



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Judgment Reserved on : 13.12.2017

Judgment Pronounced on : 19.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE TMT. JUSTICE T.KRISHNAVALLI

W.A. (MD). No.1454 of 2017 and

CMP.(MD)Nos.11161, and 11496 of 2017

1. The District Collector,
Thoothukudi District,
Thoothukudi.
2. The Assistant Director of Geology and Mines,
Thoothukudi District,
Thoothukudi.
3. The Revenue Divisional Officer,
Revenue Divisional Office,
Thoothukudi District,
Thoothukudi.
4. The Tahsildar,
Thoothukudi Taluk Office,
Thoothukudi District,
Thoothukudi.
5. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
6. The District Collector,
Tirunelveli District,
Tirunelveli.
7. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
8. The Assistant Director of Geology and Mines,
Tirunelveli,
Tirunelveli District.
9. The District Collector,
Kanyakumari District @ Nagercoil.
10. The Superintendent of Police,
Kanyakumari District,
Kanyakumari.



11. The Assistant Director of Geology and Mines,
Kanyakumari District.
Kanyakumari.

.. Appellants

Vs.

1.M/s.M.R.M. Ramaiya Enterprises Pvt. Ltd.,
Rep. by its Managing Director,
M.R.M. Ramaiya.

2. The V.O. Chidambaranar Port Trust,
Rep. by its Chairman,
Tuticorin 628 004.

3. The Union of India,
Rep. by its Secretary,
Ministry of Mines,
Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi 110 001.

4. The Union of India,
Rep. by its Secretary,
Ministry of Environment,
Forest and Climate Change,
New Delhi.

5. The Union of India,
Rep. by its Secretary,
Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi - 110 107.

6. The Union of India,
Rep. by its Secretary,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg,
New Delhi 110 001.

7.M/s.John Saw Mill Private Limited,
by its Director, M.Maria Antony,
S/o.S.Maria John,
101,Seevalaperi Road,
Palayamkottai, Tirunelveli District-627 002

.. Respondents

[R7 impleaded as per the order of this Court dated 19.01.2018
C.M.P.No.11317 of 2017]

PRAYER: Writ Appeal has been filed under clause 15 of Letters
Patent No. 20020 of 2017 made in
W.P.(MD).No.20020 of 2017.

Prayer in WP(MD). 20020/ 2017 :



Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus forbearing the Respondents herein from insisting for license, permit, transport slip, etc, under the Tamil Nadu Minor Mineral Concession Rules 1959 in the transportation of the imported river sand from the New Harbor stockyard at Tuticorin Port wherein the imported river sand is presently stored to our customers premises against proper invoice, bill of entry along with proof of payment of GST on import, within the State of Tamil Nadu.

For Appellants : Mr.Vijay Narayan, Advocate General,
Mr.B.Pugalaendhi, Addl. Advocate General
assisted by Mr.V.R.Shanmuganathan, Spl.G.P.
and Mr.T.S.Mohamed Mohideen, Addl. G.P.

For R1 : Mr.M.Vallinayagam, Senior Counsel
for Mr.N.Viswanathan

For RR3 to 6 : Mr.V.Kakthirvel, Assistant Solicitor General
assisted by
Mr.J.Jeyakumaran

For R2 : Mr.S.Yaswant

For R7 : Mr.Issac Mohanlal, Senior Counsel
for Mr.S.R.A.Ramachandiran

J U D G M E N T

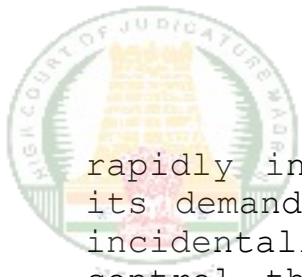
K.KALYANASUNDARAM, J.

This writ appeal is directed against the order passed in W.P.(MD).No.20020 of 2017 dated 29.11.2017 whereby, this Court held that the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder would not apply to the imported sand and also issued directions to close the sand quarry, etc.

2. The brief facts necessary for disposal of the appeal would run thus:-

(i) The 1st respondent herein (hereinafter referred to as the writ petitioner) has preferred a writ petition contending that the 1st respondent / writ petitioner is a Private Limited Company provided with Import and Export Code (IEC) bearing No.0412018128 issued by the Ministry of Commerce and industries, the Government of India, in terms of the provisions of Foreign Trade (Development and Regulation) Act. Since then, the writ petitioner was doing the business.

(ii) In India, for the past 10 years, there is rapid development of infrastructure and the "natural sand" is one of the essential material. Already, the natural sand was exploited from the rivers to its maximum extend and consequently, the ecology is in peril. The deposit of natural sand has come down



rapidly in the Indian rivers due to maximum exploitation. While its demands were very high and the price of the natural sand has incidentally increased and in order to meet the high demand, and control the price rise of the natural sand, the Union of India took a policy decision to permit to import of "natural sand" from foreign countries. In this regard, a notification dated 07.11.2014 was published by the Government of India permitting the import of sand, subject to the only condition of submitting quarantine in terms of the Plant Quarantine (Regulation of Import into India) Order, 2003.

(iii) It is the further case of the writ petitioner that after the liberalisation of the import policy, the petitioner undertook an extensive research concerning quality of "natural sand" in foreign countries to know that the same is fit for construction purpose. They also conducted chemical analysis test and thereafter entered into an agreement of sale with M/s.All Works Trading Private Limited of Malaysia, on 09.09.2017, to supply river sand of one lakh MT from Sungai Pahang River, Kuantan City, Malaysia. After obtaining certificate of Plant Quarantine from Government of Malaysia, the first shipment of sand of 55,443.84 MT reached Tuticorin Port in India on 14.10.2017 through Indian waters by obtaining necessary permission from the Director General of Lighthouses and Lightships, Ministry of Shipping.

(iv) It is the further case of the writ petitioner that they had paid a sum of Rs.1,80,00,000/- (Rupees one crore and eighty lakhs only) towards Port Wharfage Charges, Port on-board levy charges, Port Royalty Charges, Port Levy for Shore Handling Charges, Port Royalty Charges for Shore, Labour Charges, Customs Bill Filing Charges, Transport Charges, Yard Plot Rent, etc., through the clearing agent viz., M/s.Janaki Traders. The writ petitioner has also paid to the tune of Rs.38,39,347/- (Rupees thirty eight lakhs thirty nine thousand and three and forty seven only) towards Goods and Service Tax (GST).

(v) After completing the formalities with the Customs Department and the clearance from the Plant Quarantine authorities, the imported river sand was permitted to be taken out of the Port. The writ petitioner was selling the imported river sand directly to the individual customer by proper invoice customs bill of entry and by hiring vehicles. When the river sand was in transit, the Inspector of Police, Aralvoimozhi Police Station, Kanyakumari District had seized the lorries along with imported sand and handed over the same to the Revenue Divisional Officer, Kanyakumari District, who in turn handed over the said lorries to the Assistant Director of Geology and Mines, Kanyakumari District. The Inspector of Police has also registered a case in Crime No.450 of 2017 under Mines and Minerals Act, 1957. It is further stated that the 1st appellant / the District Collector Thoothukudi <https://hdservices.mca.gov.in/hdservices/> instructed the V.O.Chidambaranar Port Trust, Tuticorin, not to allow any private person / Government Firms or any other agency to transport the imported sand from the Port



Yard.

(vi) On the basis of the instructions, the Port Trust has issued a communication dated 24.10.2017 to the clearing agent, stating that the Port will not permit to transport away the sand. Contending that the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called as MMDR Act) and Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter called as MMCR Act) have no application to the imported sand and the appellants have no authority to prevent this imported sand being sold to their customers, and there is an interference with the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, the writ petition came to be filed for issuance of Writ of Mandamus forbearing the respondents from insisting for licence, permit, transport slip, etc., under the Tamil Nadu Minor Mineral Concession Rules, 1959 for the transportation of imported sand.

(vii) In the counter affidavit, the averments and allegations of the writ petitioner have been denied and the appellants further contended that the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealer Rules 2011 (herein after called as Rules 2011) were framed under the enabling provisions of Section 23(c) of the MMDR Act to prevent illegal mining, transportation and storage of minerals. The definition of "minerals" in sub Rule (xiii) of Rule 2 includes all minerals and minor minerals except sand. The term "except sand" denotes only the river sand and exclusion of other silica sand and other sand, which is also notified by the Government of India in the Gazette notification, dated 10.02.2015. The term "mineral dealer" has been defined under Sub-rule (xv) of Rule 2, which states that any person, who carries on the business of buying, selling, storing, supplying, transporting, distribution or delivering for sale of mineral or its product and includes. There is a prohibition under Rule 3 of Rules 2011 and the sub Rule (1) of Rule 7 deals with the registration of imported minerals, wherein exemption has been given for inspection, if the imported minerals of the are variety not available in India. For the minerals available in India, all the Rules applied to the regional mineral dealer are also applicable to the imported mineral dealer. Rule 8 of the Rules 2011 deals with the seizure and confiscation of minerals, which was not adhered to under the Act and Rules.

(viii) It is further stated in the counter affidavit, that as per Section 4 (1A) of MMDR Act, no person shall transport or store any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. Section 21 Sub-clause (4-A) of MMDR Act, authorizes confiscation of any ~~mineral or mineral dealer~~ equipment, vehicle, and other things seized under sub-section (4) by order of the Court. Further, Section 15 of the MMRD Act empowers the State Government to make Rules in respect of



the mines and minerals and exercise of power.

(ix) The sum and substance of the counter is that the Rules 2011 mandate the registration of a dealer, obtaining required permission for transportation of the imported sand and also submission of the relevant records connected thereto. By such submission, the respondent in the writ petition sought dismissal of the writ petitioner's claim.

3. The Writ Court, after considering the rival submissions, allowed the writ petition and issued the following directions:-

"(a) The State shall stop all sand mining/quarrying activities in the State of the Tamil Nadu within six months from today and shall not open any new sand quarries/mines in future;

(b) The quarries of granites and other minerals, except, jelly, have to be periodically closed to maintain ecological balance;

(c) The respondents shall forthwith issue appropriate directions to the authorities concerned enabling the importers to transport and sell the the imported river sand with appropriate directions to the importers to produce all the import related documents and maintain proper records reflecting the quantity imported, sold, stock in hand and other necessary particulars before the Mines and Commercial Taxes Departments respectively, to check evasion of taxes;

(d) The State shall depute a team with experts from the Geological Department to identify, process and import the sands and minerals from countries which permit export and display them for public and the 15th respondent shall cause to effect a publication as to the countries which permit export of sand and the procedures thereof to be complied with;

(e) The State shall also take a decision to import river sand by the State owned Corporation itself to meet out the short-supply of sand within the State, if there is no other legal impediments;

(f) The District Collectors and the Superintendents of Police of all the Districts concerned, in consultation with the officials of the Commercial Taxes Department, shall issue appropriate directions to their Subordinate Officers, to distinguish what kind of minerals, are permitted to be transported, inter-state or intra-state and to make the documents, required to be possessed and displayed to the officers, at the check posts, if any;



(g) The State shall establish permanent check-posts within the State with the officers equipped sufficiently to curb and prevent the illegal mining and transportation of sand; the check post officers shall maintain the record of all the vehicles crossing by; the State shall also fix camera at the check posts and connect the same with a common server to ensure that illegal mining and transportation is curbed;

(h) The State shall initiate appropriate and immediate action against the persons involved in illegal mining, transportation and storage in the State and proceed for the permanent confiscation of the vehicle involved in the illegal activities and cancellation of the Registration Certificate of the vehicle, without any scope for the owner of the vehicle to plead ignorance;

(i) The State shall constitute a Committee to ascertain the loss caused to the Government and take steps to recover the same from the Companies, individuals including the erring Government Servants, whose hand if found, be immediately suspended and prosecuted as per law;

(j) The imported sand must be tested before the goods are cleared, if Quality Certificate is not produced by the importer and for that purpose, scientific methods for testing be deployed;

(k) If any sale related to imported sand is proposed to be carried out, the same has to be done by strictly following the provisions as well as the Rules of local enactments, i.e., under the GST laws;

(l) The State shall be at liberty to bring in an enactment to regulate and handle such imported sand within the State, maintenance of records, etc;

(m) The respondents 13 to 16 shall issue appropriate guidelines specifying the quality of sand and its usage so as to enable the importers to get appropriate sand with Certificate from the exporter/authorities in foreign soil, so that the life and property of the common public is not jeopardised and the natural wealth of the State is preserved; and

(n) A copy of this order be marked to all the parties concerned forthwith for strict compliance/adherence."

4. Assailing the order of the learned Single Judge, the appellants have preferred this appeal, inter alia contending that the provisions of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealer Rules 2011 are applicable and the definition of "sand" under Rule 38 (c)



of the Tamil Nadu Minor Mineral Concession Rules, could be relied on, as both Rules were framed by drawing power under the MMRD Act. The State has powers to control the storage and transportation of imported sand also and that the imported sand is silica sand and therefore, it could not be used for construction and it should be used only for industrial purposes and that the learned Single Judge issued certain directions as if it is a public interest litigation, by travelling beyond the scope of the writ petition.

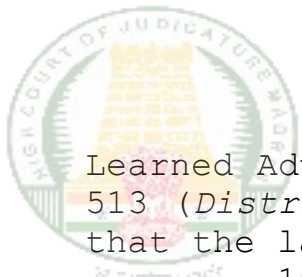
5. A miscellaneous petition in C.M.P.No.11317 of 2017 is filed by one M/s.John Saw Mill Private Limited to implead them as 7th respondent in the writ appeal.

6. By consent, the main writ appeal itself was taken up and was heard in detail.

7. We have heard Mr.Vijay Narayan, learned Advocate General, Mr.B.Pugalaendhi, learned Additional Advocate General assisted by Mr.V.R.Shanmuganathan, learned Special Government Pleader and Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader for the appellants and Mr.M.Vallinayagam, learned Senior Counsel appearing for Mr.N.Viswanathan, learned counsel for R1 and Mr.V.Kakthirvel, Assistant Solicitor General assisted by Mr.J.Jeyakumaran for R3 to R6 and Mr. Issac Mohanlal, Learned Senior Counsel for the proposed 7th Respondent and also perused the materials on record.

8. The learned Advocate General appearing for the appellants vociferously contended that the direction of the learned Single Judge is in the nature of Legislating laws, which could not be issued and it would amount to transgression into the powers of Legislature and making the application of separation of powers redundant by placing reliance on the judgment of the Apex Court reported in 2017 (5) SCC 16 (State of U.P. v. Subhash Chandra Jaiswal). It is further contended that the general direction in the public interest could be issued only by a Division Bench and not by a Single Judge, that too without providing an opportunity to the appellants/ State and other lessees in the State.

9. The learned Advocate General also relying upon the definition of the "sand" in the Explanation to Rule 38 (C), contended that though Section 2 (xiii) of the Rules 2011 exempt "sand" from the application, since silica sand can be used only for industrial purpose and it is unfit for construction and if the definition of sand under explanation to Rule 38(C) is read into Rules 2011, then Rules 2011 would be applicable and the petitioner would be under the obligation to get permits for storage and transportation even in respect of the imported sands as per Rules 7 and 8 of the Rules 2011. In this regard, the



Learned Advocate General relied upon the decision in 2015 (11) SCC 513 (*District Magistrate, Haridwar v. Harish Malhotra*) to contend that the later enactment is "pari materia".

10. The Learned Advocate General further contended that Rules 1959 and Rules 2011 were made by the State, only in furtherance of the powers granted under Sections 15 and 23 (c) of the MMDR Act and since both the Rules were cognate and subordinate Legislation, the definition under one Rule can be relied on in another.

11. It is also contended that as per Section 4(1A) of the MMDR Act, and Rules 1959 were amended and Rules 2011 were enacted in furtherance of the introduction of Sub-section, 1A to Section 4 in 1999 and therefore the appellants are well within their powers to exercise their jurisdiction over the imported sand as well as Section 4 and 4(1A), which are to be read dis-jointly. Further the learned Advocate General contended that though the word "regulate" would not ordinarily mean to include "prohibit", it may, under certain circumstances include the power to suppress or prohibit and the scope the word "regulate", which must be derived from the object of the Legislation. However, in this case, there is no prohibition, but only restriction. In support of his contentions, he relied on the judgments of the Supreme Court reported in 1981 (2) SCC 205 and 1975 (1) SCC 375.

12. The learned Advocate General further contended that the writ petitioner did not produce any document to show that the export was made only after getting approval from the Government of Malaysia and the sand does not contain any metals and no quality analysis was done by the State. Admittedly the imported sand is only "Silica sand", as per the EXIM code and therefore, the writ petitioner has to register under Rule 2 of Rules 2011.

13. The learned Advocate General further relied on the Foreign Trade Policy for the period from 01.04.2015 to 31.03.2020, the Kerala Minor Mineral Concession Rules, 2015 and the Goa (Prevention of Illegal Mining, Storage, and Transportation of Minerals) Act, 2013 and contended that the Rules akin to Tamil Nadu Rules would cover imported minerals and that as per the Foreign Trade Policy, covered the importer, who is obliged to follow domestic laws. If the authority over the imported sand is taken away, then the vehicles under the garb of transporting imported sand, are likely to transport sand illegally and would breed illegal mining.

14. The learned Advocate General also contended that the refusal of the learned Singled Judge in coming to the issue as to whether the imported sand is fit for construction purpose or not, would be a miscarriage of justice. He contended that the quality of the sand is very important, as it could affect the life and safety of the people in the State and that there is a over-riding public



interest in the transportation and storage of imported sand. It is also contended that the sand is sold on-line and the on-line permits are issued by the quarries of the PWD. Since the power of the Government to quarry under Section 38(A) of Rules 1959 was approved by the Apex Court in a judgment reported in 2006 (4) SCC 517, the order of the learned Single Judge is against the dictum laid down by the Supreme Court. Further, the Courts have been emphasizing for balance between the development and environmental protection. While so, the ban on mining on the river bank is unwarranted.

15. The learned Advocate General further submitted that the Government has taken steps to curb the illegal mining and steps were taken for fresh survey, site selection, boundary demarcation, sensitisation of the officials on the environmental impact of sand mining, CCTV monitoring, District Level Monitoring and State Level Monitoring by task force with provisions for appeal, the centralised control room, creation of legal room, liability of contractors, mine closure and plan and promotion of M-sand. The learned Advocate General also relied upon a judgment of the Supreme Court reported in 2016 10 SCC 165, AIR 1961 Supreme Court 232, AIR 1962 Supreme Court 1406 and 1985 2 SCC 116 and the Full Bench Judgment of the Kerala High Court in WP(C).No.4484 of 2012 and sought to set aside the order of the learned Single Judge. In the course of arguments, the Learned Advocate General fairly submitted that Rules 38 (A), 38 (B) and 38(C) of Minor Mineral Concession Rules would not apply for imported sand.

16. Per contra, the learned Senior Counsel appearing for the 1st respondent / writ petitioner urged that the learned Single Judge has rightly appreciated the provisions, and the judgments including the Division Bench judgment, wherein Rules 38(A) and 38 (C) were upheld and it was rightly held that the existing provisions including MMDR Act did not deal with the imported sand. The learned Senior Counsel further contended that the imported sand was permitted to meet out the demand of natural sand and to control the price, which had escalated after maximum exploitation of rivers and putting the ecology in peril. Further, placing reliance upon the certificates of analysis, certificate of phytosanitary, invoice and certificates of Plant Quarantine issued by the Quarantine Officer, Tuticorin, the test report issued by the Principal of Government College of Engineering, Tirunelveli, it is contended that the sand was imported with due certificates from Malaysia. Therefore, it could not be said as smuggled sand and further Plant Quarantine certificate as directed by the Central Government was obtained after examination of sand by appropriate authorities under the Union of India and the Principal of Government Engineering College of the State has tested, who gave a certificate that it is a river sand.



17. The learned Senior Counsel appearing for the first respondent / writ petitioner also referred to the preamble of the MMRD Act to contend that the usage of word "under the control" found in preamble, would make it clear that the Act is not applicable to imported sand and therefore, the Rules deriving powers from the Act cannot cover imported foreign sand and any such policy or Rules contrary to the main Act, would be void. Pointing out to Para 3 of the affidavit filed in support of the writ petition, it is contended that the argument of the Learned Advocate General that the learned Single Judge, travelled beyond the scope of the writ petition is unacceptable, since the learned Single Judge relied upon the judgement of the Apex Court reported in 2010 (13) SCC 1 in this context.

18. The learned Senior Counsel relying upon the definition of Rule 2(xiii), contended that the sand was excluded from the application of Rules 2011 and since the object of both 1959 and 2011 Rules are different, they cannot be treated as *pari materia*. The definition under one Rule cannot be read into the other, unless there is a specific reference to that effect. So far as the quality of the sand is concerned, the learned Senior Counsel contended that silica is a part of the sand and the imported sand contains silica of 81.6%, which can be used for construction purpose and only when the percentage of silica is higher, i.e., over 95%, it can be used purely for industrial purpose.

19. The learned Senior Counsel appearing for the first respondent / writ petitioner also contended that since the Central Government has permitted the import of sand, though the duty along with GST has been remitted, the State Government instead of encouraging importers and for obvious reasons, interfered with their lawful trade. Hence, the writ petitioner cannot be prevented from transporting and selling the sand, as it would violate the rights granted under Article 19(1)(g) of the Constitution of India. Further, it was also pointed out that the imported sand is an alternative sand, like M-sand, and by encouraging the import, the river-bed can be preserved, thereby, curtailing the hazardous illegal mining. The learned Senior Counsel further relied upon the judgments in AIR 2004 Madras 151, 1995 (2) SCC 402, 2014 (9) SCC 657, 2003 (4) SCC 753 and 2010 (13) SCC 1 and sought dismissal of the Writ Appeal and seeks for early release of sand, as the delay is causing severe hardship to the writ petitioner.

20. The learned Senior Counsel appearing for the proposed 7th respondent, is sailing along with the writ petitioner, and he contended that the proposed 7th respondent had purchased the sand from the writ petitioner and delaying the release of sand from the Port is affecting him and causing loss and hence, he sought to implead the 7th respondent.



21. Further, the learned Senior Counsel appearing for the proposed 7th respondent, while countering the arguments of the learned Advocate General, contended that it is horrendous plea that the Silica sand is hazardous and it cannot be used for construction. The fear of silicosis is applicable only when the stone or silicon blocks are pulverized, enabling the formation of dust, whereas in the case of Silica sand, it is in the form of grain or quarts and therefore, there is no possibility of dust hazardous to health. Further relying upon the provisions under MMDR Act, MMCR Rules and Rules 2011, he contended that the learned Single Judge has held that under the existing provision, there is no necessity to either register or obtain licence for the storage, transportation and sale of sand imported from outside India and the existing laws are applicable only to the sand mined within India and the Rules are only restricted to Mines and Minerals within the State and that the Rules 2011 are not applicable for imported sand.

22. It is further contended that in the absence of specific law for maintaining the need for transit pass for the imported sand, insisting upon the same would violate the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, and reliance was placed on the judgment of the Supreme Court reported in 2006 (2) SCC 545 (*State of Bihar and others v. Project Uchcha Vidya, Sikshak Sangh and others*). Insofar as Rules of Kerala and Goa States are concerned, they have no relevancy and they are different from the Tamil Nadu Rules and in any case, in the absence of enabling provisions under the Central Act, the Rules are void and if put to test, they have to be struck down. It was also contended by the learned Senior Counsel that the definition in one Act or Rules cannot be imported to another, as the scope and applicability of the Rules are different. In support of his contention, he relied on the judgment of Supreme Court in 1981 (2) SCC 308 (*Union of India v. R.C.Jain*) and AIR 1962 Supreme Court 847 (*Jumma Masjid v. Kodimaniandra Deviah*), and further contended that the need of the hour is to protect the environment and the balance of demand for sand by liberalising the imports. Hence, the learned Senior Counsel sought dismissal of the writ appeal.

23. We have heard the rival submissions and perused the materials available on record.

24. After hearing the parties, this Court finds that the following questions arise for consideration:-

(1) Whether the writ petitioner is liable to register and seek permits for storage, transportation and sale of imported sand from outside india as per the MMDR Act, 1957, TNMMR 1959 and Tamil Nadu



Prevention of Illegal Mining, Transportation and storage of Minerals and Mineral Dealers Rules 2011?

(2) Whether the directions issued by the writ court exercising its powers under Article 226 of the Constitution of India needs interference?

(3) Whether this Court has a legal obligation/mandate to preserve ecology, i.e Sand, Forests, Water, Air, etc for the present and for future generations as guaranteed under Article 21 of the Constitution of India by issuing appropriate directions?

25. At this juncture, it would be appropriate to refer herein the relevant provisions of MMDR ACT and Rules 2011:-

"Section 3(e):-

"3(e). 'minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette declare to be a minor mineral;"

Section 4:-

GENERAL RESTRICTIONS ON UNDERTAKING PROSPECTING AND MINING OPERATIONS

4. Prospecting or mining operations to be under licence or lease.-

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

(1A) No person shall transport or store or cause to be transported or stored any minor mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

Section 15:-

"15. Power of State Governments to make rules in respect of minor minerals.-

....

Section 23-C:

"23-C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.-(1) The State Government may, by notification



in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

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Rule 2(xiii) of Rules, 2011:

'Mineral' means, all minerals and minor minerals except sand.

Rule 6:-

6. Transport permit and Transit pass: (1) No person shall transport or otherwise remove or carry away any mineral from any place without obtaining a transit pass from the Deputy Director. Person desiring such passes should file an application before the Deputy Director in Form 'F' duly specifying all the particulars prescribed therein.

(2) The application shall be accompanied by a copy of the permit showing payment of royalty/seigniorage on such mineral or other adequate proof of such payment.

(3) On receipt of an application under sub-rule (1), the Deputy Director may grant transit pass in Form 'F' for such period and subject to such terms and conditions as may be imposed by him or may refuse to grant such transit pass for the reasons to be recorded in writing and communicated to the applicant.

(4) Any person who transports the minerals and who is required to carry transit shall produce pass on demand to the authorised officer or any officer or authority who has been empowered under sub-section (4), Section 21 of the Act."

Rule 7:-

"7. Conditions.-The registration certificate shall be granted in Form 'D' subject to the following conditions:-

(i) 'All trades in minerals should be registered as dealers. However in the case of Mineral Dealers who deal exclusively with imported minerals of a variety not available in Tamil Nadu, no inspection of the Units outside the State from which the minerals are secured will be done. The mineral traders however should file quarterly statement of their minerals imported into the State and produce proof of payment of any entry tax or other tax leviable by the State of Tamil Nadu whenever called upon to do so.



(ii) The grantee of registration shall maintain the details of minerals purchased and stocked and details of mineral transported from the stockyard and the balance of mineral available in the stockyard in Form 'E'. If the grantee of registration having more than one stockyard, each stockyard shall be registered separately and From 'E' shall be maintained separately for each stock yard. The stockyards are liable for verification at any time by the authority or authorised officer.

(iii) The grantee of registration shall allow any authorised officer at any time to inspect the stockyard, factories to verify the stock of ores or minerals and take sample of the abstract from the records maintained by him.

(iv) Every grantee of registration shall allow the Competent Authority or the authorised officer to enter and inspect the stockyard including the premises of the factories where such mineral is processed and he may weigh, measure or take measurements of the stocks of the minerals at such stockyard or factory.

(v) All Officers who have been authorised under Section 24 of the Act are empowered to search any place in which there is a reason to believe that offence is being committed and to seize any stock of minerals in respect of which the offence has been or is being committed.

(vi) The District Collector is empowered to issue any orders for inspections to be caused and for proper implementation of the Act and Rules within the jurisdiction of the concerned district. If any person is found to keep the mineral in the place other than in stockyard or if any grantee of registration is found to commit any offence or contravene any of the provisions of the Act or Rules including any discrepancies noted in Form 'E' in respect of any stockyard, the District Collector shall take suitable action."

26. Before, going into the rival contentions, it is necessary to decide, whether the impleading party is entitled to be impleaded. The impleading party claims to be a purchaser of sand from the writ petitioner. In view of the impugned actions, he is unable to receive the sand. Therefore, under the circumstances, this court finding force in the contentions of the Learned Senior Counsel for the proposed party, allows C.M.P.No.11317/2017 impleading the proposed party as the 7th respondent in the Writ Appeal.



27. Now coming to the first question, it has been urged before this court that the existing Rules, more particularly the Rules, 2011 would be applicable to the imported sand. A perusal of the judgment of the Learned Single Judge would indicate that the judgment was rendered after meticulously considering all the provisions relied upon by either side. At this juncture, it is necessary to refer to the findings of the Learned Single judge on the applicability of the Rules to the imported sand:-

"23.1. A cursory perusal of the aforesaid provisions throws lime-light on the issue that revolved around for consideration before this Court and thus, the following could be culled out for better appreciation: The Mines and Minerals (Development and Regulation) Act, 1957 deals with reconnaissance, prospecting and mining operations within the country of India. The scope and object of the act is spelled out in Section 4 extracted above. The Act does not contemplate or deal with imports. Section 13 of the Act enables the Central Government to make rules and exercising the power, the Minor Concession Rules, 1960 were framed. Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, enables the State Government, by notification in the Official Gazette, to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith.

Similarly, by virtue of Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, the State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

23.2. Further, the above provisions of the Mines and Minerals (Development and Regulation) Act, 1957, make it amply clear that the State Government(s) is/are given with such powers to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith and also to make rules for preventing illegal mining, transportation and storage of minerals. The words 'transportation and storage' will have to be read harmoniously with the object of the enactment or empowerment of the states to enact rules, viz-a- viz to prevent illegal mining, quarrying or reconnaissance or mining operations. The words 'transportation and storage' can only mean the transportation and storage of illegally mined minerals. When the parent act from which



powers are derived does not deal with imports, the rules cannot framed in 1959 and 2011 cannot contemplate such a preposition when the import of natural sand has been permitted with a condition to obtain plant quarantine certificate from 2014 onwards.

...

26. A perusal of the above Rules, explicitly makes it lucid that the scope of the Rules was to regulate the quarrying of minor minerals, including sand and regulate the stocking, transportation and sale of such quarried minor minerals, within the State of Tamil Nadu. After introduction of Rule 38-A, the mining activity is to be done only by the Public Works Department and when a person purchases sand from the Department, he has to obtain a licence for storage and transportation. The Rules does deal with the imported sand, be it ordinary sand or silica sand or any other form or for the matter of fact, it cannot deal as because in the first place, the Rules did not deal with the import, the Rules were framed in 1959 and the permission to import with a Plant Quarantine Certificate has been accorded in 2014. Also, The introduction of Rules 38-A, 38-B and 38-C did not alter the original position. At this juncture, it is to be borne in mind that the object of introduction of the Rules in 2003, was only to restrict the right of quarrying of private individuals and increase the role of the State, more particularly, the Public Works Department. The Rules, in the opinion of this Court, can apply only to the sand quarried by the Public Works Department and the restrictions imposed on transportation, stocking and sale of sand would apply only to the sand purchased from Public Works Department or licensee.

27. A conjoint reading of Rule 38-C with other Rules and Appendixes will reveal that it deals with issuance of transport permit to the licensee by the Public Works Department or when the licensee effects a sale and when a sale slip is to be duly authenticated by the Taluk Head Quarters Deputy Tahsildar. A thorough scrutiny of various Forms in APPENDIX XII, XVII, XVIII, XIX, XX and XXII would illustrate that the restrictions in Rule 38-C are applicable only to the sand quarried within the State and purchased from the Public Works Department and a licensee, as all the Forms contained columns only for the place, survey number, etc., where the sand was quarried and stored. The Explanation to the Rules also makes it very clear that 'stockyard' means the place



where the licensee stores the sand purchased from the Public Works Department and 'sale slip' is to authenticate that the sand from such stockyard has been sold.

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31. Further, as per the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, the Transport Permit and Transit Pass in form F, would show that it should indicate the payment of royalty / seigniorage fee. In case of importer, there is no question of payment of royalty / seigniorage. Hence, the said Form is not applicable. The Rules also do not deal with the imported minerals. As again, the object was only to curb illegal mining, transportation and storage of minerals, similar to the Tamil Nadu Minor Mineral Concession Rules, 1959, which was applicable for minor minerals secured within the state. The words 'transportation and storage' will have to be read keeping in mind the object and the circumstances under which the Rules were framed. It only implies that not only mining must be legal, the transportation and storage of the mined mineral must also be legal.

32. Hence, the conditions prescribed in the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 cannot be imposed on the importers. The word 'import' used in Rule 7 is applicable in cases of minerals imported from other States as there is only a ban in movement of sand from one State to another. Similarly, the Rules came into force in 2011 and therefore, it cannot be extended to an import permitted by the import policy of the year 2012 and revised by the notification dated 07.11.2014 issued by the Department of Director General of Trade and Finance to obtain a Plant Quarantine Certificate, under the Regulations which though was in vogue in 2003 itself. Therefore, this Court accepting the contention of the petitioner, rejects the stand of the State that the Rules are applicable to the imported goods and therefore, on this ground alone, the petitioner is entitled to succeed."

28. As rightly contended by the Learned Senior Counsels appearing for the 1st and 7th respondents and upon perusal of the preamble and the entire provisions of MMDR Act, this Court can only come to the conclusion that the parent Act, from which the rule making power is derived by the State Governments itself does



not deal with imported sand from another country and is applicable only for the development and regulation of mines and minerals under the control of the Union. Though it could be contended that once the sand is imported, the same would fall under the control of the union, the provisions of the Act do not contemplate such a situation. Further, this court is in complete consonance with the findings of the Learned Single Judge that the provisions of Sections 15 and 23C do not empower the States to deal with imported sand. Also, the Judgments of the Division Bench upholding the validity of Rules 38A and 38C will in no way affect the contentions of the writ petitioner as held by the Learned Single Judge.

29. It is pertinent to mention here though it was contended by the appellants in the writ petition that Rule 38C would empower the appellants to exercise their authority over imported sand also, now a stand is taken that the definition of 'sand' in explanation to Rule 38C must be read into 2011 rules as both originate from the MMDR Act, 1959 and are to be considered as *Pari materia*. The following judgments were also relied upon by the Learned Advocate General:-

(i) *District Magistrate, Haridwar v. Harish Malhotra* [(2015) 11 SCC 513]:-

"12. Notification No. 145/XXVII(5) Entertainment Tax/2005 dated 17-8-2005 does not apply to the respondent as it seeks to tax "exhibition by means of video". The respondent's activities are not covered by the aforementioned expression. For the definition of the said expression the U.P. Cinemas (Regulation) Act, 1955 has to be referred even though the notification has been issued under the U.P. Entertainments and Betting Tax Act, 1979. The expression can be said to be in *pari materia* and definition of a term under one Act, can be used to interpret provisions of rules under the other Act."

(ii) *Hiral P. Harsora v. Kusum Narottamdas Harsora*, [(2016) 10 SCC 165]:-

"46. We were given to understand that the aforesaid Bill lapsed, after which the present Bill was introduced in the Lok Sabha on 22-8-2005, and was then passed by both Houses. It is interesting to note that the earlier 2002 Bill defined "respondent" as meaning "any person who is...." without the addition of the words "adult male", being in consonance with the object sought to be achieved by the Bill, which was *pari materia* with the object sought to be achieved by the present Act. We also find that, in another Act which seeks to protect women in another

made

(i) *Union of India v. R.C. Jain*, (1981) 2 SCC 308 : 1981 SCC (L&S) 323 at page 310:-

<https://hcservices.ecourts.gov.in/hcservices/>

"Local Authority" shall mean a Municipal Committee, District Board, Body of Port Commissioners or other



authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

"Local fund" is again not defined in the General Clauses Act. Though the expression appears to have received treatment in the Fundamental Rules and the Treasury Code, we refrain from borrowing the meaning attributed to the expression in those Rules as it is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone" (per Loreburn, L.C. in *Macbeth & Co. v. Chislett* [1910 AC 220 : 102 LT 82]). For the same reason we refrain from borrowing upon the definition of "local authority" in enactments such as the Cattle Trespass Act, 1871 etc. as the High Court has done."

(ii) *Jumma Masjid v. Kodimaniandra Deviah*, 1962 Supp (1) SCR 554 : AIR 1962 SC 847:-

"9. Now the compelling reason urged by the appellant for reading a further exception in Section 43 is that if it is construed as applicable to transfers by persons who have only *spes successionis* at the date of transfer, it would have the effect of nullifying Section 6(a). But Section 6(a) and Section 43 relate to two different subjects, and there is no necessary conflict between them. Section 6(a) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer *simpliciter* of those interests. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires. Section 6(a) enacts a rule of substantive law, while Section 43 enacts a rule of estoppel which is one of evidence. The two provisions operate on different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a *spes successionis* at the date of transfer are not within the protection afforded by Section 43 would



destroy its utility to a large extent."

(iii) *Bangalore Turf Club Ltd. v. ESI*, (2014) 9 SCC 657 : (2014) 3 SCC (L&S) 1 : 2014 SCC OnLine SC 586 at page 689

"52. An argument raised by the appellants herein is the issue relating to the "doctrine of pari materia". It is contended that since the ESI Act does not define the term "shop", the said definition may be ascertained in the light of the definitions under the relevant Shops and Commercial Establishments Act as enacted by the respective State Legislatures, since the purpose and object of both the enactments are one and the same.

53. For the above purpose, it would be necessary to look into the concept of "doctrine of pari materia" and further ascertain whether the given statutes are in fact pari materia with the ESI Act. It is settled law that two statutes are said to be in pari materia with each other when they deal with the same subject-matter. The rationale behind this rule is based on the interpretative assumption that words employed in legislations are used in an identical sense. However, this assumption is rebuttable by the context of the statutes. According to *Sutherland in Statutes and Statutory Construction*, Vol. 2, 3rd Edn.:

"Statutes are considered to be in pari materia to pertain to the same subject-matter when they relate to the same person or things, or to the same class of persons or things, or have the same purpose or object."

56. On a perusal of the above, it may be said that the said Acts, though they may relate to labour and workmen, are in essence intended to be regulatory. The Acts require mandatory registration of the establishments covered by the respective statutes, set out provisions relating to working hours, wages, annual leave, etc. and further prescribe penalties for non-compliance with the said provisions. The Acts further enable the local authorities to appoint local inspectors who are given certain powers to ensure the compliance with the provisions of the Acts. Under sub-section (4) of Section 48 of the 1948 Act such inspectors would also be deemed to be inspectors under the Minimum Wages Act, 1948. Further, the 1961 Act under Chapter V makes an express



adjudication and decision on the issues not addressed herein."

(iv) *Kanta Devi v. Union of India*, (2003) 4 SCC 753 : 2003 SCC (L&S) 592 at page 757 :-

"8. According to Rule 7(b), the appointing authority is the Commandant and since the DIG is of higher rank, there is no illegality in the order passed by him in passing the order of dismissal. Just because the IG's approval is required for the purpose of appointment or promotion, the position of the Commandant as the appointing authority is not changed and the IG does not become the appointing authority. If the submission made is accepted, it would mean addition of words or expressions in Rule 27. It is not a case of casus omissus as contended. A construction which requires for its support addition of words has to be avoided. The words of a statute never shared, in interpretation, be added or subtracted from without almost a necessity. It is contrary to all rules of construction to read words into a statute unless it is absolutely necessary to do so. Courts cannot reframe the words used by the legislature as they have no power to legislate. A matter which, for the sake of argument, should have been provided but has not been provided for in a statute cannot be supplied by the courts as to do so will be legislation and not construction. (See *Johnson v. Moreton* [(1978) 3 All ER 37 : 1980 AC 37 : (1978) 3 WLR 538 (HL)] and *Baliram Waman Hiray (Dr) v. Justice B. Lentin* [(1988) 4 SCC 419 : 1988 SCC (Cri) 941 : AIR 1988 SC 2267] .) There is no presumption that a casus omissus exists, and language permitting the courts should avoid creating a casus omissus where there is none. Therefore, the conclusion of the Division Bench in holding that the order of dismissal passed by the DIG was legal, does not suffer from any infirmity to warrant interference."

31. A careful consideration of the above judgments would reveal that when the language used in the statute is clear and unambiguous and when the object of the enactments are different, there cannot be any reference or incorporation. In fact, in both the judgments relied upon by the appellants, the Apex Court has ultimately rejected the contention holding that when the parent act was not applicable, reading into the same is not permissible. In the case on hand, the Rules 2011 under definition of Minerals in Rule 2 (xiii) specifically excludes "sand". While so, when there is a specific exclusion, the definition in other rules



cannot be referred or relied upon, more so, when the Parent Act itself does not deal with imported sand. A plea was made on behalf of the appellants that Sections 4 and 4 (1A) have to be read disjointly. This Court is not agreeing with the said contention, as the provisions have to be read harmoniously with the object of the enactment. Section 4 deals with reconnaissance permit, prospecting or mining operations. Sub section 1A was introduced with effect from 18-12-1999. When a sub section is introduced under a particular section, it has to be read in conjunction with the object of the section. Section 4 states that no operations shall be permitted in any area except under and in accordance with the terms and conditions of permit or licence or lease granted under the Act. Therefore, the transportation and storage referred in the Sub-section 1A can only apply to the mined or quarried mineral under the reconnaissance permit or prospecting licence or mining lease. Further, as rightly held by the Learned Single Judge that Section 15 empowers the State to make rules for regulating the grant of quarrying lease and Section 23C deals with measures to prevent illegal mining, transportation and storage of minerals, it does not deal with import from another country.

32. Insofar as the Kerala and Goa Rules and the Foreign Trade Policy are concerned, the same are not applicable as the Tamil Nadu Rules do not contain such specific provisions regarding import from foreign country and more so in the light of the fact that the Act, itself does not deal with imported minerals from another country. What is not available in the statute, cannot be created by drawing inference from another statute.

33. Insofar as the constitutional right guaranteed under Article 301, it has been contended that right is not absolutely free but is subject to limitations. The following judgments were relied upon by the appellants:-

(i) *Atiabari Tea Co. Ltd. V. State of Assam* (5 Members Larger Bench) - [AIR 1961 S 232].

"Article 301, with which Part XIII commences, contains the crucial words, "shall be free" and provides the key to the solution of the problems posed by the whole part. The freedom declared by this Article is not an absolute freedom from all legislation."

(ii) *Automobile Transport Vs. The State of Assam, Madras etc.*, (8 Members Larger Bench) [AIR 1962 SC 1406].

"Regulatory measures or measure, imposing compensatory taxes for the use of trading facilities do



not come within the purview of the restrictions contemplated by Art. 301 and such measures need not comply with the requirements of the proviso to Article 304 (b) of the Constitution."

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(iii) G.K.Krishnan and others [(1975) 1 SCC 375].

"Regularisation" by stating that the word 'free' in Article 301 does not mean freedom from regulation. There is a clear distinction between laws interfering with freedom to carry out the activities constituting trade and laws imposing on those engaged therein rules of proper conduct or other restraints directed to the due and orderly manner of carrying out the activities. This distinction is described as regulation. The word "regulation" has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied. The true solution, perhaps, in any given case, could be found by distinguishing between features of the transaction or activity in virtue of which it fell within the category of trade, commerce and intercourse and those features which, though invariably found to occur in some form or another in the transaction or action are not essential to the conception. What is relevant is the contrast between the essential attribute of trade and commerce and the incidents of the transaction which do not give it necessarily the character of trade and commerce. Such matters relating to hours, equipment, weight/size of load, lights, which form the incidents of transportation, even if inseparable, do not give the transaction its essential character of trade or commerce. Laws for Government of such incidents "regulate" "Article 301, with which Part XIII commences, contains the crucial words, "shall be free" and provides the key to the solution of the problems posed by the whole part. The freedom declared by this Article is not an absolute freedom from all legislation."

(iv) State of Tamil Nadu v. M/s. Hind Stone [(1981) 2 SCC 205].

"The impugned rule contravened Articles 301 and 303 of the Constitution of India is equally without force. The restrictions freedom from which is guaranteed by Article 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade, and regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of restrictions contemplated by Article 301. They are excluded from the purview of the



provisions of Part XIII of the Constitution for the simple reason that they do not hamper, trade, commerce or intercourse but rather facilitate them."

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34. There is no quarrel over the ratio laid down in the above judgments. The answer to this contention is found in paragraphs 33 and 38 of the judgment of the Learned Single Judge, wherein the right of the State to bring in an enactment under Article 304 has been accepted. We agree with the said findings. The State is empowered to bring in an enactment subject to legal scrutiny. The rules framed, as rightly held by the Learned Single Judge, are in derivation of powers under Sections 15 and 23C and not under Article 304 of the Constitution of India.

35. Insofar as the Full Bench Judgment of the Kerala High Court is concerned, the same is not applicable to the facts of this case as evident from the very first para that the question of law therein was the powers of the authorities to deal with sand brought into the State of Kerala from other States, when there was a ban in the rules of the other States. In the present case, the import is not from another State, but from another country and the Union Government has permitted the import of sand.

36. The next contention that was raised by the learned Advocate General is that the power to regulate would under certain circumstances include the power to prohibit. The judgment in 1985 2 SCC 116 (K.Ramanathan v. State of Tamil Nadu) has been relied upon. The said contention cannot be accepted for the simple reason that the delegation of power to regulate, does not empower the States to deal with imported sand. As rightly held by the learned Single Judge, the policy decisions on import and export are within the domain of the Union Government under Entry 41 of the Union List of Seventh Schedule. Also, the existing rules are only to regulate the mining/quarrying, transportation and storage of such mined/quarried minerals located within the State and therefore, the right to prohibit can also be only with regard to such minerals.

37. By relying upon the judgment of 2006 4 SCC 517 (*State of Tamil Nadu v. P.Krishnamurthy*), wherein the challenge to Rule 38A of the MMCR rules was rejected, the learned Advocate General contended that the State has the right of monopoly to quarry. The same is not in dispute that by virtue of Rule 38A, the quarrying activity is to be made only by PWD of the State. But, that is not the point of dispute in the present case. The grant of monopoly to



the State to quarry does not mean that the State is empowered to restrict the import, which falls within the domain of Central Government.

38. It was further contended that the imported sand is a silica sand which is not fit of construction activities and that it can be used only for industrial purposes. It was also contended that it is not clear whether the export was carried out with the knowledge of the Malaysian Government or not and without subject to any test by the state, the imported sand cannot be permitted to be used for construction activities. The said contention, in the opinion of this Court, cannot be countenanced. As rightly contended by the learned counsels for the contesting respondents, the certificate of analysis and phytosanitary certificate have been issued by the Government of Malaysia, which find place in the typed set of papers filed by the appellants themselves. Therefore, it cannot be contended that the import was made without the knowledge of the Malaysian Government. Also from the guidelines issued by the Ministry of Natural Resources and Environment of Department of Irrigation and Drainage Malaysia as placed by the respondents, it is evident that the rivers in Malaysia are covered with sand blocking the passage and the Government itself has been encouraging the dredging activity and such sand are sold.

39. Insofar as the contention that the sand imported with 81.6% of silica is not fit for construction, this court is of the view that the same is not backed by scientific evidence. On the contrary, from the materials available before this Court about sand, it is clear that it is only when the percentage of silica is over 95%, it could be used for industrial purpose. Therefore, the contention that the sand with higher silica is only industrial sand cannot be accepted. From a perusal of uses and specifications of silica sand by I.J. Mclaws, it could be seen that the silica sand can be used for Industrial purpose only when the presence of silica is 99% for glass, 96% (min) for transit pipe, 96.40 % for refractory brick and so on. In short, the presence of silica must be more than 95%. It is also pertinent to mention here from the report of Dr.RavindraPatnayaka, Assistant Professor in Architecture, the most common constituent of sand is silica, usually in the form of quartz. The river sand also will contain silica. Further, in all the documents relating to import, it is clearly mentioned that the sand imported is river sand for construction purpose. Also, the government of Karnataka has already imported river sand from Malaysia to curb illegal mining and at the same time to satisfy the demand. There are many sky scrapers in Malaysia as well. Therefore, the contention of the appellants that the imported sand from Malaysia is not fit for construction activities, is rejected. At this juncture, the plant quarantine certificate has been issued by the appropriate central



authority and the principal of a government college under the Department of Technical Education has also certified the imported sand to be river sand.

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40. Therefore, under the above facts and circumstances, this Court finds that the existing Act and Rules are applicable only to sand and minerals quarried in India and the Learned Single Judge had rightly rejected the contentions of the appellants and held that the appellants cannot rely upon the existing provisions to insist the respondents / writ petitioners to obtain permits for storage and transportation of Imported Sands and the appeal on this question fails.

41. On the second question, it has been agitated by the appellants that the Learned Single Judge has travelled beyond the scope of the writ petitions and issued certain directions, which the court is not entitled to unless it is a public interest litigation. It was also contended that the directions issued are in the nature of legislative directions and the Courts do not have such powers to issue such directions. The Judgement of the Apex Court in 2017 5 SCC 163 (State of U.P. v. Subhash Chandra Jaiswal) in support of his contention that the High Court must not travel beyond the scope of the petition and should not issue directions which are in the sphere of policy.

"23. Some of the directions, as we perceive, are in the sphere of policy. A court cannot take steps for framing a policy. As is evincible, the directions issued by the High Court and the queries made by it related to various spheres which, we are constrained to think, the High Court should not have gone into. It had a very limited lis before it. Be it stated, the directions may definitely show some anxiety on the part of the learned Judges, but it is to be remembered that directions are not issued solely out of concern. They have to be founded on certain legally justifiable principles that have roots in the laws of the country. In this regard, we may fruitfully refer to the following passage from State of U.P. v. Anil Kumar Sharma [State of U.P. v. Anil Kumar Sharma, (2015) 6 SCC 716 : (2015) 3 SCC (Cri) 368] : (SCC p. 722, para 17)

"17. Quoting the observations in respect of policy-making by Lawton, L.J. in Laker Airways [Laker Airways Ltd. v. Deptt. of Trade, 1977 QB 643 : (1977) 2 WLR 234 : (1977) 2 All ER 182 (CA)] A.S. Anand, C.J., as he then was, reiterated the



principle that the 'role of the Judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play'. Anand, C.J. added:

'The judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that court cannot run the Government. It has the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation.'"

24. Be it noted, the said case also arose from the High Court of Allahabad where sweeping directions were issued. Thus analysed, we are of the convinced opinion that the High Court has crossed the boundaries of the controversy that was before it. The courts are required to exercise the power of judicial review regard being had to the controversy before it. There may be a laudable object in the mind but it must flow from the facts before it or there has to be a specific litigation before it. Additionally, the High Court should have reminded itself that it cannot enter into the domain where amendment to legislations and other regulations are necessary. We are absolutely conscious that it is the duty of the State Government to discharge its obligations in the matters relating to law and order and remain alert to the issues that emerge. It has a duty also to see that the investigations are speedily completed in an appropriate manner. If there is a failure of law and order situation, the executive is to be blamed. In the maintenance of law and order situation the judicial officers are not to be involved. But the executive has to remain absolutely alive to its duties and we are sure, the State Government shall look into the aspects and endeavour to see that appropriate steps are taken to maintain the law and order situation."

42. Before, going into the applicability of the judgment, it is necessary to point out to the reasons and directions of the Learned Single Judge.

"15. The State of Tamil Nadu had, at one point of time, agriculture as its main profession. Even today, the State contributes a lot to the country's agricultural contribution. However, the percentage is depleting every year as the State is dependent on water from neighbouring States. Even, when there is significant rain, the same is



of no use as the State has not taken appropriate steps for several decades, despite the continuing dispute and demand for water from neighbouring States. The importance of preservation of rivers and the river beds and their direct impact on the underground water table and agricultural activity, is paramount. The removal of excess sand from the river beds causes erosion of the river banks and ultimately, affects the riparian habitats in many ways. The depletion will cause deepening of the rivers and thereby, it would also affect the aquatic habitat. The effects of the sand mining will affect the ecological balance, in such a way that the same cannot be retrieved forever.

39. Here, it is necessary to point out that as per the report filed before the Honourable Division Bench of this Court, about 1,00,14.239 MT of sand has been illegally mined in 2013-14 alone in Kanyakumari, Tirunelveli and Tuticorin Regions. The Rio Declaration on Sustainable Development (2012) has accentuated the preservation of natural resources and natural eco-system for the benefit of the present and future generation. It is the duty of the current generation to develop and conserve the natural resources for the benefit of the succeeding generations. The natural resources constitute the nation's wealth. Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, permits the State Governments to create check posts and conduct periodical check. However, this Court has not come across any permanent check-post by Mines Department, like the ones notified under the erstwhile Tamil Nadu Value Added tax Act, with permanent staffs.

40. The Honourable Supreme Court in *G.Sundarrajan v. Union of India* reported in (2013) 6 Supreme Court Cases 620, while emphasizing the role of a State and the welfare of the public to be supreme and deciding the challenge made to the commencement of Kudankulam Project, reiterated as follows:

"226. In *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613], this Court, while dealing with the constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, observed that the said enactment was passed as a sequel to a grim tragedy that occurred on the night of 2-12-1984. This Court treated it to be the most tragic industrial disaster in recorded human history. While discussing the concept of *parens patriae*, the learned Chief Justice observed that the conception of the *parens patriae* theory is the obligation of the State to protect and it takes into



custody the rights and the privileges of its citizens for discharging its obligation. While dealing with the said concept, it has been opined that the maxim *salus populi (est) suprema lex* ? regard for public welfare is the highest law.

227. I have referred to the said pronouncement solely to emphasise on the role of the State to act in the greater welfare of the collective and how the public welfare has been treated to be at the zenith of law.

229. Thereafter, the Court referred to the technology in agriculture that has given a big impetus to enterprises of chemical fertilisers and its serious problems. Thereafter, it has been stated thus: (Union Carbide Corpn. case [(1989) 3 SCC 38] , SCC p. 50, para 34) ?34. Indeed, there is also need to evolve a national policy to protect national interests from such ultra-hazardous pursuits of economic gains. Jurists, technologists and other experts in economics, environmentology, futurology, sociology and public health, etc. should identify areas of common concern and help in evolving proper criteria which may receive judicial recognition and legal sanction.?

230. In *Pritam Pal v. High Court of M.P.* [1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356] , the maxim *salus populi (est) suprema lex*, i.e. welfare of the people is the supreme law, was again emphasised upon, though in a different context.

231. At this juncture, I must also refer to the other maxim *salus reipublicae suprema lex*, i.e. safety of the State is the supreme law and in case of any conflict, an individual must yield to the collective interest. But, it should not be done at the cost of safety. At all times and at all quarters, sincere efforts are to be made to maintain and sustain the safety of the people. That has been spoken by the ancients when the Kings ruled and the same reigns supreme in a democratic set-up. True it is, there are exceptions, but the exceptions are to remain in the realm of exceptions only and should not be brought into play either at the whim or fancy of the executive. The purpose of saying is that the law has many a mansion and the mosaic of law covers many spectrums so that both the maxims, namely, *salus populi (est) suprema lex* and *salus reipublicae suprema lex*, can harmoniously coexist. The present case is one where there is need for nuclear energy for the welfare of the public and for other welfare of the people of India and for peaceful purpose. Definitely, the interest of the economy and the interest



of safety are to be the real concerns of a welfare State.

232. In this regard, I may usefully refer to the following observations made by this Court, though in a different context, in *State of Karnataka v. Praveen Bhai Thogadia* [(2004) 4 SCC 684 : 2004 SCC (Cri) 1387] : (SCC p. 694, para 9) "Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote the well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the Vedas, Upanishads and Puranas were said to reveal to mankind seem to be: "Love others, serve others, help ever, hurt never? and ?sarvaejanasukhinobhavantoo"."

239. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasised on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development.

240. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of ?some inconvenience?. It is not comparable to the loss caused to property.

241. I have already emphasised upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasise, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or ~~deprived of some benefit of different nature~~ relatively would come within the compartment of smaller public interest or certain inconveniences. But when it

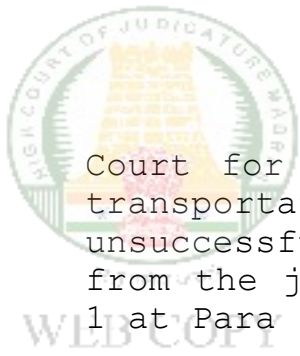


touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of some can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different."

41. Therefore, in larger interest, for the welfare of the people of the State, to protect the environment, river beds, river bodies and the field of agriculture on which thousands of farmers are thriving, the writ court found it appropriate to issue the directions referred earlier to the respondents.

43. To appreciate the directions, it is necessary to revert to the circumstances, under which the writ petition was filed. The writ petitioner contending that already there has been excess mining in the state depleting the ecology and because of the same, the natural sand is in demand and the prices have escalated. The pleadings are available in para 3 of the writ affidavit. Under the above circumstances, as the import of sand is permitted, the writ petitioner imported sand from Malaysia. However, without authority, the same was not permitted to be moved and hence the writ petition was filed. This court has already held that the writ court has rightly held that the imported sand cannot be brought within the restrictions imposed in the existing laws. The court was able to see that the actions of the State were not only in accordance with law, but also not in the interest or welfare of the State and rather are in the nature of suiting individual commercial interests. More particularly, when alternate source is available, it could be used to preserve the ecology of the state.

44. The State of Tamil Nadu has a long history of illegal mining. So far umpteen number of cases have been filed before this



Court for the release of vehicle involved in illegal mining and transportation. It is not in dispute that the state has been unsuccessful in curbing the illegal mining. It is also evident from the judgment of the Division Bench reported in 2012 (4) CTC 1 at Para 37 (V.Madhav v. Govt. of Tamil Nadu).

45. In Contempt Petition No 561/2001, My Respected Brother Justice K. Sampath had issued certain directions after observing as under:-

"19. In a disturbing article "Sandstorm under water" in 'The Hindu' dated 14-7-2002, very serious warning has been sounded that the turbulence created by dredging for sand at sea in Kerala could damage the fragile ecosystem along the coast. There also appeared a sub article about ravaged rivers. Though it is about Kerala rivers, it is as much relevant elsewhere and in particular in Tamil Nadu. The article depicts a very harrowing picture of the dangers of clandestine exploitation of river sand. In my view what is happening is not clandestine exploitation, but a bold unabashed robbery of nature's wealth.

20. Sand mining has an adverse and destructive impact. Its disastrous effect is unimaginable. It has "crippled the riverine ecology and depleted the ground water table resulting in a nascent desertification process". It has affected the stability of river banks leading to loss of whole chunks of land and making large areas flood prone. Drain channels to lakes, ponds, tanks irrigation are blocked since there is no more water. The river bed goes down far below the receive canals. It has been identified as the main reason for the water crisis. The potable nature of available drinking water is affected as the sweet water aquifers (recharger and purifier) are destroyed by quarrying. It has increased the base flow of ground water to the rivers. It also causes sea water intrusion further than usual upstream through back waters and river mouths. As enough sand does not reach the river mouths to make natural barriers along the coast, sea water and sand enter the back waters and rivers. This ultimately leads to saline intrusion into ground water. It has also seriously affected the structural stability of several bridges. River bridges and railway tracks are severely damaged by sand mining in violation of rules and lease deeds. Flooding of agricultural lands due to break in linkage between drain channels and river basins. There is destruction of Agriculture/Mangrove Eco System. Houses and buildings collapse due to erosion. The groundwater table goes down



25. There is no proper legal provision enacted by the Government to take action on illegal sand mining. Very often policies are dictated by short term considerations such as elections or partisan pressure. ecourts.gov.in/hcservices/ The rules are not scrupulously followed in the matter of grant of permit for sand quarrying. Government officials



who are supposed to check illegal sand quarrying join hands with sand smugglers.

26. Articles 48-A and 51A emphasize protection and improvement of the natural environment including forests, lakes, rivers, wildlife and other living creatures. The phrase used is 'protect and improve' which implies that the phrase appears to contemplate affirmative governmental action to improve the quality of the environment and not just to preserve the environment in its degraded form. Section 3 of the Environment (Protection) Act, 1986 contains parliamentary mandate to improve the environmental quality. The Courts are increasingly relying on these directive principles as complementary to fundamental rights."

27. "The State is a trustee of all natural resources and is under a legal duty to protect them and that the resources are meant for public use and cannot be converted into private ownership." - M.C. MEHTA VS. KAMAL NATH

28. People's Watch- Tamil Nadu is doing yeoman service in this field. There was a public hearing on the impact of sand mining under its aegis on 19-2-2002 at Chennai. It appears that there was very active public participation. I had the benefit of perusing the proceedings and I have incorporated the valuable materials I gathered from the said proceedings in this judgment.

29. SHANMUGAM, J. in W.P.Nos.10632/98 etc. by order dated 14-7-1999 directed the State Government to immediately take the following measures:

"(1) To clearly define the river bank and fix permanent marks so as to enable the clear determination of the river bank on either side in reference to all the rivers in Tamil Nadu where quarrying sand is permitted or at least the portions over which quarrying is permitted.

(2) To specify the normal sand bed level for the respective rivers and after such demarcation, to mark the level with some permanent benchmark on the river bank for the purpose of quarrying.

(3) To ban the removal or extraction of sand from such rivers where the present sand bed level is below the required level as fixed by the State.

(4) To form a river management committee or an action committee by the District Collector or the ~~transliterated~~ with the co-operation of voluntary agencies so as to ensure that sand is being collected in strict



compliance with the restriction laid down by the authorities and the rules and the lease deeds. The wastes and impurities especially those from the septic tanks should not be permitted to open into the rivers.

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(5) The encroachments are to be prohibited and existing encroachments are to be evicted summarily from the river beds.

(6) The Forest Department is to give special priority in conservation of forests at the origination point of the rivers."

30. It appears that it was only a cry in wilderness. Nothing appears to have been done. On the contrary things have gone from bad to worse. The Hindu reported about the battles between the District administration and the sand mafia. The report referred to the collapse of Karanodai Highway Bridge on Chennai-Calcutta Highway and how the Lakshmipuram Anicut across Araniar, on the northern outskirts of the city was washed away some years ago because its structure got weakened as a result of sand extraction around the Anicut. As on that day it required Rs.3 or 4 crores to build a fresh Anicut.

31. The enormity of the problem suffocates us. The apathetic and lukewarm approach of the powers that be baffles and pains us. Gide Andre lamented 'Everything has been said already but nobody is listening. We must always begin again.' Scores of Judges have said before. Their directions have not been implemented. It is a sordid commentary on the state of affairs. Still I am issuing directions to the Government in the fond hope that they will be implemented and something good may come about. These are in addition to what has been directed to be done by P. SHANMUGHAM, J. in W.P.Nos.10632/92 etc. batch already referred to.

1. The Government shall constitute a high level committee consisting of scientists, geologists and environmentalists within one month from today. The said committee shall tour the State, conduct a scientific survey with reference to sand quarrying in rivers and river beds and submit a report with particular reference to the damage caused on account of indiscriminate and illegal quarrying and spelt out suitable remedial steps to stamp out the malady, within six months thereafter.

2. On receipt of the report from the committee, the Government shall act in conformity with the guidelines and take all necessary further steps to arrest the



exploitation and to protect and improve the situation and restore status quo ante. The Government shall pass suitable regulatory legislation in this regard. The action on the part of the Government after the receipt of the report should not brook any delay. It should act fast.

In the meantime there should be a total ban on sand quarrying anywhere near motor or rail bridges - the distance between the bridges and the quarrying area should be not less than 500 metres.

The distance between the riverbank and the mining area should be not less than 10 to 15 metres. The depth of the sand pits should not exceed 1 to 1-1/2 metres.

While granting licence the local public should be taken into confidence. They should be allowed to air their views and raise their objections.

Wherever there has been violation of the terms of the grant, stringent action should be taken against the erring parties. Prosecution under Section 379 of the Indian Penal Code for theft and causing damage to public property should be launched. Severe penalties should be imposed. They should also be made to pay heavy compensation.

There should be a special river protection force mobilised for patrolling and policing the river areas and apprehending the culprits indulging in illicit quarrying. Such a force should be composed of high calibre personnel and should not fall a prey to enticements.

The officials responsible should be vested with the power to seize the vehicles involved in illicit quarrying and transport of sand. The Executive Engineer of the Assistant Executive Engineer can be vested with such powers.

The Courts at the District level may be empowered to entertain complaints of sand mining, to direct investigation, appoint commissions to inspect and report and on being satisfied direct suspension of operations.

The above are broad suggestions. There can be additions and elucidations to make the object more effective and result oriented.

No stone should be left unturned to annihilate the pernicious practice of exploitation of natural resources and to protect the long term interest of the people.



32. Under Articles 48-A and 51-A(g) it is the fundamental duty of every one of the citizens of this country to protect and improve the natural environment including forests, lakes, rivers, all other water resources and wild life and to have compassion for living creatures.....".

46. Based on the directions of the Hon'ble Court, under similar circumstances, a High Level Committee was constituted and after inspecting all the river beds, submitted a report. The relevant findings on the depletion of the rivers are given below:-

"2.2 OBSERVATIONS OF THE COMMITTEE

2.2.1 Araniyar, Kosasthalaiyar, Palar, Coovam and Vegavathi Rivers in

Tiruvallur and Kancheepuram Districts

The Kosasthalaiyar and Araniyar rivers flow mostly in Tiruvallur district. At the time of visit by the committee there were no existing quarry leases in these riverbeds. However, the committee visited the Kosasthalaiyar riverbed near Karanodai Bridge, where illicit quarrying has caused damage to the bridge. The examination of the river course clearly indicates that the width of the river has been widened due to removal of sands on both sides of the river by illicit means. The Revenue officials of that region explained that due to failure of monsoon and lack of farm work the villagers indulged in removal of sand. They projected this illicit activity as a socio-economic problem.

The committee is of the view that a realistic approach has to be evolved by the authorities concerned to tackle this socio-economic problem and stop the indiscriminate damage caused to the river by the local villagers. If this problem is not tackled urgently, the possibilities of damage to the bed and banks of Rivers and streams causing irreparable loss to environment cannot be avoided.

It is also pointed out that this socio-economic problem is exploited by antisocial elements, who encourage the villagers to remove sand illegally for transportation to the city to make profit. It is suggested that the PWD may study in detail the banks of Kosasthalaiyar River to assess the damage caused to the bank and the basin so that a comprehensive picture may evolve to tackle this



problem during the heavy monsoons.

It was also pointed out to the committee by the local people that in addition to removal of sand from the river bed, people are also engaged in active quarrying of sand in patta land adjacent to the river banks and that this removal of sand adjacent to the river banks has caused fluctuation of water level in the neighbouring wells. Even though the rule prohibits removal of sand upto 50 meters from the boundary of the river, sand is removed in the safety zone area on either side of the banks at many places along the Kosasthalaiyar river course. Moreover some lessees obtain quarry lease for brick earth in patta land, and misuse the same for removing sand occurring below the brick earth.

The committee also visited the Lakshmipuram Anaicut in Araniyar River. This anaicut was constructed in the year 1976 by Public Works Department and it collapsed in 1994 because of indiscriminate sand quarrying in the riverbed adjacent to the Anaicut by the illicit miners. Public Works Department authorities have now proposed to reconstruct the anaicut at a cost of Rs.5.50 Crores. At present no lease has been granted in Araniyar River bed. The local Public Works Department officials deposed before the committee that they are helpless and not able to do anything to stop the illicit removal of sand, as they do not have any powers to take action on such illegal activity. The local police are also reluctant to take action and advice to report the activity to the local Tahsildar and by the time action has been taken, irreparable damage has been caused. The local Tahsildar and Revenue Divisional Officer of the region explained that this illicit activity is carried out mostly during night time. They are unable to take effective steps in this regard.

The committee also examined the damage caused to Aranvoyal Anaicut near the 12/4-km stone of the Poondi-Tiruvallur highway. It is reported that this anaicut had collapsed in 1986 and was repaired by the Public Works Department, which again got damaged in 1991. The main cause for this damage is illegal quarrying and over exploitation of sand from the Coovum riverbed. Due to constant removal of sand the Coovum riverbed has lost its sand potential and the quarrying has been shifted to the patta lands adjacent to the Coovum riverbanks, where large scale illicit quarrying was observed by the committee. No action is being taken to stop this plunder, is every possibility of Poondi-Tiruvallur highway being damaged irreparably because of such illegal sand removal.



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The committee visited the sand quarries in the Cauvery bed in Namakkal district. In Manapalli village where a lease has been sanctioned in the riverbed, the area leased out only reveal exposure of rocks and pebbles. The lessee has taken this area only with a high hope to remove sand from the same riverbed in the adjacent Karur district where sand is available. The inspection of the Cauvery river basin in Trichy, Karur and Namakkal districts by the committee revealed large scale illicit removal of sand by the lessees. Well-laid roads are seen in the riverbed for removal of sand by the lessees. When the district authorities take action against the lessee for using poclain for sand removal they say that the poclain is used only for laying road and not for sand removal and the Honourable Court also permits them to use poclain for road formation. Roads inside the riverbeds should not be permitted. In the guise of laying roads in the leasehold area the lessees engage poclains and remove sand indiscriminately and illicitly from large areas.

2.2.4 Palar and Cheyyar Rivers in Tiruvannamalai and Vellore Districts

The committee visited a lease area in Cheyyar River in Anapathur. Here also road formation is seen inside the riverbed and sand is being quarried by rathole mining, which will affect the flow of water and the environment. In Panamugai village in Palar river bed, quarry operations were seen in depth beyond three to four meters exposing the bed rock. In the riverbed in many places huge ponds are formed due to illicit and deep sand quarrying thereby obstructing the free flow of water. It is also observed that the lessee is quarrying in the riverbed in the adjacent Vellore district-taking lease in Tiruvannamalai district. In Vellore district near Perumugai village indiscriminate mining of sand was noticed in Palar River in the leased area. Since there is no flow of water in the Palar river, only large ponds of water are seen in the river bed which are standing examples for exposure of groundwater table.

2.2.5 Vaigai, Vaipar, Tamiraparani, Chitrar and Nambiyar River in Madurai, Sivagangai, Thoothukkudi and Tirunelveli Districts

In Madurai sand quarry has been banned in Vaigai River. Inspite of the ban reports of illegal quarrying of sand are received on the western and southern upstream side of



the river. In Sivagangai district the committee examined an expired lease area in Kalpiravu village, in Vaigai riverbed, where illicit quarrying to a large extent is seen. The quarrying is carried out to a depth of more than one-meter thereby free flow of water in the river is hampered. There are a number of irrigation as well as water supply proposals between Silaiman and Manamadurai, in this riverbed. It is interesting to note that in Vaigai river in some areas sand is available for removal but no action has been taken because of objections from the public. Near Kirungakottai village in the same Vaigai riverbed the river has lost its face due to sand removal which has been permitted in the erstwhile Rule 39. The committee also visited the adjacent Sirugudi village wherein sand quarrying was seen in a patta land. Here the lessee has removed sand for more than 10-m depth. This large-scale removal of sand will definitely hamper the river flow since the patta land adjoins the Vaigai riverbed and thereby cause serious impairment to flow of water in the river. This in turn will cause serious damages to agriculture production downstream.

Therefore, the committee feels that in patta land adjacent to the river no quarrying should be allowed within 250m distance of river boundary on either side. In Thoothukkudi District a sand quarry lease in Vaippar riverbed near Kilnattukkurichi village was visited. The district authorities have issued show cause notice to the lessee as he has indulged in quarrying outside the leasehold area. But the Hon'ble Court has stayed orders of the District collector and permitted the lessee to continue the operation. The lessee has indulged in rathole mining and has removed sand for more than two to three meter depths in the riverbed. It was felt by the committee that number of leases have to be granted where the sand is available. This may reduce to a greater extent illegal removal of sand and also environmental degradation of the riverbed. In Tamirabarani riverbed the Committee examined the lease area where quarrying in two places were allowed near Kansapuram village. Road was constructed in the river bed with the consent of the Public Works Department authorities to remove sand. Here water is seen flowing throughout the year. Such construction of road will only obstruct the free flow of water and sand collection in the river. In this riverbed also illicit removal and unscientific mining have made the river to appear as small ponds. Near Seevalaperi in the Chitrar River, a tributary of Tamirabarani River, indiscriminate quarrying has made the river appear as an undulated terrain with large pits. Sand has been removed



to a depth of two to three meters. The river has also been widened due to indiscriminate sand removal in adjacent patta land to a depth of 3 meter. All these quarry operations are of illegal nature. Road has been formed within the riverbed for such illegal removal of sand.

The committee also examined leasehold areas in Rajakalmangalam in Nambiyar riverbed. Here the District Collector has permitted the Koodangulam atomic power project authorities to remove 8500 lorry loads of sand for their construction work. Even in this area where government agencies have been permitted to quarry sand, sand quarrying is done in haphazard manner and this has resulted in formation of pits in the river up to a depth of two to three meters. The committee asked the District Authorities to inform the Koodangulam project personal to conduct the quarrying in a scientific way so as to prevent environment degradation of the area.

2.2.6 Thenpennaiyar River in Dharmapuri District

The committee visited Irumatur village near Thenpennaiyar River, where it is reported that illicit removal of sand in the riverbed in areas within 500 meter of the TWAD board wells has caused health problems causing cholera. The examination of the area did reveal illicit mining in the areas adjacent to the TWAD board wells and this has caused depletion of sand bed and consequential seepage of polluted water. The committee is of the opinion that in all places where TWAD board has such water wells, areas around 500 meters should be handed over to TWAD, so that they can protect the area. They should be given powers to take penal action against persons engaged in illicit removal of sand from their protected area.

47. Though, the report of the committee was part of judicial pronouncements, the illegal mining was not curbed. Therefore, several petitions alleging illegal mining has been raised before this court on various occasions. In the case of M.Periyasamy Vs The State and others in W.P No 11182/2010, the Division Bench of this Court, while considering a plea to ban mining in the Tamirabarani river bed, after analyzing the pitiable condition and the rampant illegal mining, banned the mining for five years by its order dated 02/12/2010 and directed for a constitution of a state level monitoring committee to inspect the river beds in the state and only upon the inspection and recommendation of the committee, future mining can be permitted.



The usage of poclains or heavy machinery was also banned.

48. Similarly while dealing with the rampant and illegal sand mining across the cauvery river, the Division Bench of this Court in W.P No 4699/2012, by its order dated 03/08/2012 mandated that the sand quarrying can be permitted only after Environmental Impact assessment, even if the quarrying activities are done by the PWD and all the quarries in operation beyond five years were directed to be stopped and the quarries in operation for less than five years were permitted to continue for three months with certain restrictions and their continuation is subject to the order from the State Level Environment Impact Assessment Authority.

49. Recently, in a batch of writ petitions in WP (MD) No.4251 of 2017 & etc, the Madurai Bench of Madras High Court, by order dated 28.07.2017, constituted a Committee of Commissioners to inspect the quarries and report the details with regard to excavation of sands from the quarries. Accordingly, as directed by the Madurai Bench of Madras High Court, the Committee of Commissioners filed its report with conclusions, from which, it is ascertained as follows:

- The team had found during the inspection that the entire river beds riddled with pits and ponds due to indiscriminate and chaotic sand mining continuously. The illegal mining beyond the permitted boundary and depth level has not only thrived, but also flourished inspite of rigorous rules to restrict illegal mining and due to failure of monitoring mechanisms. The large scale illegal mining could not have taken place without the knowledge of all concerned who were/are part of sand mining. The natural mineral, which is the public wealth has been looted and squandered without restraint illegally.
- The irresistible conclusion of the commission is that in all the sand quarries inspected by the team, there are violations both with reference to permitted extent and depth level of sand mining. Even in the virgin quarries, the MSL level and river bed level do not correspond with the GPS measurements taken during inspection.
- The entire quarrying operation at various sites was carried out in a random and unscientific manner. The site inspection and the consequential granting of mining plan, preparing of Topo Sheet, obtaining of SEIAA clearance and sand quarrying permission have taken place mechanically without application of mind and without minimum care to comply with all the requirements under the relevant rules. The quarrying operation on ground had carried out in a most unorganized

group
human

a. The directions issued are not in the nature of legislative directions but only in exercise of power under Article 226 of the Constitution of India because of the failure of the state to protect the river beds and curb illegal sand mining which has gone beyond resurrection.

c. In the case decided by the Apex Court, the directions issued by the High Court were in the nature of legislative or policy decisions, which required amendment of the provisions. It cannot be said so in the present case as the MMDR Act, itself has issued guidelines for grant of quarry lease, when many directions issued by this Court in many instances have not been scrupulously followed and when it has been brought to the knowledge of the court about the rampant illegal mining activities and availability of alternate source of sand, directions have been issued to stop the mining activities in the state within 6 months and follow the provisions in the rules to take action against the perpetrators of illegal mining...

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that the existing laws are inadequate to deal with imported sand.

51. Insofar as the contention that the directions can be issued only by the Division Bench, this Court is not in consonance with same. The directions were issued by the Learned Single Judge in exercise of his power under Article 226 of the Constitution, which is wider even than the power of the Apex Court under Article 32. The law on this point is settled in many cases. This High Court under Article 226 of the constitution has wide powers to issue directions to not only protect the fundamental rights but also the constitutional rights. The directions issued are relating to and connected with the subject matter of lis before the court. Therefore, this Court is of the view that the learned Single Judge was well within the powers of the Court under Article 226 of the Constitution and the second question is answered in negative against the appellants.

52. Another ground that was raised is that the directions have been issued without giving opportunity to the State and lessees. This statement is fallacious for the simple reason that the Collectors on behalf of different Districts represented the State in this Writ Appeal and the learned Advocate General of the State has argued their case, not only before the Division Bench and also before the learned Single Judge. Further, the State has now issued a Government order permitting import by individuals with certain conditions. Therefore, the contention also fails.

53. Now coming to the third question, the High Courts are empowered to issue orders or directions, not only in matters relating to fundamental rights but also to protect the constitutional rights enshrined in the constitution. In that sense, the power of High Courts under Article 226 of the Constitution have been held by the Apex Court in various judgments to be superior than that of the Apex Court under Article 32 of the Constitution. Right to life and liberty is the basic fundamental right guaranteed by the constitution under Article 21. The scope of the Article has been widely interpreted by the Supreme Court in the following cases to ensure that all plausible conditions are prevalent in the society for the man kind to survive, which run thus:-

(i) Kharak Singh v. State of UP (AIR 1963 SC 1295) :
"By the term "life" as here used something more is meant than mere animal existence".

(ii) Shantistar Builders v. N.K.Toitame (1990) 1
SCC 520:
<https://hcservices.ecourts.gov.in/hcservices/>



"9. Basic needs of man have traditionally been accepted to be three—food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in."

(iii) *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549 :

"Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc."

(iv) (2003) 7 SCC 389 : 2003 SCC (Cri) 1642 at page

394:

'Environmental, ecological air and water pollution amount to violation of the right to life assured by Article 21 of the Constitution of India, 1950 (in short "the Constitution"). Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment."

54. The directive principles of the state policy are not mere guidelines. The decisions of the state are to be in consonance with the fundamental and constitutional rights. It is the duty of the state to ensure that the fundamental right to life guaranteed in the constitution is safeguarded. The maintenance of ecology by preserving the river and river beds go a long way in not only preserving them for future generations or inhabitants in the vicinity, but also will have a global impact. The mining of sand along the river-bed has drastic effects on the ecology. Though the Act and the Rules framed thereunder, permit mining, it cannot vest a perpetual right even on the state to carrying out mining. The effect and impact of mining has been a subject matter of concern throughout the world as it directly impacts the climate control. Many international conventions have addressed the issue. Many scholars have voiced their concern on the effects of mining. The Dr.V.Kumar, Controller of Examinations, Associate Professor of Geology, National College (Autonomous), Trichy has penned the impacts of sand mining on different aspects in his report as follows:-



"Effects of Physical Impact

These impacts may cause:

- 1. the undercutting and collapse of river banks,*
- 2. the loss of adjacent land and/or structures,*
- 3. upstream erosion as a result of an increase in channel slope and changes in flow velocity, and*
- 4. down erosion due to increased carrying capacity of the stream, downstream changes in patterns of deposition, and changes in channel bed and habitat type.*

Impact on Ground Water

Water quality

- Sand mining and dredging activities,*
- poorly planned stockpiling and uncontrolled dumping of overburden,*
- and chemical / fuel spills affects the adjoining groundwater system will cause*
- reduced water quality for downstream users,*
- increased cost for downstream water treatment plants*
- and poisoning of aquatic life.*

Ground Water

- Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments on these rivers dry.*
- Bed degradation from in stream mining lowers the elevation of stream flow and the floodplain water table which in turn can eliminate flow depth and a bar skimming operation increases flow width.*
- Both conditions produce slower stream flow velocities and lower flow energies, causing sediments arriving from upstream to deposit at the mining site.*
- As stream flow moves beyond the site and flow energies increase in response to the "normal" channel from downstream, the amount of transported sediment leaving the site is now less than the sediment carrying capacity of the flow.*
- This sediment-deficient flow or "hungry" water picks up more sediment from the stream reach below the mining site, furthering the bed degradation process.*
- This causes shallowing of the streambed, producing*



braided flow or subsurface inter gravel flow in riffle areas, hindering movement of fishes between pools.

Groundwater quantity

- Whenever the stream bed is lowered the water table adjacent to the rivers are also get lowered.
- Sand acts as cushion - absorb water and allow them flow laterally.
- The ground water recharge in the adjacent area of the river course is mainly by the lateral flow of water from the river. This phenomenon is application to the river flowing in plains.

Ecological Impact

These impacts may have an effect on

- the direct loss of stream reserve habitat,
- disturbances of species attached to streambed deposits,
- reduced light penetration,
- reduced primary production, and reduced feeding opportunities.

Salt Water intrusion

- Excessive instream sand-and-gravel mining causes the degradation of rivers.
- Depletion of sand in the streambed and along coastal areas causes the deepening of rivers and estuaries, and the enlargement of river mouths and coastal inlets. It may also lead to saline-water intrusion from the nearby sea.
- Excessive instream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river.
- Instream sand mining results in the destruction of aquatic and riparian habitat through large changes in the channel morphology. Impacts include bed degradation, bed coarsening, lowered water tables near the streambed, and channel instability."

Bird habitat

- Physical disturbance of the habitat caused by dredging activities includes generation of noise, which can interrupt nesting / breeding activities.

- Other effects include destruction of habitat for foraging and nesting, increased exposure to re-suspended



toxicants, human disturbance from mining operations and increased predator use of recently dredged areas.

Riparian habitat, flora and fauna

- In stream mining can have other costly effects beyond the immediate mine sites.
- Many hectares of fertile land are lost, as well as valuable timber resources and wildlife habitats in the riparian areas.
- Degraded stream habitats result in lost of fisheries productivity, biodiversity and recreational potential.
- Severely degraded channels may lower land and aesthetic values.
- All species require specific habitat conditions to ensure long-term survival.
- Factors that increase or decrease sediment supply often de-stabilize bed and banks and result in dramatic channel readjustments.
- Mining-induced changes in sediment supply and channel form disrupt channel and habitat development processes.

Biological environment

- Introduction of abnormal volumes of organic material and nutrients, thus increasing the biological oxygen demand (BOD), which in turn reduces oxygen levels and productivity;
- Reintroduction of toxic substances uncovered by mining activities;
- Inadvertent destruction of the adjacent habitat critical to the life cycles of certain organisms.
- Disruption of migratory routes of motile marine organisms."

The above report clearly spells out that the harm caused to the human lives, properties and ecology is alarmingly higher than the benefit derived out of mining, necessitating imminent remedial measures. At this juncture it is relevant to refer to the following judgments of the Apex Court, while dealing with the duty to preserve the environment, which run thus:-

(i) M.C.Mehta v. Kamal Nath and others (1997 1 SCC 388):

<https://hcservices.ecourts.gov.in/hcservices/>

15. The notion that the public has a right to expect certain lands and natural areas to retain their natural



characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled an ecological perspective on property: A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental law Review Vol. 12 1988 Page 311 in the following words:

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

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

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

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed



by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

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

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

16. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust. It was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concerns about 'the environment' bear a very close conceptual relationship to this legal doctrine. Under the Roman Law these resources were either owned by no one (*res Nullius*) or by every one in common (*Res Communis*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public Joseph L. Sax, Professor of Law, University of Michigan proponent of the Modern Public Trust Doctrine - in an erudite article "Public Trust Doctrine in natural resource law: effective judicial intervention". Michigan Law Review Vol. 68 Part-1 page 4/3 has given the historical background of the Public Trust Doctrine as under:

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"The source of modern public trust law is found in a concept that received much attention in Roman and English



1869 grant. The State of Illinois sued to quit title. The court while accepting the stand of the State of Illinois' held that the title or the State in the land in dispute was a little different in character from that which the State held in lands intended for sails. It was different from the title which the United States held in public lands which were open to preemption and sale. It was a title held in trust - for the people of the State that they may enjoy the navigation of the water, carry on commerce over them, and have liberty of fishing their in free from obstruction or interference of private parties. The addition of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor ?? court in Illinois' Central "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

19. In *Gould vs. Greylock Reservation Commission* 350 Mass 410 (1966), the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1888 a group of citizens interested in preserving Mount Greylock as a unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the licency Authority. The plaintiffs brought the suit as beneficiaries of the public trust. The court has been the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:-

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"The profit sharing feature and some aspects of the project itself strongly suggest a commercial enterprise.



21. Professor Sax in the article (Michigan Law Review) refers to Prieweys. Wisconsin State Land and Improvement Company 93 Wis 534 (1896), Crawford County Lever and Drainage district Nos. 1, 182, Wis 404, city of Milwaukee vs. State 193 Wis 423, State vs. Public Service Commission 275 Wis 112 and opines that the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and lay out a reasonable meaning for the public trust doctrine than have the courts or any other State".

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

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

23. We may at this stage refer to the judgment of the Supreme Court of California in National Audubon Society vs. Superior Court of Alpine County 33 CAL. 3d 419. The case is popularly known as "the Mono lake case", Mono lake is the second largest lake in California. the lake is saline. It contains no fish but support a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tufa on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the city of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the



ecological values of the Mono Lake were imperiled. The plaintiffs environmentalist - using the public trust doctrine - filed a law suit against Los Angeles Water Diversions, the case eventually came to the California Supreme court, on a Federal Trial Judge's request for clarification of the States public trust doctrine. the Court explained the concept of public trust doctrine in the following words:-

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

24. The Court explained the purpose of the public trust as under:-

"The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in Marks v. Whitney, supra, 6 Cal.3d 251, "[p]ublic trust easements [were] traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses- navigation, commerce and fishing-did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that "[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another. there is a growing public recognition that one of the most important public uses of the tidelands-a use encompassed within the tidelands trust-is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the secondary and climate or the area."

Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as



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



of the Mono basin.

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

27. 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.

28. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered in-



violate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The esthetic use and the pretime glory of the natural resources, the environment and the eco-systems 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 goods and in public interest to encroach upon the said resources.

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

30. This Court in *Vellore Citizens Welfare Forum v. Union of India & Ors.* JT 1996(7) S.C.375 explained the "Precautionary Principle" and "Polluters Pays principle" as under:-

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

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



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

(iii) The "Onus of proof" is on the actor or the developer/industrialist to show that this action is environmentally benign.

"The Polluter Pays" principle has been held to be a sound principle by this Court in *Indian Council for Environmental Legal Action vs. Union of India* JT 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

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

The precautionary principle and the polluter pays principle have been accepted as part of the law of the land."

(ii) M.C.Mehta v. Union of India (UOI) and others (AIR 2004 SC 4016):

"45. The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This



Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to of enjoyment of pollution-free water and air for full enjoyment of life. (See *Subhash Kumar v. State of Bihar* [AIR 1991 SC 420]).

46. Further, by 42nd Constitutional Amendment, Article 48-A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right of life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of Amicus Curiae, the appointment of experts and the appointments of monitory committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In *M.C. Mehta v. Union of India* [(1987) 4 SCC 463], this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India & Ors.* [(2000) 10 SCC 664], this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's " test. [See *Chairman Barton : The Status of the Precautionary Principle in Australia : (Vol. 22) (1998) (Harv. Envtt. Law Review, p. 509 at p.549-A)* as in *AP Pollution Control Board vs. Prof. M.V. Nayuder (Retd) & Ors.* [(1999) 2 SCC 718].



47. The mining operation is hazardous in nature. It impairs ecology and people's right of natural resources. The entire process of setting up and functioning of mining operation require utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and are likely to effect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples' life, health and property, the principles of accountability for restoration and compensation have to be applied.

50. The grant of mining lease is governed by the Mines and Minerals (Regulation and Development) Act, 1957 (for short, 'the MMRD Act) which was enacted to provide for the development and regulation of mines and minerals under the control of the Union. Section 13 is the rule making power of the Central Government. The Central Government is empowered to make rules to provide for the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any mining operation shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the mining lease. Section 18, inter alia, casts a duty upon the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by mining operations and for such purposes, the Central Government may, by notification in the official gazette, make such rules as it thinks fit.



51. The Mineral Concession Rules, 1960 have been framed by the Central Government in exercise of the powers conferred by Section 13 of the MMRD Act. Chapter IV of these Rules relate to grant of mining leases in respect of land in which the minerals vest in the Government. Rule 22(4), inter alia, provides that on receipt of the communication from the State Government of the precise areas to be granted for mining purpose, the applicant shall submit a mining plan, within the period stipulated in the Rules, to the Central Government for its approval. The applicant, on approval of the mining plan by the Central Government, shall submit the same to the State Government to grant mining lease over that area. Rule 4A, inter alia, provides that notwithstanding anything contained in Sub-rule(4), the State Government shall be competent to approve mining plan of open cost mines (mines other than underground mines) in respect of now metallic or industrial minerals, named therein, one of it being Silica sand. The mining plan, as provided in sub-rule (5) of Rule 22, shall, inter alia, incorporate the mineral reserves of the area and the plan of area showing, inter alia, water courses, limit of reserves and other forest areas and density of trees, if any, assessment of impact of mining activity on forest, land surface and environment including air and water pollution; details of the scheme of restoration of the area by afforestation, land reclamation, use of pollution control devices and such other measures as may be directed by the Central Government or the State Government from time to time. A tentative scheme of mining and annual programme and plan for excavation from year to year for five years is also required to be incorporated in the mining plan. Rule 22(5) was inserted in the Rules by notification dated 27th September, 1994 to which certain amendments were made in terms of notification dated 17th January, 2000 also inserting by same notification Rule 22(4A). Sub-rule(4) to Rule 22 ad been earlier inserted by notification dated 27th September, 1994.

52. The grant of permission for mining and approving mining plan and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving Mining Plan and Scheme by Ministry of Mines, Central Government is deemed to have approved mining and it can commence forthwith on such approval. Section 13 of the MMRD Act and the Rules made in exercise of powers under the said section, deal, inter alia, with the aspect of grant of mining of lease and not commencement of



53. Rules 31 to 41 contained in Chapter V of the Mineral Conservation and Development Rules, 1988 framed under Section 18 of the MMRD Act deal with the measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof. These Rules, inter alia, provide that every holder of a mining lease shall take all possible precautions for the protection of environment and control of pollution while conducting mining operations in the area; shall, wherever top soil exists and is to be excavated for mining operations, remove it separately and utilize for restoration or rehabilitation of the land which is no longer required for mining operations. The holder is also required to take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, salting and beneficiation or metallurgical operations shall be stored in separate dumps which shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment. Wherever possible, the waste rock, overburden etc. shall be back-filled into the mines excavation with a view to restoring the land for its original use as far as possible and wherever it is not feasible during mining operation, the waste dumps shall be suitably terraced and stabilized through vegetation or otherwise. It is also required that the phased restoration, reclamation and rehabilitation of lands affected by mining operation shall be undertaken which work shall be completed before the conclusion of mining operations and the abandonment of mine. Air pollution due to fines, dust and smoke or gaseous emissions during mining operations and related activities shall be controlled and kept within 'permissible limits' specified under various environmental laws of the country including



the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 by the holder of mining lease. Further, noise arising out of such operations shall be abated or controlled by the lessee at the source so as to keep it within the permissible limit. The mining operations shall be carried out in such a manner so as to cause least damage to the flora of the area and nearby areas. Every holder of mining lease shall take immediate measures for planting in the same area or any other area as selected by the authorized officer and not less than twice the number of trees destroyed by reason of any mining operation and look after them during the subsistence of the licence/lease and restore, to the extent possible, other flora destroyed by mining operations.

54. The aforesaid measures are not required to remain only on paper but strictly complied for the protection of environment and control of pollution as a result and consequence of mining operations."

(iii) T.N. Godavarman Thirumulpad v. Union of India (UOI) and others (AIR 2005 SC 4256):

"69. The duty to preserve natural resources in pristine purity has been highlighted in M.C. Mehta v. Kamal Nath & Ors. [(1997) 1 SCC 388]. After considering the opinion of various renowned authors and decisions rendered by other countries as well on environment and ecology, this Court held that the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land. The Court accepted the applicability of public trust doctrine and held that it was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. These natural resources have a great importance to the people as a whole that it would wholly unjustified to make them subject to private ownership. These resources being a gift of nature, should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. It was held that 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 these resources. The State as a trustee is under a legal duty to protect these natural resources. Summing up the Court said : "We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

"74. The forest policy has a statutory flavour. The non-fulfillment of aforesaid principle aim would be violative of Articles 14 and 21 of the Constitution. The basic objectives of the Forest Policy, 1988 are: "2.1 The basic objectives that should govern the National Forest Policy are the following:

-- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.

-- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.

-- Checking soil erosion and denudation in the catchment areas of rivers, lakes reservoirs in the interest of soil and water conservation, for mitigating floods and



droughts and for the retardation of silation of reservoirs.

-- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.

-- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.

-- Meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations.

-- Increasing the productivity of forests to meet essential national needs.

-- Encouraging efficient utilization of forest produce and maximum substitution of wood.

-- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimize pressure on existing forests.

2.2 The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim."

"79... Moreover, any threat to the ecology can lead to violation of right of enjoyment of healthy life guaranteed under Article 21 which is required to be protected. The Constitution of India enjoins upon this Court a duty to protect environments."

"85. Reference may also be made to report of the Planning Commission (Chapter IX) relating to forest environments in Tenth Five Year Plan (2002- 2007) which has taken note of the fact that sustainability is not an option but imperative since without it environmental deterioration and economic decline will be feeding each other leading to poverty, pollution, poor health, political upheaval and unrest. Environment cuts across all sectors of development. The rapid increase in green house gases in the atmosphere, land degradation, deteriorating conditions of fragile eco systems, deforestation, loss of biodiversity and environmental pollution have become subjects of serious global concern. The overall impact of these phenomena is likely to result in depletion of ozone layer, change of climate, rise in sea-level loss of



"91. We may also briefly refer to Public Trust doctrine and its applicability to the matters under consideration. The Public Trust Doctrine looks beyond the need of the present generation and also suggests that certain resources are invested with a special nature. It would be instructive to make a note of a story given in by Timothy Patrick Brady in Boston College Environmental Affairs Law Review, Spring 1990 under the title 'But most of it belongs to those yet to be born'. The story relates to digging of well at the time of drought. When a Frenchman told villagers of a prudent African solution of digging well, many villagers agreed but others argued that it will bring people from other villages and they would bring their cattle and that would increase the pressure on the already precious water. The Frenchman told the villagers that why not explain to them that the well is only for your own village and they can dig their own. It



was then said that 'water is not only ours, but is gift of nature from God and must be shared.' Ultimately, they concluded that it was wiser not to dig the well at all. The moral of the story is that we are trustees of natural resources which belong to all including future generation as well. The public trust doctrine has to be used to protect the right of this as also future generation."

(iv) Goa Foundation v. Union of India (UOI) and others (2014 6 SCC 590):

"41. This Court in exercise of its power under Article 32 of the Constitution can direct the State to prohibit mining activities in an area adjacent to a National Park or a Wildlife Sanctuary for the purpose of protecting the flora, fauna and wildlife habitat of the National Park/Wildlife Sanctuary because these constitute part of the natural environment necessary for healthy life of persons living in the State of Goa. The right to life under Article 21 of the Constitution is a guarantee against the State and for enforcing this fundamental right of persons the State, which alone has a right to grant mining leases of the mines located inside the State, can be directed by the Court by an appropriate writ or direction not to grant mining leases or not to allow mining that will be violative under Article 21 of the Constitution. In Re: Construction of Park at NOIDA near Okhla Bird Sanctuary [(2011) 1 SCC 744] a three-Judge Bench (Forest Bench) of this Court has observed:

"..... Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in." Thus, the submissions of learned counsel for the lessees that until a notification is issued under the Environment (Protection) Act, 1986 and the Rules made thereunder prohibiting mining activities in an area outside the boundaries of a National Park/Wildlife Sanctuary, no mining can be prohibited by this Court is misconceived."

"52. We entirely agree with the CEC report that in the absence of proper checks, verifications and controls, there is bound to be illegal mining, storage and transportation of minerals, but we find that after the CEC Report, the Goa (Prevention of Illegal Mining,



Storage and Transportation of Minerals) Rules, 2013 have been framed by the State Government under Section 23 (c) of the MMDR Act. A reading of these Rules show that several provisions have been made in these rules to prevent illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning of mineral. The rules also provide for establishment of check posts, barriers and weighbridges and inspection of minerals in transit. Moreover, these rules empower any person authorised by the Government to enter, inspect, search and seize articles. These rules will have to be strictly enforced by the State Government and we hope that by such strict enforcement of these rules, the mining, storage and transportation of minerals in the State of Goa will get controlled and regulated and the leakages and evasion of revenue will, to a large extent, be prevented."

"66. We are of the considered opinion that it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions and the decision taken by the State of Goa to grant a mining lease in a particular manner or to a particular party can be examined by way of judicial review by the Court. To quote the opinion of four Judges out of five Judges expressed by D.K. Jain J. in Natural Resources Allocation, In Re, Special Reference No.1 of 2012 (supra):

"Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above.

Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its



antimony with Article 14 of the Constitution.”

(v) State of NCT of Delhi v. Sanjay (2014 10 SCC 101):

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“55. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.

56. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting persons under the Indian Penal Code where the offences committed by persons are penal and cognizable offence.

66. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed.

67. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

(vi) Lafarge Umiam Mining Pvt. Ltd. V. Union of India (UOI) and others (2011 7 SCC 338):
<https://hcservices.ecourts.gov.in/hcservices/>



"19. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of "sustainable development". It is equally well-settled by the decision of this Court in the case of Narmada Bachao Andolan v. Union of India and Others [(2000) 10 SCC 664] that environment has different facets and care of the environment is an on-going process. These concepts rule out the formulation of across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "No Go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the Margin of Appreciation Doctrine would apply.

20. Making these choices necessitates decisions, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties require proper decision making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.

30. Time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review.

Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of



sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? 98 Thus, the court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play. Our above view is further strengthened by the decision of the Court of Appeal in the case of R v. Chester City Council reported in (2011) 1 All ER 476 (paras 14 to 16)."

(vii) M.C.Mehta v. Union of India (UOI) and others (2009 6 SCC 142):

"7....On account of extensive mining on a disproportionate scale without taking remedial measures has resulted irreversible changes in the environment at Aravalli. It is in the aforesaid background that any mining activity came to be banned under Order dated 29/30.10.2002. Even as far back as 2002, the environmental problems in the Aravalli range in Gurgaon district came to be identified. Remedial measures including pollution control guidelines and action plan for various stakeholders came to be suggested by CMPDI. Though guidelines for mining operations came to be issued by the State Government, the compliance was not there. Moreover, there was no mechanism to upgrade the mining technologies to minimize the impact due to mining in the eco-sensitive zones. CMPDI also noticed that in the Aravalli Hills a large number of activities, operations of stone crushers and deforestation had caused environmental degradation even in 2002 which is clear from para 63 of the above judgment in M.C. Mehta case (supra) and the tragedy is that despite all warnings, the mines continued their operations without Environment Management Plan. That, right from 18.3.2004, when this Court pronounced the judgment in M.C. Mehta case (supra), till date, number of Reports came to be submitted as the Court tried to balance mining activity on one hand with protection of environment on the other hand. In fact, in para 57 of the said judgment, this Court stated that so long as it is possible to undertake mining operations on the sustainable development principle, the Court should not impose a complete ban on mining as it generates revenue for the State. However, vide para 89, a warning was given



that if despite imposition of stringent conditions, the degradation of environment continuous and reaches a stage of no-return, then this Court may have to consider at a later date the closure of mining activity. This prediction has come true. The consequence is that the State now has decided to close the mining activity. Para 89 is also important from another angle. The judgment in M.C. Mehta case (supra) has left it to this Court to consider at a later date the closure of mining activity. Even in para 96(6), this Court observed that mining activity can be permitted only on the basis of sustainable development and on compliance with stringent conditions as the Aravalli Hill Range has to be protected at any cost and in case despite stringent conditions, mining results in an irreversible consequence on the ecology in the said area then at a later date the total stoppage of mining activity may have to be considered. In other words, in the judgment of this Court in M.C. Mehta case (supra) decided on 18.3.2004, a window was left open for this Court to impose complete ban on mining operations if emergent situation arises.

(a) Mining Projects:

8. Nature has endowed India with a wide variety of temperate and tropical forests. The Earth has not only provided ridges, fauna, flora to India but immense mineral treasures with great potential for economic exploitation. At the same time, our economy is facing problems on account of rising population, indiscriminate industrialization, unsustainable exploitation of natural resources etc. Mining sector is regulated by a large number of environment and forest statutes. The Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 were enacted to implement the decisions taken in United Nations Conference on Human Environment in 1972 at Stockholm. These environment and forests statutes interact with mining regulations under Mines and Minerals (Development and Regulation) Act, 1957; Mineral Concession Rules, 1960; Mineral Conservation and Development Rules, 1988. On account of depletion of the forest cover, we have the Forest (Conservation) Act, 1980, which was enacted to regulate the diversion of forest area for non-forest purposes. Similarly, under the EP Act, 1986 we have several notifications, including Environment Impact Assessment Notification 1994. At the same time, mining comes under the purview of large number of mining statutes which are required to be implemented inter alia by State Forest Departments, State Pollution Control



20. At this stage, we may also note that under Section 13 (2)(qq) of 1957 Act, Rules have been framed for rehabilitation of flora and other vegetation destroyed by reason of any prospecting or mining operations. Under Section 18 of the 1957 Act, Rules have been framed for conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling pollution caused by prospecting or mining operations which also form part of Mineral Concession Rules, 1960 and Mineral Conservation and Development Rules, 1988. Under Rule 27(1)(s)(i) of Mineral Concession Rules, 1960 every lessee is required to take measures for planting of trees not less than twice the number destroyed by mining operations. Under Mineral Conservation and Development Rules, 1988, vide Rule 34, mandatory provisions for reclamation and rehabilitation of lands are made for every holder of prospecting licence or mining lease to be undertaken and that work has to be completed by the lessee/licensee before abandoning the mine or prospect. Similarly, under Rule 37 of Mineral Conservation and Development Rules, 1988 the lessee/licensee has to calibrate the air pollution within permissible limits specified under EP Act, 1986 as well as Air (Prevention and Control of Pollution) Act, 1981. Under the said Rules 1988, the most important Guideline is Guideline No. 25.26.3, 25.26.4, 25.26.5 and 25.26.6. This Guideline deals with reclamation, planning and implementation, restoration strategy, principles of rehabilitation, rehabilitation of mined out sites and methods of reclamations. (see



Handbook of Environment & Forest Legislations, Guidelines and Procedures in India by Ravindra N. Saxena and Sangita Saxena at pp. 1555-1562). It may be noted that there are two steps to be taken in the method of reclamation, namely, technical reclamation and biological reclamation. The most important aspect of the above guideline is making of a Rehabilitation Plan.

Conclusion:

21. None of the above provisions have been complied with. In the circumstance, by the present order, we hereby suspend all mining operations in the Aravalli Hill Range falling in the State of Haryana within the area of approximately 448 sq. kms. in the Districts of Faridabad and Gurgaon including Mewat till Reclamation Plan duly certified by State of Haryana, MoEF and CEC is prepared in accordance with the above statutory provisions contained in various enactments enumerated above as well as in terms of the Rules framed thereunder and the Guidelines. The said Plan shall state what steps are needed to be taken to rehabilitate (including reclamation) followed by Status Reports on steps taken by the Authorities pursuant to the said Plan."

(viii) Association For Environment Protection Versus State Of Kerala, AIR 2013 SC 2500:

"4. Although, the Constitution of India, which was enforced on 26.1.1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48-A was inserted in Part IV of the Constitution and the State was burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, Fundamental Duties of the citizens were enumerated in the form of Article 51-A (Part-IV A). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51-A (g)].

5. The Courts in different jurisdictions have, time and again, invoked the public trust doctrine for giving judicial protection to environment, ecology and natural resources. This Court also recognized the importance of the public trust doctrine and applied the same in several cases for protecting natural resources which have been



treated as public properties and are held by the Government as trustee of the people. The judgment in *M.C. Mehta V/s. Kamal Nath* (1997) 1 SCC 388 is an important milestone in the development of new jurisprudence by the Courts in this country for protection of environment. In that judgment, the Court considered the question whether a private company running tourists resort in Kullu-Manali valley could block the flow of Beas river and create a new channel to divert the river to at least one kilometer down stream. After advertng to the theoretical and philosophical basis of the public trust doctrine and judgments in *Illinois Central Railroad Co. V/s. People of the State of Illinois*, 146 US 387; *Gould V/s. Greylock Reservation Commission* 350 Mass 410 (1966); *Sacco V/s. Development of Public Works*, 532 Mass 670; *Robbins V/s. Deptt. of Public Works* 244 NE 2d 577 and *National Audubon Society V/s. Superior Court of Alpine County* 33 Cal 3d 419, this Court observed:

"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.

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



the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

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55. From the above judgments, it is clear that the courts have stepped in to protect the environment by curbing mining activity, whenever the state has failed in its duty under Article 48 A and 51 A. Also, from the various reports referred above, it is evident that the directions and the orders of the Hon'ble Apex Court and this Court referred above have been violated and the illegal mining activity has not been curbed and the mining has been continued beyond permissible limits, resultantly, causing irreparable damage to the ecology. The scope of the doctrine of public trust has been discussed elucidated by the Apex Court in M.C Mehta's case (supra). The scope of judicial review is not limited to validity of enactments alone but would also be applicable to policy decisions when the decisions either directly or indirectly violate the fundamental rights, more so in cases where the interest of the public is at stake. If the ecology is not protected, there is no doubt that it will endanger the very existence of human life and we might not even have a future generation. Therefore, as a custodian of the fundamental rights and the constitutional rights, it is the duty of this court to ensure that environment is protected and is not subjected to degradation, when the authorities have failed. Hence, the third question is answered in affirmative.

56. Under the above circumstances, this Court is of the view that the appellants have not made out any case for interference with the order of the Learned Single Judge. Hence, the writ appeal is dismissed and the appellants are directed to strictly comply with the directions issued in W.P No 20020/2017. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Secretary,

The Union of India, Ministry of Mines,

Shastri Bhavan, Dr. Rajendra Prasad Road,

New Delhi 110 001.



2. The Secretary,
The Union of India, Ministry of Environment,
Forest and Climate Change, New Delhi.

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3. The Secretary,
The Union of India,
Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi - 110 107.

4. The Secretary,
The Union of India, Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi 110 001.

+1cc to Mr.M.MITHUN,Advocate,SR. 42977

+2cc to Mr.N.VISWANATHAN,Advocate,SR.42933

+1cc to M/S.Special Government Pleader,SR. 42809

W.A. (MD) . No.1454 of 2017
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