

Case Note: Case concerning the mining activities causing river pollution. The court decided to allow the continuation of mining till the end of 2005 till when secondary ore, available in the already broken area, should be exhausted, as per the recommendation of the Forest Advisory Committee. This was however subject to the fulfillment of the recommendations made by the Committee on eco-logical and other aspects.

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AIR2003SC724

IN THE SUPREME COURT OF INDIA

Decided On: 30.10.2002

K.M. Chinnappa and T.N. Godavarman Thirumalpad

v.

Union of India (UOI) and Ors.

Hon'ble Judges:

B.N. Kirpal, C.J., Y.K. Sabharwal and Arijit Pasayat, JJ.

JUDGMENT

Arijit Pasayat, J.

1. By destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of industries, economical gains have led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight have contributed in large measures to the alarming position. In the case at hand, the alleged victim is the flora and fauna in and around Kudermukh National Park, a part of the Western Ghats. The forests in the area are among 18 internationally recognized "Hotspots" for bio-diversity conservation in the world. The I.A. 670 of 2001 was filed by Sri K.M. Chinnappa describing himself as trustee. Wildlife First.

2. The said I.A. 670 of 2001 is an offshoot of I.A. 548 filed by learned Amicus Curiae questioning the correctness of orders issued by the States of Karnataka and Uttar Pradesh respectively which according to him were in violation of the provisions contained in the Wildlife (Protection) Act, 1972 (in short the 'Act'). By order dated 14.2.2000, operation of any order permitting removal of certain trees from National Parks, Games Sanctuaries and Forests was injuncted. Subsequently, the word 'forests' was deleted.

3. In the present I.A. learned Amicus Curiae has pointed out that notwithstanding orders passed by this Court on 12.12.1996 and 14.2.2000 mining activities were being

conducted by Kudremukh Iron Ore Co. Ltd. (hereinafter referred to as a 'company') which were in clear violation of orders passed by this Court. The main reliefs sought are:

"(a) to direct the MoEF to withdraw the illegal "temporary working permission" issued by it and stop mining activities;

(b) direct KIOCL to stop polluting the Bhadra river due to open cast mining;

(c) take action against KIOCL for illegal encroachment in the forests and for destruction of forests in the Kudremukh National Park; and

(d) to stop KIOCL from laying new slurry pipe line in the forests of the National Park."

4. On 10.5.2001, this Court passed an order to the following effect:

"Issue notice returnable in the second week of July, 2001. Mr. A.D.N. Rao, Advocate accepts notice on behalf of the Union of India. Service be effected on respondent No. 2 through Mr. S.R. Hegde, Advocate and on respondent No. 3 by ordinary process and by registered post.

Union of India will file an affidavit within eight weeks and in the affidavit they will also state the reason as to why the Government of India having once notified the area as a National Park then permit mining activity to be carried out notwithstanding this Court's order of 12th December, 1996."

5. It was noted that Kudermukh National Park in which mining activities were being carried out was declared to be a National Park in terms of Section 35(1) of the Act. The matter was referred to the Central Empowered Committee (in short 'the Committee') constituted under Section 3 of the Environment (Protection) Act, 1986 (in short the 'Environment Act'). After hearing the parties and taking note of the materials placed before it the Committee has recommended as follows:

"After carefully considering all the views and suggestions, the exceedingly rich biodiversity of the area and investment made by the KIOCL, suggestion made by the learned Amicus Curiae, the Committee is of the view that the KIOCL be asked to wind up its operations within a period of five years or on the exhaustion of the oxidized weathered secondary ore, whichever is earlier, in the already broken up area. It is clarified that the period of 5 years would commence from 25-7-1999, when its lease had expired.

The winding up period of five years shall be subject to the following conditions:

(i) the MoEF should prepare or get a rehabilitation and reclamation and a proper eco-restoration plan prepared for the mined area and project impact area through appropriate agency at the cost of KIOCL;

(ii) KIOCL shall undertake to make available funds necessary for implementing for the aforesaid plans. The plans would be implemented by the agencies selected by the MoEF and under the supervision of the MoEF;

(iii) a monetary compensation of Rs. 25 crores @ Rs. 5/- crores per year will have to be deposited by KIOCL with MoEF in a separate bank account which would be utilized for the purposes of research, monitoring and strengthening protection of the Kudremukh National Park and for other protected areas in the State of Karnataka;

(iv) a Monitoring Committee shall be constituted by the MoEF comprising representative of MoEF, representative of the State of Karnataka, two NGO experts preferably from Karnataka, which shall monitor the implementation of the rehabilitation plans; and

(v) after the winding up operations are complete, the KIOCL will transfer all the buildings and other infrastructure to the Forest Department of the State of Karnataka at book value.

Transparent guidelines for dealing with development projects in protected areas as recommended by Learned Amicus Curiae and agreed to by the MoEF in its affidavit filed by Shri S.C. Sharma, Additional Director General of Forests shall be notified within 30 days with the concurrence of the Central Empowered Committee."

6. One of the members of the Committee Shri Valmik Thaper gave a dissenting note. According to him all mining operations must stop immediately and the five years' period starting on 25th July, 1999 (on which the original lease period expired) must be treated as a "Restoration and Winding up period" so that the company can restore all mined lands, plant indigenous species and protect the region and give back to one of the world's finest forests what has been taken from it. All costs will be met by the project proponent. When the matter was taken up, Shri Thaper was requested to submit further materials, if any, to justify his dissenting note. A photographic Report has been submitted. The Company has filed its response in relation to the Committee's recommendation and connected reports.

7. While contending that there was no violation of any law relating to forests and environment certain legal issues were raised by the Company which need to be dealt with first. With reference to Rule 24 (B) of the Mineral Concession Rules, 1960 (in short the 'Concession Rules') framed under the Mines and Minerals (Regulation and Development) Act, 1957 (in short the 'Mines Act'), it was submitted that notwithstanding anything provided under the Act, Conservation Act or the Environment Act, on an application being made the lease was to be renewed for twenty years and therefore, the recommendations made at a point of time for such period were in order. Further, the draft Notification under Section 35(1) of the Act was issued on 2.9.1987 and the final Notification was published on 16th June, 2001 under Section 35(4) of the Act, whereby the land under mining was specifically excluded. In any event, 900 hectares of land was outside the land covered by the Notification. The Notification dated 29.5.1982 issued under Section 349 of the Karnataka Municipalities Act, 1964 (in short 'Municipalities Act') was also relevant. All these, according to Shri Venugopal, took the land in question

outside the purview of the operations of the Act, Conservation Act and the Environment Act.

8. With reference to the order dated 14.11.2000 passed in W.P. 337/2000, it was submitted that the same was relatable to a stage under Section 35(5) of the Act. Since there was an existing legal right to get a renewal, which had already accrued, there was no question of any embargo on the renewal of the mining lease. In this background, it was submitted that the State and the Central Governments at earlier points of time had acceded to the request of the company for renewing the lease for twenty years. Reference in this context was made to a letter dated 6.7.1999 issued by the State Government. It was pointed out that the company had subsisting with foreign buyers, and if the lease is not renewed or the mining activities are required to be abandoned, there shall be large financial implications on account of impossibility to perform the contracts. It was submitted that for the purpose of renewal, no consent is necessary as an exiting right is only to be extended further. In any event, the period as suggested by the Committee should be reckoned prospectively and not retrospectively and the two years' period already covered by temporary working permit should be reckoned while computing the period. It was pointed out that subsisting contracts with some foreign countries are operative till 2005 and 2006 and at least adequate time could be given to fulfill these contracts. Learned counsel for the State of Karnataka has submitted that originally it had accepted the proposal for the longer period, but taking into account the various circumstances, its final stand is that five years period from 24.10.2001 would be adequate, equitable and fair.

9. The company has taken a stand that it is earning valuable foreign exchange and discontinuous of its business activities would stop earning of valuable foreign exchange in addition to rendering large number of employees jobless. It is pointed out that some subsisting contracts are there and infact there is possibility of extracting 342 million tons of primary ores, in addition to 119 million tons of secondary weathered ores. In fact, the company's request is for permitting activities in some additional areas so that the primary ores can be extracted and exported in addition to the secondary weathered ores.

10. The main thrust of the Company's plea relating to environmental issues which was highlighted by Shri Venugopal during hearing of the application was that the Company has taken all possible steps to preserve and conserve nature in its pristine glory. It is eco-friendly as would be evident from the various activities undertaken by it and vast sums of money spent for preservation of nature and environment in addition to efforts to prevent pollution. It has received several awards for its admirable achievements in the field of environmental protection. It was submitted that sustainable development is permissible and is universally accepted phenomenon. At the time the company was incorporated environment impact assessment was conducted and detailed guidelines were formulated to see that there was least degradation of the environment. The approach was clearly environmental friendly. The approach in such matters is to see as to what prevailed when the project was commenced. There has been a substantial change in the approach and if the contemporaneous factual backdrop is considered, it will be seen that the company's anxiety was to protect nature and environment. Further, the various reports submitted by

expert bodies give a lie to the impressions created before the Committee that there was continued destruction of nature of the flora and fauna by the mining activities undertaken by the company. The reality is otherwise. With reference to a Notification dated 29.5.1982 issued under Section 349 of the Municipalities Act, it is submitted that the concerned area cannot be treated to be a forest land. A reference was also made to a decision in State of Bihar v. Banshi Ram Modi and Ors., to contend that the Act has no application.

11. Learned Amicus Curiae has pointed out that stands of the company are per se not acceptable. The Committee has granted to the company much more than what it deserves. With reference to the report of Shri Valmik, it is pointed out that the situation is so grave that "hands off situation" has come to play. It is pointed out that the role of the Karnataka State Government and the Central Government in the Ministry of Environment and Forest is far from satisfactory. Even without any Environment Impact Assessment report, stand was taken for granting 20 years renewal period. There is no consistency in the stand of the State and the Central Governments because at one point of time they agreed to renewal period of 20 years and subsequently turned around to five years period, and then again took inconsistent stands. All these go to show that there is no proper application of mind and without realizing the serious consequences involved, recommendations are being made. In W.P. 337/2000 by order dated 14.11.2000, it was, inter-alia, directed as follows:

".....Pending further orders, no de-reservation of forests/sanctuaries/national park shall be effected".

12. Action of the State Government in excluding land while issuing Notification under Section 35(4) of the Act is in clear violation of this Court's order.

13. Banshi's Ram's case on which emphasis was laid by the company is not good law in view of the subsequent decisions of this Court in Ambica Quarry Works v. State of Gujarat and Ors. (1987 (1) SCC 213). Reference may also be made to the decisions in Tarun Bharat Sangh, Alwar v. Union of India and Ors. (1992 Supp. (2) SCC 448), Tarun Bharat Sangh, Alwar v. Union of India and Ors. (1993 Supp. (3) SCC 115) and two reported orders in T.N. Godavarman Thirumulkpad v. Union of India and Ors. and T.N. Godavarman Thirumulkpad v. Union of India and Ors. The stand of the company that Notification dated 29.5.1982 excluded the land in question from being forest land is clearly untenable in view of the Section 2(ii) of the Forest (Conservation) Act, 1980 (in short the 'Conservation Act').

14. The seminal issue involved is whether the approach should be "dollar friendly" or "eco friendly".

15. 'Environment' is a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded. Einstein had once observed, "The environment is everything that isn't me." About one and half century ago, in 1854, as the famous story goes the wise

Indian Chief of Seattle replied to the offer of the great White Chief in Washington to buy their land. The reply is profound. It is beautiful. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. The whole of it is worth quoting as any extract from it is to destroy its beauty.

"How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the trees carries the memories of the red man.

'the white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man - all belong to the same family.'

So, when the Great Chief in Washington sends word and he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. Once a portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought,

plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there is life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a mid-day rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath - the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man lying for many days. He is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports.

The wind that gave our grandfather his first breath also receives the last sign. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his brothers.

I am a savage and I do not understand any other way. I have seen thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers, so that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If man spit upon the ground, they spit upon themselves.

This we know: The earth does not belong to man, man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web he does to himself.

Even the white man, whose God walks and talks with him as friend to friend cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover - our God is the same God. You may think now that you own him as you wish to own our land; but you cannot. He is the God of Man, and his compassion is equal for the red man and white. This earth is precious to him, and to harm the earth is to heap contempt on the creator. The white too shall pass perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.

But in your perishing you will shine brightly, fired by the strength of the God who brought you this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us for we do not understand when the wild buffaloes are slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone, where is the eagle? Gone. The end of living and the beginning of survival."

16. It would be hard to find out such dawn to earth description of nature. "Nature hates monopolies and knows no exception. It has always some levelling agency that puts the overbearing, the strong, the rich, the fortunate substantially on the same ground with all others" said Zarathustra Environment is polycentric and multi-facet problem affecting the human existence. The Stockholm Declaration of United Nations on Human Environment, 1972, reads its Principle No. 3, inter-alia, thus:

"Man has the fundamental right to freedom, equality, and adequate conditions of life. In an environment of equality that permits a life of dignity and well being and bears a solemn responsibility to protect and improve the environment for present and future generations."

17. The Declaration, 'therefore, says that' in the developing countries, most of the environmental problems are caused by underdevelopments. The Declaration suggests to safe actions with prudent care for ecological balance. It is necessary to avoid massive and irreversible harm to the earthly environment and strife for achieving present generation and the posterity a better life is an environment more in keeping with the needs and hopes. In this context immediately comes to mind the words of Pythagoras who said:

"For so long as man continues to be the ruthless destroyer of lower living beings, he will never know health or peace. For so long as men massacre animals, they will kill each other. Indeed, they who sow the seeds of murder and pain cannot reap joy and love."

18. Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (42nd Amendment) Act, 1976, enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild

life of the country." Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wild life and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefor, has now become a matter of grave concern for humane existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measure to promote, protect and improve the environment man-made and natural environment.

19 Industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials, and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oasis, he is also leaving behind deserts in the place of oasis. In the last century, a great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves over much on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first. Ecologists are of the opinion that the most important ecological and social problems is the wide spread disappearance all over the world of certain species of living organisms. Ecologists forecast the extinction of animal and plant species on a scale that is incompatibly greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2000 years did so after 1990. The International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1000 birds and animal species are facing extinction at present. It is for this that the environmental questions have become urgent and they have to be properly understood and squarely met by man. Nature and history are

two components of the environment in which we live, move and prove ourselves. This Court in Sachindanand Pandey and Anr. v. State of West bengal and Ors. and Virender Gaur v. State of Haryana, (1995 AIR SCW 306) has highlighted these aspects.

20. Environmental law is an instrument to protect improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in this exercise. Many have enacted laws long back and they are busy in remodelling the environmental law. The others have moved their law making machineries in this direction except the under-developed States who have yet to come in this wave length. India was one of those few countries which paid attention right from the ancient time down to the present age and till date, the tailoring of the existing law to suit the changing conditions is going on. The problem of law-making and amending is a difficult task in this area. There are a variety of colours of this problem. For example, the industrial revolution and the evolution of certain cultural and moral values of the humanity and the rural and urban area developments in agricultural technology, waste, barren or industrial belts; developed, developing and under-developed parts of the lands; the rich and poor Indians; the population explosion and the industrial implosion; the people's increasing awareness and the decreasing State Exchequer; the promises in the political manifestos and the State's development action. In this whole gamut of the problems the Tiwari Committee came out with the date that we have in India "nearly five hundred environmental laws" and the Committee pointed out that no systematic study had been undertaken to evaluate those legislative developments. Some legal controls and techniques have been adopted by the legislatures in the field of Indian Environmental Laws. Different legislative controls right from the ancient time, down to the modern period make interesting reading. Attention has to be paid to identify the areas of great concern to the legislature; the techniques adopted to solve those problems; the pollutants which required continuous exercise; the role of legislature and people's participation outside. These are some of many areas which attract the attention in the study of history of the Indian Environmental Law.

21. Since time immemorial, natural objects like rivers enjoyed a high position in the life of the society. They were considered as Goddesses having not only the purifying capacity but also self-purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included, penance, outcasting, fine, etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental pollution was controlled rigidly in the ancient time. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. The 'dharma' of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of the society, motivated them to allow the natural objects to remain in the natural state. Apart from this motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the eco-systems. The noteworthy development in this period was that each individual knew his duty to protect the environment and he tried to act accordingly. Those aspects have been highlighted by a

learned author C.M. Jariwala in his article "Changing Dimensions of the Indian Environmental Law" in the book "Law and Environment" by P. Leelakrishnan.

22. The Economic and Social Council of the United Nations passed a resolution on 30th July, 1968 on the question of convening an International Conference on problems of human environment. In the United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972, proclamation was made on United Nations on Human Environment. It was stated in the proclamation in these profound words:

"Man is both creature and moulder of his environment which gives his physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights even the right to life itself.

The protection and improvement of the human environment is a major issue which affects the well being of people and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all Governments."

23. When the necessity to promote the environment turned grave, doubt was expressed by some commentators whether the issue of the environment would last. They have been proved wrong, since it is clearly one of the big issues, perhaps the biggest issue of the 1990s. It is big issue in political terms, since protection of the environment is high on most people's priorities for the 1990s. As a result political parties and Governments are falling over each other in their eagerness to appear green, even if as yet their actions rarely match their rhetoric. It is big in terms of the size of the problem faced and the solutions required; global warming, the destruction of the ozone layer, acid rain, deforestation, overpopulation and toxic waste are all global issue which require an appropriately global response. It is big in terms of the range of problems and issues - air pollution, water pollution, noise pollution, waste disposal radioactivity, pesticides, countryside protection, conservation of wildlife - the list is virtually endless. As observed by Simon Bell and Stuart Bell in 'Environmental Law':

".....In the words of the White Paper on the Environment. This Commons Inheritance (cm. 1200, 1990) the issues range 'from the street corner to the stratosphere.' Finally, it is big in terms of the knowledge and skills required to understand a particular issue. Law is only one element in what is a major cross-disciplinary topic. Lawyers need some understanding of the scientific, political and economic processes involved in environmental degradation. Equally all those whose activities and interests relate to the environment need to acquire an understanding of the structure and content of environmental law, since it has a large and increasing role to play in environmental protection."

24. Apart from the direct cost to business of complying with stricter regulatory controls, the potential liabilities for non-compliance are also increasing. These liabilities fall into five general categories:

(a) Criminal liabilities'

The number of criminal offences for non-compliance with environmental legislation is immense, and in recent years the regulation agencies have shown an increased willingness to resort to prosecution. Private prosecution is also a possibility. Fines will be the normal penalty, though in a number of cases sentences of imprisonment have been imposed (there is normally a potential personal liability for directors and senior managers). Maximum fine levels have risen in recent years, as have actual levels of fines imposed.

(b) Administrative sanctions:

In most regulatory systems there is a range of options available to the regulatory, including variation, suspension or revocation of a licence. Since these steps may lead to the closure of a plant, they are obviously of great importance.

(c) Clean up costs:

In most environmental legislation there is a power to clean up after a pollution incident and receive the cost from the polluter or (in some cases) the occupier.

(d) Civil liability:

There is growing interest in the toxic torts, although many of the actions have in fact been around for a long time. Many environmental actions rest upon strict liability. Although liability may often be difficult to establish, the size of claims may be very high indeed.

(e) Adverse publicity:

In practice the publicity attracted as a result of infringements of the law may be as costly as any direct costs.

25. The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of Courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well being of human beings. (See World Commission on Environment and Development - Our Common Future (1987). To commemorate the tenth anniversary of the Stockholm Conference, the World Community of States assembled in Nairobi (May 10-18, 1982) to review the action taken on to implement Stockholm Declaration. It expressed serious concern about the state of environment world wide and recognized the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it.

26. Progress and pollution go together. As this Court observed in *M.C. Mehta and Anr. v. Union of India and Ors.*, when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximizing safety requirements. As observed in the United Nations Conference held at Stockholm in June, (SIC) economic and social development was essential for ensuring a favourable living and working environment for man and for creating condition on earth that were necessary for the improvement of the quality of life.

27. The tragedy of the predicament of the civilized man is that 'Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee'. There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. In this foreward to *International Wild Life Law*, M.R. M. Prince Philip the Duke of Edinburgh said:

"Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the country-side. Sadly, perhaps, it is a great deal more complicated than thatAs usual with all legal systems, the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented.....Regretfully progress in this direction is proving disastorously slow." (See *International Wildlife Law* by Simon Lyster, Cambridge, Grotius Publications Ltd. 1985 Edn.)

28. The United National General Assembly adopted on October 29, 1982. the World Charter for Nature. The Chapter declares the Awareness that:

"(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation."

29. Towards the end of his reign, King Ashoka in the third century B.C. issued a decree that it has a particularly contemporary ring in the matter of preservation of wild life and environment. He had written:

"Twenty-six years after my coronation, I declare that the following animals were not to be killed, parrots, mynas, the aruna, ruddy geese, wild geese, the mandimukha, cranes, bats, queen, ants, terrapins, boneless fish, rhinoceroses.....and all quadrupeds which are no useful or edible.....Forest must not be burned."

30. To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The world is under an impenetrable cloud. In view of enormous challenges thrown by the Industrial revolution, the legislatures throughout the world are busy in their exercise to find out means to protect the world. Every individual in the society has a duty to protect the nature. People worship the object of nature. The trees, water, land and animals had gained important position in the ancient times. As Manu VIII, page 282 says different punishments were prescribed for causing injuries to plants. Kautilya went a step further and fixed the punishment on the basis of importance of the part of the tree. (See Kautilya III, XIX, 197)

31. As observed by this Court in Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.

32. The Academy Law Review at pages 137-138 says that a recent survey reveals that every day millions of gallons of trade wastes and effluent are discharged into the rivers, streams, lake and sea etc. Indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities. Our country is no exception to this. Air Pollution has further added to the intensity and extent of the problem. Every year millions of tons of gaseous and particulate pollutants are injected into the atmosphere, both through natural processes and as a direct result of human activity. Scientists have pointed out that earth's atmosphere cannot absorb such unlimited amount of pollutant materials without undergoing changes which may be of an adverse nature with respect to human welfare. Man in order to survive in his planetary home will have to strike the harmonious balance with nature. There may be boundless progress scientifically which may ultimately lead to destruction of man's valued position in life. The Constitution has laid the foundation of Articles 48-A and 51-A for a jurisprudence of environmental protection. Today, the State and the citizen are under a fundamental obligation to protect and improve the environment, including forests, lakes rivers, wildlife and to have compensation for living creatures.

33. A learned Jurist has said, the Rig Veda praises the beauty of the dawn (usha) and worships Nature in all its glory. And yet today a bath in the Yamuna and Ganga is a sin against bodily health, not a salvation for the soul -so polluted and noxious are these 'Holy' waters now. "One hospital bed out of four in the world is occupied by a patient who is ill

because of polluted water....Provision of a safe and convenient water supply is the most important activity that could be undertaken to improve the health of people living in rural areas of the developing world." (W.H.O.) "Nature never did betray. That heart that loved her." (Wordsworth). The anxiety to save the environment manifested in the Constitution (Forty-Second Amendment) Act, 1976 by the introduction of a specific provision for the first time to "protect and improve" the environment. Man is Nature's best friend and worst enemy. If industry is necessary, pollution inevitable. Since progress and pollution go together, there can be no end of progress, and consequently, no escape from pollution. If industry is necessary evil, pollution surest sufferance. Several enactments have been made to combat pollution. "Pollution" is noun derived from the transitive verb "pollute" which means to make foul or unclean, dirty, to make impure or morally unclean. In Halsbury's Laws of England (Forth Edition, Volume 38,para 66) "pollution" means the direct or indirect discharge by man of substances or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities on interference with other legitimate use of water.

34. In Divisional Forest Officer and Ors. v. S. Nageswaramma it was observed that the renewal of lease is not a vested right of the lessee. There is a total prohibition against the grant of mining lease in a forest area without concurrence of the Central Government. As was observed by this Court in M.C. Mehta v. Kamal Nath and Ors., our legal system based on English Common Law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. The aesthetic use and the pristine glory cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for public good and in public interest to encroach upon the said resources.

36. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and 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. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.

37. In this background, the Environment Impact Assessment reports are of great importance. The Council on European Economic Committee in their directive to the member States highlighted objectives of such assessments as follows:

"The effect of a project on the environment must be assessed in order to take action of the concerns to protect human health, to contribute by means of a better environment to the

quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the eco-system as a basic resource of life."

38. A few decisions taken at the Convention on Biological Diversity dated 5th June, 1992 would be relevant.

39. The Preamble, inter-alia, contains the following:

"Concerned that biological diversity is being significantly reduced by certain human activities. Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures. Nothing that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source. Nothing further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings."

40. Articles 1, 6, 7 and 14(a) are also important.

Article 1: Objectives -

The objectives of this Convention to be pursued in accordance with its relevant provisions are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of utilization of genetic resources including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 6: General measures for conservation and sustainable use-

Each contracting party shall, in accordance with its particular conditions and capabilities:

(a) develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adopt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the contracting party concerned; and

(b) integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross- sectoral plans, programmes and policies.

Article 7: Identification and Monitoring Each contracting party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(a) identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annexure 1;

(b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to Sub-paragraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(c) identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and

(d) maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to sub-paragraphs (a), (b) and (c) above.

Article 14(a): Impact Assessment and Minimizing Adverse Impacts-

Each contracting party, as far as possible and as appropriate, shall:

(a) introduce appropriate procedures requiring environment impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures."

41. Sustainable development is essentially policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Therefore, while thinking of the developmental measures the needs of the present and the ability of the future to meet its own needs and requirements have to be kept in view. While thinking of the present, the future should not be forgotten. We owe a duty to future generations and for a bright today, bleak tomorrow cannot be countenanced. We must learn from our experiences of past to make both the present and the future brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future. It cannot be lost sight of that while today is yesterday' tomorrow, it is tomorrow's yesterday.

42. The greenery of India should not be allowed to be perished, to be replaced by deserts. Euthopia which at a point of time was considered to be one of the greenest countries, is virtually a vast desert today.

43. The Union Government framed National Forest Policy in 1988. Though the basic objectives are very laudable, it is sad to note that it has virtually been confined in papers containing it, and not much has been done to translate them into reality. Nevertheless, it reflects anxiety of the Union Government to protect and preserve natural forests with vast variety of flora and fauna, representing biological diversity and genetic resources of the country.

44. Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of environment are: (i) the principles of sustainable development and (ii) the precautionary principle. It needs to be highlighted that the Convention on Biological Diversity has been acceded to by our country and, therefore, it has to implement the same. As was observed by this Court in Vishaka and Ors. v. State of Rajasthan and Ors., in the absence of any inconsistency between the domestic law and the international conventions, the rule of judicial construction is that regard must be had to international convention and norms even in construing the domestic law. It is, therefore, necessary for the Government to keep in view the international obligations while exercising discretionary powers under the Conservation Act unless there are compelling reasons to depart therefrom.

45. The United Nations Conference on Human Environment held in Stockholm during June 1972 brought into focus several alarming situations and highlighted the immediate need to take steps to control menace of pollution to the Mother Earth, air and of space failing which, the Conference cautioned the mankind, it should be ready to face the disastrous consequences. The suggestions noted in this Conference were reaffirmed in successive Conference followed by Earth Summit held at Rio-de Janeiro (Brazil) in 1992.

46. So far as the effect of Rule 24B of the Minerals Rules is concerned, it is to be noted that Section 2(ii) of the Conservation Act rules out non-forest activities. The Section begins with a non-obstante clause providing that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government any order of the nature enumerated in the provisions. Section 3 of the Conservation Act deals with constitution of Advisory Committee and Section 4 deals with power to make rules. Rules 4, 5 and 6 of the Forest Conservation Rules, 1981 (in short 'Conservation Rules') are relevant. Rule 4 deals with procedure to make proposal by a State Government or their authority. Rule 5 deals with the powers of the Committee to advise on proposals received by the Central Government. The Committee referred to therein is the one constituted under Section 3 of the Act. Rule 6 deals with action of the Central Government on the advise of the Committee. Admittedly, the Central Government has not accorded the approval for use of any forest land or any portion thereof for being used for any non forest purpose. That being so, Rule 29(b) of the Mineral Rules cannot be of any assistance to the company. So far as the order dated 14.11.2000 in W.P. 337/2000 is concerned, it is clear therefrom that de-reservation of forests, sanctuaries and national parks was prohibited. Therefore, exclusion of company's land in terms of the Notification under Section 35(4) of the Act though same was being used for mining by the company, was not in order to that extent.

47. So far as the letter dated 6th July, 1999 of the Government of Karnataka is concerned, it does not in any way help the company and on the contrary makes its case more brittle. A few paragraphs of the said letter need to be noted here:

x x x x x

"Considering the above and as the present lease will expire on 24.7.99, the P.C.C.F. has recommended for grant of temporary working permission to the above company to carry out the mining activities for a period of 2 years so as to avoid hardship to it, which is a Government of India Undertaking. Further, Environment Impact Assessment and studies on impact of mining on flora and fauna in this sensitive area is to be carried out by the reputed Environmental Institute and Wildlife Institute, respectively that is by Environmental Research Institute, Nehrunagar, Nagpur (Maharashtra) and Wild Life Institute, Dehradun (Uttar Pradesh). After these studies are conducted and based on the recommendations to be made by these institutes to minimize the environmental damage it can be decided whether to allow the mining and renew the lease or otherwise in favour of M/s. Kudremukh Iron Ore Company Ltd., in this sensitive area of Western Ghat Region.

x x x x x

Under the circumstances explained above, I am directed to request you to kindly communicate the approval of Government of India on the following proposals:

(i) for renewal of lease of 1452.74 hectares of forest land which is already broken up in favour of M/s. Kudremukh Iron Ore Company Ltd for a period of 20 years with effect from 25.7.1999.

(ii) to grant temporary working permission in the already broken up area of 1452.74 hectares forest land to the above company to carry out mining activities for a period of 2 years since the lease of forest land will expire on 24.7.1999."

x x x x x

48. It is an accepted fact that the Environment Impact Assessment Reports of the two named institutes have not been obtained. Therefore, in reality there was no Environment Impact Assessment report either before the State or the Central Government. Further, the request of the State Government was to grant temporary working permission in respect of already broken up area, pending fulfilment of conditions enumerated:

Coming to plea that in case of a renewal there is no requirement of compliance of Section 2 of the Conservation act, the stand is clearly untenable in view of decisions in Ambica Quarry's case and Rural Litigation and Entitlement Kendera v. State of U.P. where at page 2201 it was observed that 'whether it is a case of first grant or renewal following exercise of option by the lessee, the compliance of Section 2 of the Conservation Act is necessary as a condition precedent'. It may be noted here that the area in question was declared to be a reserved area in 1960 and in 1987 the Notification under Section 35(1) was issued.

49. It is of significance that in the present case the Forest Advisory Committee under the Conservation Act on 11.7.2001 examined the renewal proposal in respect of the company's mining lease. It recommended that the mining may be allowed for a period of four years i.e. upto the year 2005 by which time the weathered secondary ore available in the already broken up area would be exhausted. The Ministry of Environment and Forests

deferred a formal decision on the said recommendation as the matter was pending before this Court.

50. On consideration of the materials on record we find no reason to vary the majority view of the Committee, a statutory one when its findings and conclusions are based on assessments of the factual aspects and after duly considering the materials and Reports placed before it by the parties. We have also taken note of the period indicated by the Forest Advisory Committee, which is also a statutory Committee.

51. Taking note of the factual background and the legal position highlighted above, we think it proper to accept the time period fixed by the Forest Advisory Committee constituted under Section 3 of the Conservation Act. That means mining should be allowed till the end of 2005 by which time the weather I secondary ore available in the already broken area should be exhausted. This is, however, subject to fulfilment of the recommendations made by the Committee on eco-logical and other aspects.

52. The modalities as to how these have to be worked out shall be done in the manner recommended by the Committee. It was submitted by the learned counsel for the State of Karnataka that the recommendation made about transfer of buildings and other infrastructure to the Forest Department of the State Government at book value is not acceptable to it. This is a matter which can be considered by the Committee on an appropriate motion being made by the State before it. The modalities to be adopted to effectuate the order passed by this Court and recommendations of the Committee shall be worked out by the Ministry of Environment and (SIC) the State Government and the company under the supervision and guidance and monitoring of the Committee.

53. Before we part with the case, we note with concern that the State and the Central Government were not very consistent in their approach about the period for which the activities can be permitted. Reasons have been highlighted to justify the somersault. Whatever be the justification, it was but imperative that due application of mind should have been made before taking a particular stand and not to change colour like a Chameleon, and that too not infrequently.

54. Certain proceedings have been initiated against the company for alleged violation of various statutes. These proceedings shall be considered by the respective forums/Courts in their proper perspective, uninfluenced by any observation made hereinbefore in this judgment.

55. The interlocutory application is disposed of accordingly.