relating to confiscation proceedings by authorised officer were attracted. Hence, petitioner cannot succeed on the ground that the 1987 Act has no retrospective effect.

In view of the above conclusions reached by the Court on the contentions, the petitioner were dismissed sans any order as to costs.

42) *Consumer Education and Research Society, Ahmedabad and Ors. v.Union of India and Ors. AIR 1995 Gujarat, 133*

The Government of Gujarat, on 14th of April, 1981, issued a notification whereby 765.79. Km of land in Lakhpat taluka of Kutch district was declared as a wild life sanctuary under S. 18(1) of the Wild Life Protection Act, 1972.¹ The sanctuary was known as the ANarayan Sarovar Sanctuary@.

However, on 27th July, 1993, two notifications were published whereby notification of 1981 was cancelled and, as a result, the said sanctuary came into existence in the reserve forest area, which was specified in the last Chinkara Wild Life Sanctuary, was only 94.87 Sq. kilometres.

¹hereinafter referred to as >the Act= for the sake of brevity.

The petitioners sought to challenge notification of 27th July, 1993, on the basis that the State Government had no jurisdiction to issue such a notification and the boundary of a sanctuary could only be altered by a resolution of the Vidhan Sabha. On the question of locus standi, the petitioners submitted that the respondents in issuing the impugned notifications not only violated S. 26-A(3) of the Act but also infringes Articles 14 and 21 of the Constitution.

The respondent No.1, claimed that because of S. 21 of the General Clauses Act Government had the power and jurisdiction to cancel the 1981 notification.

The respondent no. 3, a company in whose favour mining lease for quarrying limestone and for setting up a cement factory was sought to be granted, contended that there was no valid declaration of Narayan Sarovar Sanctuary under S. 18 of the Act. They further alleged that the petitioners did not have any locus standi to file the present writ petitions.

The court declared that the Government in the present case did not have any jurisdiction or power to invoke S. 21 of the General Clauses Act. The Wild Life (Protection) Act conferred power on the State Government to notify an area as a sanctuary, but the power to alter the boundary had been expressly reserved with the State legislature under sub-section (3) of S.26A, The Court said that once a sanctuary has been notified as such, then the State Government, for the purposes of altering its boundary, would become functus officio and the only authority or body which would have right to amend the boundaries is the State legislature.

The Court referred to cases such as *State of Bihar v. D. N. Ganguly*, AIR 1958 SC 1018; *Lt. Governor of Himachal Pradesh v. Avinash Sharma*, AIR 1970 SC 1576 etc and unequivocally declared that once an area has been notified as such, then the State Government, for the purposes of altering its boundary, would become functus officio and the only authority or body, which would have a right to amend the boundaries is the State legislature.

The Court unequivocally declared that once an area has been declared to be sanctuary, then the said area could be varied only in accordance with the Act and the State Government could not, in law, seek to invoke section 21 of the General Clauses Act and rescind the notification declaring the Narayan Sarovar Sanctuary.

The Court rejected the contention of respondent No.3, by saying that notification was indeed complete with respect to declaring Narayan Sarovar Sanctuary under Sec. 18 of the Act.

Adverting the question of Locus Standi, the court referred to the cases of Subhash

Kumar v. State of Bihar, (1991)1 SCC 598; Janata Dal v. H. L. Chowdhary, AIR 1993 SC 892 and noted that in the present case the petitioners do not have any personal axe to grind . Hence, the *locus standi* of the petitioners was upheld.

Thus, the Court held the impugned notifications dt. 27th July, 1993 to illegal and hence quashed them. As a result of the quashing of the notifications dt. 27th July 1993, the earlier notification dt. 14th Apr. 1981 establishing Narayan Sarovar Sanctuary was renewed.

The Court refrained from expressing any opinion with respect to the desirability or otherwise of the reduction in sanctuary area.

The petitioners were held to be entitled to counsels fee determined as Rs. 4,500/-

43) ***Smt. G. Kalamani and other v. The Chief Conservator of Forests in Karnataka and Others, Air 1995 Kant. 211 (Bench: N. Y. Hanumanthappa, J.)***

The petitioner was a transporter of Seegekayi Soapnut (Antiwala)etc. They used to purchase them from the agricultural produce market committee (APMC). Nevertheless, the authorities demanded transit permit to transport the same.

Therefore the petitioners sought the court to issue a writ of mandamus directing the respondents not to insist on any transit permit for transporting the said products.

The grounds relied upon by the petitioners were primarily two:

- 1) The said products were *not of forest produce*.
- 2) The said products were being sought from the agricultural produce market committee and not transported from any forest.

Adverting to the first ground, the court referred to S. 2(7) of the Karnataka Forest Act, 1963 and Rule 145 of the Karnataka Forest Rules, 1969 and came to the conclusion that seegakayi or antiwala were a kind of soapnut and they indeed were forest produce.

The court adverted to Rules 143, 144, 145(A) etc. of the Karnataka Forest Rules, 1969 and declared that generally obtaining a transit permit, to transport seegakayi or antiwala etc.,

is necessary unless they come within the exemption clauses. However, the court, cited the case of Ullal Madhava Nayak v. State of Karnataka (W. P. No.1119 etc./1975 dt. 14/10/1976) and made it clear that were the forest produce has been purchases, either from a private business man or from APMC Market yard, transit permit is not required , but the same has to be established by producing necessary proof.

Therefore, the Court held that it is incumbent upon the petitioner to show to the concerned forest officer that the forest produce like soapnut, seegekayi, antiwala etc., which was under transport, was not required to obtain any transit permit as it was under transport from APMC or some other private business man. The court declared that if such a proof is produced the authorities shall not insist on transit permit.

44) ***M/s. S. Veneer and Saw Mills v. State of Nagaland and others***, AIR 1995 Gau 37
(Bench: S. N.Phukan (Actg). C. J. and A. K. Patnaik, J.)
(Judgement delivered by: PHUKAN, C. J. (Actg.)

The writ petitioner used to run a saw mill and the production started in 1987. According to the petitioner, due to unforeseen circumstances, the unit remained inoperative for about 2 years and only in Feb. 1992, arrangement could be made to re-start the mill.

When the divisional forest officer, Dimapur was informed about the re-start, the writ petitioner was asked to make advance payment of royalty on timber. As the advance payment was not made, the mill was closed down by the authorities.

Though the respondents controverted the claim of closure of mill in between, the main question before the Court was with respect to the power of the State government to realise royalty, including advance royalty vis-a-vis the provisions of the Nagaland Forest Act, 1968.¹

The learned single judge had already rejected the submission on behalf of the writ petitioner that the royalty which had been imposed was not tenable in law in absence of any legislation or rules framed under the Act. Therefore, the writ petitioner appealed.

The Court referred to the cases of Surajudin v. State, AIR 1960 MP 129 and District Council of Towai Autonomous District v. Dewet Singh, AIR 1986 SC 1930. The Court noted that in the present case the amount sought to be realised was on the basis of installed capacity of each saw/veneer/ plywood mill and the royalty imposed was a percentage of such capacity.

¹hereinafter referred to as >the act= for the sake of brevity.

Since the fixation of royalty was not on the basis of actual timbers used by each saw mill, the notification imposing royalty on the basis of installed capacity of each mill, was held by the Court, not to be royalty but a tax.

The court also referred to the case of *K. T. Moopil Nair v. State of Kerala*, AIR 1961 SC 552 and held that composition of tax on forest is Ultra vires the powers of the State legislature.

The court also referred to the cases of *RHYL UDC v. RHYL. Amusements Ltd.*, (1959) 1 ALLER 257; *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara*, AIR 1961 SC 964; *Indira Bai v. Nan Kishore*, (1190)4 SCC 668 and held that principle of estoppel cannot be made applicable in as much as the proposed royalty have been held to be tax unauthorised by law. The learned Single Judge, was held to be incorrect in holding that the principle of estoppel would apply merely because there was some discussion between the government and mill owners.

The court, on the basis of above reasoning finally held that it is for the government to find out the ways and means for realising the royalty on logs used by the mills. However, the Court made it clear that if royalty on logs used by a particular mill had already been paid by the forest contractors, the mill owners would be exempted from paying royalty to that extent. Nevertheless, the court said that if the royalty had not been paid, realised from the contractor, the same has to be paid by the mill owner. The State government for their purpose, was advised to prepare a scheme where the rate of royalty was fixed for logs actually used or supplied to the mills and not on installed capacity.

With the above observations and directions, the appeal was allowed with no order as to costs.

45) ***Gurudev Singh Rai v. Authroised officer - cum Asst. Conservator of Forests and another*, AIR 1992 Ori.287**

(Bench: B.L. Hansaria, C. J. and B. N. Das, J)

(Judgement delivered by: HANSARIA, C.J.)

In this case, a truck carrying dry and processed tendu leaf bags, was confiscated as the permit was found to be forged. The petitioner advanced the following contentions:

1) Since there was no inter-district movement of tendu leaves, no offence under Orissa

Forests Act, 1972¹ .

- 2) Since the petitioner had only intended to transport the tendu leaves from Purjang to Bombay, a case of commission of the forest offence cannot be made out. (relied on the case of *Md. Akram v. State, AIR 1951 Assam 17*)
- 3) There was no *mens rea* with respect to the commission of the offence. The court noted the fact that the tendu leave bags were booked from Purjang (in the district of Dhenkanal) and the detection was made in the district of Sambalpur and hence rejected the first contention.

Adverting the second contention, the court noted that unlike Md. Akram=s case, in the present case the petitioner had not been booked for trial for committing an offence under S. 5 of the Imports and Exports (Control) Act.

With respect to the third contention, the court referred to case of *State of Orissa v. Kiram Shankar Panda, (1991) 71 Cut LT 157*, and held that if a forest offence is committed with the knowledge or connivance of the driver of the vehicle, the vehicle would be liable for confiscation even though the owner might not have any knowledge or connivance. Hence the question of mens rea was held to be irrelevant in the present case.

Nevertheless, the court instead of upholding the order of confiscation of the vehicle went on to impose fine even though the act itself does not provide anything of such nature. In this regard, adverting to the question as to ***whether the judiciary can also legislate; if so, when and to what extent?***, the court advanced the following reasons:

- 1) Forgery of the permit, could not have been reasonably known to the driver of the vehicle. Even the forest authorities themselves have to work hard to find out the fact of forgery.
- 2) The petitioner may lose his truck valued presently at about Rs. 4 lakhs when the tendu leaves being illegally transported were worth about Rs.60,000. (relied on, *Narendra Singh v. Authorised officer, O.J. C. No.3105 of 1988*; *N. V. Gopaldaswamy, v. Assistant Conservator of Forests, O.J. C. No.3265 of 1988*; *State of Orissa v. Laxmidhas Rath, O.J. C. No. 4224 of 1989*. In all these cases fine was imposed in lieu of confiscation of the

¹hereinafter referred to as >the Act=.

vehicle.)

- 3) Cases such as *Seaford Court Estates Ltd., v. Asher*, (1949)2 ALLER 155, 164 (per Lord Denning); *Bangalore Water Supply v. A. Rajappa* AIR 1978 SC 548 (per Beg C. J.); *M. Pentiah v. Verramallappa*, AIR 1961 SC 1107 (per Sarkar, J.); *Hameedia Hardwara Stores v. Mohanlal*, (1988)2 SCC 513; *S. Surjeet Singh Kahra v. Union of India*, (1991) 1 JT 417 (SC); *K. Veeraswami v. Union of India*, (1991) 3 SCC 656 (per Shetty, J.) Etc. clearly show that it is not beyond the competence of the Court to read words in a statute which are not there.
- 4) Though S. 56(2-a) of the Act gives discretion only with respect to confiscation of vehicles, these may well be certain cases, the authority may not feel satisfied that confiscation of vehicle is demanded, keeping, inter alia, in view the magnitude of the offence. Such instances could be where offence relates to a forest produce whose value is nominal etc.
- 5) Had the deficiency in section 56(2-a) of the Act come to the knowledge of the legislature it would have definitely provided for imposition of fine as an alternative punishment in those cases where the authorities may not be satisfied about the desirability of confiscation and may not also feel happy in allowing owner of the vehicle to go scot-free.
- 6) In the present case, though the confiscation of vehicle shakes the conscience of the court, the owner cannot be allowed to go scot free as that would send a wrong message to the people involved in the objectionable activity.

Based on above reasoning, the court disposed off the petition setting aside the order of confiscation and instead awarded a fine of Rs.60,000/-.

- 46) ***Aramachine and Lakri Vikreta Sangh, Nagpur v. State of Rajasthan and others*, AIR 1992 Raj 7: (Bench: K. C. Agarwal, C. J. and A. K. Mathur, J.)
(Judgement delivered by: K. C. Agrawal, C. J.)**

The petitioner was an association of Aramachinery and Lakri Vikreta Sangh. The writ petition was filed challenging the validity of the Rajasthan Forest Produce (Establishment and

Regulation of Saw Mills) Rules, 1983¹ framed by the State Government in exercise of powers conferred by sections 41 and 42 of the Rajasthan Forest Act, 1953.

The rules basically pertained to the mode in which the operation with respect to saw mills was to be conducted.

The main contention of the petitioner was that the rules were beyond sections 41 and 42 of the Act and therefore, are invalid. Moreover, the petitioner claimed that the rules framed by the State Government impose unreasonable restriction on the trade and profession of the petitioner in contravention of Art. 19(a) (g) of the Constitution.

The court noted the fact that Rules of 1983 were framed to regulate and control and transit of timber and other forest produce so as to put a check at the point of saw mills, where timber was taken.

The court also noted the case of *Chandra Bhavan v. State of Mysore*, AIR 1970 SC 2942 and came to the conclusion that the rules were framed to achieve the object of Art. 51A of the Constitution.

Keeping the above object in mind and the fact that there is no absolute bar on the cutting of timber, the court rejected the second argument advanced by the petitioner. The court noted requirement of obtaining permission cannot mean *unreasonable restriction* in the enjoyment of a right for carrying on a trade or business guaranteed Art 19(1) (g) of the Constitution.

The court adverted to the cases of *State of Madras v. Nataraja*, AIR 1969 SC 147; *Lakshman v. State of M. P.*, AIR 1969 SC 656 and *Krishnan v. State of Tamil Nadu*, AIR 1975 SC 583 and rejected the contention based on violations of Articles 301 -304 of the constitution saying that an imposition of restriction requiring a person to obtain a permission from the proper authority for cutting trees cannot be held to be unreasonable.

The Court laid down the following test for considering whether rules are within the powers of the rule making authority:

¹hereinafter referred to as >the Rules= for the sake of brevity.

- 1) Whether the rules are reasonable and convenient for carrying the Act into full effect;
- 2) Whether the rules relate to matters arising under the provisions of the Act;
- 3) Whether they relate to matters not in the Act otherwise provided for and
- 4) Whether they are consistent with the provisions of the Act.

Based upon the above reasoning, the writ petition was dismissed.

- 47) ***Reshma Finance Corporation, Madras v. Divisional Forest Officer, Nilamlur, AIR 1996 Ker 307 (Bench K. T. Thomas, Actg. C. J. and S. Sankarasubban, J.) (Judgement delivered by: Chandrakantaraj Urs., J.)***

One lorry (Ashok Leyland) was seized by some forest officials on 16/5/1995 alleging that the vehicle was used for committing a forest offence by transporting forest produces. The lorry was produced before the Divisional Forest Officer (DFO) who was the authorised officer as per Section 61A of the Kerala Forest Act.¹ The DFO issued notice to the registered owner of the Vehicle to show cause why confiscation proceedings should not be initiated in the matter. The appellant, who was the financier of the lorry, approached the DFO requesting to hear him too before passing any order.

Since the DFO declined the request, original petition was filed in the High Court. The single judge refused the relief and hence as appeal was filed before the Division Bench.

The main question to be answered was: can a financier (who advanced loan on the security of a motor vehicle) claim a right to be heard in confiscation proceedings involving the motor vehicle under Sec 61A of the Kerala Forest Act.

The primary contention of the appellant was though the vehicle was registered in another person's name, they were the actual owner as substantial amount of money was advanced by them on the security of the vehicle. Alternatively, it was contended that even otherwise the appellant had a great stake in the vehicle and hence he must be heard before any

¹hereinafter referred to as >the Act= for the sake of brevity.

order affecting the vehicle is passed by the authorised officer.

The respondents contention was that so long as appellant is not the registered owner of vehicle, he has no right to be heard in confiscation proceedings, particularly so when the vehicle was not seized from his possession.

The Court referred to S. 52, S.61A and S. 61B of the Act and concluded that following are the conclusion precedents for exercising the discretion conferred upon the authorised officer.

- 1) Seized vehicle should have been produced before the authorised officer,
- 2) the officer should have reached satisfaction that a forest offence had been committed by using the vehicle.
- 3) the authorised officer cannot pass the order of confiscation without giving a notice in writing to the person from whom the vehicle was seized informing him of the grounds for such confiscation.
- 4) An opportunity of making a representation in writing and further opportunity of being heard, in the matter should be afforded to person from whom vehicle was seized.
- 5) If the owner of the vehicle proves that the vehicle was no used without his knowledge and also that the person in charge of the vehicle had taken all reasonable and necessary precaution against such use, the authorised officer cannot pass, an order to confiscate the vehicle (vide *State v. Mathew*, 1995 (3) Ker LT 772)

The Court adverted to the cases of *Kunjuraman v. Sraa Saramma*, 1986, Ker LT 742 and *Saidu Mohammed v. Rama*, 1995 (2) Ker LT 343 and held that though it is mandatory on the part of the authorised officer to issue notice to the person from whom the vehicle is seized, it is not mandatory, that notice should be issued to the owner. Nevertheless, the court said that it is open to the owner to come forward to explain the facts and he need not necessarily be the registered owner.

The Court referred to the fact that discretionary powers conferred on administrative authorities cannot be exercised arbitrarily (vide *Jai Singhani v. Union of India*, AIR 1967 SC 1427) and held that if any person who is really interested in the vehicle comes forward on his own requesting that he may also be heard before confiscation is ordered, fairness, demands, that he also is heard. The court further averred that pre=empting such persons from hearing would amount to negation of *justice and fair play*.

Hence, the DFO was directed to afford the appellant an opportunity of being heard before ordering confiscation of the vehicle seized.

48) ***M. C. Mehta v. Kamal Nath and Ors., (1997)1 SCC 388***

[Bench: Kuldip Singh and S. Saghir Ahmed JJ) (Judgement delivered by Kuldip Singh, J.)

The Supreme Court took notice of a news item which appeared in the Indian Express dt. 25/2/1996. The news items stated that the family of Kamal Nath (a former Minister for Environment and Forests) had a direct link with a private company, Span Motels Pvt. Ltd., The said company had built a club at the bank of River Beas by encroaching land, including substantial forest land which was later regularised and leased out to the company, when Kamalnath was the Minister.

The news report stated that earth - movers and bulldozers were used by the Motel to turn the course of the river and create a new channel. According to the news item, three private companies were engaged to reclaim huge tracts of land around the motel.

The main allegation in the news item was that the course of the river was being diverted to save the motel from future floods. The Supreme Court took notice of the news item because the facts disclosed therein, if true, were to be a serious act of environmental degradation on the part of the motel.

The respondents contested the allegations on various grounds. Mr. Kamalnath claimed that he had no right, title or interest in the alleged property. The Executive Directors of the company, too, echoed the same sentiments but the counsel did not dispute before the Court that almost all the shares in the motel owned by the family of Mr. Kamalnath.

The primary reason given by the respondents was that they had undertaken all the activities to protect their own based property from severe flood erosion which can ensure because of the fury of river Beas. Indeed, they claimed that they were always willing to exchange their land in lieu of leasing out the encroached land which was essential for them to protect their own property.

Letter for such exchange/lease were going on since 1988 but it was only in November 1993 when Mr. Kamalnath was the Minister in charge of the Department that the clearance was given by the government of India and the lease was granted. The court noted this fact and said

that it cannot be a mere coincidence.

Nevertheless, the company submitted that all the work undertaken by it was in the interest of the community and if they had not done something, whole vicinity of the river was under danger.

The court by the order dt. 6/5/1996 had earlier directed the Central Pollution Control Board, through its Member Secretary to inspect the environment around the area in possession of the Motel and file a report.

The report went into the nuances of the work done by the Motel and concluded that the constructions were patently illegal and may lead to multifarious deleterious effect upon the river as well as the surroundings.

The court referred to the doctrine of public trust and adverted to landmark writings of David B. Hunter, Barbara Ward and Joseph Sax. The Court also took into consideration the case-law developments in *Illinois Central Railroad Co. v. People of State of Illinois*, 146 US 387; 36 LEQ 1018 (1892), *Gould v. Greylock Reservation Commission*, 350 Mass 410 (1966), *Saceo v. Development of Public Works*, 532, Mass 670, *Robbins v. Dept. of Public Works*, 244 NE2d 577

National Audubon Society v. Superior Court of Aepine Country, 33 Cal 3d 419, *Philips Petroleum v. Mississippi* 108 SCL 792 (1988) etc. and concluded that our legal system includes the public trust doctrine as part of its jurisprudence. The court noted that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running water, air, forests, and ecologically fragile lands. The State as a trustee, has a legal duty to protect the natural resources. These resources are meant for public use and cannot be converted into private ownership. The court said that the aesthetis use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private , commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

The court unhesistantly held that the Himachal Pradesh Government committed a patent breach of public trust by leasing the ecologically fragile land to the motel management.

Further more, the court adverted to *Vellore Citizen=s Welfare Forum v. Union of India*,

(1996) 5 SCC 647 and *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 212 and held that the precautionary principle and the polluter pays principle have been adopted as part of the law of the land and hence one who pollutes the environment must pay to reverse the damage caused by his acts.

Finally, the Court ordered and directed as under:

- 1) The ***Doctrine of Public Trust*** is a part of the law of the land.
- 2) The prior approval granted by the Government of India, Ministry of Environment by the letter dt. 24/11/1993 and the lease deed dt. 11/4/1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original natural conditions.
- 3) The Motel shall pay compensation by way, for the restitution of environment and ecology of the area.

The Director of NEERI shall, inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred, for reversing the damage caused by the Motel to the environment and ecology of the area.
- 4) The Motel through its management shall show cause why pollution fine, in addition, be not imposed on the motel.
- 5) The motel shall construct a boundary wall, in its own land to separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.
- 6) The Motel shall not discharge untreated effluents into the river. The Himachal Pradesh Pollution Control Board should keep a vigil upon this.
- 7) The Himachal Pradesh Pollution Control Board shall inspect all the hotels/institutions/factories in Kullu-Manali colla and take action in accordance with law, in case, any of them are discharging in untreated effluent/waste into the river.
- 8) The Motel shall show cause on 18/12/1996 why pollution fine and damages be not imposed as directed. NEERI shall send its report by 17/12/1996.

The judgement ended the political career for Mr. Kamalnath, and sent the then Congress Government to the backfall, as corruption and position arrogance of Ministers in power were well exposed.

- 50) ***K. V. Shanmugam and etc. v. State of Tamil Nadu, and others,***
AIR 1997 Mad. 338
(P. SATHASIVAM, J.)

The petition was concerned with, a grant of mining lease in pit V of Badanavadi Revenue Forest to respondent no.5 without obtaining the prior sanctions of the Central Government as mandated under Sec. 2 of the Forest (Conservations) Act, 1980.

The main limb of petitioner=s contention was absence of sanction of the Central Government.

On the other hand, the respondents contended that the grant of lease subject to concurrence from the Ministry of Environment and Forests. Moreover, it was contended that the impugned government order granting mining lease to respondent no. 5 was only a grant of quarrying a minor mineral under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959. Furthermore, it was contended that the impugned grant of quarrying permission does not amount to grant of permission to cut and clear the forest growth.

The court relied upon the decisions in

- 1) *Ambica Quarry Works v. State of Gujarat* (1987) 1 SCC 213
- 2) *Rural Litigation and Entitlement Kendra v. State of U.P* 1989 supp (1) SCC 504;
- 3) *State of Madhya Pradesh v. Krishnadas Tikaram*, 1995 Supp (1) SCC 587;
- 4) *T. N. Godavarman Thirumulkpad v. Union of India*, (1997) 2 SCC 267;
- 5) *State of Bihar v. Banshi Ram Modi* (1985) 3 SCC 643

and clearly laid down that State government cannot grant or renew the lease for quarrying the mineral situate within the reserve forest area without detaining the prior approval of the Central government.

Moreover, the Court noted that since Sec. 2 of the Forest Conservation Act opens with a non obstante clause, the provision will have an over riding effect on the provisions contained in the

Act or any other law for the time being in force in a State.

The court repelled all the contentions challenging the locus standi of the petitioner, on the basis of the **doctrine of public trust** as enumerated in the case of *M. C. Mehta v. Kamal Nath* (1997) 1 SCC 388. The court declared the impugned Government Order granting lease in favour of the 5th respondent subject to the concurrence of the Central Government to be violations of the provisions of Sec. 2(ii) of the Forest Conservation Act, 1980.

In view of the above reasoning, the Court made it clear that in all cases in which the Government desired to grant lease of reserve forest lands for mining operations, the mandatory provisions of sec. 2 of the Forest (Conservation) Act, 1980 has to be strictly complied with this, the writ petition was allowed to the above indicated extent.

51) ***Tumda Saw and Veneer Mills, Tumpa, Arunachal Pradesh v. State of Assam***, AIR 1997 Gauhati 41

The petitioners were manufacturers of veneer, a substance manufactured from logs. The case revolved around the fact whether transit permits are required for transporting veneer.

The Chief Conservator of Forest insisted upon transit passes . However the petitioners claimed that veneer is a finished product and is the outcome of manufacturing process and hence no transit pass was necessary for transportation.

Earlier, on 2/7/1993, the Court decided that veneer could not be termed as= forest produce > and hence there could not be any question of transit pass. However later government of Assam passed an ordinance which subsequently became Assam Forest Regulation (Amendment) Act, 1995. This expanded the definition of >timber= to include even peeled out or sliced outwood (i,e, veneer)

Based on rival contentions, the Court framed the following issues for determination:

- 1) Whether the amendment made in the Assam Forest Regulation Amendment Act, 1995 is repugnant to any of the provisions of existing law? and
- 2) Whether the state legislature has jurisdiction to make law relating to veneer by including

within the definition of timber?

Adverting to first point, court referred to the cases of Shyamkant v. Rambhusan, AIR 1939 FC 74, Faverbhai v. State of Bombay, AIR 1954 SC 752; Iika Ranji v. State of U. P. AIR 1956 SC 676; Thirumuruga Kirupananda Variyar Tharathiru Sundara Swamigal Medical Education and Charitable Trust v. State of Tamilnadu, (1996) 3 SCC 15; State of Orissa v. M.A. Tullohd and Co., AIR 1964 SC 1284 etc. dealing with the doctrine of repugnancy and came to the conclusion that since the earlier definition of timber in the existing law was not exhaustive and hence the inclusion of veneer in the definition is not repugnant to the existing law.

Referring to point no.2, the Court referred to the meaning of >forest produce= as forest produce in its primary and natural state lying in the forest. So, the court noted, that the expression >Forest= used in Entry 17A of List III is wide enough to cover the field of legislation pertaining to timber which is a >forest produce=. However, the court decided that since veneer goes through a process of manufacturing and is not in the natural state, it cannot be said to be a forest produce and therefore it cannot be included in the definition of timber.

Hence, the state legislature was held to be incompetent to make law to include veneer in the definition of timber as the same is not a forest produce. In view of the above finding, insistence for transit pass by the respondents for transportation of veneer was set aside and quashed.

52) ***G. R. Simon and Others v. Union of India* AIR 1997 Delhi 301.**
(Bench: M. Jagannadha Rao C. J. , Anil Dev Singh and Manmohan Sarin JJ.)
(Judgement delivered by: Manmohan Sarin, J.)

The batch of writ petitions were filed by the manufacturers wholesalers and dealers engaged in retail trade of tanned, cured and finished skins of animals.²The petitioners challenged the introduction of provisions of Chapter VA in the wild life (protection)Act, 1986, together with notification issued thereunder.

The petitioners had challenged the Amendment Act of 1986 on the following grounds:

- 1) There is no nexus between the object of preservation of animal life and banning and destroying the trade/business in the animal skins and articles made therefrom.
- 2) The amendment is a colourable exercise of power and the statement by the Minister in the parliament was not followed.
- 3) The amendment to the act by which the holding of stocks on the expiry of the stipulated period except those retained for personal use became unlawful is confiscatory and deprivation of property without the authority of law.
- 4) The impugned act renders jobless the petitioners who carried on their legitimate trade, business and occupation. This is violative of Article 19(1) (g).
- 5) The protection of large number of wild animals who had no utility for humans could not be said to be public interest. Moreover, the legislation is arbitrary as it has the effect of confiscating and appropriating the property without paying reasonable prices.

All the grounds were vehemently contested by the respondents. The court referred to Art 51A of the Constitution which imposes fundamental duty on every citizen to protect and improve the natural environment and held that the steps taken by the state through the Amendment Acts was the correct step under this. The Court noted that every living creature, though ostensibly innocuous and useless, has its own unique role to play in the maintenance of ecological balance.

The court noted that Amendment Act was passed pursuant to recommendations of the specialists in Indian Board for wild life. Moreover, the Court assailed that the depletion in members of endangered species has a strong nexus with large scale poaching of wild life for purposes of trade and enhanced that there was nexus between the object of preservation of

²Hereafter referred to as >animal articles=.

animal life and banning and destroying the trade/business in the animal skins and articles made therefrom.

On the question of adequate opportunity to clear the already accumulated stocks, the court noted that the petitioners had been provided time from Dec. 1986 to Feb. 1993 (nearly six years, though the Act provides a period of two months) to dispose of their stocks. Hence, the petitioners cannot have any legitimate grievance of denial of opportunity in this regard.

The stocks of the petitioners was, therefore, held to be liable to be dealt within accordance with the provisions of the Wild Life (protection) Act, 1972.

Thus, the provisions of Chapter V-A introduced by the Amending Act of 1986 to the Wild Life Act of 1972 was held to be intra vires and the writ petitions were dismissed.

The court has not discussed the issue relating to colourable exercise of Power.

Was there any felt need to refer to Art 51A (g) in the Judgement? The court was more assertive in terms of amendment of the statute. There is no reasonable attempt made by the courts to justify their stand.

For balancing the freedom of trade and environment no proper view was expressed.

53) ***K. V. Sridharan and etc. v. State of Tamil Nadu and others*** AIR 1997 Mad 338
(Bench: P. Sathasivam, J.)

The petition was conformed with a grant of mining lease in Bit V of Badamavadi Reserve Forest to respondent no. 5 without obtaining the prior sanction of the Central Government as mandated under Sec. 2 of the Forest (Conservation) Act, 1980.

The main limb of petitioner=s contention was absence of sanction of the cultural government.

On the other hand, the respondents contended that the grant of leave subject to

concurrence from the Ministry of Environment and Forests. Moreover, it was contended that the impugned government order granting mining lease to respondent no. 5 was only a grant of quarrying a minor mineral under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959. Further more it was contended that the impugned grant of quarrying permission does not amount to grant of permission to cut and clear the forest growth.

The Court relied upon the decisions in

- 1) *Ambica Quarry Works v. State of Gujarat* (1987) 1 SCC 213
- 2) *Rural Litigation and Entitlement Kendra v. State of U.P.* 1989 Supp (1) SCC 504;
- 3) *State of Madhya Pradesh v. Krishnadas Tikaram*, 1995 Supp (1) SCC 587;
- 4) *T. N. Godavarman Thirumulkepad v. Union of India* (1997) 2 SCC 267
- 5) *State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643

and clearly laid down that State Government cannot grant or renew the lease for quarrying the mineral situate within the reserve forest area without detaining the prior approval of the Central Government.

Moreover, the Court noted that since S. 2 of the Forest Conservation Act opens with a non obstinate clause, the provisions will have an over riding effect on the provisions contained in the Act or any other law for time being in force in a state.

The court repelled all the contentions challenging the locus standi of the petitioner on the basis of the doctrine public trust as enumerated in the case of **M. C. Mehta v. Kamalnath**, (1997) 1 SCC 388. The court declared the impugned Government order granting lease in favour of the 5th respondent subject to the concurrence of the Central Government to be violative of the provisions of Sec. 2(ii) of the Forest Conservation Act, 1980.

In view of the above reasoning, the Court made it clear that in all cases in which the Government desired to grant lease of reserve forest lands for mining operations, the mandatory provisions of Sec. 2 of the Forest (Conservation) Act, 1980 has to be strictly complied with. With this, the writ petition was allowed to the above indicated extent.

- 53) ***Tunni Merchants Association v. The Principal Chief Conservator of Forests, Hyderabad***, AIR 1997 AP 163

(Bench: P. Venkata Rama Reddy and K. B. Siddappa, JJ)

(Judgement delivered by: P. Venkata Rama Reddy, J.)

The Writ petition was filed by merchants of Tuni, East Godavari District, who deal in Cashewnuts. They questioned the action of the forest officials in insisting upon transport permits for movement of cashew-nuts purchased by the petitioner in the areas surrounding Narsipatnam, K. D. Peta, Anakapalli and Bhimunipatnam.

The primary contention of the petitioners was that cashew or cashew-nuts are not **>forest produce=** within the meaning of S. 2(ii) (g) of the Andhra Pradesh Forest Act, 1967 unless the cashew nuts are obtained from the cashew-trees grown in the forest area.

The contention of the respondent was that cashew-nuts fell within the ambit of the inclusive definition of **>forest produce=**. Moreover, it was submitted that the transit permits were necessary to arrest the smuggling of cashew-nuts from the governmental plantations which were located very near to the cashew **>topee=** of the private owners. It was stated that the Forest Department has raised cashew plantations around Narsipatnam audits surrounding villages and there is possibility of smuggling or unauthorised procurement of cashew-nuts from the said plantations in the guise of purchase from private plantations.

The Court noted the fact that cashew nuts by themselves are not understood as forest produce in popular or commercial parlance. Moreover, since cashew nuts are not produced in forest only, **the court unhesitatingly held that cashew-nuts cannot be said to be >forest produce=**.

Thus, the court came to the conclusion that once cashew-nuts obtained from the cashew plantations around Narsipatnam and its surrounding villages and there is possibility of smuggling or unauthorised procurement of cashew nuts from the said plantations in the guise of purchase from private plantations.

The court noted the fact that cashew nuts by themselves are not understood as forest produce in popular or commercial parlance. Moreover, since cashew nuts are not produced in forests only, the court unhesitatingly held that cashew-nuts cannot be said to be **>forest produce=**.

Thus, the Court came to the conclusion that once cashew-nuts obtained from the cashew plantations on private lands is excluded from the definition of >forest produce= either specific or inclusive, the forest department cannot insist on permits being obtained for transporting the cashew-nuts obtained from the private lands to the petitioners business places.

Further, the Court acknowledged that transit permits are required only for the movement of >forest produce= but not other produce. Hence, the possibility of clandestine or unauthorised removal of cashew nuts from the plantations raised by the Forest Department cannot be a ground to insist on transit permits.

In the cases of unauthorised removal, the court pointed out, the right course of action open to the forest department would be to take appropriate action under the provisions of the Andhra Pradesh Forest Act. In appropriate case, the Court noted, even the goods can be seized.

Thus, in light of the above reasoning the court issued a writ to the forest department asking them not to insist on transport or transit permits for the movement of cashew-nuts purchased by the petitioners from the private cashew plantations of the ryots and being transported to petitioner=s places of business.

54) **Madanlal Sethi and Ors. v. State of Madhya Pradesh 1997 (3)** SCALE 575

The case concerned the validity of the Madhya Pradesh Kashtha Chiran (Viniyaman) Adhinyam, 1984¹ and Rule 27 of the M. P. (Transit (Forest Produce) Rules, 1961)². The appellants had challenged the validity of the above provisions of the Act and the Rules on the ground that they required them to register certain specifications of the forest wood purchased by them under public auction from the government timber depots.

After saving and cutting the wood into different sizes, the appellants were required to make proper entries into the relevant register. Moreover, when the consumers take out the wood from the timber depot, they are also required to submit a transit permit. It was stated that the licenses of the saw mills are being unnecessarily harassed by being asked to make numerous needless entries in the relevant register, like forms D-1 and D-2 and there by getting subjected to confiscation of the wood lawfully purchased by

¹hereinafter referred to as >the Act=.

²hereinafter referred to as >the Rules=

them. Thus, it was claimed that the Act and the Rules are arbitrary and unreasonable as they offend their fundamental rights of freedom to carry on the business and trade under Article 19(1) (g) of the Constitution.

The respondent filed a counter affidavit explaining in detail that, every care is taken to ensure that the license of the saw mill is given, for the possession of the wood purchased from the government depots. They explained that the requirements to enter the specified details of the wood in form no. D-1 and of the finished product in Form No. D-2 is only to ensure that the officer on duty of inspection would be in a position to verify whether the wood in possession has been purchased by the licence from lawful source; is properly accounted for; is in their lawful possession; and to see that the disposal of the same is done in accordance with the Rules.

The appellants contended that though the rules require that specification of the forest wood kept in saw-mill and saw pit be recorded, in reality when the wood is taken to the saw mill and is cut into logs of different sizes, there would be considerable wastage and the finished wood realised by saw-mill the logs would be less than the original length and girth etc. They said that it is really impossible for the license to enter all specifications in the relevant entries in form D-1, D-2 and D-3 etc., and to account for the wood they purchased. Therefore, it hinders their peaceful conduct of the business.

As one of the illustrations, it was stated that one of the division Forest officers even meticulously measured zero point of the differential wood in the possession of the saw mill and failure to account for it, took action by confiscating the entire wood. This the appellants alleged, showed that by operation of the Act, licenses are being arbitrarily prevented from exercising the right of freedom to carry on trade and business and are being subjected to needless harassment in the absence of necessary guidelines.

The respondents submitted that guidelines have been framed in clear terms for all the aspects.

The court referred to sections 8,9 and 13 of the Act dealing with specifications about the wood and it concluded that after perusing all the aspects, they are satisfied that the details, as have been provided for, are required only with the object of the ensuring that the licenses who are the persons in the control of the saw-mill and saw-pit or employee etc., are in lawful possession of the wood and of further ensuring that the wood in their possession was obtained from a lawful source and they have duly accounted for such a wood.

Therefore, keeping the object in mind the court also concluded that the rules are

consistent with the meticulous details and there is no gap. Hence, the rules were held, not to be ultra vires the Constitution as offending Article 19(1) (g) or Article 14 simply because some shortfall or discrepancy was noticed by the officer in the quantity or quality of the wood.

Hence, the appeal was dismissed.

- 55) **M/s. Ivory Traders and Manufacturers Association and Others, v. Union of India,**
AIR 1997 Delhi 267
(Bench: M. Jagannadha Rao, C. J. and Anil Dev Singh and Manmohan Sarin J.J.)
(Judgement delivered by: Anil Dev Singh, J.)

There were two sets of writ petitions. In the first set, the petitioners challenged certain amendments carried out in the Wild Life (Protection) Act, 1972 whereby the trade in imported ivory and articles made therefrom had been banned.

In another Act, the grievance of the petitioners was that though they are not covered by the Wild Life (Protection) Act, 1972 and the Amendment Act No.44 of 1991, the authorities could take action against them for, their being in possession of mammoth ivory and, articles made therefrom.

In the *first set of writ petitions*, the petitions stated that, they only deal with ivory imported, before the coming into operation of the Amendment Act. So, they alleged that the ban imposed by virtue of section 33 and 34 of the Amendment Act, was violative of Articles 19(1) (g), 14 and 300A of the Constitution of India. The further grievance of the petitioners was that they cannot even retain the possession and control of the ivory lawfully imported by them and articles made or derived therefrom as the same has been made, an offence under sec. 51 of the Act read with Sec. 49C(2) thereof. According to the petitioners the ban is unreasonably unfair and arbitrary.

Similarly, in the *second set of writ petition*, the petitioner contended that the ivory in their possession is imported mammoth ivory and hence not permitting the sale of imported ivory acquired prior to the ban has no nexus with object sought to be achieved by the Act. Moreover, they submitted that the Act does not deal with mammoth ivory, a species long extinct.

However the counsels for the respondents vehemently contested the claims put forward

by the petitioners. They submitted that the traders in the garb of dealing in ivory imported from Africa or Mammoth ivory, were actually dealing with Indian ivory, which resulted in illegal billing of Indian Elephants, with the result that, their population has gone down. Moreover they submitted that the trade in wild life is antithetical to conservation. Further more, they submitted that the trade in wild life is akin to trade in liquor or any other noxious trade and does not have the protection of either Article 14 or 19(1) (g). They also contended that the petitioners should have liquidated the stocks of ivory in 1989, when the African Elephant was proposed to be brought in Appendix I of the Conservation on International Trade in Endangered species of Wild Fauna and Flora (referred to as CITES in short).

The court referred to earlier Acts dealing with Wild life protection (for instance, the Wild Birds Protection Act, 1887 etc.) and adverted to the objects and reasons of the main Wild Life (protection) Act, 1972 and the Amendment Acts of 1986 and 1991.

The Court referred to the Cases of *Narender Kumar v. The Union of India*, AIR 1960 SC 430, *State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh*, AIR 1970 SC 1157; *Mohd. Faruk v. State of Madhya Pradesh*, AIR 1970 Gupta, AIR 1994 SC 205 etc. and declared that rights granted under Article 19(1) are not absolute rights but are qualified rights and restrictions including prohibition thereon can be imposed in public interest. In the present case the Court noted the diminishing number of elephants over a period of years and referred to the fact that not only the parliament but even the international community has turned its attention towards this end. Thus, the ban imposed by the impugned legislation especially Section 49B (1) (a) (ia) read with sec. 49A (c) (iii) and Sec. 49C (7) thereof was held not, violative of Article 19(1) (g) of the Constitution. It was also held not to be in contravention of Article 14 of the Constitution as the ban does not suffer from unreasonableness, arbitrariness and unfairness.

The Court referred to the cases of *Southern Pharmaceuticals and Chemicals*, , AIR 1981 SC 1863; *Cooverjee B. Bharuch v. Excise Commissioner, Ajmer*, AIR 1954 SC 220; *State of Assam v. Sristikar Dowerah*, AIR 1957 SC 414; *State of Bombay v. F. N. Balsara*, AIR 1951 SC 318; *State of Bombay v. R. M. D. Chamarbaugwala*, AIR 1957 SC 699; *Har Sankar v. The Dy. Excise and Taxation Commissioner*; *State of U. P. v. Synthetics and Chemicals Ltd.*, AIR 1980 SC 614; *M. J. Sivani v. State of Karnataka* AIR 1995 SC 1770 etc. to declare that trade which is pernicious, donoxious and baneful can be totally banned without attacking Article 19(1) (g) of the Constitution. So the Court declared that pernicious activities such as depletion of the elephant speculation cannot be taken to be as business or trade in the sense in which it is used in Article 19(1) (g) of the Constitution.

The Court referred to the cases of *Municipal Corporation of cities of Ahmedabad v. Jan Mohammed Usmanbhai*, AIR 1986 SC 1205; *Pappassam Labour Union v. Madura Coasts Ltd.*,

AIR 1995 SC 2200; *Keshavananda Bharti v. state of Kerala*, AIR 1973 SC 1461; *State of Kerala v. N. M. Thomas* AIR 1976 SC 490 C etc. to reiterate that when the legislature imposes restriction or prohibition or a ban to fulfil the mandate of the Directive Principles of the State Policy, the restriction, prohibition or ban, is in the interest of the general case, the court noted that legislature intended to give effect to Article 48A and 51 of the Constitution.

Furthermore, the court referred to the cases of *Mumbai Upnagar Gramodyog Sangh*, AIR 1970 SC 1157, *Fatehchand Himmatlal v. State of Maharashtra*, AIR 1977 SC 1825; *State of Gujarat v. Vora Saiyedbhai Kadarbhai*, AIR 1995 SC 2208; *Synthetics and Chemicals Ltd. v. State of U. P.* AIR 1990 SC 1927 etc. and noted that since the primary object of the inaugural legislating in the preservation of the elephant and not utilisation of the property for public purpose, Article 300A is not attracted for the purposes of compensation.

The court also finally noted the fact that it is almost impossible for an untrained eye to distinguish between elephant and mammoth ivory.

Based on all the above reason, the court dismissed the writ petitions.

56) ***Environmental Awareness Forum V. State of Jammu and Kashmir*** ,
(1999) 1 SCC 210. (Bench: A. S. Anand, B. N. Kripal and V. N. Khare, JJ.)

In this case, various IAs were dealt by Hon=ble Supreme Court. In I.A. No.16, the Hon=ble supreme Court perused the official notings and found that M/s. Bekay Katha Pvt. Ltd. represented to the State Government vide letter dt. 18/3/1998 that the Court had exempted a Minor forest produce from the ban on fellings@ vide order dt. 4/3/1997. The Official note prepared on the basis of representation stated the following:

aKatha is a minor forest produce. The Katha is manufactured from the Khair wood. In pursuance of the order dt. 4/3/1997, there is no ban on the felling of Khair trees form the forest areas as per the working plan@.

The Additional Secretary, Forest forwarded the representation to the Principal Chief Conservator of Forest. However, Additional Chief Secretary, Forest noted that it is a matter of interpretation whether aKhair@ can be treated as minor forest produce.

After opinion from Indian Council for Forestry Research and Education, Khair was concluded to be a Minor Forest Produce (MFP) and hence ban was lifted. On the other hand, the Additional Chief Secretary, Forest noted that the issue was discussed at length with all officers

of the department and they were of the view that as per the books on the subject, only katha is MFP and khair tree in timber and therefore, Supreme court=s directive on MFP is not applicable. However, in spite of the above observation, directions were issued to allow khair trees to be felled for extraction of katha to M/s.Bekay katha pvt. Ltd.

The Court, therefore on the basis of Additional Chief Secretary Forest=s views noted that the only katha is MFP while Khair is timber. Hence, the court was prima facio satisfied that there was a deliberate attempt to circumvent the order of the court and there has been a wilful breach of the orders of the Court.

Thus, notices were issued to the officers as well as Managing Director of M/s. Bekaya Katha Pvt. Ltd., to show cause why contempt proceedings be not initiated against them. The State Government was directed to produce the file relating to the subject matter containing all the notings by the officials.

In I. A. No.13, the Court dealt with the application to direct the Jammu and Kashmir government to implement the directions of the court to relocate the band-sawmills in the specified sawmills zone. Six weeks time was granted to the relocate, and directed Jammu and Kashmir government to furnish a status report in this regard. The Court clarified that directions regarding ,the relocation of land - sawmills is only in respect of such band sawmills which are licensed. Hence they would not apply to unlicensed or illegally set up band sawmills and the State government can demolish them.

IA No.12 was related to the movement of timber outside the State of J and K. Earlier the Court had suspended the movement of trees or timber from the Sate except for the use of DGS and D, Railways and Defence. Though the State of J and Kashmir was directed to file within one month an detailed affidavit specifying the quantity of timber for transportation outside the state, no affidavit was filled.

The Advocate General of Jammu and Kashmir was allowed six weeks time to file detailed affidavit with respect to the said matter.

57) The Goa Foundation v. The Conservator of Forest; Forest Department, Panaji, Goa & Ors. (AIR 1999 Bombay 177)

A Public Interest Litigation was filed by the Goa Foundation challenging the permission granted by the Conservator of Forests contrary to the Forest (Conservation) Act 1980 for carrying out certain developmental activities in the forest area, of village Penha de Frana of Bartez Taluka of Goa. According to the petitioner, the land in question was a forest land and non forest activity therein was not permissible unless prior permission was taken from the Central Government under the Forest Conservation Act 1980. The petitioner alleged that alterations were made in the survey record for facilitating the residential complex work in the area of 11.275 sq meters. The Court looked into the rival contentions made by the Forest Department by scrutinizing the past record of the land. It also verified the Forest Department instructions for application of Forest (Conservation) Act 1980 to private forest. Tracing the history of the said land the court

observed that the construction activity in these areas was for a non-forest purpose and as no approval had been taken from the Central Government in this regard the developmental activity carried out in the area had to be stopped.

58) *Maharaja Fatehsinrao Zoo Trust v. State of Gujarat, AIR 1999 Guj. 346*

(R. K. Abichandani, J.)

The Petitioner - Maharaja Fetehsinrao Zoo Trust challenged the order of the Gujarat Revenue challenged by which it was decided that 250 acres and 26 gunthas of land held by the petitioner was surplus and that the petitioner could hold only the remaining 36 acres of land.

The contentions of the petitioner were the following:

- 1) The land in question is not a land³ within the meaning of Sec. 2(17) of the Gujarat Agricultural Lands Ceiling Act, 1960³ because it is a forest land not being put to any agricultural use.
- 2) There is Blackbuck Sanctuary in this land. Trees and grass have grown naturally on these lands. The land was not of even surface and is suited for wildlife.
- 3) Under Sec. 2 of the Forest Conservation Act, 1980, the forest land cannot be taken away or converted into a non-forest land by any authority without the prior approval of the central government.
- 4) The case of T. N. Godavarman Thirumukkad v. Union of India, (1997) 2 SCC 267 and Samatha v. State of A. P., (1997) 8 SCC 191 decided that the word a forest³ used in the Forest Conservation Act, 1980 included private forests and, therefore, the forest land in question cannot be considered as agricultural land within the meaning of the land ceiling Act and hence it cannot be declared as surplus.
- 5) There is a conflict between the Forest Conservation Act, 1980 and the land ceiling Act (1960) and as decided in Ashoka Marketing Ltd., v. Punjab National Bank, AIR 1991 SC 855, the latter enacted statute i,e, FCA 1980 should prevail.

The Court went into the entire scheme of the land ceiling Act and observed that the acquisition of the surplus land as per the provisions of the land ceiling Act does not depend upon the fact whether the land in reality be allotted under Sec. 29 of the Act. Thus, the court

³hereinafter referred to as a land ceiling Act³ for the sake of brevity³

declared that the contention that since forest has grown on the land it cannot be acquired as a surplus land because forest land cannot be allotted for agricultural use under Sec. 29, is misconceived.

The court noted that the land in which there is forest is not exempted from the provisions of the land ceiling Act. It observed "If that were so, most of the vast land owners would have converted them into forests and continue to hold lands beyond the ceiling area"

On the question of conflict between the FCA and the land Ceiling Act, the Court noted that both the enactments operate in different fields and hence there is no question of conflict between the two. Thus, the court declared that the requirement of prior approval of central government cannot be utilised by the petitioner for protecting its holding in excess of the ceiling area when on facts it has been found by the authorities below that the land in question is capable of being used for agricultural purposes and that it is classified as dry crop land. Thus, by claiming to have private forest in land which is capable of being put to agricultural use, no immunity can be claimed from the provisions of the land ceiling Act.

Hence, on the above mentioned reasons, the petition was rejected. Petitioner's submission to extend the period of interim relief so as to enable appeal to higher forum was also rejected in view of undue delay.

There is a conflict with other Statutes . In the process of having more lands than the stipulated lands under The Land Ceiling Act their petitioner resorted to Forest Act to get the benefit .There is no complexity in the decision

60) ***M/s. Indian Wood Products Co. Ltd. v. State of U P. AIR 1999 and All 222***

The Petitioner was a manufacturer of Katha out of Khain wood. In this case, the petitioner's vehicle carrying Katha, purchased from Hoshiarpur (Punjab) was seized at Kanpur by the forest authorities.

The contention put forth by them was the fact that to produce Katha from the khair wood, a manufacturing process is utilised and the mill katha so obtained by the above process is eatable and marketable item and not a forest produce within the meaning of section 2(4) of the Indian Forest Act. Thus, it was submitted that for the movement of Katha, no transit pass is required.

It was said that since katha is not "forest produce" the forest authorities have no

jurisdiction to seize the vehicle carrying katha and neither Indian Forest Act nor U. P. transit of Timber and other forest produce rules, 1978 are applicable.

It was further contended by the petitioners that Rule 3 of the U. P. Transit of Timber and other forest produce Rules, 1978 is violative of Articles 19(1) (g) and 301 of the constitution in as much as it imposes a prohibition for moving any forest produce without transit pass. They also contended that the restriction is unreasonable as it covers all forest produce irrespective of circumstance.

The respondents vehemently contested all the submissions and submitted that Katha whether found in or brought from a forest, is a forest produce. Hence, it was submitted that the forest authorities were justified in seizing the vehicle.

The court adverted to the definition of 'forest produce' given in sub-section (4) of section 2, of Indian Forest Act, 1927, definition of 'catchu' given in the book 'Eco Botany', 'Encyclopedia Britannica' etc. and came to the conclusion that the petitioner company is merely improving quality of the output of catechu/lattha and not changing its physical feature. Catechu, stands included within the definition of the word 'forest produce'. Whether found in, or brought from, forest or not.

The court referred to cases of Karnataka Forest Development Corporation v. M/s. Contreads Private Ltd., AIR 1994 SC 2218; Forest Range Officer v. P. Mohammed Ali, AIR 1994 SC 120; Environment Awareness etc. and concluded that even factory made katha, which is catechu, is a forest produce within the meaning of the definition of the word 'forest produce' as defined under sec. 2(4) of the Indian Forest Act.

Since the challenge to the vires of the impugned rules was not pressed, the court refused to look into the matter. However, the court said that it does not find it to be ultra vires Arts. 19(1) (g), 301 or 304.

Since in another writ petition filed before the Lucknow bench had already been dismissed by the Division Bench, this writ was also dismissed with costs.

61) ***Sairam Saha v. State of West Bengal, AIR 1999 Cal 90:***
(Bench: Gitesh Ranjan Bhattacharjee and Nure Alam Chowdhury, JJ.)
(Judgement delivered by Gitesh Ranjan Bhattacharjee J.)

The Petitioner intended to fell down trees from his garden, which he claimed to be unproductive

and non-fruit bearing. His case was that when he started felling down trees he was prevented from his garden, which he claimed to be unproductive and non-fruit bearing. His case was that when he started felling down trees he was prevented from doing so on the plea that there is a complete ban on felling of the trees on any land. The main thrust of the petitioners argument was that the land was his private raiyati land. Moreover, he claimed that at no point of time the said land was a forest of any nature and it was never converted from an earlier forest.

The Court referred to the case of *T. N. Godavarman Thirumulkpad v. Union of India*, AIR 1997 SC 1228, which was cited by the petitioner to the following position from the reading of the decision and the directions contained therein:

- i) while the Supreme Court has imposed certain bans in respect of undesirable activities in the forests, irrespective of the nature of the forest, the court had declared that the ban which has been imposed by the Supreme Court in respect of forests will not affect felling in any private plantation comprising of trees planted in any area which is not a forest. The position, therefore, in view of the said Supreme court decision is that the ban regarding felling of trees in forests as imposed by the Supreme Court is not to apply to felling of trees in any private plantation which is not forest.
- ii) Moreover, the order nullified the orders at variance which might have been or might be passed by any government authority, tribunal or court. However, any statute can vary the order of the Supreme Court.

The court in this case, noted that though there is no legislative ban in respect of cutting of any tree in a non-forest private plantation, the legislature has authorised the Deputy Commissioner of Darjeeling district to impose certain restrictions including prohibition of cutting of more than one tree without permission (Sec. 4A of the West Bengal Land Reforms Act, 1955)⁴

Moreover, the court noted that under Sec. 4B there is an implied statutory ban against cutting or felling of trees in non-forest private plantation in such number and in such manner as may change the nature and character of the land or its user. Hence, to prevent any such mischief the collector of the district may restrain a raiyat under Sec. 4C(5) of the W. B. Act from cutting or felling tree on his land if the collector is satisfied that recourse to such felling or cutting of trees may change the character of the land or the mode of its user.

Furthermore, the court noted that since all the restrictive in regard to private plantation flows from the statutory provisions the case of *T. N. Godavarman* (supra) has no application.

⁴Hereinafter referred to as >the W. B Act for the sake of brevity.

Thus, the court held that while cutting of one or two trees in a non-forest private plantation in such number and in such manner as may change the nature and character of the land or its user. Hence, to prevent any such mischief the collector of the district may restrain a raiyat under sec. 4C(5) of the W. B. Act from cutting or falling tree on his land if the collector is satisfied that recourse to such felling or cutting of trees may change the character of the land or the mode of its user.

Further more, the court noted that since all the restrictive in regard to private plantation flows from the statutory provisions the case of T. N. Godavarman (supra) has no application.

Thus, the court held that while, cutting of one or two trees in a non-forest private plantation, in the absence of any restriction or prohibition flowing from or rooted in any enacted law, may not be affected by any non-statutory ban at variance with the order of the Supreme Court, yet felling of trees in considerable number brought with the actual or probable consequences of changing the character of the raiyat land or the mode of its user will certainly attract the application of the statutory provisions of section 4B and Section 4C of the West Bengal Land Reform Act.

To maintain the balance between the right of an individual raiyat to cut trees standing on his land without changing the nature and character of the land or the mode of its user on the one hand and the enforcement of the statutory provisions of sections 4B and 4C of the >W.B. Act= as well as for avoidance of any possible evasion of such provisions on the other hand the court took recourse to the guidelines mentioned in the case of Biswanath Kumar v. State of West Bengal, (1996) 2 Cal4N407. The Court disposed of the writ petition with the following direction to the petitioner:

- i) The petitioner will not be entitled to cut down all the trees in the orchard or garden at a time, but he shall be entitled once every two years to cut down and replace the old uneconomic and/or unproductive trees in the ratio of 1:10 (1:5 in case of orchard or garden comprised of less than 10 trees)
- ii) New saplings have to be planted within one month of the felling of trees
- iii) One month notice has to be given to the collector before taking recourse to cutting of trees.
- iv) In case of any violation of the court=s order or any other violations of the provisions of section 4B or Sec. 4C of the W. B. Act, the collector will be entitled to take appropriate

action in accordance with law.

Before parting, however, the court observed that the state of West Bengal may consider the desirability of having enacted a comprehensive law regarding felling of trees in non-forest areas on the lines of the Uttar Pradesh protection of trees in Rural and hilly areas Act, 1976.

On merits of the case the court has been less generous to the Petitioner.

The claims made by the Petition are not surprisingly unreasonable.

In exercising the sound discretion the court has looked in to the case of Godavarman completely.

62) **M/s Chandmari Tea Co. and Another v. State of Assam and Others**
(AIR 2000 Gauhati 13)

Seven writ petitions were filed in the Assam High Court challenging the various notifications issued by the Govt. of Assam notifying extension of the territory of Burachapari Reserve Forest and Kaziranga National Park as per the schedule mentioned in those notifications. Some of the petitioners have also challenged the cancellation of grazing permits and prayed for a direction to provide for alternative pasture ground for grazing their cattle. The High Court clubbed all the writ petitions and disposed the matter through a common judgement as the facts and points of law involved in these cases were common. In one petition, the petitioner challenged the notification issued by the regional forest officer, Bagori under by which the petitioners were asked not to proceed with the Tea Plantation in the area in question which was handed over to the Forest Department by the Revenue Department for the purpose of the movement of wildlife to take shelter in the adjacent hills during the flood and rainy season. The petitioner contended before the court that his company had been running the tea estate for sixty years and carrying on plantation and manufacturing of tea in the said Tea Estate. Out of total garden land of 2538 bighas, 2189 bighas are periodic patta land belonging to the petitioner and the remaining 349 bighas are government land in respect of which the company has been paying revenue since 1935. It is further contented that the settlement of the said land is under consideration by the Government. In 1977 about 37 bighas of land has been acquired by the government for the purpose of laying pipeline by Oil India Limited and tea bushes worth lakhs of rupees were destroyed. It seems from the facts of the case that the petitioner company had taken a huge amount of bank loan for the tea plantation. Under section 35 of the Wild Life Protection Act, 1972, the Government incorporated certain areas of Kanchanguri village measuring about 89.754 hectares into Kaziranga National Park. It is contented by the petitioner that the description given in the notification was confusing and incorrect. Though as per the same notification no portion of the garden land of the petitioner falls

in the Kanchanguri village but references were made to certain areas crossing the boundary of the petitioners tea estate. The petitioner stated that no opportunity of hearing was given to him. Again the Secretary Forest Department issued a notification under section 35 of the Act where no reference was made as to the petitioners tea estate. Even the Government circular issued by the revenue department did not disturb the petitioner till the issuance of the impugned notification. In the mean time the petitioners claim for the settlement of land in question is pending. The petitioner further contended that the transfer of land in question from the Revenue Department to The Forest Department could not take place, when the prayer for settlement of land was under consideration. The Collector and the Sub Deputy Collector of the concerned region had submitted a report in favour of the petitioner recommending the settlement of the aforesaid land in favour of the petitioner. In the second petition the petitioner was the President of a ME School of village Thutechapari Dist. Sonitpur. He challenged the notification issued by the Commissioner, North Assam division, directing him to show cause with all papers and documents as to why a right and title of the school in respect of the land in its occupation should not be declared illegal and should not be cancelled. The petitioner contended before the court that the land in question was allotted to the school by the Sub-Divisional Officer of Bishwanath Division and hence this notice by the respondent was illegal. In the third petition the petitioners were the Managing Committee members of two lower primary schools. They challenged the notice issued by the Commissioner, North Assam Division, regarding the land of the school. The petitioner were placed before the court, the records of the lands which were allotted by the Government for the establishment of the schools. They contended that if the land were taken away under Section 20 of the Wildlife Act, 1972, the students, mostly belonging to schedule cast community will suffer immensely. In the fourth petition the petitioners has challenged the process of inclusion of two areas within the boundary of Kaziranga National Park. The petitioners stated that the village of the petitioner occupied the land in question by paying taxes and the lands were settled in their favour on annual patta basis by the Deputy Commissioner in the year 1967. The grievance of the petitioner was that the notification of the Government declared an area of approximately 40.50 hectares within the area of Kaziranga National Park under Section 35 of Act 1972 as reserve forest. Despite the villagers filing the representation against the notification, the forest department had attempted to evict the villagers. Against the eviction process, the petitioner preferred a petition before the court and the Division Bench of the court directed the institution of an enquiry as per the notification, and ordered that during the pendency of the enquiry the petitioner should not be evicted. The petitioner alleged that no enquiry had been conducted by any authority as it and the villagers are still under threat of being evicted from the land in question any time. In the fifth petition the petitioner challenged the notification issued by the respondent under section 26-A(i) of the 1972 Act declaring the Burachapri Reserve Forest to be Wildlife sanctuary and also prayed for a direction restraining the respondents from evicting the members of the petitioner societies from the land in the respective individual possession. The petitioner was representing 2000 people who were engaged in the business of cattle rearing and

supply of milk under professional graduates and had been living in the area for over 80 - 90 years with semi-permanent structure. The petitioner continued before the court that after conversion of Burachpari grazing reserve into reserve forest in 1975. The members of the petitioner society continued to remain in the reserve forest with the limited rights privileges and concessions they were issued grazing permits on payment fees. In the sixth petition the petitioner challenged the notification in which the government had ordered, cancellation of grazing permits. In the seventh petition the petitioners stated that they had been rearing their cattle in chars and chaprasis by establishing cattle sheds. The Government of Assam Notification declared the char occupied by the petitioner to be included in the Kaziranga National Park. The petitioner prayed for the settlement of land under their occupation. The government contended before the court that in all the seven petitions false claims had been made their cases would not stand before the court. All the villagers had encroached the government land on one pretext or the other and asked for settlement of land in dispute. The court after going through the different sections of the Wildlife Protection Act, Land Acquisition Act and Forest Act and the Constitutional protection relating to protection of forest and wildlife of the country examined whether the declaration made by the government to convert the reserve forest into wildlife sanctuary was made without inviting claims and objections in compliance with the statutory provisions. The petitioners alleged before the court that the declaration made by the government was made surreptitiously, behind the back of the people in violation of the statutory principles and natural justice. The court after going through the records observed that while adding the areas in question to the national park-sanctuary, the government had followed the due process of law by inviting objections and claims and also decided to compensate them in accordance with law. The court directed the government to proceed adding the areas in question and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act and dismissed the claims of the petitioners.

63) ***Dipak Chowdhury v. State of West Bengal: (Bench: Satyabrata Sinha and S. N. Bhattacharjee, JJ.) (Judgement delivered by: Satyabrata Sinha, J.)***

The appellant's case was that he had purchased 118 Sal bags, which bore a passing hammer mark and a sale hammer mark in Assam and brought the same to West Bengal.

He contended that all original documents in relation to the said articles had been deposited with the Range Officer, moraghat range for the purpose of obtaining transit pass.

However, the logs were seized on 22/2/1996. Before that, on or about 20th Feb. 1996, a notice was issued by the Beat Office, Khuntimari, directing the appellant to show cause as to why the said bags had been brought without any hammer mark and valid document. Nevertheless, a writ application, was filed by the appellant questioning the jurisdiction of the Beat Officer to issue the said notice.

During the pendency of the application, another notice was issued on 28/8/1996 *inter alia*, on the ground that the appellant had brought the said timber without any authority and hence the appellant was asked to show cause why the seized timber may not be confiscated under S. 59A (3) of the Indian Forest Act.

It was noted by the court that without giving an opportunity to the appellant to file an objection to the notice dt. 28/8/1996, the order of confiscation was passed. The order was passed on the ground that all the hammer impression found on the sal logs were forged and the correspondence by the Divisional Forest Officer, Kachugaon Division with that of Divisional Forest Officer, Jalpaiguri Division tampered by the appellant to mislead the investigation.

The court agreed with the contention of the appellant that the order cannot be sustained as the appellant had not been issued any notice in respect thereof nor the documents pursuant where to and on the basis whereof the said finding had been arrived at were not supplied to the appellant. Hence the order of confiscation was set aside and the Forest Officer, Jalpaiguri District and Divisional Forest Officer, Jalpaiguri Division were directed to supply copies of such documents upon which the department intend to rely upon. In the event of such documents being voluminous, the authorities were directed to permit inspection and thereafter hear the appellant on the said question.

It was made clear that all the appellant is now aware of the charges levelled against him, no further notice is required to be served.

The appeal was disposed of with aforementioned directions- No order as to costs, and the direction that the aforementioned authority shall dispose of the matter at an early date and not later than three months from the date of communication of the present order.

Environmental Issues are not involved. The Principle of Natural justice is not followed in this case.

Concluding observations

The interrelationship between Law, Technology and Development though exploitation of biodiversity appears to be quite fascinating. Development can be nothing but expansion of the range of freedoms to choose the kind of life one has reason to value.¹³ The availability of technology is essentially a tool of aid in the course of exercise of the choice and the use of

¹³ See, Amartya Sen, *Development as Freedom* (1999).

technology itself is a matter of choice. Indeed, the role of technology in expanding the human development is quite significant. Nevertheless, even technology is not neutral and exhibits the both the best and the worst sides of human beings. Since human beings are mean of the two extremes of angel and evil, the need of law to regulate the human behaviour is paramount.¹⁴

¹⁴ H.L.A. Hart, *The Concept of Law*, p. 196.

Along with regulating the human behaviour, law also needs to protect the interest of the vulnerable through evolution in the range of Jurisprudence to respond to the ever-emerging problems. One immediate instance coming to mind could be the revival of the Realist Theory of Personality to recognise the community rights. Indeed, the **Doctrine of Public Trust** as evolved by the Supreme Court of India in the case of *M.C. Mehta v. Kamal Nath* which declared that the state holds the natural resources as the trustee of the people and ought to work in consonance of the spirit of the trustee appears to be a step in this direction.¹⁵ But much more is desired, for, the doctrine still puts too much reliance upon the benevolence of the state.

Biodiversity has the potential to alter India's future drastically. This can be an opportunity if utilised properly lead India on the path of becoming a global superpower. At the same time, however, new realities have thrown up varied legal responses. Some of the responses have been delineated in the course of the book.

Notwithstanding the diversity in the approach of cases, as far as the use of technology is concerned, we must keep in mind that the naïve belief in the certitude of science is exactly like a blind faith in superstition, for, it may have turned out to be a cliché but it is undoubtedly true that eternal vigilance is the price of freedom. It should as well be understood that a problem avoided turns into a crisis; and the crisis not mastered can turn into a disaster further down the road. Unless we act, we run the risk of losing touch with reality.

¹⁵ *M.C. Mehta v. Kamal Nath and Others*, (1997) 1 SCC 388. The doctrine of public trust, in its modern form, is owed to the Courts of the United States. The case of *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387 (1892).has been identified as the Lodestar in American Public Trust Law. In that case, the legislature granted lands underlying Lake Michigan to a private company. A few years later, the legislature had second thoughts about the grant and repealed it. In an action brought by the state to have the original grant declared invalid, the Supreme Court of the United States stated that the title to the lands given in grant were different in character from that which the state holds in lands intended for sale. It is a title held in trust for the people of the state that they may enjoy the navigation of waters, carry on commerce over them, and have the liberty of fishing therein freed from the obstruction or interferences of private parties. Though the Court did not prohibit the disposition of trust lands to private parties, it stated that the state cannot divest itself of authority to govern the whole of area in which it has responsibility to exercise its police power; to grant the entire waterfront of a major city (Chicago) to a private company is, in effect, to abdicate legislative authority over navigation.