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Reserved on 05.12.2018

Delivered on 04.01.2019

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4820 of 2018

Petitioner :- Bharat Jhunjhunwala
Respondent :- Union Of India And 4 Others
Counsel for Petitioner :- Arun Kumar Gupta
Counsel for Respondent :- C.S.C.,A.S.G.I.,Avinash Chandra Srivastava

Hon'ble Govind Mathur,Chief Justice
Hon'ble Dr. Yogendra Kumar Srivastava,J.

(Per Hon'ble Dr. Yogendra Kumar Srivastava,J.)

1. Heard Sri Arun Kumar Gupta, learned counsel for the petitioner and Sri Shashi Prakash Singh, learned Additional Solicitor General appearing for the Union of India. The State is represented through its learned Standing Counsel.

2. The present public interest litigation has been filed under Article 226 of the Constitution of India praying for a direction commanding the respondents to consider the scientific studies and the reports submitted by the petitioner to the respondents and also the report of Wildlife Institution of India (in short 'WII') including its comments and to protect the Turtle Wildlife Sanctuary (in short 'TWS') at Kashi (Varanasi), notified as a sanctuary vide notification dated 21.12.1989 issued under Section 18 of the Wild Life (Protection) Act, 1972[1]. A further prayer has been made for an appropriate direction to the respondents not to shift the TWS upstream and to protect and stop the plying of motorboats, inland waterways vessels and ships and also stop human activities in the protected sanctuary area. The third prayer with regard to the issue pertaining to navigation of ships/vessels in the river Ganga, has not been pressed by the petitioner for the present.

1 the Act, 1972

3. The records of the case indicate that upon an earlier public interest litigation in ***Bharat Jhunjhunwala Vs. Union of India & 3 Ors.***[2] filed by the petitioner, raising similar issues with regard to the Turtle Wildlife Sanctuary, this Court vide order dated 10.01.2018 disposed of the petition in the following terms:-

> *"…... In regard thereto, the petition is disposed of granting liberty to the petitioner to supply a copy of the research paper on the protection of Turtle Wildlife Sanctuary Management within four weeks from date, in the event of the same being received by the Principal Chief Conservator of Forest Wildlife, Lucknow, we hope and trust the paper shall be considered by him or by any other authority/committee who he deems proper."*

4. Pursuant to the aforementioned order, the petitioner is said to have submitted a representation dated 07.02.2018 to the Principal Chief Conservator of Forests in Wildlife, Lucknow. Further, it has been submitted that upon seeking information under the Right to Information Act, the WII forwarded the required institution.

5. The petitioner has referred to a communication dated 16.03.2018 sent by the Principal Chief Conservator of Forests (Wildlife), UP, Lucknow to the Director Wildlife Institution, Handia, Dehradun, on the subject of review of management effectiveness of TWS, Varanasi wherein it was stated that the location of sanctuary being along the ghats of Varanasi city, the Ministry of Environment, Forest and Climate Change (Wildlife) (in short MOEF & CC) had constituted an expert team in June, 2017 to assess the ground realities in the said sanctuary and the expert team has submitted its report to the Ministry and in continuation thereof the MOEF & CC had desired that a review of the management effectiveness of the turtle sanctuary in terms of its biological, ecological and ecosystem service value, possible rationalization of the boundaries in the sanctuary to include mosaic of riverine habitat matrix may be taken at the earliest, and accordingly, it was decided to request the WII to carry out the said study.

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2 PIL No.34434 of 2017

6. A technical report entitled *"Assessment of the Wildlife Values of the Ganga River from Bijnor to Ballia including Turtle Wildlife Sanctuary, Uttar Pradesh"*, submitted by the WII, Dehradun, in July, 2018 is on record. In the report, it has been noted that out of 13 species of turtle reported from the Ganga River, only 5 species were encountered during the field sampling with the combined efforts of visual encounter surveys and in-stream sampling within the TWS and upstream and downstream of the sanctuary limit. The report notes that very low encounter of turtles in the TWS indicates high human disturbance leading to habitat alterations within a very small and protected area, and that sites along the TWS on the left bank were seen to have the least suitable habitat for turtles with high anthropogenic disturbances such as cemented ghats, intense ferry boat activity, pollution and human presence along the river.

7. The report submitted by the Wild Life Institute is based on the study period from April to May, 2018 wherein sampling was conducted for 32 days and on the basis of the same it was recorded that the capture rates for turtle species was very low indicating a low abundance of turtles in the TWS and the study showed the presence of only 5 out of 13 species of freshwater turtle and three species encountered within the TWS. The low encounter rate of turtles was attributed to poor aquatic habitat quality and high anthropogenic disturbances within the TWS.

8. The report concludes by stating that very low encounter rate of turtles in the TWS indicates high human disturbances leading to habitat alterations within a very small protected area, and sites along the TWS on the left bank were seen to have the least suitable habitat for the turtles with anthropogenic disturbances such as cemented ghats, intense ferry and boat activity, pollution and human presence along the river. Based on an overview of facts as noticed in the study it was

recommended that the stretch from downstream Newada in Allahabad District to Adalpur in Mirzapur District be considered as a conservation priority area. The report further suggests that this area may be brought under the purview of the Act, 1972 by declaring it as a wildlife sanctuary for conservation of aquatic biodiversity of the Ganga River in Uttar Pradesh. The report of the aforementioned study *"Assessment of the Wild Life Values of Ganga River from Bijnor to Ballia including Turtle Wildlife Sanctuary, Uttar Pradesh"* conducted by the WII, Dehradun was submitted to the State Government on 06.07.2018.

9. The proposal for denotification of the TWS from 940 kms to 970 kms which was submitted by the State Government was taken up at the 50th Meeting of the Standing Committee of the National Board for Wildlife held on 07.09.2018 and it highlighted the following findings of the WII study:-

> *"**50.3.12.2 De-notification of Kachhua Wildlife Sanctuary from 940 km to 970 km.**-*
>
> *x x x x x*
>
> *"Only five freshwater turtle species were encountered in TWS out of the 13 species reported from the Ganga river. Capture rates for turtle species were low in the TWS, indicating low abundance of turtles during the sampling period and high anthropogenic disturbance within TWS."*
>
> *x x x x x*
>
> *"3.1.5 very low encounter rate of turtles in TWS indicate high human disturbance leading to habitat alteration within a very small Protected Area. Sites along the TWS in left bank are seen to have least suitable habitat for turtles with high anthropogenic presence such as cemented ghats, intense ferry and boat activity, pollution and human presence along the river. The sand bar in the right bank of the sanctuary though is an excellent habitat for turtles and breeding birds, is also under severe anthropogenic pressure. Higher diversity and catch of fish species from the TWS is indicative of restriction on fishing in the sanctuary"*
>
> *x x x x x*
>
> *"it is clear from the above that 7 km stretch was observed to have high anthropogenic disturbance throughout the day and night due to motor boat and tourist activities in certain areas of the sanctuary and is ranked as 'No habitat-1'. This shows that Kacchua Wildlife*

Sanctuary has been classified into no habitat class. Hence, due to high human disturbance leading to habitat alterations within a very small protected area, Kacchua Wildlife Sanctuary is found to have least suitable habitat for turtles with high anthropogenic disturbance and aforesaid area is no longer is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment"

x x x x x

"10. Based on combined score the stretch from downstream Newada in Allahabad district to Adalpur in Mirzapur district, a total of 140 km may be considered as conservation priority area and notified as wildlife sanctuary under provision of Wildlife (Protection) Act, 1972. Since the ecological characteristics and wildlife values vary along the 140 km stretch on account of anthropogenic pressure, harmonization for excluding some areas having high anthropogenic pressures on account of intense cultural religious uses may be required and to be done by the Uttar Pradesh Forest Department.

For the purpose of identifying suitable stretch for declaring as Wildlife Sanctuary from the stretch of 140 km suggested by WII study the state government has analyzed the cumulative score of stretches and concluded that cumulative score of 3 stretches (940-950, 950-960, 960-970) comes out to be 10.36, which is highest in all the stretches. Accordingly state government concludes that;

"considering the high conservation suitability of this particular stretch of 30 km near Newada near Allahabad (940-970 km), it is considered appropriate to notify it as a Wildlife Sanctuary under the provision of Wildlife (Protection) Act, 1972 for conservation of turtles and other aquatic fauna. This would sufficiently compensate/mitigate the existing Kacchua Wildlife Sanctuary, which is only 7 km stretch length, while the aforesaid area being proposed as sanctuary would cover 30 km length in an areas which is more than 4 times and of much higher conservation value as per WII report."

10. On the basis of the aforementioned conclusions recorded in the study, the State Government analyzed the score of the stretches and concluded that the cumulative score of 3 stretches (940-950, 950-960, 960-970) was the highest and considering the high conservation suitability of the particular stretch of 30 kms near Newada in Allahabad (940-970 kms), it was considered appropriate to notify it as a wildlife sanctuary under the provisions of the Act, 1972 for conservation of turtles and other aquatic fauna. This, in the opinion of the State Government would sufficiently compensate/mitigate the existing TWS

which was only 7 kms stretch length, while the aforesaid proposed sanctuary would cover 30 kms length in an area of more than four times and of much higher conservation value as per WII report.

11. The State Board for Wild Life (in short 'SBWL') recommended the denotification of the TWS alongwith compensatory/mitigation measures, in the following terms:-

> *"(1) Kacchua Wildlife Sanctuary, Varanasi was found to be very low on the basis of different parameters for suitability. Hence the proposal for de-notification may be forwarded to MoEF&CC for approval of the standing committee of the NBWL and as per prevailing legal provisions the permission be obtained from CEC / Hon'ble Supreme Court.*
>
> *(2) Proposal for notification of 30 km (940 km to 970 km) stretch near Newada (Allahabad) as wild life sanctuary may be forwarded to MoEF&CC for approval of standing committee of NBWL and following action may also be taken simultaneously:*
>
> > *(a) The social Impact assessment of proposed Kacchua Wildlife Sanctuary will be conducted and mitigation measures would also be adopted.*
> >
> > *(b) Opinion of Chief Naval Hydrographer would also be obtained.*
> >
> > *The State Chief Wildlife Warden has recommended the proposal with following conditions:*
> >
> > *(i) Social Impact Assessment of the proposed Kacchua Wildlife Sanctuary will be conducted and mitigation measures would be adopted.*
> >
> > *(ii) Opinion of Chief Naval Hydrographer would be obtained."*

12. In view of the recommendations made by the SBWL at its meeting held on 30.08.2018, the State Government recommended the proposal for denotification of the TWS, and the same was taken up as an Agenda Item at the 50th Meeting of the NBWL held on 07.09.2018, and after discussions and noticing the recommendations made in the report based on the study by the WII, the Standing Committee decided to recommend the proposal of the State Government, and it was resolved that the State Government may proceed with the process of notification of the proposed wildlife sanctuary and denotification of existing TWS as per the prevailing instructions and relevant provisions

for the Act, 1972.

13. The petitioner seeks to raise a grievance against the proposed denotification of the turtle wildlife sanctuary from its present site at Varanasi which had been declared as a sanctuary vide notification dated 21.12.1989, and it is sought to be contended that though the report submitted by the WII has made observations with regard to human activities in the TWS at Varanasi causing adverse effect to the sanctuary, the respondents instead of protecting the sanctuary are trying to shift it and the said action is contrary to the provisions of the Act, 1972.

14. It is further sought to be contended that the proposed shifting of the sanctuary is based on non-application of mind without any adequate study with regard to the impact of the said shifting, and as such the said action is in violation of Article 14 of the Constitution of India as well as it is not in public interest.

15. Sri Shashi Prakash Singh, learned Additional Solicitor General has submitted that the proposal for shifting of the existing sanctuary is based on a study conducted by the WII, Dehradun on the request of the State Government, and it is only on the basis of the findings recorded in the aforementioned study that the proposal for shifting the sanctuary had been submitted. It was also pointed out that the State Government while submitting the proposal had referred to specific findings of the WII Study and on the basis of the same had proposed to notify the stretch of 30 kms at Newada near Allahabad (940-970 kms) as wildlife sanctuary under the provisions of the Act, 1972 for conservation of turtles and other aquatic fauna. It is submitted that the proposal is based on a scientific study made by WII, and the same is a well considered one, and as such the proposed shifting of the sanctuary suffers from no illegality.

16. Learned Standing Counsel appears for the State has adopted the

submissions made by the learned Additional Solicitor General of India.

17. We have heard the learned counsel for the parties and perused the records.

18. The factual matrix of the case lies in a narrow compass. The Act, 1972 (Act No.53 of 1972) was enacted by the Parliament to provide for the protection of wild animals, birds, plants and for matters connected therewith an ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. The Act was enforced in the State of UP on 01.02.1973 vide Gazette of India, 1973, Extra, Pt. II.

19. The scope and ambit of the Act, 1972 was considered by the Supreme Court in ***Pradeep Krishen Vs. Union of India***[3] and it was observed as follows:-

> *"**10**. We may now notice the relevant provisions of the Act. Enacted in 1972, it was a major step in the direction of protecting wildlife and birds. Hunting of various animals specified in the First Schedule to the Act is totally prohibited while hunting of certain other animals specified in Schedules II, III and IV is permitted only on licence. Under the Act, the Central Government is empowered to declare any area of adequate ecological, geomorphologies, natural or geological significance, a Sanctuary. In such Sanctuaries, public entry is barred and hunting without a licence is prohibited. The Act contemplates that a specified area can be declared a National Park. National Parks so constituted are meant for protecting, propagating and developing wildlife. Trade and commerce in wild animals, articles and products of such animals, except in specified conditions, is forbidden. Any violation of the provisions of the Act may be visited with penalties of imprisonment and fine. Several authorities have been created under the Act to give effect to the provisions intended to protect wildlife and birds. By a subsequent amendment made in 1991, specified plants have also been brought under the protective umbrella of the Act. This, broadly speaking, is the purport of the enactment.*
>
> ***11**.We may now be more specific. The Act was enacted by Parliament in pursuance of the resolution passed by the requisite number of States under Article 252 (1) of the Constitution. It was initially brought into force in those States, which included the State of Madhya Pradesh. Provision was made for extending it to other States. Section 2 contains the dictionary of the Act. Several expressions used in the Act, to wit, animals, animal article, big game, captive animal, cattle,*

3 1996 (8) SCC 599

etc., have been duly defined. We may, however, notice the definitions of the terms, National Park and Sanctuary.

> *"2. (21) 'National Park' means an area declared, whether under Section 35 or Section 38, or deemed, under sub-section (3) of Section 66, to be declared, as a National Park;*
>
> *2. (26) "sanctuary" means an area declared, whether under Section 18 or Section 38, or deemed, under sub-section (3) of Section 66, to be declared, as a wildlife sanctuary."*

Sections 3 and 4 contemplate the appointment of certain officers for carrying out the purposes of the Act. Section 6 provides for the Constitution of a Wildlife Advisory Board. Sections 7 and 8 set out the functions and duties of the Board. By the 1991 Amendment, Section 8 was amended and clause (cc) was inserted which added to the list of duties, the duty to advise the State Government in relation to the measures to be taken for harmonising the needs of tribals and other dwellers of the forest with the protection and conservation of wildlife. Chapter III deals with Hunting of Wild Animals. Chapter IV, inter alia, deals with National Parks and Sanctuaries. Section 18 empowers the State Government to declare by notification any area to be a sanctuary if the area is considered to be of adequate ecological, faunal, floral, geomorphologies, natural or zoological significance. Once a notification is issued under Section 18, Section 20 bars the accrual of new rights. Section 24 provides for the acquisition of extant rights. We may now notice the relevant part of Section 26A introduced by way of an amendment which reads as under:

> *"26A. (1) When—*
>
> *(a) a notification has been issued under Section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or*
>
> *(b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological, faunal, floral, geomorphologies, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary,*

the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be a sanctuary on and from such date as may be specified in the notification:

> *(3) No alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State."*

We may next notice the relevant part of Section 35(1) which reads thus:

> *"35(1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is by reason of its ecological,*

> *faunal, floral, geomorphologies, or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating, or developing wildlife therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park.*

x x x x x

15*. Now as pointed out earlier, since Parliament had no power to make laws for the States except as provided by Articles 249 and 250 of the Constitution, the States were required to pass resolutions under Article 252(1) to enable Parliament to enact the law. After as many as 11 States passed resolutions to that effect, the Act came to be enacted to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or incidental thereto. Even Articles 48-A and 51-A(g) inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife off the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message which we must constantly keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the expression or the context conveys otherwise, subserve and advance the aforementioned constitutional objectives. With this approach in mind we may now proceed to deal with the contentions urged by parties.*

16. *Chapter IV, inter alia, deals with Sanctuaries and National Parks. Section 18 before its amendment by Act 44 of 1991 provided that the State Government, may, by notification, declare any area to be a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphologies, natural or zoological significance for the purpose of protecting, propagating wildlife or its environment. After its amendment, it provides that the State Government may, by notification declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphologies, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment. In substance, the thrust of the Section is the same except that earlier the State Government could straightaway declare any area to be a Sanctuary by issuing a notification but under the amended section, it has to declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary. When a notification is issued under section 18, the Collector is required to entire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the Sanctuary. After such a notification is issued, no rights can be acquired in or over the land comprised within the said limits except by succession, testamentary or otherwise.*

Section 21 requires the Collector to publish the notification in the regional language in every town and village in or in the neighbourhood of the area comprised therein specifying the situation and the limits of the Sanctuary and calling upon persons claiming any right to prefer the claim before the Collector specifying the nature and extent o such right and the amount and particulars of the compensation, if any, and the claim in respect thereof. The Collector is then expected to inquire into the claim preferred by any person and pass an order admitting or rejecting the same in whole or in part. If such a claim is admitted in whole or in part, the Collector may either exclude such land from the limits of the proposed Sanctuary or proceed to acquire such rights unless the right-holder agrees to surrender his rights on payment of agreed compensation, worked out in accordance with the provisions of the Land Acquisition Act, 1894 or allow the continuance of any right of any person in or over any lad within the limits of the Sanctuary. If he decides to proceed to acquire such land or right in or over such land, he shall proceed in accordance with the provisions of the Land Acquisition Act. Section 27 bars the entry of any person other than those specified in clauses (a) to (e) thereof from entering or residing in the area of the Sanctuary except in accordance with the conditions of permit granted under Section 28, Section 26-A, which was introduced in the Act by the amending Act 44 of 1991, has already been extracted earlier. Sections 29 and 30 prohibit the destruction and setting of fire within the Sanctuary and Section 31 prohibits entry into the Sanctuary with any weapon unless specifically permitted. Section 32 bans the use of injurious substances; Section 33 provides for control of Sanctuaries; Section 34 requires registration of certain persons in possession of arms. These are the provisions which relate to Sanctuaries. Section 35, which we have extracted earlier deals with National Parks and sub-section (3) thereof provides that where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26-A (both inclusive) except clause (c) of Section 24(2) shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of right, in relation to any land in such area as they apply in the said matters in relation to any land in a Sanctuary. It will be seen from this provision that the provisions which apply in relation to investigation and determination of claims, and extinguishment of rights in the case of Sanctuaries also apply, as far as may be, in the case of National Parks."

20. The State of UP vide notification dated 21.12.1989 exercising powers granted under sub-section (1) of Section 18 declared the area spread within 7 kms near the mid-stream of Ganga River at Varanasi as Tortoise Wildlife Sanctuary, Varanasi.

21. The schedule of the notification gives the area of the proposed

wildlife sanctuary, and the same is as follows:-

''उत्तर प्रदेश सरकार
वन अनुभाग–3
संख्या:4170/14–5 62/89
लखनऊः दिनांक 21 दिसम्बर, 1989

अधिसूचना

चूँकि राज्य सरकार की राय है कि वह क्षेत्र जिसका ब्योरा नीचे दी गयी अनुसूची में दिया गया है, वन्य जीव और उनके पर्यावरण का संरक्षण, संवर्धन और विकास करने के प्रयोजन के लिए पर्याप्त पारिस्थितिक, प्राणिजात, प्राकृतिक और प्राणितत्वीय महत्व का है,

अतएव, अब, वन्य जीव (संरक्षण) अधिनियम, 1972 (अधिनियम संख्या 53 सन् 1972) की धारा 18 की उपधारा (1) के अधीन शक्ति का प्रयोग करके, राज्यपाल, वाराणसी शहर के निकट गंगा नदी की मध्य धारा के किनारे के लगभग 7 किलोमीटर पर फैले उक्त क्षेत्र को कछुआ वन्य जीव विहार, वाराणसी घोषित करते हैं।

अनुसूची

जिला	*नदी का नाम*	*प्रस्तावित वन्य जीव विहार का क्षेत्र*
वाराणसी	*गंगा*	*अपने दोनों तटों से सीमान्त गंगा नदी के मध्य धारा के किनारे का लगभग सात किलोमीटर का क्षेत्र*
सीमायें–	*उर्ध्व प्रवाह सीमा–* *अद्य प्रवाह सीमा–*	*रामनगर किला।* *मालवीय रेल एवं सड़क पुल।*

आज्ञा से,
जी0 गनेश
सचिव।''

22. For an appreciation of the rival contentions it may be necessary to refer to the relevant statutory provisions of the Act, 1972 (Act No.53 of 1972) which was enacted to provide for the protection of wild animals, birds, plants and for matters connected therewith. Chapter IV of the said Act deals with protected areas including sanctuaries. The term "sanctuary", as defined under Section 2(26), prior to the amendment of the Act, 1991, was as follows:-

*"**2. Definitions.-In this Act, unless the context otherwise requires,—***

x x x x x

26. "sanctuary" means an area declared, whether under section 18 or section 38, or deemed, under sub-section (3) of section 66, to be declared, as a wild life sanctuary."

23. Section 18, as it stood prior to the amendment made in the year

1991, was as follows:-

> *"**18. Declaration of sanctuary**.— (1) The State Government may, by notification, declare any area to be a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.*
>
> *(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation ans limits of such area."*
>
> *Explanation.—For the purposes of the this section, it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries.*

24. Section 19 requires the Collector to inquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary. For the said purpose, claims could be filed within the period specified under Section 21(b) and after the inquiry was made, the Collector could pass orders under Section 24 of the Act, 1972. The relevant provisions contained under Sections 19 and 24, prior to the amendment made in the year 1991, are as follows:-

> *"**19. Collector to determine rights**.— Whenever any area is declared to be a sanctuary, the Collector shall inquire into, and determine, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary.*
>
> *x x x x x*
>
> ***24. Acquisition of rights**.— (1) In the case of a claim to a right in or over any land referred to in section 19, the Collector shall pass an order admitting or rejecting the same in whole or in part.*
>
> *(2) If such claim is admitted in whole or in part, the Collector may either—*
>
> > *(a) exclude such land from the limits of the proposed sanctuary, or*
> >
> > *(b) proceed to acquire such land or rights, except where by an agreement between the owner of such land or the holder of rights and the Government, the owner or holder of such rights has agreed to surrender his rights to the Government, in or over such land, and payment of such compensation, as is provided in the Land Acquisition Act, 1894. (1 of 1984)"*

25. The effect of a conjoint reading of the aforementioned provisions, as they stood prior to the amendment of the year 1991, was that the sanctuary came into existence the moment the notification

under Section 18 of the Act was issued, and that the notification declaring the sanctuary was final unless and until it was altered by the order of the Collector under Section 24(2) of the Act, 1972.

26. The Wild Life (Protection) Amendment Act, 1991[4] (amending Act No.44 of 1991) brought about certain important amendments in the Act, 1972. The amendments which are relevant for the purpose of the controversy involved in the present case were the substitution of sub-section (1) of Section 18 of the Act and the enactment of a new Section 26A. The amended Section 18 and the newly inserted Section 26A read as follows:-

> *"**18. Declaration of Sanctuary**.—(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment.*
>
> *x x x x x*
>
> ***26A. Declaration of area as Sanctuary**.— (1) When—*
>
> > *(a) a notification has been issued under section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or*
> >
> > *(b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological, faunal, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment, is to be included in a sanctuary,*
>
> *the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification.*
>
> *Provided that where any part of the territorial waters is to be so included, prior concurrence of the Central Government shall be obtained by the State Government.*
>
> *Provided further that the limits of the area of the territorial waters to be included in the sanctuary shall be determined in consultation with the Chief Naval Hydrographer of the Central Government and after taking adequate measures to protect the occupational interests of the*

4 the Amendment Act, 1991

local fishermen.

(2) Notwithstanding anything contained in sub-section (1), the right of innocent passage of any vessel or boat through the territorial water shall not be affected by the notification issued under sub-section (1).

(3) No alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State."

27. The amendment made to sub-section (1) of Section 18 of the Act, 1972 and the insertion of the new Section 26A brought about a major change in the scheme of Chapter IV under the Act, 1972. As against the unamended Section 18 where the declaration of sanctuary was final, unless modified by an order under Section 24(2), under the amended sub-section (1) of Section 18, the notification made by the State Government is only a declaration of the intention to constitute any area as a sanctuary. In terms of the amendment the declaration of an area as a sanctuary is now to be made under Section 26A(1), and accordingly Section 2(26), which defines the word "sanctuary" was also amended, and in place of Section 18 in the definition reference was now made to Section 26A. Section 2(26) as stood after its amendment in the year 1991 was as follows:-

*"**2. Definitions**.—In this Act, unless the context otherwise requires.—*

x x x x x

26. "sanctuary" means an area declared, whether under section 26A or section 38, or deemed, under sub-section (3) of section 66, to be declared, as a wildlife sanctuary."

28. Sub-section (3) of Section 26A as inserted by the amending Act No.24 of 1991 provided that no alteration of boundaries of the sanctuary could be made by the State Government except on a resolution passed by the Legislature of the State.

29. The provisions contained under sub-section (3) of Section 26A of the Act, 1972 were amended in terms of the Wild Life (Protection) Amendment Act, 2002[5] (Act No.16 of 2003) and the amended sub-section (3), now reads as follows:-

---

5 the Amendment Act, 2002

> "..... *(3) No alteration of the boundaries of a sanctuary shall be made by the State Government except on a recommendation of the National Board.*"

30. The scope of the powers with regard to alteration of the boundaries of a sanctuary made under sub-section (3) of Section 26A, as it stood after the amending Act No.44 of 1991 came to be considered by the Supreme Court in the case of the ***Consumer Education and Research Society Vs. Union of India & Ors.***[6]. In the aforementioned case, the area of the "*Narayan Sarovar Chinkara Sanctuary*" which had been declared and denotified under Section 18(1) of the Act, 1972, was sought to be reduced by exercising powers under sub-section (3) of Section 26A of the Act, 1972 and a resolution to the said effect was passed by the State Legislature and thereupon the State Government had issued a notification. The said notification was put to challenge before the High Court which dismissed the writ petition, and the matter was taken to the Supreme Court where it was sought to be contended that the State Legislature had not considered all the aspects of the problem. The Supreme Court declined to quash the notification altering the boundaries of the sanctuary, and it was held as follows:-

> "***6.*** *What we find from the Debate that took place in the Assembly and the resolution is that the matter was discussed for two days, a number of objections that were raised were considered and the decision was taken in overall public interest. The following paragraph from the resolution discloses that:*
>
> > "*AND WHEREAS the State Government has considered all aspects of the problem in arriving at this conclusion. Protecting the wildlife is an article of faith for the Government and the Government does not intend to give a go-by to that commitment merely for the sake of development. At the same time the natural resources available in the area is a key to sustainable development and this is all the more so to a more backward region like Kutch which is ravaged by nature's inhospitality and which is based upon minerals and enter into an era of development and prevent famine, unemployment and migration. Kutch and its people have been neglected in the development process due to several adverse conditions. The geological explorations have revealed good deposits of certain minerals which can be the foundation for the development of Kutch. It has become necessary to make such mineral available for exploitation and with this intention and without in any way*

6 (2002) 2 SCC 599

> *diluting the commitment to protect wildlife and to improve the habitat by positive steps the Government is proposing this resolution under the provisions of Section 26-A(3) of the Wild Life (Protection) Act, 1972."*

> *We agree with Mr. Dhavan that some aspects deserved better consideration and some other relevant aspects should also have been taken into account by the State Legislature. But it will not be proper to invalidate the resolution of the State Legislature on such a ground when we find that It took the decision after duly deliberating upon the material which was available with it and did not think it necessary to call for further information. The power to take a decision for reduction of the notified area is not given to the State Government but to the State Legislature. The State Legislature consists of representatives of the people and it can be presumed that those representatives know the local areas well and are also well aware of the requirements of that area. It will not be proper to question the decision of the State Legislature in a matter of this type unless there are substantial and compelling reasons to do so. Even when it is found by the Court that the decision was taken by the State Legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the wild life and the environment."*

31. In the facts of the present case, the State Government exercising powers under sub-section (1) of Section 18 of the Act, 1972 had declared and notified the area spread within 7 kms near the mid-stream of the Ganga River at Varanasi as a Tortoise Wildlife Sanctuary. Subsequently upon a communication dated 16.03.2018 sent by the Principal Chief Conservator of Forests (Wildlife), UP, Lucknow to the Director Wildlife Institute, Dehradun, a review of the management effectiveness of the TWS at Varanasi, was sought and it was stated that the location of the sanctuary being along the ghats in Varanasi City, the MOEF & CC (Wildlife Division) had constituted an expert team in June, 2017 to assess the ground realities in the said sanctuary and the expert team had submitted its report to the Ministry and in continuation thereof the MOEF & CC had desired that a review of the management effectiveness of the turtle sanctuary in terms of its biological, ecological and ecosystem service value and also a possible rationalization of boundaries of the sanctuary to include the mosaic of

riverine habitat matrix may be taken at the earliest; accordingly, it had been decided to request the WII to carry out the said study.

32. The terms of reference of the proposed study as communicated to the WII vide letter dated 16.03.2018 of the Principal Chief Conservator of Forests (Wildlife Division), UP, Lucknow were as follows:-

> *"1. To analyze the current management practices of Kachhua Turtle Sanctuary and its effectiveness in achieving the objectives laid down in the Management Plan.*
>
> *2. To comprehensively study the ecological status of riverine habitat within existing Kachhua Turtle Sanctuary in terms of its biological, ecological and ecosystem service value and to suggest measures to augment the same.*
>
> *3. To analyze and assess the impact of expansion/rationalization of existing boundaries of the sanctuary to include mosaic of riverine habitat matrix preferably on downstream side in the interest of long terms turtle conservation and maintenance of riverine ecosystem.*
>
> *4. To suggest a better protection and management regime for the sanctuary to augment its effectiveness in meeting the objectives of its creation."*

33. The WII submitted a technical report entitled *"Assessment of the Wildlife Values of the Ganga River from Bijnor to Ballia including Turtle Wildlife Sanctuary, Uttar Pradesh"*, in July, 2018. The report specifically pointed out that out of 13 species of turtle reported from Ganga River, only 5 species were encountered during the field sampling with the combined efforts of the visual encounter surveys and in-stream sampling within the TWS and upstream and downstream of the sanctuary limit. It is also noted in the report that the sites along the TWS on the left bank were seen to have the least suitable habitat for turtles with high anthropogenic disturbances such as cemented ghats, intense ferry boat activity, pollution and human presence along the river. The report indicates that an assessment of wildlife values was conducted in the entire stretch of the River Gage falling within Uttar Pradesh and priority areas were identified through a scoring matrix based on scientific parameters. The anthropogenic influence scores

were also considered, and on the basis of the same it was recorded that in spite of the protected status the TWS scored low due to its small size and high human disturbances and based on the technical analysis it was noted that the 140 kms stretch downstream Newada and Allahabad District to Adalpur and Mirzapur District be considered as a priority stretch for conservation and it was suggested that this area may be brought under the purview of the Act, 1972.

34. Referring to the TWS which is a 7 kms section of the middle stretch of the Ganga River near Varanasi, UP between Ramnagar Fort to Malviya Bridge, the report takes note of the fact that the middle Ganga stretch is characterized by large fertile flood planes that were extensively used for agriculture, and the alteration due to agriculture, construction and sand mining had disrupted the lateral connectivity of the river. Further, it was noted that the aquatic and riverine habitat of TWS had also been disrupted by similar threats. The report also takes note of the fact that being a place of the considerable religious and cultural importance, the region was experiencing tremendous tourist pressure and also although declared a protected area, the increase in river bank and river-bed agriculture, increase in river traffic and water pollution and sewage were posing threats to the biodiversity of this section to the river. Upon a special assessment of the habitat dynamics in TWS the report takes note of the fact that the bank of the river Ganga in Varanasi is almost concretized with more than 80 ghats witnessing thousands of pilgrims everyday.

35. Based on the study period from April to May, 2018 wherein extensive sampling was conducted for 32 days, the report states that the capture rates for turtle species were very low indicating a low abundance of turtles in the TWS and the study showed the presence of only 5 out of 13 species of fresh water turtles and 3 species encountered within the TWS. Based on the aforementioned study, the

report concludes by stating that very low encounter rates for turtles in the TWS indicate high human disturbances leading to habitat alterations within a very small protected area and sites along the TWS on the left bank were seen to have the least suitable habitat for the turtles with anthropogenic disturbances such as cemented ghats, intense ferry and boat activity, pollution and human presence along the river. Upon an overview of the facts as noticed in the study, it was recommended that the stretch from downstream Newada in the Allahabad District to Adalpur at Mirzapur District be considered as a conservation priority area and may be brought under the purview of the Act, 1972 by declaring it as a wildlife sanctuary for the conservation of aquatic biodiversity of the Ganga River in Uttar Pradesh.

36. The report of the study *"Assessment of the Wildlife Values of the Ganga River from Bijnor to Ballia including Turtle Wilelife Sanctuary, Uttar Pradesh"* conducted by the WII was submitted to the State Government on 06.07.2018, and the proposal submitted on the basis thereof for denotification of the TWS from 940 kms to 970 kms was taken up at the 50th Meeting of the Standing Committee of the National Board for Wildlife held on 07.09.2018. The State Government on the basis of the conclusions recorded in the study analyzed the cumulative score of the stretches and concluded that considering the high conservation suitability of particular stretch of 30 kms at Newada near Allahabad (940-970 kms) it was proposed to notify it as a wildlife sanctuary under the provisions of the Act, 1972 for conservation of turtles and other aquatic fauna. In the opinion of the State Government, this would sufficiently compensate/mitigate the existing TWS, which was of only 7 kms stretch length, while the area being proposed would cover 30 kms length which would be more than 4 times and of much higher conservation value as per the WII Report.

37. The proposal submitted by the State Government was discussed

in the meeting of the SBWL on 30.08.2018, and recommendation was made for denotification of the TWS alongwith detailed compensatory/mitigation measures. In view of the recommendations made by SBWL the State Government recommended the proposal for denotification of the TWS and notification of the 30 kms (940-970 kms) stretch near Newada (Allahabad) as Wildlife Sanctuary. The aforementioned proposal was taken up as an Agenda Item at the 50th Meeting of the Standing Committee of the National Board for Wildlife held on 07.09.2018 and after discussions noticing the recommendations made in the report based on the study of WII the Standing Committee has resolved that the State Government may proceed with the process of notification of the proposed wildlife sanctuary and denotification of the existing TWS as per the prevailing instructions and relevant provisions of the Act, 1972.

38. The aforementioned facts clearly demonstrate that the proposed notification of the wildlife sanctuary and denotification of the existing sanctuary has been made on the basis of the report submitted by an expert team constituted by the MOEF & CC (Wildlife Division), Government of India to assess the ground realities in respect of the existing sanctuary and on the basis of the report submitted by the said Committee, the Ministry had desired a review of the management effectiveness of the TWS and for the said purpose the WII was requested to carry out a study with specific terms of reference. A detailed scientific study based on extensive sampling was conducted and the WII submitted a technical report which was then analyzed by the State Government. The SBWL, which is an expert body constituted under sub-section (1) of Section 6 of the Act, 1972 had made recommendations for denotification of the TWS alongwith compensatory/mitigation measures and in view thereof the State Government had recommended the proposal which was then taken up as an Agenda Item and a resolution for the notification of the proposed

wildlife sanctuary and denotification of the existing TWS was made by the NBWL which also is an expert body constituted under Section 5A of the Act, 1972.

39. We may at this stage also refer to the provisions contained under Sections 5A, 5B, 5C, 6 and 8 as inserted/amended by the Wild Life (Protection) Amendment Act, 2002 (Act No.16 of 2003), which provide for constitution of the National Board and its Standing Committee, functions of the National Board, constitution of the State Board for Wildlife and its duties respectively. For ease of reference the aforementioned provisions are being extracted below:-

> *"**5. Power to delegate.— x x x x x***
>
> ***5A. Constitution of the National Board for Wild Life.—**(1) The Central Government shall, within three months from the date of commencement of the Wild Life (Protection) Amendment Act, 2002, constitute the National Board for Wild Life consisting of the following members, namely:-*
>
> *(a) the Prime Minister as Chairperson;*
>
> *(b) the Minister in-charge of Forests and Wild Life as Vice-Chairperson;*
>
> *(c) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;*
>
> *(d) Member, Planning Commission in-charge of Forests and Wild Life;*
>
> *(e) five persons to represent non-governmental organisations to be nominated by the Central Government;*
>
> *(f) ten persons to be nominated by the Central Government from amongst eminent conservationists, ecologists and environmentalists;*
>
> *(g) the Secretary to the Government of India in-charge of the Ministry or Department of the Central Government dealing with Forests and Wild Life;*
>
> *(h) the Chief of the Army Staff;*
>
> *(i) the Secretary to the Government of India in-charge of the Ministry of Defence;*
>
> *(j) the Secretary to the Government of India in-charge of the Ministry of Information and Broadcasting;*
>
> *(k) the Secretary to the Government of India in-charge of the Department of Expenditure, Ministry of Finance;*
>
> *(l) the Secretary to the Government of India, Ministry of Tribal Welfare;*
>
> *(m) the Director-General of Forests in the Ministry or Department of the Central Government dealing with Forests and Wild Life;*

(n) the Director-General of Tourism, Government of India ;

(o) the Director-General, Indian Council for Forestry Research and Education, Dehradun;

(p) the Director, Wild Life Institute of India , Dehradun;

(q) the Director, Zoological Survey of India;

(r) the Director, Botanical Survey of India;

(s) the Director, Indian Veterinary Research lnstitute;

(t) the Member-Secretary, Central Zoo Authority;

(u) the Director, National Institute of Oceanography;

(v) one representative each from ten States and Union territories by rotation, to be nominated by the Central Government;

(w) the Director of Wild Life Preservation who shall be the Member-Secretary of the National Board.

(2) The term of the office of the members other than those who are members ex officio, the manner of filling vacancies referred to in clauses (e), (f) and (v) of sub-section (1), and the procedure to be followed in the discharge of their functions by the members of the National Board shall be such, as may be prescribed.

(3) The members (except members ex officio) shall be entitled to receive such allowances in respect of expenses incurred in the performance of their duties as may be prescribed.

(4) Notwithstanding anything contained in any other law for the time being in force, the office of a member of the National Board shall not be deemed to be an office of profit.]

***5B. Standing Committee of the National Board**.—(1) The National Board may, in its discretion, constitute a Standing Committee for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board.*

(2) The Standing Committee shall consist of the Vice-Chairperson, the Member-Secretary, and not more than ten members to be nominated by the Vice-Chairperson from amongst the members of the National Board.

(3) The National Board may constitute committees, sub-committees or study groups, as may be necessary, from time to time in proper discharge of the functions assigned to it.]

***5C. Functions of the National Board**.—(1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit.*

(2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for—

(a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products;

(b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;

(c) carrying out or causing to be carried out impact assessment of various projects and activities on wild life or its habitat;

(d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and

(e) preparing and publishing a status report at least once in two years on wild life in the country.

***6. Constitution of State Board for Wild Life**.—(1) The State Government shall, within a period of six months from the date of commencement of the Wild Life (Protection) Amendment Act, 2002 constitute a State Board for Wild Life consisting of the following members, namely:—*

(a) the Chief Minister of the State and in case of the Union territory, either Chief Minister or Administrator, as the case may be—Chairperson;

(b) the Minister in-charge of Forests and Wild Life—Vice-Chairperson;

(c) three members of the State Legislature or in the case of a Union territory with Legislature, two members of the Legislative Assembly of that Union territory;

(d) three persons to represent non-governmental organisations dealing with wild life to be nominated by the State Government;

(e) ten persons to be nominated by the State Government from amongst eminent conservationists, ecologists and environmentalists including at least two representatives of the Scheduled Tribes;

(f) the Secretary to the State Government or the Government of the Union territory, as the case may be, in-charge of Forests and Wild Life;

(g) the Officer in-charge of the State Forest Department;

(h) the Secretary to the State Government, Department of Tribal Welfare;

(i) the Managing Director, State Tourism Development Corporation;

(j) an officer of the State Police Department not below the rank of Inspector-General;

(k) a representative of the Armed Forces not below the rank of a Brigadier to be nominated by the Central Government;

(l) the Director, Department of Animal Husbandry of the State;

(m) the Director, Department of Fisheries of the State;

(n) an officer to be nominated by the Director, Wild Life Preservation;

(o) a representative of the Wild Life Institute of India, Dehradun;

(p) a representative of the Botanical Survey of India;

(q) a representative of the Zoological Survey of India;

(r) the Chief Wild Life Warden, who shall be the Member-Secretary.

(2) The term of office of the members other than those who are members ex officio and the manner of filling vacancies referred to in clauses (d) and (e)

of sub-section (1) and procedure to be followed shall be such, as may be prescribed.

(3) The member (except members ex officio) shall be entitled to receive such allowances in respect of expenses incurred in the performance of their duties as may be prescribed.]

x x x x x

***8. Duties of State Board for Wild Life**.—It shall be the duty of the State Board for Wild Life to advise the State Government,—*

(a) in the selection and management of areas to be declared as protected areas;

(b) in formulation of the policy for protection and conservation of the wild life and specified plants;

(c) in any matter relating to any Schedule;

(cc) in relation to the measures to be taken for harmonizing the needs of the tribals and other dwellers of the forest with the protection and conservation of wildlife; and

(d) in any other matter connected with the protection of wild life which may be referred to it by the State Government."

40. The scope of judicial review in a matter relating to a policy decision based on the view of the NBWL constituted under Section 5A of the Act, 1972 and the decision taken by the MOEF and the Central Government on the basis thereof was sought to be questioned in the case of ***Centre for Environmental Law, Wold Wide Fund-India Vs. Union of India & Ors.***[7] and the primacy of the opinion expressed by the National Board for wildlife was affirmed in the following terms:-

*"**32**. The Parliament later vide Act 16 of 2003 inserted Section 5-A w.e.f. 22-09-2003 authorising the Central Government to constitute the National Board for Wild Life (in short "NBWL"). By the same Amendment Act, Section 5-C was also introduced eliciting functions of the National Board. Section 5-B was also introduced by the aforesaid amendment authorising the National Board to constitute a Standing Committee for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board. NBWL is, therefore, the top most scientific body established to frame policies and advise the Central and State Governments on the ways and means of promoting wild life conservation and to review the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto. The Central and the State Governments cannot brush aside its opinion without any cogent or acceptable reasons. Legislation in its wisdom has conferred a duty on NBWL to provide conservation and development of wildlife and forests."*

7 (2013) 8 SCC 234

x x x x x

57*. The views of NBWL constituted by the Central Government in exercise of its powers conferred under Section 5-A of the Wildlife (Protection) Act, have to prevail over the views expressed by SBWL. The duties conferred on the National Board under Section 5-C of the Act and on the State Board under Section 8 of the Act are entirely different. NBWL has a duty to promote conservation and development of wildlife and frame policies and advise the Central Government and the State Governments on the ways and importance of promoting wildlife conservation. It has to carry out/make assessment of various projects and activities on wildlife or its habitat. NBWL has also to review from time to time the progress in the field of wildlife conservation in the country and suggest measures for improving thereto. Those functions have not been conferred on the State Board. The State Board has been conferred with a duty to advise the State Government the selection and management of areas to be declared as protected areas and advise the State Government in formation of their policies for protection and conservation of the wildlife and specify plans, etc. Statutorily, therefore, it is the duty of NBWL to promote conservation and development of wildlife with a view to ensuring ecological and environmental security in the country. We are, therefore, of the view that the various decisions taken by NBWL that Asiatic lion should have a second home to save it from extinction, due to catastrophes like epidemic, large forest fire, etc., which could result in extinction, is justified. This Court, sitting in the jurisdiction, is not justified in taking a contrary view from that of NBWL."*

41. Learned counsel for the petitioner has not been able to point out any material irregularity with regard to the procedure which has been followed with regard to the notification of the proposed wildlife sanctuary and the denotification of the existing sanctuary. Learned counsel has not been able to dispute the powers under sub-section (3) of Section 26A of the Act, 1972 whereunder the alteration of the boundaries of a sanctuary may be made by the State Government upon a recommendation of the National Board, and it is in accordance with the said powers that the alteration of the boundaries of the sanctuary earlier declared and notified in exercise of powers under sub-section (1) of Section 18 of the Act, 1972 has been proposed.

42. The Supreme Court in the case of ***Consumer Education and Research Society*** (supra) while considering the powers under sub-section (3) of Section 26A with regard to alteration of boundaries of a

wildlife sanctuary, has clearly held that it would not be proper to question the decision in a matter of this type unless there are substantial and compelling reasons to do so, and even when it is found by the Court that the decision was taken without considering all the relevant aspects it would not be prudent to invalidate the decisions unless there was material to show that it would have irreversible and adverse effect on the wildlife and the environment.

43. The scope of judicial review in the policy matters and administrative decisions, has been considered by the Apex Court in a number of cases.

44. In a public interest litigation against setting up a public project involving environmental pollution, the Government's clearance to the proposal for construction of a thermal power plant was challenged, and after going into the matter in depth and finding nothing wrong in the decision of the Government the High Court dismissed the writ petition whereupon special leave petitions were filed before the Supreme Court and reiterating the self-imposed restrictions of a court in considering such an issue, the special leave petitions were dismissed by the Supreme Court in the case of ***Dahanu Taluka Environment Protection Group & Anr. Vs. Bombay Suburban Electricity Supply Company Ltd & Ors.***[8] with the following observations:-

> *"**2**. The limitations, or more appropriately, the self-imposed restrictions of a Court in considering such an issue as this have been set out by the Court in Rural Litigation & Entitlement Kendra v. State of U.P. and Ors. 1987 (1) SCR 637 and Sachidanand Pandey v. State of W.B. The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The*

8 (1991) 2 SCC 539

> *Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored or overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision."*

45. The scope of judicial review of a policy evolved by the Government was considered before the Supreme Court in ***Federation of Railway Officers Association & Ors. Vs. Union of India***[9] wherein the decision of the Government to create new Railway Zones on the basis of recommendations made by a Railway Reforms Committee and also a study group set up for the purpose was sought to be challenged. Upholding the decision of the High Court wherein it had been held that propriety or beneficence of a policy decision of the Government was beyond domain of the Court, the Special Leave Petitions were dismissed, with the following observations:-

> *"**12**. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."*

46. In ***Essar Oil Ltd. Vs. Halar Utkarsh Samiti***[10] while considering the decision of the State Government, which had been put to challenge, granting permission under Section 29 of the Act, 1972, the law on the subject was laid down in the following terms:-

> *"**37**. Once the State Government has taken all precautions to ensure that the impact on the environment is transient and minimal, a court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. [See Shri Sachidanand Pandey v. The State of W.B. (1987) 2 SCC 295: AIR 1987 SC 1109.] Courts cannot be asked to assess the environmental impact of the pipelines on the wild life but can at least oversee that those with established*

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9 (2003) 4 SCC 289
10 (2004) 2 SCC 392

> *credentials and who have the requisite expertise have been consulted and that their recommendations have been abided by, by the State Government. If it is found that the recommendations have not been so abided by, the mere fact that large economic costs are involved should not deter the Courts from barring and if necessary, undoing the development."*

47. The ambit of judicial review of the decision making process of the Government again came up before the Supreme Court in a matter pertaining to the safety and environmental aspects of the Tehri Dam, in ***N.D. Jayal & Anr. Vs. Union of India & Ors.***[11] wherein the decision of the Government on a particular safety aspect of the dam, which was based upon a report submitted by group of experts, was sought to be questioned, and the Apex Court by its majority judgment held that the Court cannot sit in judgment over the cutting edge of scientific analysis and where the Government or the authorities concerned after due consideration of all view points and full application of mind had taken a decision it would not be appropriate for the Court to interfere and such matters must be left to the wisdom of the Government or the implementing agency, and only, if such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the Court would get in the way.

48. The relevant observations of the Supreme Court made in the aforesaid judgment are as follows:-

> *"**19**. In the present case the Government, even after the decision of this Court which did not interfere with the decision of the Government on safety aspects in Tehri Bandh Virodhi Sangarsh Samiti's case (supra) again seriously examined safety aspects as a matter of precaution. The Office Memorandum dated 1.2.1999 of the Ministry of Power, Government of India, before us testifies this position. Green signal for further works was given by the Government after satisfying itself with the safety of the dam. A mere revisit to the earlier decision cannot be counted as a sign of doubt regarding the dam safety. If the Government so desires they could have abandoned the Project. The necessity or effectiveness of conducting 3D Non- Linear Test or Dam Break Analysis were taken into account by the Government and if the Government decided not to conduct such tests upon the opinion of the expert bodies concerned, then the Court cannot advice the*

11 (2004) 9 SCC 362

> *Government to go for such tests unless malafides, arbitrariness or irrationality is attributed to that decision. The decision of the Government is not based on any financial constraints or uncertainty as to technical opinion. It was clearly of the view that the last Committee was unanimous that the Tehri Dam to be constructed is safe but the advice based on abundant caution was not accepted. As a result, we need not re-examine the safety aspects of the dam.*
>
> ***20**. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the Court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the Courts should take only a detached decision based on the pattern of the well-settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the Court will get in the way. Here the only point to consider is whether the decision-making agency took a well-informed decision or not. If the answer is "yes", then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits."*

49. The scope of a public interest litigation and the exercise of judicial review in a policy matter was considered by the Supreme Court in ***Networking of Rivers In Re.***[12] and the principles in this regard were restated in the following terms:-

> *"**74**. The abovestated principles clearly show that a greater element of mutuality and consensus needs to be built between the States and the Centre on the one hand, and the States inter se on the other. It will be very difficult for the Courts to undertake such an exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of Public Interest Litigation. A Public Interest Litigation before this Court has to fall within the contours of constitutional law, as no jurisdiction is wider than this Court's constitutional jurisdiction under Article 32 of the Constitution. The Court can hardly take unto itself tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and construction of river linking channels under that programme. The Court is not equipped to take such expert decisions and they essentially should be left for the Central Government and the State concerned. Such an attempt by the*

12 (2012) 4 SCC 51

> *Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools and expertise at its disposal."*

50. In the case of ***Jal Mahal Resorts (P) Ltd. Vs. K.P. Sharma***[13] the Supreme Court while examining the decision of the Government of Rajasthan to restore the Lake and Jal Mahal monument and declare the precinct area on a public-public partnership format observed as follows:-

> *"**137**. Although the Courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State Authorities specially if it based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the Court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. This might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers."*

51. In the case of ***Centre for a Public Interest Litigation Vs. Union of India & Ors.***[14] while considering the scope of a judicial review of a policy decision of the Government, a view was taken calling for minimal interference by the Courts in exercise of powers of judicial review of Government policy when based on deliberations of technical experts. It was held that interference with the discretion of the Government would be warranted only when found to be arbitrary, *mala fide*, based on extraneous considerations or against statutory provisions. The observations made by the Supreme Court in the said judgment are

13 (2014) 8 SCC 804
14 (2016) 6 SCC 408

being extracted below:-

> *"**21**. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In Jal Mahal Resorts (P) Ltd. v. K.P. Sharma, the Court underlined the principle in the following manner:*
>
> > *137. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592 at p. 611 has unequivocally observed that:*
> >
> > > *'41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.'*
> >
> > *138. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "Laxman rekha" while examining the correctness of an administrative decision taken by the State or a Central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed*

specially in an age of economic liberalisation wherein global players are also involved as per policy decision.

***22**. Minimal interference is called for by the courts, in exercise of judicial review of a Government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well-equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664 and reiterated in Federation of Railway Officers Assn. v. Union of India (2003) 4 SCC 289 in the following words:*

> *"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."*

***23**. Limits of the judicial review were again reiterated, pointing out the same position by the courts in England, in G. Sundarrajan v. Union of India (2013) 6 SCC 620 in the following manner:*

> *"15.1. Lord MacNaughten in Vacher & Sons Ltd. v. London Society of Compositors (1913 AC 107 : (1911-13) All ER Rep 241 (HL) has stated:*
>
> > *"... Some people may think the policy of the Act unwise and even dangerous to the community. … But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction."*
>
> *15.2. In Council of Civil Service Unions v. Minister for the Civil Service (1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL), it was held that it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy are fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety."*
>
> *15.3. This Court in M.P. Oil Extraction v. State of M.P. (1997) 7 SCC 592 held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.*
>
> *15.4. Reference may also be made of the judgments of this Court in Ugar Sugar Works Ltd. v. Delhi Admn. (2001) 3 SCC 635, Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal (2007) 8 SCC 418 and*

Delhi Bar Assn. v. Union of India (2008) 13 SCC 628.

15.5. We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement."

***24**. When it comes to the judicial review of economic policy, the Courts are more conservative as such economic policies are generally formulated by experts. Way back in the year 1978, a Bench of seven Judges of this Court in Prag Ice & Oil Mills v. Union of India (1978) 3 SCC 459 : AIR 1978 SC 1296 : 1978 Cri LJ 1281 carved out this principle in the following terms:*

"24. We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

***25**. Taking aid from the aforesaid observations of the Constitution Bench, the Court reiterated the words of caution in Peerless General Finance and Investment Co. Limited v. RBI (1992) 2SCC 343 with the following utterance:*

"31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

***26**. It cannot be doubted that the primary and central purpose of judicial review of the administrative action is to promote good administration. It is to ensure that administrative bodies act efficiently and honestly to promote the public good. They should operate in a fair, transparent, and unbiased fashion, keeping in forefront the public interest. To ensure that aforesaid dominant objectives are achieved, this Court has added new dimension to the contours of judicial review and it has undergone tremendous change in recent years. The scope of judicial review has expanded radically and it now extends well beyond the sphere of statutory powers to include diverse forms of "public" power in response to the changing*

architecture of the Government. Thus, not only has judicial review grown wider in scope; its intensity has also increased. Notwithstanding the same,

> *"it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established–for example, if the decision was reached procedurally unfair.*

***27**. The raison d'etre of discretionary power is that it promotes decision maker to respond appropriately to the demands of particular situation. When the decision-making is policy-based, judicial approach to interfere with such decision making becomes narrower. In such cases, in the first instance, it is to be examined as to whether policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy."*

52. In ***G. Sundarrajan Vs. Union of India***[15] a challenge sought to be raised regarding setting up of a nuclear power plant on grounds of safety and environmental protection was repelled by the Apex Court and it was held that fairness and reasonableness of policy and findings by experts were not amenable to judicial review and that the Courts were concerned only with the manner in which the policy decisions had been taken and unless the policy framed was absolutely capricious, unreasonable and arbitrary and based on mere *ipse dixit* of the authority or was invalid in constitutional or statutory mandate the Court's interference was not called for.

53. In the present case, as we have discussed earlier, the process for notification of the proposed sanctuary and the denotification of the existing sanctuary has been initiated on the basis of a report submitted by an expert team constituted by MOEF & CC to assess the ground realities in respect of the existing sanctuary and on the basis of the report submitted by the expert team a review of the management effectiveness of the TWS was sought and for the said purpose the WII was requested to carry out a study with specific terms of reference

15 (2013) 6 SCC 620

whereafter a detailed scientific study based on extensive sampling was conducted by the WII and a technical report was submitted which was then analyzed by the State Government. The SBWL, an expert body constituted under sub-section (1) of Section 6 of the Act, 1972 made recommendations for denotification of the TWS alongwith compensatory/mitigation measures and in view thereof the State Government recommended the proposal which was when taken up as an Agenda Item at the 50th Meeting of the Standing Committee of NBWL held on 07.09.2018, and after discussions the Standing Committee has decided to recommend the proposal of the State Government, and accordingly it was resolved that the State Government may proceed with the process of notification of the proposed wildlife sanctuary and denotification of the TWS. The proposed decision is thus based on the opinion of the experts and after following the due procedure under law and there does not appear to be any material illegality in the same.

54. On the basis of the facts of the case as available on record, the submissions of the parties and the legal position referred to above, we are of the considered view that no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India in the present public interest litigation.

55. The writ petition lacks merits and is, accordingly, **dismissed**.

56. It would, however, be open to the petitioner to submit his suggestions, if any, on the proposal in question before the authorities concerned.

Order Date :- 4.1.2019
Shahroz

(Dr. Y.K. Srivastava,J.) (Govind Mathur,C.J.)