

CONSUMER EDUCATION AND RESEARCH SOCIETY

v.

UNION OF INDIA AND ORS.

FEBRUARY 16, 2000

[G.T. NANAVATI AND S.N. PHUKAN, JJ.]

*Wild Life Protection Act, 1972 : Sections 18(1) and 26A(3).*

*Forest Area—Declaration of as "Wildlife Sanctuary—Reduction in area of sanctuary limit subsequently—Legality of.*

*State of Gujarat—Notification declaring forest area as a wildlife sanctuary—Cancellation of notification and issue of another notification whereunder only a party of the said reserved forest declared as wildlife sanctuary—Delimitation to the area of sanctuary successfully challenged before High Court—Thereafter State Legislature passed a Resolution reducing the sanctuary limit—Rest of the area made available for development of backward area of District—Consequential notification by Government—Writ challenging Resolution and Notification dismissed by High Court—Appeal before this Court—Interim order by Supreme Court permitting mining of limestone for meeting the requirements of a cement plant—Held the power to take a decision for reduction of the notified area is not given to the State Government but to the State Legislature—If an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of Prohibition in such a case—It would be proper and safer to apply the 'Principle of Protection' and the 'Principle of Polluter Pays' keeping in mind the principle of 'sustainable development' and the 'principle of inter-generation equity'—The impugned resolution and the notification do not deserve to be quashed—Proper course is to permit restricted and regulated exploitation of mineral wealth—Direction by Supreme Court—The interim order passed by this Court shall continue for a period of one year—If a need arises to carry out mining operation in a larger area that may be permitted only after obtaining an order to that effect from this Court—The State Government shall constitute a Committee to make a comprehensive study of the relevant environmental aspects and also to study the effects of the present limited mining operation permitted by this Court—It shall also study the effect*

- A of running of the cement plant set up outside the old sanctuary area—The State Government is restrained from giving permission to others to carry on any mining operation or to put up a cement plant within the area of 10 kms. from the periphery of the old sanctuary area without obtaining an order from this court—State Government shall also take steps to monitor air and water pollution in this area every three months through its officers and submit its report in that behalf—The State Government shall also submit a yearly report to this Court as regards the action taken by it.
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State Legislature—Resolution to reduce the limit of wildlife sanctuary—Validity of—Power of court to interfere with decision of State Legislature in such a matter—Held it is not 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.

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#### CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)

No. 13658 of 1996.

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From the Judgment and Order dated 11.10.95 of the Gujarat High Court in S.C.A. No. 6507 of 1995.

- Ashok Desai, Attorney General, K.N. Rawal, Altaf Ahmad, Mukul Rohatagi, Additional Solicitor Generals, Dr. Rajiv Dhawan, N.N. Goswami, Dr. Abhished Manu Singhvi, R.P. Bhatt, P. Chidambaram, Harish N. Salve, Arun Jaitley, Naresh Mathur, S.K. Dholakia, Ashok Desai, G. Ramaswamy, Bhaskar Tanna, Raju Ramachandran, Soli J. Sorabjee, Naresh Mathur, N.K. Sahool, Ms. Indoo P. Verma, Sameer Parekh, P.H. Parekh, N. Singh Rohit Mammen Alex, Ms. Hemantika Wahi, Ms. M. Kaur, Anupam Lal Das, Ms. Sandhya Rajpal, T.C. Sharma, Hemant Sharma, S.K. Dwivedi, P. Parmeswaran, Naresh Bakshi, B.V. Balram Das, Ms. Sumita Hazarika, Ms. Sunita Sharma, Anip Sachthey, Ms. Anu Sawhney, Anupam Lal, A.L. Das, Ms. Shweta Shalini, B.V. Balaram Das, H. Munshi, J.P. Pathak, Ms. Indra Sawhney, Krishna Venugopal, C.D. Singh, Ms. Bina Madhavan, Ms. Anil Katiyar, M.N. Shroff, Mihir Joshi, Ms. Mahrook Karawala, S.R. Hegde, Ms. Tanuja Sheel and Ms. Reema Bhandari for the appearing parties.
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The Judgment of the Court was delivered by

- G.T. NANAVATI, J. In this special leave petition the judgment and order passed by the High Court in Special Civil Application No. 6707 of
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1995 is challenged. The petitioner had filed the writ petition challenging the Government Notification dated 9.8.1995 and the Resolution dated 27.7.1995 passed by the State Legislature reducing the area of "Narayan Sarovar Chinkara Sanctuary" from 765.79 Sq. K.M. to 444.23 Sq. K.M. The High Court dismissed that petition. A

On 14.4.1981 the Government of Gujarat, in exercise of the powers conferred by Section 18(1) of the Wild Life Protection Act, 1972, declared a part of the forest area in Lakhpat Taluka of Kutch District as a "Wild Life Sanctuary". The total area of the sanctuary was 765.79 Sq. K.M. On 27.7.1993 it cancelled that notification and issued another whereby only a part of the said reserved forest was declared as the "Chinkara Wild Life Sanctuary". The area so declared was 94.87 Sq. K.M. The said two notifications were challenged by the petitioner by filing writ petitions in the Gujarat High Court. The High Court quashed both those notifications. The result was that the earlier notification dated 14.4.1981 was revived. Thereafter the State Government made certain inquiries and decided to delimit the area of that sanctuary as it was found to be more than required and the delimitation was likely to be helpful in systematically developing that area economically by making use of its mineral wealth. It then moved the State Legislature for passing an appropriate resolution in that behalf. The State Legislature, thereafter on 27.7.1995, passed a resolution to reduce the sanctuary limit to 444.23 Sq. K.M. and make the area of 321.56 Sq. K.M. rich with minerals like limestone, lignite, bauxite and bentonite, available for the development of the said backward area of Kutch District. The resolution was passed in exercise of the powers conferred by Section 26A(3) of the Wild Life Protection Act. Pursuant to that resolution the Government issued a notification to that effect on 9.8.1995. The petitioner again challenged those notifications by filing the writ petition. B C D E F

The High Court, after scrutinising the resolution, was of the view that "the State Legislature was quite aware about the wild life as without in any way diluting the commitment to protect wild life and to improve the habitat, positive steps are taken so neither wildlife is affected nor the improvement is affected." The High Court held that for about 1200 Chinkaras the area of 444.23 Sq. K.M. was quite sufficient. It further held that economic development of the area was likely to benefit the people of Kutch District at large and help in protection, preservation and development of flora and fauna of that area. As regards permission to set up the G H

A cement plant near that area and to do mining in the de-notified area, it held that proper conditions have been imposed for preventing pollution and to meet other environmental requirements. Taking this view it dismissed the writ petition.

B Initially an attempt was made to see if it was possible to pass an agreed order. But that attempt did not succeed. On 8.5.1997 the following interim order was passed.

C "..... without prejudice to the rights and contentions of the parties in the pending S.L.P. (C) No. 13658 of 1996, the respondent No. 6 is permitted to undertake prospective operation for the proposed lime-stone mining in respect of 500 Hec. being close to their Cement Factory in a compact block which will also be close to the boundary of the reserved sanctuary. The respondent No. 6 is permitted to carry on actual mining operation of lime-stone in any area confined to 250 Hec., on condition that the lime-stone which will be extracted by such mining operation will not be sold. Such mining operation, however, may be carried on after getting necessary permission from all concerned authorities under various Acts. The respondent No. 6 will also furnish bank guarantee of a nationalised bank for a sum of Rupees fifty lakhs, for the purpose of compensating damage to the disputed area and for meeting obligation, if any, flowing from any order that may be passed later on."

F Meanwhile, an Expert Committee of the Gujarat Government carried out the study of that area and submitted its report to the Government. On 14.5.1999 both the parties were again heard. The report submitted by the Expert Committee, an earlier report of the Wild Life Institute and the counter affidavit filed by the Central Government were considered. It was found that all the relevant aspects were not considered by the two Committees which had enquired into the matter. It was, therefore, thought proper to direct the Central Government to constitute an Expert Committee consisting of experts in different disciplines. That Committee was directed to undertake a survey of the Narayan Sarovar Sanctuary as originally notified and to consider in the light of the subsequent de-notification whether the remaining area is of adequate ecological, faunal, floral H geomorphological, natural or zoological significance for the purpose of

protecting, propagating or developing wild life and its environment.

The matter was thereafter heard on 11.1.2000, 12.1.2000, 13.1.2000 and 19.1.2000. It was submitted by Mr. Rajiv Dhawan, learned senior counsel appearing for the petitioner that the State Government had wrongly assumed and believed that the purpose of the notification dated 14.4.1981 was just to protect the Chinkaras in that area. In fact it was issued with a view to protect the eco-system also. He also submitted that the State Government did not apply its mind to all the relevant aspects, did not call for any further information and mainly relying upon the opinion of the State Government passed the impugned resolution. He also submitted that the fact that there were a large number of trees on the land which was given on lease for the purpose of setting up the cement plant was not brought to the notice of the Legislature. The Legislature was also not made aware of the condition imposed by the Union of India on 16.6.1995 that no mining be done within 25 K.M. of the original sanctuary. He further submitted that the Debate which took place in the Assembly discloses that the information which was available to the Member of the Assembly was insufficient and only because the majority of the Members so desired that the said resolution came to be passed.

What we find from the Debate that took place in the Assembly and the resolution is that the matter was discussed for two days, number of objections that was 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 nature 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 area of development and prevents 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

- A 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 diluting the commitment to protect wild life and to improve the habitat by positive steps the Government is proposing this resolution under the provisions of Section 26A(3) of the Wild Life (Protection) Act, 1972."
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- We agree with Mr. Dhawan that 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.
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- The forest in the notified and de-notified areas is an edaphic thorn forest. It is a desert forest but with a large number of trees. It has been identified as a potential site for designation as a bio-sphere reserve by an Expert Committee constituted by the Ministry of Environment and Forest. It has been put in a "Rich area category", from bio-diversity point of view, by the Gujarat Ecology Commission. Even the Union of India in its affidavit has stated that the de-notified area of the sanctuary includes many areas of high and very high floral and faunal value and these areas form integral part of the Narayan Sarovar Sanctuary. The Rapid Impact Assessment Report by the Wildlife Institute of India has also pointed out that any reduction in the area of that sanctuary will reduce the number of species of trees. It is also at the same time true, as pointed out by the Government, that this part of the Kutch District is a backward area. There is no other
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possibility of industrial development in that area, though it contains rich mineral deposits. Therefore, if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of Prohibition in such a case. The reports of the three committees only point out the ecological importance of the area and express an apprehension, that any major mining operation within the notified area and large scale industrialisation near about the sanctuary as originally notified, may adversely affect the ecological and bio-diversity of that area. It would, therefore, be proper and safer to apply the 'Principle of Protection' and the 'Principle of Polluter Pays' keeping in mind the principle of 'sustainable development' and - the 'principle of Inter-generation equity'.

For the reasons stated above, we are not inclined to accept the contention raised by Mr. Dhawan that the impugned resolution and the notification deserve to be quashed. In our opinion the proper course to be adopted in this case is to permit restricted and controlled exploitation of the mineral wealth of that area, watch its effects for a period of about five years and direct a comprehensive study of the notified and denotified area from the environmental point of view.

We, accordingly direct that (1) the interim order passed by this Court shall continue for a period of one year. If a need arises to carry out mining operation in a larger area that may be permitted only after obtaining an order to that effect from this Court; (2) the State Government shall constitute a Committee headed by a retired Judge of the Gujarat High Court and consisting of experts in the fields of hydrology, soil erosion and other related disciplines to make a comprehensive study of the relevant environmental aspects and also to study the effects of the present limited mining operation permitted by this Court. It shall also study the effect of running of the cement plant set up outside the old sanctuary area. The Committee shall, for this purpose, visit the area twice in a year, once before the monsoon and thereafter sometime after the monsoon, and submits its report to the State Government and to this Court, (3) the State Government is restrained from giving permission to others to carry on any mining operation or to put up a cement plant within the area of 10 Kms. from the periphery of the old sanctuary area without obtaining an order from this Court. The State Government shall also take steps to monitor air and water pollution in this area every three months through its officers and submit its

- A** report in that behalf. After considering the reports the State Government shall take appropriate steps for controlling and improving the same. The State Government shall also submit a yearly report to this Court as regards the action taken by it. This S.L.P. is ordered to be listed after one year for further orders. It will be open to the parties to approach this Court earlier if any clarification or modification of this order is required.

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T.N.A.

Petition is still pending