Appendix – 52

IN THE HIGH COURT OF DELHI
(Provisions of Chapter V-A, introduced by the Amending Act of 1986 to the Wild Life Act of 1972 are valid and intra vires)

Date of Decision: 20th March, 1997

1. Civil Writ Petition No. 2750/86
   R. Simon & Others Vs. Union of India & Ors.

2. Civil Writ Petition No. 3586/87
   Mysore Super Reptile Corp. Vs. Union of India & Ors.

3. Civil Writ Petition No. 819/87
   Ranbir Singh & Co. Vs. Union of India & Ors.

4. Civil Writ Petition No. 319/87
   M/s Aruna Bros. Vs. Union of India

5. Civil Writ Petition No. 2342/88
   Ali Mohd. Malik Vs. Union of India & Ors.

6. Civil Writ Petition No. 2962/87
   M/s Sarda Ram Vs. Union of India & Ors.

7. Civil Writ Petition No. 1198/87
   Lalit Mohan Bhakhory Vs. Union of India & Ors.

8. Civil Writ Petition No. 1197/87
   Atam Prakash Vs. Union of India & Ors.

9. Civil Writ Petition No. 2141/87
   Mohinder Singh Bedi Vs. Union of India & Ors.

10. Civil Writ Petition No. 1854/87
    M/s Shagoor Emporium Vs. Union of India & Ors.

11. Civil Writ Petition No. 371/87
    N.A. Mir Vs. Union of India & Ors.

12. Civil Writ Petition No. 368/87
    Mohd. Ramzan Vs. Union of India & Ors.

13. Civil Writ Petition No. 1551/87
    Yakab Sons Vs. Union of India & Ors.

14. Civil Writ Petition No. 370/87
    G.N. Mir Vs. Union of India & Ors.

15. Civil Writ Petition No. 438/87
    M/s Shaggon India Vs. Union of India & Ors.

16. Civil Writ Petition No. 2140/87
    Mohd. Ashraf Khan Vs. Union of India & Ors.

17. Civil Writ Petition No. 369/87

Fido Mohd. Raza Vs. Union of India & Ors.

18. Civil Writ Petition No. 437/87
New Kashmir Navalities Vs. Union of India & Ors.

19. Civil Writ Petition No. 207/89
M/s Bhagwan Bros. Vs. Union of India & Ors.

Appearance

Mr. D.D. Thakur, Sr. Advocate, Mr. K.K.Luthra, Sr. Advocate, Mr. Mukul Rohtagi, Sr. Advocate, with Mr. N.N. Bhatt, M. R.M. Tufail, Ms. Anuradha Dutt, Mr. Vijay Kishan, Ms. Sumbui Rizvi, Mr. S.M. Aquil, Mr. Sudhir Luthra and Mr. S.B. Sharma for the Petitioners.

Petitioners

Mr. Madan Lokur, Ms. Meera Bhatia, Ms. Nandini Ramachandran and Mr. Virender Goswami for the Union of India.
Mr. Raj Panjwani for World Wide Fund for Nature – India.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL DEV SINGH
HON'BLE MR. JUSTICE MANMOHAN SARIN

1. Whether reporters of local papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

MANMOHAN SARIN. J.:

1. These are batch of writ petitions filed by the manufactures, wholesalers and dealers engaged in retail trade of tanned, cured and finished skins of animals. Petitioners are also engaged in retail trade of articles made of skin, hereinafter referred to as the 'animals articles'.

2. The petitioners in the above writ petitions had challenged the introduction of provisions of Chapter V-A in the Wild Life (Protection) Act, 1972 by Wild Life (Protection) Amendment Act, 1986, together with notification issued thereunder as being violative of articles 19(1) (g) read with Articles 300 and 300A of the Constitution of India.

3. We are taking up C.W.P. NO. 2750/86 and C.W.P. No. 3586/87 as the lead cases.

4. In writ petition No. 2750/86, petitioner Nos. 1to 13 claim themselves to be the dealers, while petitioner Nos. 14 to 25 claim themselves to be manufacturers and petitioner Nos. 26 to 28 as wholesalers in tanned, cured and finished skins. The

petitioners claim to have applied for licences and were granted licences in various categories and claim to have carried on their business as valid licence holders. The petitioners submit that apart from those who hunt and trap the animals and do the curing and tanning, there are wholesale dealers of skins including snake skins, manufactures of these skins and articles and retail dealers of made up articles. the petitioners submit that animal articles in their trade are in two categories namely furs, which consist of coats, caps, gloves, blankets, stoles, skins and snake skin items such as bags, shoes, wallets, brief cases, Betti etc.

5. The Schedule to the act was amended in 1977 which included snake skin and the authorities stopped permission for export of snake skin. The grievance of the petitioners is with the passing of Wild Life (Protection) Amendment Act of 1986. The Government of India acting under Section 61 of the Wild Life Act of 1972 issued a notification No. 1-15/86 (WL-1)-50-859-E dated 24.11.1986, whereby almost all the items excepting a few as contained in Schedules III, IV and V have been transferred to either Schedule I or part II of Schedule II of the Act. The consequence was that every 'animal article' in which the petitioners dealt was brought within purview of Chapter VA introduced by the Amendment. As a consequence of which within two months from 25-11-1986, stocks of petitioners would be rendered un-saleable and their trade brought to a grinding halt. The Government of India vide another notification bearing No. 1-15/86 (WL-1)-50848-B dated 26-11-1986 granted exemption from the provisions of 49-B(1) and (2) of the impugned Act in favour of Bharat Leather Corporation and the State Trading Corporation. The said corporations were enabled by the notification to export animal skins even after the expiry of two months of the amending Act coming into force.

6. The petitioners case is that under the 1972 Act animals mentioned in schedule IV could be hunted and killed in accordance with the provisions of the licences issued for the said purpose. A large number of animals were lawfully killed by holders of the licences and the killing resulted in continued lawful availability of the animals skins as long as for a period of 13 years.

7. The petitioners had challenged the Amendment Act of 1986 inter alia on the following grounds: -

(i) While generally denying that preservation of Wild Life was in public interest, it was contended by petitioners that there is no nexus between the object of preservation of animal life and banning and destroying the trade/business in the animal skins and articles made therefrom. The statement in the Statement of Objects and Reasons that traders were not inclined to part with their stocks of skins so as to continue wit their clandestine and illegal activities was denied. The petitioners claimed that the prices offered by the Bharat Leather Corporation for snake skin were ridiculously low and hence the assertion of petitioners unwillingness to sell the stocks was denied.

(ii) The amendment was a colourable exercise of power, and wherein the Parliament had been misled by the State of Minister. The Parliament was made to believe that the ban on trade/business was to apply to only specified animals and not to all the animals. However, almost all the animals from schedule III and schedule IV

were deleted and brought within the purview of schedule I and part II of schedule II leaving rabbits, rats, domestic cats, etc. in schedule III and IV.

(iii) The amendment to the Act by which the holding of stocks on the expiry of the stipulated period except those retained for personal use became unlawful was assailed as confiscatory and as deprivation of property, without the authority of law. While questioning the proposition that protection of Wild Life was in general interest of public, petitioners contended that certain animals like Black Bears, Jackal and Otter were detrimental to cattle and fish etc. Similarly snakes were taken as endangering and taking a toll of human life.

(iv) The impugned Act rendered jobless the petitioners who carried on their legitimate trade, business and occupation, without any compensation. The petitioners who had lawfully acquired skin and skin articles of animals already killed and had invested huge amounts of money, were deprived of their sources of livelihood. It resulted in extinction of fundamental rights of the petitioner under Article 19(1)(g). The impugned Act was not restrictive as contemplated under Article 19(6) but completely destructive of Article 19(g). The impugned Act was not in interest of general public as the trade and business in animals skins and animal articles could not be treated as relevant i preventing the illegal trapping, killing and hunting of animals. The protection of large number of wild animals who had no utility for humans could not be said to be in public interest. Apart from violating petitioners' fundamental rights under Articles 19(1)(g), it was an arbitrary piece of legislation in as much as it had the effect of confiscation and appropriation of property without reasonable prices being paid. A large number of petitioners and other persons in the trade are deprived of their livelihood without any alternative arrangement or rehabilitation. The Act created a monopoly in favour of the State Trading Corporation and Bharat Leather Corporation to the exclusion of the petitioners.

8. Counter had been duly filed in these writ petitions. The stand of the respondents may be briefly summarized. The Amendment Act of 1986 was constitutionally invalid. It was brought about for the preservation of Wild Life. It was contended that the amendment in the schedules of Wild Life (Protection) Act, 1972 was not the first one but was the fourth one, proceeded by three amendments made on 3-9-1977, 5-10-1977 and 9-9-1980, amending the schedule to the Act. The earlier amendments were not assailed by the petitioners.

9. The protection of Wild Life is included in the directive principles of the State Policy under the 42nd Constitutional Amendment Act, 1976 under Clause G of Article 51 A of the Constitution. It is the fundamental duty of every citizen to protect and improve the natural environment including various lakes, rivers and Wild Life and to have compassion for living creatures. The contention of the petitioners that protection and preservation of wild Life was not in public interest was therefore devoid of all merit. Wild Life forms part of our cultural heritage in the same manner as other archeological monuments, painting, literature etc. Each and every animal plays a role in maintaining the ecological balance and, therefore, the contention that certain animals have no role to play or are detrimental to human life is completely misconceived. Taking the case of even jackals, which are referred to by the

petitioners as animals of no utility, these are natural scavengers who feed on offal and dead animals, thereby keeping the environment clean. Snake which have been described by some petitioners as harmful and dangerous to human life feed on rats. The mortality rate in the country due to snake bites is less than 0.0005%, which is very low compared to the death and fatalities caused by other diseases and animal bites. Snakes are the natural killers of rats which cause loss of nearly 33 million tones of stored cereals, apart from dreaded diseases such as plague. Russel Wipers and Rat snakes are known to have fascination of rats for food. The above would show that even the most maligned animals which appear apparently to be of no utility, have a role to play in retaining ecological balance. Besides, it is only when human beings tread their natural habitat that animal react. The Wild Life (Protection) Act has provisions to deal with and eliminate those animals which become harmful to human lives or properties. Thus, the argument that certain wild animals are harmful to life and serve no useful purpose is misconceived. It is to be recognized that Wild Life is an asset and heritage to be preserved for future generations.

10. The changes in the Schedule to the Act, made by the amendments, were not only confined to new species or vermins, but it included animals that were removed from one Scheduled to the other Schedule, depending upon the existing status of the species of Wild Life. The Notification under Section 61 (1), pursuant to the Amending Act dated 24-11-1986, had been made on the basis of recommendations of the specialists in the field who considered the existent state of the animals. The changes were based on the recommendations of the Indian Board for Wild Life, comprising eminent environmentalists, conservationists, scientists and important public representatives. As a result of the changes in the Schedule the petitioners would not be eligible for dealing in wild life articles that had been shifted from the Schedule IV to Part-1 and Part-2 of Schedule I and II. Undoubtedly, the preservation of wild life has a strong nexus and is related to trade in wild life articles. Despite measures, such as creation of sanctuaries and animal parks, where no hunting was permitted, and the amendments in the Schedule of Wild Life (Protection) Act, there has been a steady decline and depredation and in some cases extinction of numerous species of wild animals for exploitation in trade. This necessitated inclusion of endangered species of animals in Schedule I and Part-2 of Schedule II. Ban on hunting and trapping of wild animals had also been imposed. Despite these measures, the illegal poaching of wild animals continues for the purposes of trade, depleting the number of animals in several cases, endangering the very existence of the wild life species. The depletion in number of endangered species has a strong nexus with large scale poaching of wild life for the purposes of trade. The Wild animals and snakes required for fur and skin trade are not killed for their meat or for any other purpose but for their stocks from the traders on market rate or for payment of compensation does not arise because of the Amending Act does not provide for the acquisition of the stocks or any other property held by them. It only provides for time period within which persons holding stocks of such articles have to dispose of the said stocks and upon the expiry of the stipulated period it become an offence under Section 49-C (7) of the Wildlife (Protection) Amendment Act to retain the Wild Life articles under Schedules I and II, except those for personal bonafide use.

14. Vide a separate judgment prepared by one of us (Anil Dev Singh, J.) and delivered today by this Bench in C.W. 1016/92 with connected writ petition titled M/s Ivory Traders and Manufactures Association and others Vs. Union of India Others. The challenge to the amendment Act 44 of 1991 – whereby the trade in imported ivory and articles made therefrom – had been dismissed and the constitutional validity of the said Act and Provisions of the Wild Life (Protection) Act, 1972 have been upheld. The said judgement also noticed and considered the provisions introduced by the amendment Act of 1986 vide Chapter VA as well as Wildlife (Protection) Amendment Act, 1991. The said judgment has traced the legislative history and examined the amendments introduced in the Wild Life Act from time to time. The please and grounds on which the amendment of 1986 introducing Chapter V A as well as the amendments brought about by the amendment Act of 1991 were challenged have been considered in the said judgement, though in relation to imported Ivory at great length. as the grounds and pleas taken for challenging the provisions of the Act in the present petitions are similar, we adopt the reasoning given by us in Civil Writ Petition 1016/92, apart from the reasoning given in paragraphs 9 to 11 above.

15. The present batch of writ petitions, as stated earlier, are filled by those dealing with tanned, cured and finished skins. It would, however, be necessary to advert to certain special features of these batch of writ petitions and for this purpose, we would be referring to Civil Writ Petition No. 2750 of 1986 and Civil Writ Petition No. 3586 of 1987.

16. Apart from challenging the constitutional validity of 1986 amendment and provisions of the Wild Life Protection Act, learned counsel for the petitioners submitted that the petitioner should be permitted to dispose of their existing stocks which have been duly declared and identified by the respondents. Learned counsel for the petitioners submitted that the petitioners should either be permitted to sell their stocks to avoid the extreme hardship or in the alternative the State should acquire them at reasonable prices. In this connection, it was submitted that petitioners had always been ready and willing to dispose of the said stocks. In order to determine whether the petitioners have had a reasonable opportunity and time for disposal of their stocks, it would be worthwhile to recapitulate and trace the proceedings in the writ petition.

17. Civil Writ Petition No. 2750 of 1987 was filed on 18-12-1986 when rule was issued. The amendment Act had received the presidential assent on 23-5-1986 and notification in the Gazette was published on 25-11-1986. This Court vide interim order made on 23-1-1987 permitted the petitioners to make the declaration of stocks. The petitioners were further authorised person the stocks held by them. The provisions of the impugned Act were stayed to that extent for a period of 3 months. This interim order was extended from time to time. It also applied to certain parties who were permitted to join the petitioners. The interim directions were also given to the Government to consider renewal of licences without prejudice to the respective rights and contentions of the parties. The stay was extended from time to time and finally vide order dated 18-1-1986, interim order were directed to be continued till disposal of the writ petition. Further, vide order dated 9-2-1993, division bench of this Court vacated the stay order dated 23-1-1987, observing that the stay order passed

in respect of ivory under the same Act had already been vacated. A Special Leave Petition was filed against the said order and the Apex Curt vide order dated 26-2-1993 dismissed the Special Leave Petition. It was, however, directed that no fresh prosecution would be launched against petitioners for possession of existing stock till the writ petitions were finally disposed of. During the course of these proceedings, a Committee comprising representatives of wholesalers, retailer dealers and manufactures as well as representatives of two Corporations and independent person was constituted to assess the reasonable prices of stocks held by the petitioners. The Committee was appointed by the Government on 23-7-1987. After deliberations, the Committee submitted its report on 18-1-1988 stating that it was not possible to ascertain the reasonable prices of the tock held by the petitioners. This Court observed that no useful purpose would be served by making further attempt to explore the possibility of ascertaining and fixing the reasonable prices based on the prices of Bharat Leather Corporation, instead it expedited the hearing of the writ petitions. In the meanwhile, the prosecution of the petitioners were also stays.

18. The grievance of the petitioners had been that Bharat Leather Corporation was offering absurdly low prices and far less the prices at which it was selling the skins to other fabricators. The petitioners in writ petition No. 3586 of 1987 made a very fervent plea for being permitted to either dispose of their remaining existing stocks or the State take over the same on reasonable prices. It is claimed that Bharat Leather Corporation offered Rs. 6/-, Rs. 5/- and Rs. 3.50p. per skin for purchase from the petitioners as compared to their own selling price at Rs. 20/- and Rs. 30/- to the manufacturers from their stocks.

19. As per the petitioners their total stocks declared of whip snake skins as on 23.2.1987 was 6, 83, 270, out of which they sold 90,585 after the stay granted by the Delhi High Court. In addition, 2,95,000 skins were exported pursuant to the permission granted vide orders of the High Court of Karnataka and they were left with 2,97,685 snake skins. After taking into account the skins of other animals, such as Lizards, crocodiles, wild cat, tiger, leopard, etc. their total stock was 3,87,278. The petitioners urged that these snake skins are kept in bark tanned state in semi processed form, requiring further processing as per specifications. The processing in the tannery would be at the rate of 8000 skins per month. The petitioners also claimed that since there was hardly any domestic demand, they should be permitted to export their stocks by granting a one-time opportunity to them to export the skins.

20. Learned Counsel for the respondents opposed grant of any such opportunity, submitting that more than adequate opportunity has already been availed by the petitioners. In this connection learned counsel for the respondents submitted that past experience had clearly established that such opportunities had been misused to accumulate stocks by illegal poaching and clandestine collections. The accumulated stock rose from the estimated figure of 5,00,000 snake skins to 50,00,000 snake skins in 1978. Large scale seizure of skins by Customs Authorities that were sought to be smuggled, running into approximately 27,00,000 were detected during the years 1979 to 1983. The same was true of the fur trade. Ban was imposed export of fur articles in 1979. exemption was given to the fur traders of Jammu and Kashmir for export on receipt of numerous representations from traders. The central Government permitted the traders to export and liquidate the stocks held

by them. However, by the year 1983-84 the J&K traders had exported 60,259 articles while the request for quota was only for 45,450. By this token their stocks should have been exhausted but surprisingly the stock position as on 1-4-1984 comprised 4,41,361 skins and 64,171 articles, thereby registering an increase in the stock. The respondents, therefore, contended that the petitioners wanted to cling to their stock to accumulate more stocks and to be used as a cover for smuggling of articles.

21. As regards the allegation of the petitioners that Bharat Leather Corporation was not offering reasonable prices, it is stated that the petitioners were free to sell the said stocks during the period provided in the Statute as well as the period during which the operations of the provisions of the Act remained stayed to other authorised dealers.

22. It would be seen that from December 1986 up till 9-2-1993, the Petitioners had all the opportunity for selling and disposing of their stocks to authorised persons. Not only this, but from perusal of the reports of the Committee, it would be seen that one of the issues was whether it should attempt to fix the prices of snake skin only or of all the products and all the items of the stocks. The Bharat Leather Corporation and the State Trading Corporation in view of the provisions of 49(b)(1) and (2) wanted to confine it to purchase of stocks which could be exported and only for snake skin. The efforts of the Committee provided, futile as notices above, the petitioners had desired that the prices be fixed on the basis of international sale price of Bharat Leather Corporation while the petitioners themselves were unable to furnish requisite details of their cost of acquisition, purchase price and other relevant details. The respondent contended that there had been large scale poaching of wild life. Wild animals and snakes involved in fur and snake skin trade are not killed only for their meat or any other purpose but only for their skins, used by Fur and Snake skin traders. It had led to extinction of many species wild life all the world. The petitioners had been provided under the Act a period of two months to dispose of their stocks and as noticed above in fact as a result of petitions filed and orders passed, the petitioners have enjoyed the opportunity to sell for a period of nearly six years till February, 1993. Accordingly, the petitioners cannot have any legitimate grievance of denial of opportunity in this regard. We are of the considered view that neither the State nor the Bharat Leather Corporation and the State Trading Corporation are under any legal obligation to buy the stocks of the petitioners in acceptance of the one time sale proposition advanced by the petitioners. The petitioners are also not entitled to any further time for disposal of stocks. The stocks of the petitioners would, therefore, be liable to be dealt with in accordance with the provisions of the Wild Life (Protection) Act, 1972.

23. We hold that the provisions of Chapter V-A, introduced by the Amending Act of 1986 to the Wild Life Act of 1972 are valid and intra vires.

24. For the aforesaid reasons the writ petitions are dismissed.

Manmohan Sarin, J.
Chief Justice
Anil Dev Singh, J.
March , 1997

Appendix – 53

Act amendments of 1986, 1991 for banning trade in elephant ivory with a view to create blockade of the activities of poachers and others so that a complete prohibition in trade in ivory.

IN THE HIGH COURT OF DELHI

CIVIL WRIT PETITION NO. 1016 OF 1992
with CWP Nos. 1272/92, 1631/92, 1749/92, 1303/92 & 1964/93

Date of decision: March 20, 1997

M/s Ivory TRADERS & MANUFACTURERS- represented by Mr. D.D ASSOCIAION AND
OTHERS. Thakur, Sr. Advocate with Mr. S.B. Sharma and Mr. N. Bhat, Advocates in C.W. Nos.1016/92, 1272/92, 1631/92 and 1749/92

- Dr. A.M. Singhvi, Sr. Advocate with Mr. Shyam Moorjani and Mr. P.K. Bansal, Advocate, for the petitioners in CWP No. 1303/92.

- Dr. Rajeev Dhavan, Sr. Advocate, with Mr. V.S. Chauhan, Mr. Navneet Chaudhry, Mr. Nikhilesh Kumar and Mr. Manesh Garg, Advocate, for the petitioners in CWp No. 1964/93.

VERSUS

UNION OF INDIA AND OTHERS – represented by Mr. Madan Lokur with Ms. Nandini Ramachandran for the union of India.
Mr. Raj Panjwani, for the World Wide Fund for Nature, India.

CORAM:

Hon'ble Mr. Justice M. Jagannadha Rao, C.J.
Hon'ble Mr. Justice Anil Dev Singh
Hon'ble Mr. Justice Manmohan Sarin.

1. Whether reporters of local papers may be allowed to see the judgment?
2. Whether referred to the reporter or not?

ANIL DEV SINGH, J.:

There are two sets of writ petitions before us. In Civil Writ Petition Nos. 1016/92, 1272/92, 1749/92, 1631/92, the petitioners challenge certain amendments carried out in the Wild Life (Protection) Act, 1972 by the Amendment Act No. 44 of 1991 whereby the trade in imported ivory and articles made therefrom have been banned. In Civil Writ Petition Nos. 1303/92 and 1964/93 the grievance of the petitioners is that though they are not covered by the Wild Life (Protection) Act, 1972 and the Amendment Act No. 44 of 1991, the authorities are taking action against them for their being in possession of mammoth ivory and articles made therefrom. Besides, like Writ Petition No. 1016/92 etc. they also challenge the amendments carried out in the Wild Life (Protection) Act, 1972 by the Amendment Act No. 44 of 1991.

In so far as the first category of cases are concerned it will be convenient to deal with Writ Petition No. 1016/92 as the points raised in this writ petition and the other writ petitions, namely, CWP Nos. 1272/92, 1631/92 & 1749/92, are the same.

Writ Petition No. 1016/92:

The writ petitioners in this writ petition are mainly aggrieved by the ban imposed by the Wild Life (Protection) Amendment Act, 1991, on the trade in ivory derived from the African elephant. It is asserted by them that they only deal with ivory imported before the coming into operation of Amendment Act No. 44 of 1991. It is claimed that the first petitioner is a Society registered under the Societies Registration Act, 1860 and is an Association of persons connected with the trade and business of Ivory, including persons manufacturing articles therefrom. The second petitioner to the fourteenth petitioner are dealers in ivory. They assert that they are carrying on business and trade in ivory including the manufacture of articles derived from ivory lawfully imported into India prior to the ban and are members of the first petitioner. The fourteenth petitioner also claims to be an artisan engaged in the business of carving raw ivory. The fourteenth petitioner too claims to be an artisan. Therefore, they plead that they are person affected by the Amendment Act.

As per the prayer clause of the writ petition, the petitioners challenge sections 5(1), 27(b), 30(i), (iii), 33(b)(ii), 34, 35 and 37 of the Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991) (for short the Amendment Act) and the corresponding amendments/changes carried out in the Principal Act known as Wild Life (Protection) Act, 1972. These amendments/ changes have been affected: (1) in section 2(2); (2) by introduction of clause (c) in sub-section (1) of Sec. 39; (3) by omission of clause (ia) from sub-section (1) of section 44; (4) by replacement of second proviso to section 44; (5) by insertion of sub-clause (iii) in clause (c) of section 49A; (6) by introduction of sub-clause (ia) in clause (a) of sub-section (1) of section 49B; (7) in section 49C(7); and (8) in section 51 of the Principal Act. The petitioner find serious fault with sections 49A(c)(iii) & 49B(1)(a)(ia) of the Principal Act as introduced by sections 33 ad 34 of the Amendment Act which have the effect of banning trade in ivory imported into Indian or articles derived therefrom. According to the petitioners such a ban is violative of articles 19(1)(g), 14 and 300A of the constitution of India. The further grievance of the petitioners is that they cannot even retain the possession and control of the ivory lawfully imported by them and articles

made or derived therefrom as the same has been made an offence under section 51 of the Act read with section 49C(7) thereof. According to the petitioners the ban is unreasonable, unfair and arbitrary.

Writ Petition Nos. 1303/92 & 1964/93:
The petitioner in Writ Petition No. 1303/92 is a dealer and manufacturer of jewellery. It is claimed that the petitioner imported part of his stock of mammoth ivory from Russia and part of it from Hongkong for the purposes of his business. It is further asserted that ivory derived from mammoth, an extinct species of wild animal, and ivory derived from elephants cannot be treated at par or on the same footing as both are different from each other and can be distinguished. The petitioners in Writ Petition No. 1964/93 claim to be carvers of mammoth ivory.

In so far as the two instant petitions are concerned, the points raised in these writ petitions regarding the validity of the Amendment Act 44 of 1991 are similar to the other writ petitions mentioned above. However, the only point of distinction between these writ petitions and the other writ petitions is that the petitioners claim that mammoth ivory in which they are dealing in is not covered by the provisions of the Act. It is stated in the writ petitions that mammoth ivory is derived from an extinct species of elephant and actually it is a fossil ivory and cannot be considered to be ivory at all for the purposes of the Act. The petitioners, however, do not deny that mammoth ivory is imported from abroad.

Mr. D.D. Thakur, learned senior counsel appearing for the petitioners in C.W.P. Nos. 1016/92, 1272/92, 1631/92 and 1749/92 reiterated the challenge laid in the writ petitions to the constitutionality of the amendments effected in the Principal Act by the Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991) to the extent of the ban imposed on trade in imported ivory acquired prior to the Amendment Act No. 44 of 1991. Learned counsel contended that the restriction is unreasonable, unfair and arbitrary and violates the fundamental rights of the petitioners under Articles 14 and 19(1)(g) of the Constitution. Besides, it was submitted that the amendment Act extinguishes the title of the petitioners over the imported ivory lawfully acquired by them and articles made therefrom without making any provision for compensation therefore. The point raised by the learned counsel with great emphasis was that the petitioners should be allowed to sell their stocks of ivory and products derived therefrom and the Government should buy the same. He also canvassed that reasons for not permitting the sale of imported ivory acquired prior to the ban has no nexus with the object sought to be achieved by the Act. He further submitted that there was no link between elephants in the remote forests of India and the sales of imported ivory or articles made therefrom in the show rooms of the petitioners in the cities. Learned counsel contended that the functionaries of the wild life department of the concerned States can prevent illegal hunting of elephants and there is no good reason to ban the sale of imported ivory and articles made therefrom.

DR. Singhvi appearing in writ Petition No. 1303/92 and Dr. Rajeev Dhavan appearing in Writ Petition No. 1964/93 reiterated the submission made by learned counsel in Writ Petition Nos. 1016/92, 1272/92, 1631/92 and 1749/92. Besides, they submitted that the petitioners trade only in imported fossil ivory and

article manufactured therefrom. Thy contended that the Parliament is not competent to legislate in regard to remnants of ivory belonging to long extinct Mammoth imported from abroad – and actually the Act does not deal with this kind of ivory at all. According to the learned counsel, the Act only covers elephant ivory and articles made therefrom. They further canvassed that Elephant ivory and mammoth ivory are of different types and can be distinguished from each other. Learned counsel also submitted that since Mammoth ivory is outside the scope and ambit of the Act, the authorities created by the Act cannot ask the petitioners to comply with the provisions thereof and to handover the stocks of mammoth ivory and articles made therefrom to them. In a nutshell the submission of learned counsel is that the mammoth ivory in the possession of the petitioners is free from the provisions and restraints of the Act.

On the other hand, Mr. Madan Lokur, learned counsel for the respondent/Union of Indian and Mr. Raj Panjwani, learned counsel for the World Wide Fund for Nature – India, submitted that the impugned legislation was enacted to provide protection to wild life and it must be viewed in that perspective. They further submitted that the necessity of protection and conservation of wild life is essential for the very existence of human life. According to the learned counsel trade in wild life is skin to trade in liquor or any other noxious trade and does not have the protection of either Article 14 or 19(1)(g). According to the learned counsel, trade in wild life is antithetic to conservation and therefore, it is noxious and also threatens the very survival of human beings as existence of different life forms are dependent for their survival on each other. Mr. Lokur, learned counsel, pleaded that the restrictions were reasonable and necessary in public interest and the provisions were meant to give effect to the directive principles of the State policy. He pointed out that since African elephant was included in Appendix “1” of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (for short ‘CITES’) with effect from January 18, 1990, member States including Indian prohibited internal and trans border trade in ivory. commenting upon the legislative measures taken in this country, he pointed out that the Parliament in order to save the Indian Elephant and to give effect to the International treaty enacted the Amendment Act (Act No. 44 of 1991)

Learned counsel argued that the petitioners should have liquidated their stocks between 1989, when the African Elephant was proposed to be brought in Appendix ‘I’ of CITES and within six months of the passing of the Amendment Act 44 of 1991. He also submitted that as a result of the interim stay granted by this Court, which was operative upto July 7, 1992, the petitioners had sufficient time to liquidate the stocks but they did not do so and on the contrary kept augmenting the same. He further canvassed that dealing in ivory imported from Africa cannot be claimed as a fundamental right. He vehemently contended that the traders in the garb of dealing in ivory imported from Africa or mammoth ivory had actually been dealing with Indian Ivory which resulted in illegal killings of Indian Elephant with the result that their population has gone down and in order to arrest their further depletion it was necessary to bring about the present amendments. Mr. Lokur also highlighted the fact that the respondents do not admit that the petitioners had lawfully acquired the stocks of imported ivory.

Before examining the submissions of the learned counsel for the parties, at the threshold we will make a brief reference to the legislations which preceded the present one. We will also set out the provisions of the Amendment Act 44 of 1991 to the extent they are relevant, objects and reasons of the Principal Act and the Amendment Acts of 1986 and 1991 for better understanding of the matter.

Birds were the first to get the attention of the British in India. The first legislation for protection of birds was enacted by the British in 1887 which was known as the Wild Life (Protection) Act, 1887 (Act No. X of 1887). However, the purpose of this Act was limited as it prohibited the possession or sale of only certain kinds of wild birds during the breeding season. This Act did not have the desired effect as killing of birds was not prohibited. As a consequence of wanton killing of birds and animals a more comprehensive legislation was needed. In order to remedy the situation the British enacted a legislation called 'the Wild Birds and Animals (Protection) Act, 1912 (Act No. VIII of 1912). Section 3 of that Act empowered the Provincial Government to declare the whole year or any part thereof, what may be called as close time, during which specified kind of wild birds or animals would not be killed and it was made unlawful to capture or kill or sell or buy or possess any such bird or animal. Section 4 made contravention of section 3 punishable with fine. In the year 1935 the Act was amended by the Wild Birds and Animals (Protection) Act No. XXVII of 1935. By that Amendment Act, amongst other additions and alterations, section 11 was added by virtue of which the Provincial Government could declare any area to be a sanctuary for the birds or animals and their killing was made unlawful. Any violation of section 11 was made punishable with fine. It is note worthy that for the first time the concept of sanctuary was introduced in India but the provisions of that Act also proved to be inadequate for protection of wild life and birds. For the next thirty-seven years nothing much was done to improve the situation. There was rapid depeletion of wild life and birds and need was felt to enact a more comprehensive and effective legislation for protection of wild life. But there was a difficulty. The subject of wild life being a State subject falling in Entry 20, List II of Seventh Schedule of the Constitution, there was no way for the Parliament to enact a law in regard to the aforesaid subject except by invoking the provisions of Articles 252 of the Constitution.

Having regard to the importance of the matter, the legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Utter Pradesh and West Bengal passed resolutions in pursuance of Article 252 of the Constitution empowering the Parliament to pass the necessary legislation in regard to the protection of wild animals, birds and for all matters connected therewith. Thus armed with the resolutions, the Parliament enacted the Wild Life (Protection) Act, 1972. It comes into effect from February 1, 1973. For the purpose of the present enquiry it will be advantageous to refer to the Statement of Objects and Reasons of the Act, which reads as follows: -

> " The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were

once teeming with wild life have become devoid of it and even in sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relates to control of hunting and do not emphasise the other factors which are also prime reasons for the decline of India's wild life, namely, taxidemy and trade in wild life and products derived therefrom.

2. Having considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds for all matters connected therewith or ancillary and incidental thereto.

3. Legislation in respect of the aforesaid subject-matter is relatable to entry 20 of the State List in the Seventh Schedule to the Constitution, namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of articles 249 and 250 of the Constitution) resolution in pursuance of article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislation of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.

4. The Bill seeks to -

(a) constitute a Wild Life Advisory Board for each State;
(b) regulate hunting of wild animals and birds;
(c) lay down the procedure for declaring areas a Sanctuaries, National Parks, etc.
(d) Regulate possession, acquisition, or transfer of, or trade in, wild animals, animal articles and trophies and taxidermy thereof;
(e) provide penalties for contravention of the Act.

The working of the legislation proved inadequate in certain matters despite minor changes having been effected by the Amendment Act 23 of 1982. Major changes were effected in the Principal Act in 1986 by Wild Life (Protection) Amendment Act, 1986 (Act No. 28 of 1986). It received the assent of the President on May 23, 1986 and was published in the Gazette of India dated May 26, 1986, Part II-S.1 Ext.P.1 9No. 33). The statement of objects and reasons of the Amendment Act of 1986 reads as follows: -

" The Wild Life (Protection) Act, 1972 provides for the protection of wild animals and birds and for matters connected therewith or ancillary thereto.

2. Under the scheme of the Act, trade or commerce in wild animals, animal articles and trophies within he country is permissible and is regulated under the country is permissible and is regulated under Chapter V. Since there is hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have taken a heavy toll of our wild animals and birds. The stocks declared by the traders at the commencement of the Wild Life (Protection) Act, 1972 are still used as a cover for such illicit trade. Attempts to acquire the declared stocks of skins of some wild species have also not met with the desired success, mainly because most traders are not inclined to part with their stocks and thereby lose the ploy for illegal activities. It is, therefore, necessary to suitably amend the Act to prohibit trade in certain specified wild animals or their derivatives. It is, therefore, proposed to provide that no one will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives therefrom after a period of two months from the commencement of the amending Act or two months from the date on which a wild animal is included in Schedule I or Part II of Schedule II by notification issued under the provisions of the Act. All existing licences for internal trade would be invalid thereafter. Further, no fresh licences would be granted for internal trade on such wild animals or their derivatives in future. An exemption is being given to notified Government of India undertakings who can purchase stocks from licensees during the specified period of two months for manufacturing articles from them exclusively for export. The exemption at present available to dealers in ivory under the second proviso to Section 44(1) is also being removed so as to enforce a total ban in dealing in Indian ivory and simultaneously to provide for some regulation over the manufacture and trade of articles made out of imported ivory.

3. The Bill seeks to achieve the above objects."

The Amendment Act of 1986, inter alia, inserted Chapter VA in the Principal Act and also amended sections 44, 51 and 63 thereof.

Again by Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991), which received the assent of the President on September 20, 1991 and was published in the Gazette of India dated September 20, 1991, Part –Z.1 Ex.P.1 (No. 6), extensive amendments were made in the Principal Act. It amended the title of the Principal Act so as to be called The Wild Animals, Birds and Plants (Protection) Act, 1972. It brought about changes in sections 1, 2, 4, 6, 8, 12, 18, 19, 24, 33, 34, 35, 36, 38, 39, 40, 43, 44, 49, 49A, 49B, 49C, 50, 51, 54, 57, 59, 60, 61, 62, 63, 64, 66, Schedule II, Schedule III and Schedule IV of the Principal Act. Besides, it also made the following changes: -

(1) It substituted new section for sections 9, 29 and 55 of the Principal Act;
(2) It omitted sections 10, and 13 to 17 of the Principal Act;
(3) It inserted two new chapters, namely, Chapter IIIA and Chapter IVA, in the Principal Act; and
(4) It inserted new Schedule, namely, Schedule VI, in the Principal Act.

In order to appreciate the necessity to carry out the amendments in the Principal Act it would be advantageous to have an insight into the purposes of the Amendment Act, 1991 which is reflected in the Statement of Objected and Reasons of the Amendment Bill: -

" The Wild Life (Protection) Act, 1972 provide for the protection of wild animals birds.

2. In the implementation of the Act over 18 years, the need for amendment of certain provisions of the Act to bring them in line with the requirements of the present times has been felt. The Indian Board for Wildlife also endorsed the need for these amendments. Ministry of Environment & Forests has worked out the proposals for amendment of the Act on the basis of recommendations of the Standing Committee of Indian Board for wild Life and various ministries of the Government.

3. Poaching of wild animals and illegal trade of products derived therefrom, together with degradation and depletion of habitats have seriously affected wildlife population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education, research, scientific management and captive breeding, would continue. It is being made mandatory for every transporter not to transport any wild life product without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government officers as well a individuals now can also file complaints in the courts for offences under the Act. It is also proposed to provide for appointment of Honorary Wild Life Wardens and payment of rewards to persons helping in apprehension of offenders.

4. To curb large scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunization of livestock in and around National Parks and Sanctuaries.

5. Realising the need to protect offshore marine flora and fauna, the provision of National Parks and Sanctuaries are proposed to be extended to the territorial waters. It is also being provided that while declaring an part of territorial sic sanctuary due precaution shall be taken to safeguard the occupational interests of local fisherman.

6. While making the provisions of the Act more effective and stringent, due regard has also been given to the rights of the local people, particularly the

tribals. It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters no area can be declared a sanctuary unless the rights of the people have been settled. State Wildlife Advisory Boards are also being made responsible for suggesting ways and means to harmonise the needs of tribals and the protection of wild life.

7. In the recent times, there has been a mushroom growth of zoos in India. Zoo, if managed properly, serve a useful role in the preservation of wild animals. So far there is no legislation dealing with zoos. Provisions are now being made for setting up of a Central Zoo Authority responsible for overseeing the functioning and development of zoos in the country. Only such zoos would be allowed to operate as are recognised and maintain animals in accordance with the norms and standards prescribed by zoo Authority. Activities causing disturbance of animals in a zoo are being made a punishable offence.

8. Over exploitation has endangered the survival of certain species of plants. Although the export of these plants and their derivatives is restricted under the provisions of the export policy and the "Convention of International Trade in Endangered Species of Wild Fauna and Flora" to which Indian is a Party, yet there is no restriction on collection of these species from the wild. Provision to prohibit collection and exploitation of wild plants which are threatened with extinction, is being made. Cultivation and trade of such plants would, however, be permitted under licence. The provisions, however, would not affect the collection of traditionally used plants for the bonafide personal use of the tribals.

> 9. It may be recalled that the Parties to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES), being greatly concerned by the decline in population of African elephant (sic) the import and export of African ivory for commercial purposed has been prohibited. As a result import of ivory would no longer be possible to meet the requirements of the domestic ivory trade. If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. with this point in view, the trade in African ivory within the country is proposed to be banned after giving due opportunity to ivory traders to dispose off their exiting stock.

10. The existing legal provisions do not permit the collection of snake venom for producing life saving drugs from snakes like Cobra and Russel's Viper. This is causing hardship. It is, therefore, proposed to amend the Act to provide for extraction of and dealing in snake venom in a regulated manner.

11. The Bill seeks to achieve the aforesaid objects."

At this stage it will also be useful to set out below extracts from the Statement of the Minister of State of Environment and Forests in the Lok Sabha which he made at the floor of the House while moving the Bill'

"THE MINISTER OF STATE OF THE MINISTRY OF ENVIRONMENT & FORESTS (SHRI KAMAL NATH):

I beg to move:

" That the Bill further to amend the Wild Life (Protection) Act, 1972, as passed by Rajya Sabha be taken into consideration."

** ** **

Wildlife in our country has suffered serious depletion on account of pressures exerted by the rapid growth of population and the consumption oriented approach, regardless of the need to maintain essential bio-diversity and ecological process, balances, and life0support systems which are so vital for land productivity, food security and human survival. Setting up a network of effectively managed National Park and Sanctuaries is the highest priority of Wildlife Conservation. With this point in view, the provisions with regard to Management of Parks and Sanctuaries are being made more effective and stringent. Realising the need to protect off-shore marine flora and fauna, the legal provisions of National Parks and Sanctuaries are proposed to be extended to territorial waters as well.

As already mentioned, wildlife populations and habitats have degraded to a great extent under the pressure of human activities. We can no more afford to kill wild animals for the sake of pleasure of a few person, thus disrupting life forms and linkages vital for the preservation of bio-diversity. Wildlife is also in no position to bear the burden of capturing of wild animals for commercial purposes.

**

Poaching of wild animals and illegal trade, has over the years, taken serious dimensions because of the exponential rise in the price of wild animals and their products. The job of a poacher gets more and more lucrative as a particular species gets rarer. Therefore, proposals have been made in the Bill to make the penalties for various offices more deterrent. It is being made mandatory for every transporter not to accept any consignment of wildlife products without proper sanction from the authorised officers.

Population of Indian elephants, particularly in South Indian, are under serious threat by ivory poachers. Although the trade in India ivory was banned in 1986, the trade in imported ivory gives an opportunity to unscrupulous ivory traders to legalise poached ivory in the name of imported ivory. With this point in view, the trade in African ivory is proposed to be banned after giving due opportunity to ivory traders to dispose of their existing stocks.

**

The amendments effected by the Wild Life (Protection) Amendment Act, 1991, in the Principal Act, which the petitioners challenge, read as under :-

5. Amendment of Section 2. – In Section 2 of the principal Act :-

(a) in Clause (2), for the words “has been used”, the words “has been used, any (and) ivory imported into India and an article made therefrom” shall be substituted;

xx xx xx

27. Amendment of Section 39. – In Section 39, of the principal Act, in sub-section (1), the

(a) ……
(b) after clause (b), the following clauses shall be inserted, namely :-
“(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

shall be ……. [ ]

30. Amendment of Section 44. – In Section 44 of the principal Act, in sub-section (1), -

(i) in clause (a), sub-clause (ia) shall be committed.
xx xx xx
(iii) for the second proviso, the following proviso shall be substituted, namely :-
“Provided further that noting in this sub-section shall apply to the dealers in tail feathers of peacock and articles made therefrom and the manufacturers of such articles.”

33. Amendment of Section 49A. – In Section 49A of the principal Act, -
(a) ……
(b) in clause (c). –
(i) …….
(ii) after sub-section (ii), the following sub-clause shall be inserted, namely :-
“(iii) in relation to ivory imported into India or an article made from such ivory, the date of expiry of six months from the commencement of the Wild Life (Protection) Amendment Act, 1991”.

34. Amendment in Section 49B. – In Section 49B of the principal Act, in sub-section (1), in clause (a), after sub-clause (i), the following sub-clause shall be inserted, namely :-

35. Amendment of Section 49C. – In Section 49C of the principal Act, -
(a) in sub-section (1), in clause (a), after sub-section (iv), the following sub-clause shall be inserted, namely :-
“(v) ivory imported into India or article made therefrom;”.

(b) in sub-section (7), for the words “any scheduled animal or a scheduled animal article”, the words “any scheduled animal, or scheduled animal article or ivory imported into India or any article made therefrom”.

37. Amendment of Section 51. – In Section 51 of the principal Act,-

(a) in sub-section (i),-
(i) for the brackets, words, figure and letter “(except Chapter VA)”, the brackets, words, figures and letters” (except Chapter VA and Section 38J)”, for the words “two years”, the words “three years” and for the words “two thousand rupees”, the words “twenty-five thousand rupees” shall be substituted;
(ii) in the first proviso, for the words “relates to hunting in “, the words “relates to hunting in, or altering the boundaries of,”, for the words “six months”, the words “one year” and for the words “five hundred rupees’, the words “five thousand rupees” shall be substituted;

(iii)for the second proviso, the following proviso shall be substituted, namely :-

“Provided further that in the case of a second or subsequent offence of the nature mentioned in this subsection, the term of imprisonment may extend to six years and shall not be less than two years and the amount of fine shall not be less than ten thousand rupees.”;
(b) after sub-section (IA), the following sub-section shall be inserted, namely :-
“(1B) Any person who contravenes the provisios of Sector 38J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both;
Provided that in the case of a second or subsequent offence, the term of imprisonment may extend to one year or the fine may extend to five thousand rupees.”;

(c) in sub-section (2), for the words “uncured trophy or meat”, the words “uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof” shall be substituted;
(d) after sub-section (4), the following subsection shall be inserted, namely :-

“(5)Nothing contained in Section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.”

Taking into account the amendments, the Principal Act, in so far as it is relevant for the purpose of the present writ petitioners, read as follow :-

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

xx xx xx

39. Wild animals, etc. to be Government property
(1) Every

xx xx xx

(c)"ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule of order made thereunder has been committed;

xx xx xx

shall be the property of the State Government and, where such animal is hunted in a Sanctuary or National Park declared by the Central Government, such animal or any article, trophy, uncured trophy or meat derived form such animal or any vehicle, vessel, weapon, trap, or tool used in such hunting, shall be the property of Central Government

xx xx xx

---

* Substituted by Act No. 44 of 91 w.e.f. 2.10.91.

44. Dealings in trophy and animal articles without licence prohibited
(1) Subject to the provisions of Chapter V-A, no person shall, except under, and in accordance with, a licence granted under sub section (4)
(a) commence or carry on the business as
(i) a manufacturer of, or dealer in, any animal article;or
(ia) *Omitted
(iii)a dealer in trophy or uncured trophy; or
(iv) a dealer in captive animal; or
(v) a dealer in meat; or

(b) ……
Provided that …….
(c)…….

"Provided further that nothing in this sub-section shall apply to the dealers in tail feathers of peacock and articles made therefrom and the manufacturers of such article".

xx xx xx

49-A Definitions
In this Chapter

xx xx xx

(C) "specified date" means
(i) …….
(ii) ……..

---

* The text of the omitted provision was as follows :-
" a manufacturer of, or dealer in, any article made of ivory imported into India."

(iii) in relation to ivory imported into India or an article made from such ivory, the date of expiry of six months from the commencement of the Wild Life (Protection) Amendment Act, 1991.

49-B. Prohibition of dealing in trophies, animal articles, etc. derived from Scheduled animals.
(1) Subject to the other provisions of this section, on and after the specified date, no person shall
(a) commence or carry on the business as
(i) …….
(ia) a dealer in ivory imported into India or articles made therefrom or a manufacturer of such articles; or

(ii) …….
xx xx xx
49-C. Declaration by dealers
(1) Every person carrying on the business or occupation referred to in sub-section (1) of Sec. 49-B shall, within thirty days from the specified date declare to the Chief Wildlife Warden* as the end of the specified date of
(i) ……
(ii) ……..
(iii) ……
(iv) …….
(v)ivory imported into India or article made therefrom.
(b) ……
(c) …….

xx xx xx

(7) No person, other than a person who has been issued a certified of ownership under sub-section (3) shall, on and after the specified date, keep under his control, sell or offer for sale or transfer to any person any scheduled animal or scheduled animal article or ivory imported into India or any article made therefrom

51. Penalties
(1) Any person who contravenes any provision of this Act except Chapter VA and section 38J or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to three years or with fine which may extend to twenty five thousand rupees, or with both.

Provided that where the offence committed in relation to any wild animal specified in Schedule I or Part II of Sch. II or meat of any such animal animal article, trophy, on uncured trophy derived from such animal or where offence relate to hunti8ng or altering the boundaries pf a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than one year but

may extend to six years and also with fine which shall not be less than five thousand rupees.

Provided further that in the case of a second or subsequent offence of the nature mentioned in this subsection, the term of imprisonment may extend to six years and shall not be less than two years and the amount of fine shall not be less than ten thousand rupees.

(1A) ……
(1B) Any person who contravenes the provisions of Section 38J shall be punishable with imprisonment for a term which may extend to two thousand rupees, or with both;

Provided that in the case of a second of subsequent offence, the term of imprisonment may extend to one year or the fine may extend to five thousand rupes.;

(2) When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, uncured trophy, meat, ivory important into India or an article made from such ivory, any specified plant or part of derivative thereof in respect of which the offence has been committed, any trap, tool, vehicle, vessel, or weapon used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

xx xx xx

(5) Nothing contained in Section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age."

Having referred to the legislation which preceded the Principal Act and having set out the objects and reasons of the Principal Act and the Amendment Acts of 1986 and 1991, we will like to notice the arguments of Mr. Thakur, learned senior counsel, which are based on the principles adumbrated by the Supreme Court in various decisions. He submitted that the legislation can impose only reasonable restrictions on the fundamental rights of the people, including the right to trade and business, in public interest and the restrictions on trade which are arbitrary, unfair and unjust are violative of Art. 19(1)(g) of the Constitution. Learned counsel cited the decision of the Supreme Court in Chintaman Rao v. The State of Madhya Pradesh, 1950 SCR 759, laying down that phrase "reasonable restrictions" occurring in Article 19(6) does not include limitations which are arbitrary or excessive in nature beyond what is required in the interest of the public, and the word "reasonable" implies a course which reason dictates. The learned counsel also cited decisions of the Supreme Court in Mohd. Hanif Quareshi and other v. State of Bihar, AIR 1958 S.C. 731; The State of Madras v. V.G.Row, AIR 1952 S.C.196; State of West Bengal v. Subodh Gopal Bose and others, AIR 1954 S.C. 92, laying down the criteria on the basis of which

reasonableness of a statute should be judged. He also submitted that it is ultimately for the court to determine whether the statute is reasonable or otherwise. Learned counsel pointed out that where the statute imposes restrictions on the fundamental rights of a citizen the onus to justify the restriction is on the State. Mr. Thakur also submitted that if the statute imposes restrictions on trade or business which are unfair, unreasonable are arbitrary, besides infringing Article 19(1)(g) of the Constitution, the same would also be violative of Article 14 as well. In this connection, learned counsel relied upon the principles laid down by the Supreme Court in E.P.Royappa v. State of Tamil Nadu and another AIR 1974 S.C. 555; Ramana Dayaram Shetty v. The International Airport Authority of India and others, AIR 1979 S.C. 1628; Bachan Singh v. State of Punjab, AIR 1982 S.C. 1325; Minerva Mills Ltd. & Others v. Union of India and others, AIR 1980 S.C. 1789; and Smt. Maneka Gandhi v. Union of India and another, AIR 1978 S.C. 597. If we say so with respect, the propositions and principles brought to our notice by means of the above decisions are unassailable. However, we are adding a small caveat here to the extent that where the trade is pernicious and noxious it does not attract the protection of Article 19(1)(g).

Whether the ban imposed on trade of imported ivory and articles made therefrom under section 49B(1)(a)(ia) read with Sec. 49A(c)(iii) and Sec. 49C(7) of the impugned legislation violates Article 19(1)(g) of the Constitution?

The basic point which has been urged before us by various counsel revolves around the question whether the ban imposed on trade of imported ivory and articles made therefrom by the Amendment Act 44 of 1991 is reasonable as envisaged by Article 19(6). We will therefore, immediately embark upon the enquiry, first dehors the question whether the trade in imported ivory is pernicious and is not covered by Article 19(1)(g). In order to do that it will be necessary to keep in view the purpose of the Principal Act and the Amendment Act No. 44 of 1991. As already noticed, the Act is meant to protect and safeguard Wild life. The Supreme Court in State of Bihar v. Murad Ali Khan and others, (1988) 4 SCC 655, has an occasion to notice the purpose of the Act. In this regard, the Supreme Court observed the follows :-

“The policy and object of the wild life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depredation inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these law reflect a last ditch battle for the restoration, in part at least, a grave situation emerging from a long enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilized man is creased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee”. In his foreword to International Wild Life Law, H.R.H. Prince Philip, the Duke of Edinburgh said:

Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated said :

Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly perhaps, it is a great deal more complicated than that ……
…… As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and ripidly implemented. Regretfully progress in this direction is proving disastrously slow….

There have been a series of inter national conventions for the preservation and protection of the environment. The United Nations General Assembly adopted on October 29, 1982 “The world charter for nature”. The Charter declares the Awareness that :

(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.
(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.

In the third century B.C. King Asoka issued a decree that “has a particularly contemporary ring” in the matter of preservation of Wild life and environment. Towards the end of his reign, he wronte:

Twenty-six years after my coronation, I declared that the following animals were not to be killed: parrots, mynas, the aruna, ruddy geese, wild geese, the nandimukha, carnes, bats, queen ants, terrapins, boneless fish, rhinoceroses ……. and terrapins, boneless fish, rhinoceroses …….. and all quadrupeds which are not useful or edible …….. Forests must not be burned.

Environmentalists conception of the ecological balance in nature is based on the fundamental concept that nature is “a series is an interdependent part” and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the civilized man” operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats.” Thus, it is obvious that the object of the principal Act was to arrest depletion of animal life so maintain the ecological balance which is necessary for welfare of humanity. Despite the coming into force of the Principal Act, the provision did not prove effective for protection of elephants. One of the reasons was that the elephant was placed at item No. 13 in part ‘I’ of Schedule II of the Act. According to section 9(1) of the Act, as it originally stood, no person was authorised to hunt any wild animal specified in Schedule-I. According to clause 2 of Section 9, hunting of animals specified in Schedule II, III and IV were permitted in accordance with the conditions specified in a licence granted under sub-section 5 of the Act. Since the elephant was placed in part I of Schedule 2 of the Act, the hunting of the same was possible under a licence. Thus

the elephant had little or no chance or survival under the Act as it stood in its original form. On March 3, 1973, a significant International Convention known as Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) took place. The Convention resulted in an agreement between the member States, which was initially ratified by 10 countries and came into operation on July 1, 1975. As the Asian elephant was highly endangered specie, it was placed in Appendix-I of the CITES. Appendix-I includes all species threatened with extinction or which are or may be affected by trade. Trade in specimens of these species are subject to stirict regulation in order not to endanger further the survival of these species and must be authorised in exceptional circumstances only. However, the African elephant was given place in Appendix-III which, unlike Appendix-I animals, did not enjoy immunity from being hunted and killed. The Asian elephant was banned and international trade in Asian ivory was virtually prohibited, the African elephant could still be hunted. India signed the convention in July 1974 and deposited the instrument of ratification on July 20, 1976. India became a party to the convention from October 18, 1976. A major development took place when the Parliament in order to amend the Wild Life (Protection) Act, 1972, enacted on May 23, 1986 the Wild Life (Protection) Amendment Act, 1986 (Act No. 28 of 1986) whereby several changes were effected in the Principal Act including insertion of Chapter VA. On October 24, 1986, keeping in view the depletion of elephant population and in accordance with CITES, the Central Government intervened under Section 61(1) of the Principal Act and transferred the Indian elephant to Schedule-I and listed the same at Entry 12B thereof. This was a major step towards protecting Indian elephant as Schedule 'I' animals enjoy complete immunity from being hunted. The 'elephant' having been put on Schedule '1' of the Act, the prohibition to kill the same came into force with immediate effect. As a result of this, trade and commerce in Indian Elephants was totally banned. This step was not challenged by the petitioners. It may be pointed out that import of ivory was not banned but was allowed subject to requirement of licence under section 44 of the Principal Act as amended by Act No. 28 of 1986. The African elephant like its Indian counterpart was also endangered and threatened by man and in order to save the specie, in October 1989 at the Lusanne CITES Meet, the African elephant was upgraded and included in Appendix '1' of the CITES and after three months of its inclusion w.e.f. January 18, 1990 international trade in ivory was required to be banned. Almost all countries which are parties to the convention have given effect to it. The result of this was that virtually all International trade in ivory was prohibited with effect from the aforesaid date. In this country in order to bring the Principal Act in tune with the aforesaid development, the Amendment Act 44 of 1991 inserted sub-clause (ia) to section 49B(1)(a) of the Principal Act as a result whereof the trade in "important ivory" and articles made therefrom were completely prohibited from the "specified date". It may be noted that legislature has used the words ivory imported into India and not African ivory, thus enlarging the area of operation of the Act. Now as to the meaning of the words "specified date", the Amendment Act through the insertion of sub-clause (iii) in clause (c) of section 49A has provided that the specified date in relation to ivory imported into India or an article made therefrom is the date six months from the commencement of the Wild Life (Protection) Act, 1991. That means, as per the above said provisions, dealers in imported ivory or articles made therefrom or manufacturers of such articles were required to liquidate their stocks and stop all activities relating thereto within six months of the commencement of the Wild Life (Protection) Act, 1991, i.e. April 2,

1992 (date of commencement of the Act being October 2, 1991 + six months therefrom). The Union of India in its reply dated April 30, 1992 and additional affidavit dated September 12, 1995, has maintained that despite the ban on the killing of the Indian elephant its poaching continues and the traders are actually dealing in ivory extracted from Indian 'elephant' under the garb and fascade of imported ivory resulting in the depletion of its population. Therefore, in order to stop the killings of Indian elephants, it was necessary to ban all trade in imported ivory. Above said additional affidavit gives the statistics of the elephant population in India in the early part to the 20th century and for the years 1977-78, 1985 & 1989 to 1993, which are as follows :-

Year	Number of Elephants
Early part of 20th Century	2 lakhs
1977-78	20061-21091
1985	16560-21361
1989	17065-23270
1990	15500-17500
1991	15000-20000
1992	20000
1993	22796-28348

According to the aforesaid figures, it is apparent that the elephant population had considerably gone down after early part of the 20th Century. Additional affidavit also alludes to the differences between the Indian Elephant and the African Elephant. It is pointed out that unlike Africa, where both male and female elephants have tusks, in India only the male elephants possess tusks. It is also brought out that even among the males (bull elephants) all of them do not possess tusks. As per the affidavit there are only 1,500 tuskers in the country as against 5,000 a decade back. If this position was allowed to prevail, the elephant would have become extinct in this part of the subcontinent. As already, noticed, the Supreme Court in State of Bihar v. Murad Ali (Supra) has referred to environmentalists conception of ecological balance in nature being based on the fundamental concept that nature is a series of complex biotic communities of which man is interdependent part, and a part should not be allowed to diminish the whole. Relationship between nature and man is inextricably linked. They are co-existing entities that partake of each other. To preserve different species is to preserve human life. But this single fact of life is difficult to be perceived by those who are living of and thriving on exploitation and destruction of nature. The 'elephant' is no exception to depredations of man. It is now an endangered specie requiring not only protection from being hunted but also a chance to recoup its depleting numbers. In order to achieve this object, drastic steps for preservation judged the situation and in its determination completely prohibited the trade in imported ivory and ivory articles. In order to effectuate the ban sections 49B(1)(a)(ia) and 49C(7) read with section 49A(c)(iii) interdict a dealer in imported ivory or article made therefrom to keep under his control, sell or offer to sell or transfer to any person ivory imported into India or any article made therefrom on or after six months of the coming into force of the Amendment Act 44 of 1991. This was also in keeping with the global perception that the elephant must be saved from extinction. Learned counsel for the petitioners submitted that the petitioners had lawfully acquired the ivory at the time when there

was no ban. They invited our attention to the affidavits of the petitioners in this regard. At this stage it may be pointed out that Mr. Lokur during the course of the arguments vehemently denied the fact that the petitioners lawfully acquired the stocks of imported ivory either before the ban imposed by the Amendment Act 44 of 1991 or the Lusanne Meeting of CITES in 1989. He also canvassed that under the cover of ostensibly trading in imported ivory, the traders were laundering poached Indian ivory. Assuming for the sake of argument that the petitioners acquired imported ivory lawfully before the coming into force of the ban, that does not mean that the Parliament in its wisdom, keeping in view the aforesaid background, could not impose a ban on the sale of such ivory or articles made therefrom after giving the dealers time for disposal of the stocks. In order to determine reasonable of a restriction, which includes prohibition, regard must be had to the nature of the business, its capacity and potential to cause harm and damage to the collective interest and welfare of the community. While adjudging the reasonableness of the restriction it has also to be considered whether the restriction on trade and business is proportionate to and commensurate with the need for protection of public interest.

The test of reasonableness is not to be applied in vaccum but it must be applied in the context of the stark realities of life. The law must be directed to effectively remedy the problems and evils persisting in the society. It may be that in the past a situation may not have arisen calling for the passing of a law to make the life of people to be in harmony with environment cannot be thwarted and faulted on the material considerations of a few. Reasonableness of law cannot be worked out by a mathematical formula. What may have been unreasonable restriction yesterday, may be more than reasonable today. Therefore, the criteria for determining the degree of restriction which would be considered reasonable is by no means fixed or static but must vary from age to age is relatable to adjustments necessary to eliminate the dangers facing the community. The test of reasonableness has to be viewed in the context of the enormity of the problem and the malady sought to be remedied by the legislation.
In the present case restriction undoubtedly imposes total ban on trade in ivory. The Central Government has pointed out in its counter-affidavit dated April 30, 1992 that there was serious problem to protect the Indian elephant as long as the traders were allowed to deal with ivory imported from abroad. It is further pointed out that there is no readymade and easy method of distinction between imported ivory and Indian ivory. it is also pointed out that in the circumstances it was necessary to strike at the root cause of poaching and remove the incentive to kill elephants by banning ivory trade altogether.

The Minister of State of Environment and Forests while moving the amendment bill in the Lok Sabha adverted to the fact that the population of Indian elephants, particularly in South India, was under serious threat by ivory poachers. Although the trade in Indian ivory was banned in 1986, the trade in imported ivory was giving an opportunity to unscrupulous ivory traders to legalise poached ivory in the name of imported ivory. With this point in view, the trade in African ivory was proposed to be banned after giving due opportunity to ivory traders to dispose of their existing stocks. He also referred to the growing menace of poaching wild animals which had acquired serious dimensions because of exponential rise in the price of the wild animals and their products. Therefore, in this scenario when virtually all international

trade in ivory stood prohibited and member States had given effect to the ban how trade in imported ivory could be permitted by India. The pressing need to preserve ecology and bio-diversity cannot be sacrificed to promote the self-interest of a few. Law enacted by Parliament to protect the Indian Elephant, keeping in view the above said international convention cannot be flawed as imposing unreasonable restraints. Surely, India cannot be a party to the decimation of the elephant. It is documented that some member countries have even burnt and destroyed tonnes of ivory in order to discourage ivory trade and to protect the elephant which is on the brink of extinction. If permission or exemption is given to traders to deal in pre-convention ivory or ivory imported before the coming into force of the Amendment Act 44 of 1991, the possibility of increased assault on Indian tuskers cannot be ruled out. In that event poached Indian ivory will enter the market masquerading as imported ivory, there being no visible distinction between the two. At this stage it will be advantageous to recall the objects and reasons of the Amendment Act of 1991 and the statement of the Minister of State of Environment and Forest in the Lok Sabha, the relevant portions whereof reads as follows :-

Objects & Reasons of the Amendment Act :
"If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. With this point in view, the trade in African ivory within the country is proposed to be banned after giving due opportunity to ivory traders to dispose off their existing stock."

Statement of the Minister :

"Poaching of Wild animals and illegal trade, has over the years, taken serious dimensions because of the exponential rise in the price of Wild animals and their products. The job of a poacher gets more and more lucrative as a particular species gets rarer.

As a result of the high price of ivory in the market the work of poachers has been rendered highly lucrative. The magnitude of the problem would be evident from the fact that the tusker population in India has been reduced from 5000 to 1500 during the past one decade. This is proof enough of the fact that the Wild Life Department of the States have not succeeded in tacking the problem. It is common knowledge that the officials of the Forest and Wild Life Department of the States are not able to protect trees and wild life because of strong criminal syndicates of poachers. The same is true for other countries. Douglas H. Chadwick in his fascinating book 'The fate of the Elephant has also spoken about this aspect of the matter thus :-
"…….. As soon as CITES listed the African elephant on Appendix I of the Endangered Species List in 1990, prohibiting international trade in tusks, the market for them crashed. It has remained relatively minor ever since. Curtailed demand has kept the price of ivory down, which has in turn curtailed poaching.
Not that the whole bloody business has ceased. Though tusks bring but a fraction of their former price, they are still worth several months wages to rural people in quite a few nations. <u>According to various sources, the international black market for ivory is increasingly dominated by the same criminal syndicates running drugs and other contraband. They have the networks in place : they move whatever is profitable</u>."

It is very important to sound a clear message that it will no longer be remunerative to deal in ivory, not even for the purpose of one time sale. That is what the impugned legislation has done. It also needs to be driven home that the beauty of ivory and things created therefrom should not be the reason for the destruction of its source. The elephant with the tusker stands out any day to ivory curios adorning the mantel pieces of a few who can afford to buy them at fabulous prices unmindful of the virtual disappearance of a remarkable animal. This is a very heavy price to pay for satiating the aesthetic sense of a few persons. Trade and business at the cost of disrupting life forms and linkages necessary for the preservation of biodiversity and ecology cannot be permitted even once. We, therefore, reject the submission of the learned counsel for the petitioners that there was no proximity between the elephants in the remote forests of India and the sales of imported ivory or articles made therefrom in the show rooms of the petitioners in the city. We also reject the submission that the functionaries of the Wild Life Department of the States could prevent illegal hunting of elephants and there was no good reason to ban the sale of imported ivory and articles made therefrom. The Parliament understanding the vastness of the problem and considering that it will be any difficult to prevent of the Indian elephant, already on the verge of extinction, and the sale of Indian ivory under the guise of imported ivory without imposing the ban on trade in imported ivory cannot be faulted as the degree of harm in allowing the petitioners to continue with the ivory trade would have been much greater to the community as compared to the degree of harm to the individual interests of the petitioners by prohibiting the ivory trade. In the former case the petitioners would have benefited at the cost of the Society. Trade and property rights must yield to the collective good of the people.

Rights granted under Article 19(1) are not absolute rights but are qualified rights and restrictions including prohibition thereon can be imposed in public interest. There is high authority for the proposition that when it is reasonable under Article 19(6) and such a prohibition would not fall foul of Article 19(1)(g). In Narender Kumar and other v. The Union of India and others, 1960(2) SCR 375 = AIR 1960 S.C. 430, a question arose as to whether Non-Ferrous Metal Control Order, 1958 which was issued by the Government of India under section 3 of the Essential Commodities Act, 1955, violated Article 19(1)(g). The Court while interpreting the word restrictions held as follows :-

"It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws "inconsistent" with Art. 19(1), or "taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause, There can be no doubt therefore that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot therefore be accepted."

In State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh, 1969 (2) SCR 392, the Supreme Court wile considering the scope of Articles 19(1)(f) & (g) and 31(1), (2) & (5) held that the power of State to impose reasonable restrictions carries with it the power to prohibit or ban an activity or to acquire, dispose of property or to extinguish title of an owner in a commodity which is likely to involve grave injury to the health and wealth of the people. In that case, second respondent was an owner of stable of

milch-cattle at Andheri. The Legislature of the State of Maharashtra by Act 14 of 1961 amended inter-alia sections 367, 372 and 385 of the Bombay Municipal Corporation Act 3 of 1888. By virtue of the amendment, an owner of a carcass of a dead animal was to deposit it at the place appointed in that behalf by the Bombay Municipal Corporation. The Act empowered the Corporation to arrange the disposal of carcasses. The Municipal Corporation called upon the first respondent, carrying on the business of carcasses of dead animals and utilising the product for industrial uses, to stop removing carcasses from 'K' Ward of the Corporation. Subsequently the Corporation also published a notification inviting the attention of the public at large to the provisions of Section 385 and other related provisions of the Act and warned the persons concerned that violations of the provisions was liable to result in the grant of a contract for the removal and disposal of carcasses under section 385 of the Act in respect of the said ward and other wards to Hariian Workmen's Cooperative Labour Society Ltd. and declared that no other person or agency was authorised to remove and dispose off carcasses. Respondents No. 1 and 2 feeling aggrieved, filed a writ petition in the High Court of Bombay for cancelling the Notification and for various other reliefs. The petition was dismissed and it was held that sections 366, 367(c) and 385 of the Act were enacted for the promotion of public health and for the prevention of danger to the life of the community and in the larger interest of the public and that the restrictions upon the rights of the owners of the cattle and persons carrying on business in carcasses were not inconsistent with the fundamental rights guaranteed under Article 19(1)(f) and (g) thereof. In appeal, the Letter's Patent Bench modified the order of the learned singe Judge and declared section 372(g) and part of section 385 of the Act invalid. The State of Maharashtra then preferred an appeal to the Apex Court. While setting aside the impugned judgment of the Letter's Patent Bench of the Bombay High Court, the Supreme Court held that reasonableness of the restriction imposed upon the right must be evaluated in the light of the nature of the commodity and its capacity to be detrimental to the public weal. The Supreme Court in this regard held as follows:-

"The power of the State to impose reasonable restrictions may extend to prohibiting, acquisition, holding or disposal of a commodity if the commodity is likely to involve grave injury to the health or welfare of the people. In adjudging the reasonableness of restrictions imposed upon the holding or disposal of a carcass which is the paramount consideration. Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated in the Act, being enacted solely in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Art. 19(1)(f) and (g) and the interests of a citizen in the exercise of his right to acquire, hold or dispose of his business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the removal of the carcass expeditious from the place where it is lying is not contended to be arbitrary or excessive. The law which compels removal to carcass under the supervision of the Corporation to which is entrusted the power and duty to take steps to maintain the public health cannot also be regarded as arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Art. 19(1)(f) and (g) and

the interests of a citizen in the exercise of his right to acquire, hold or dispose of his property to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity. The law which compels the removal of the carcass expeditiously from the place where it is lying is not contended to be arbitrary or excessive. The law which compels removal to the appointed place and disposal of the carcass under the supervision of the Corporation to which is entrusted the power and duty to take steps to maintain the public health cannot also be regarded as arbitrary or excessive, merely because the enforcement of the law involves some pecuniary loss to the Citizen. We are unable to agree that by compelling disposal of carcasses by leaving to the owner of the carcass to dispose it in any manner he thinks fit, danger to the public health could be effectively avoided."

In State of Madras v. V.G. Rao, AIR 1952 SC 196 (at page 200), the Supreme Court while emphasing that no abstract standard or general pattern of reasonableness can be laid down in all cases, indicated the following criteria for examining the reasonableness of the restrictions under Article 19(1)(g) :- "the nature of the right alleged to have been fringed, the underlined purpose of the restriction imposed, and the extent and urgency of evil sought to be remedied thereby".

Again in Mohd Faruk v. State of Madhya Pradesh and others, AIR 1970 SC 93, stating the criteria of reasonableness, the Supreme Court held as follows :-

"The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency – national or local – or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made our or that a less drastic restriction may ensure the object intended to be achieved."

In Systopic Laboratories Pvt. Ltd. v. Dr. Prem Gupta and others, 1994 Supp (1) S.C.C. 160, the petitioner challenged the notification on the manufacture and sale of fixed doses of the combination corticosteroids with any other drug for internal use was imposed. This prohibition was challenged as being unreasonably restrictive of the right of the petitioner to carry on its trade guaranteed under Article 19(1)(g) of the Constitution. The Supreme Court considered the question in the light of the report of the Experts Committee which was of the opinion that the fixed doses combination of corticosteroids with any other drug should not be allowed because in the recommended upper doses limit the daily dose of corticosteroides often exceeds pharmacological limit for adrenocorti suppression. In this regard the Court observed as follows :

“It is therefore, not possible to hold that the prohibition which has been imposed by the impugned Notification on the manufacture and sale of the drug in question imposes an unreasonable restriction so as to violative of the right guaranteed under Article 19(1)(g) of the Constitution.”

As is apparent from the aforesaid decisions of the Apex Court, the reasonableness of law imposing restriction must be considered in the back drop of the facts and circumstances under which it was enacted, the nature of evil that was sought to be remedied by such law, and the ratio of harm caused to a person or group of persons by the legislation as compared to the beneficial effect reasonably expected to result to the general public. The court must also consider the question whether the restraint caused by the law was more than what was necessary in the interest of the general public. When so considered it is obvious that the provisions of the Amendment Act 44 of 1991 cannot be said to be imposing unreasonable restriction on the trade of ivory.

A law designed to abate extinction of an animal specie is prima facie one enacted for the protection of public interest as it was enacted to preserve and protect the elephant from extinction. It was not only the perception of the Parliament but of the world community as well, as reflected in the CITES, that the elephant must be protected from being wiped out from the face of the earth by excesses of man. Learned counsel for the petitioners relied upon the decision of the Supreme Court in Chintaman Rao v. The State of Madhya Pradesh, 1950 S.C.R. 759, in support of his submission that total prohibition in trade of ivory is violative of Article 19(1)(g). In that decision the validity of the Central Provinces and Berar Regulation on Manufacture of Bidis (Agriculrural Purposes) Act, totally prohibiting the manufacture of Bidis during agricultural season, was challenged. The State pleaded that the ban was necessary so that ground that the object of the statute was to provide a measure for the supply of adequate labour for agricultural purposes in Bidi manufacturing areas of the province which could well have been achieved by legislation restraining the employment of agricultural labour. This decision is of no avail to the learned counsel for the petitioners as in the instant case the situation was so grave that the purpose of the legislation could only be achieved by prohibiting the trade in ivory. The statistics pointed out above clearly indicate the danger which the elephant specie faced at the hands of man for his easy gains. Therefore, under the circumstances, it cannot be said that the restriction imposed by the Amendment Act 44 of 1991 was unreasonable, arbitrary, unfair, or excessive. The State has the power to prohibit absolutely every form of activity in relation to killing or slaughtering of elephants including the sale of tusks or articles made therefrom as such form of activity is injurious to public interest.

Fifty years ago the urgency to preserve the elephant may not have been the upper most priority of human beings as at that point of time it was not on the brink of extinction as it that point of time it was not on the brink of extinction as it is now. The criteria for determining the reasonableness of a restriction must not be measured with a fixed or a static yardstick. The yardstick must be elastic and flexible to suit the conditions prevailing at a given point of time. In His Holiness Kesavananda Bharati Sipadagalvaru and others v. State of Kerala and another, AIR 1973 S.C. 1461, the Supreme Court inter alia held that fundamental rights have no

fixed content. Most of them are empty vessels into which each generation must pour its contents in the light of its experience.

Mr. Thakur, learned senior counsel, submitted that the State may be justified in imposing restriction on the killing of elephants but it cannot prohibit sale of tusks or articles made therefrom. He canvassed that the stocks which the petitioners have, should be allowed to be sold as such an activity or one time sale of sticks cannot come in the way of saving the elephant. We do not agree with the submission of learned counsel for the petitioners. The State has taken the stand that the sale of Ivory by the dealers would encourage poaching & killing of elephants as the stocks which the petitioners hold presently will be replenished by further killings of elephants as Ivory fetches a very good price in the market. We do not find any fault with the stand taken by the respondents. Therefore, the ban imposed by the impugned legislation especially Section 49B(1)(a)(ia) r/w section 49A(c)(iii) and section 49C(7) thereof is not violative of Article 19(1)(g) of the Constitution. It is also not in contravention of Article 14 of the Constitution as the ban does not suffer from unreasonableness, arbitrariness and unfairness.

Upto this stage we have considered the matter on the assumption that the right. Now we will consider whether such a trade is covered by Article 19(1)(g).

Whether trade in ivory is pernicious and not covered by Article 19(1)(g) of the Constitution:

The trade in ivory ! is dangerous, subversive and pernicious as it has the potential to deplete the elephant population and to ultimately extinguish the same. It is well settled that trade which is pernicious can be totally

---

! Word ivory is used in comprehensive sense including indigenous as well as imported ivory.

banned without attracting Article 19(1)(g) of the Constitution. There is a string of authority for the proposition that no citizen has any fundamental right guaranteed under Article 19(1)(g) of the Constitution to carry on trade in any noxious and dangerous goods like intoxicating drugs or intoxicating liquors. Trade and business in intoxicating drugs or liquors is only one of the noxious types of enterprises. This category does not close with drugs & intoxicating liquors. What was not considered harmful at an earlier point of time, may be discovered to be so later. Time has a way of changing norms. Several other activities being equally pernicious fall in this category too :-

1. Gambling,
2. Prostitution,
3. Dealing in counter felt coins or currency notes, etc.

Activities having a baneful effect on the ecology, human and animal life etc. occupy a central position in the above category. By virtue of section 10 of the Constitution (42 Amendment) Act, 1976, Article 48A was inserted in the constitution. Article 48A enjoins upon the State to protect and improve the environment and to

safeguard the forests and the wild life of the country. Therefore, what is destructive of the environment, forest and wild life is contrary to the said directive principles of the State policy. Again by section 11 of the Constitution (42 Amendment) Act, 1976, Article 51A was incorporated in the Constitution. This Article lays down the fundamental duties of the citizens. Clause (g) of Article 51A requires every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

It needs to be noticed that the Amendment Act 44 of 1991 has been enacted to carry out the mandate of the directive principle as enshrined in Article 48-A. The State has the power to completely prohibit a trade or business which has an adverse impact on the preservation of species of wild life which are on the verge of extinction both because it is inherently a dangerous practice to destroy such animals in terms of ecology and also because of the directive principles contained in Article 48A of the Constitution. When the legislature prohibits a pernicious, noxious or a dangerous trade or business it is in recognition of society's right of self protection.

Trading in animals close to being wiped out of existence and articles made from their bones, skins or other parts of their bodies, is a situation akin to dealing in any other noxious or perhicious trade, e.g., intoxicating drugs. While the Parliament can impose a ban on trading in endangered species or articles derived from them in furtherance of Art 48A, it can prohibit trade in intoxicating drugs and liquors in compliance with the mandate of Article 47. Courts have recognized that trade or business in intoxicating drug and liquor is not a fundamental right as it is dangerous and noxious. Similarly on parity of reasoning business in animal species on the verge of extinction being dangerous and pernicious is, therefore, not covered by Article 19(1)(g). The principle on the basis of which restriction can be imposed on the trade in intoxicating drugs or intoxicating liquors will also apply with equal force to trade in other pernicious and dangerous businesses and enterprises. In Southern Pharmaceuticals and Chemicals, Trichur and others v. State of Kerala and others, AIR 1981 SC 1863, the Supreme Court was dealing with Sections 12A, 12B, 14E and 14F, 68A of Abkari Act, 1967 and Rules 13 & 16 of Kerala Rectified Spirit Sulres, 1972. These provisions were enacted to ensure that rectified spirit was not misused under the pretext of being used for medicinal and toilet preparations containing alcohol. It was held that such regulation was a necessary concomitant of the police power of the State to regulate trade or business which is inherently dangerous to public health. The restrictions imposed by Section 12-B as to the alcoholic contents of medicinal and toilet preparations and the alcoholic contents of medicinal and toilet preparations and the requirement that they shall not be manufactured except and in accordance with the meaning of Article 19(6) of the Constitution. In that case the Supreme Court also negative the contention that the impugned provisions were violative of Article 19(1)(g) of the Constitution on the ground that no citizen has any fundamental right guaranteed under Article 19(1)(g) of the Constitution to carry on trade in noxious and dangerous intoxicating drugs or intoxicating liquors. In Cooverjee B. Bharuch v. Excise Commissioner and the Chief Commissioner, Ajmer and others, AIR 1954 SC 220, the Supreme Court was dealing with a challenge to the auction sale of country liquor shop under Excise Regulation 1 of 1915. The question which fell for the determination of the Supreme Court was whether the provisions of the Excise Regulation and the auction rules were ultra

vires since they purported to grant monopoly to trade in favour of few persons. The Excise Regulation 1915 provided that the Chief Commissioner may lease to any person the right of manufacturing or of supplying or of selling by wholesale or retail country liquor or intoxicating drug within any special area. The Supreme Court held that the grant of a lease either by public auction or for a sum is regulatory in nature and law prohibiting or regulating trade in noxious or dangerous goods cannot be considered illegal. The Apex Court in that case cited with approval the following observations in Crowley's case (1890) 34 Law Ed. 620:-

"There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United State. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rests in the discretion of the governing authority.

To the similar effect is the decision of the Supreme Court in The State of Assam v. Sristikar Dowerah and others, AIR 1957 SC 414, where it was held that no person had any absolute right to sell liquor. While holding so, the Supreme Court also took into consideration the purpose of the restriction imposed by the State. It found that the purpose of the restriction was to control and restrict the consumption of intoxicating liquor and such control and restriction was necessary for the preservation of public health and morals and to raise revenue. In the State of Bombay and another v. F.N. Balsara, AIR 1951 SC 318, the Apex Court held that absolute prohibition of manufacture and sale of liquor is permissible as the concept of inherent right of a citizen to do business in such articles is antithetical to the powers of the State to enforce prohibition laws in respect of the liquor, the only exception being manufacture for the purposes of medicinal preparations. In State of Bombay v. R.M.D. Chamrbaugwala and another, AIR 1957 SC 699. The Supreme Court said that gambling could not be regarded as trade or business within the meaning of Article 19(1)(f) and (g) and Article 301 of the Constitution. It also held that inherently vicious activities cannot be treated as entitling citizens to do business or trade in such activities. In Har Shankar and others v. The Dy. Excise and Taxation Commissioner and others, AIR 1975 (3) SCR 254, Chandrachud, J. (as His Lordship then was)considering the decision of five earlier Constitution Benches observed as follows :-

"In our opinion the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decision of this Court in the State of Bombay v. F.N. Balsara, 1951 SCR 682, Cooverjee B. Bharucha v. The Excise Commr. and the Chief Commr., Ajmer 1954 SCR 295, Nagendra Nath v. Commr. of Hills Division and Appeals, Assam, 1958 SCR 1240, Amar Chandra v. Collector of Excise, Govt. of Tripura, (1973) 1 SCR 533 and State of Bombay v. R.M.D. Chamarbaughwala, 1957 SCR 874 as interpreted in State of Orissa, Harinarayan jaiswal (1972) 3 SCR 784 and Nashirwar v. State of Madhya Pradesh, Civil Appeals Nos. 1711-1721 and 1723 of 1974 decided on 27-11-1974: (AIR 1975 SC 360). There is no fundamental right to do trade or business in intoxicants. The State under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants – its manufacture, storage, export, import, sale and possession ……

These unanimous decisions of five Constitutional Benches uniformly emphasized after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves of all citilised communities."

In The State of U.P. and other v. Synthetics and Chemical Limited and others, AIR 1980 S.C. 614, the Supreme Court again relying upon the decisions in Har Shanker v. Dy. Excise and Taxation Commissioner (supra) and State of Orissa v. Hari Narayan Jaiswal, (1972) 3 SCR 784, held that the State has the exclusive right of manufacture and sale of intoxicating liquors. Obviously this decision of the evils to the utmost. The Supreme Court spoke thus :-

"It is true that they have fundamental right to trade or business or avocation but it is subject to control by Article 19(6)which empowers to impose by law reasonable restrictions on the exercise of the right in general public interest. In applying the test of reasonableness, the broad criterion is whether the law strikes a proper balance between social control on the one hand and the right of the individual on the other hand. The Court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time. The Court cannot proceed on general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restrictions are imposed. In order to determine reasonableness of the restriction, regard must be had, as stated earlier, to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The State, with a view to prohibit illegal or immoral trade, business or injury to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/business. The nature of the business and its indelible effect on public interest etc., therefore, are important elements in deciding the reasonableness of the restriction. No one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost.

The licencing authority, therefore, is conferred with discretion to impose such restrictions by notification or Order having statutory force or conditions emanating therefrom as part thereof as are deemed appropriate to the trade or business or avocation by a licence or permit, as the case may be. Unregulated video game operations not only pose danger to public peace and order and safety; but the public will fall into prey of gaming where they always stand to lose playing in the games of chance. Unless one resorts to gaming regularly, one can hardly be reckoned to possess skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of player to get extra tokens. Therefore, even when it is a game of mixed skill and

chance, it would be a gaming prohibited under the statute except by regulation. The restriction imposed therefore, cannot be said to be arbitrary, unbridled or uncanalised. The guidance for exercising the discretion need not ex facie be found in the notification or orders. It could be gathered from the provisions of the Act or Rules and a total consideration of the relevant provisions in the notification or order or conditions of licence. The discretion conferred on the licencing authority, the Commissioner or the District Magistrate, cannot be said to be arbitrary, uncanalised or without any guidelines. The regulations, therefore, are imposed in the public interest and the right under Article 19(1)(g) is not violated.

It is true that the owner or person in charge of the video game, earn livelihood assured under Article 21 of the Constitution but no one has right to play with the credulity of the general public or the career of the young and impressive age school or college going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(2) of Constitution. Right to life under Art. 21 does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some of video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair no unjust."

Undoubtedly the business which the petitioners in the instant case are pursuing is attended with danger to the community. Its evil effect is manifested by the depletion of the elephant population. The possession of an article made from Ivory has been declared as a crime. There is no fundamental right to carry on business in crime. The legislature has stepped in to eliminate the killing of Elephant. If the legislation in order to rectify the malady has made the possession of Ivory or articles made therefrom and offence, it cannot be said that the legislation violates Article 19(1)(g) of the Constitution to carry on trade and business. Such a pernicious activity cannot be taken to be as business or trade in the sense in which it is used in Article 19(1)(g) of the Constitution.

Once again we will assume for the sake of arguments that trade in such animals is a fundamental right and the impugned legislation imposes fetters thereon but the fact remains that the impugned legislation is for effectuating the purpose of Article 48A. When the legislature imposes restriction or prohibition or a ban to fulfil the mandate of the directive principles of the State policy, the restriction, prohibition or ban, is in the interests of the general public, as the expression interests of the general public occurring in Art. 19(6) is of a wide import including matters covered in Part IV of the Constitution. We are in this view supported by the decision of the Supreme Court in Municipal Corporation of the City of Ahmedabad and others v. Jan Mohammed Usmabhai and another, AIR 1986 SC 1205, Where it was held as follows :-

"The expression in the interst of general public is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

In Papnasam Labour Union v. Madura Coats Ltd. and another, (1995) 1 S.C.C. 501 (at page 513), the Supreme Court relying upon its earlier decision in Minerva Mills Case, (1992) 3 S.C.C. 336, held that ordinarily any restriction imposed which has the effect of promoting or effectuating the directive principles can be presumed to be reasonable restriction in public interest.

Therefore, when a legislation imposes restriction on the right of a trader for giving effect to any of the provisions of Part IV of the Constitution, the restriction will be deemed to be in the interest of the general public.

Since directive principles are fundamental in the governance of the country they must be given primacy. They can be effective only when they are given priority and preeminence over the fundamental right results to the common detriment of the community at large, it can be restricted, abridged or prohibited in order to promote common good of the people as envisioned by Part IV of the Constitution relating to the directive principles of the State policy.

The Courts are bound to enforce the law made in furtherance of the directive principles of the State policy. The directive principles of the State policy has laid down the path for the country to follow in order to achieve its goals. Measures to preserve the elephant brought into effect by Act No. 44 of 1991 which being in consonance with moral claims embodied in Part IV of the Constitution cannot be allowed to yield to Article 19(1)(g) and must be given priority. The Supreme Court in His Holiness Kesavananda Bharati Sripadagalavaru (supra) in regard to the importance of the directive principles observed as follows :-

“As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto themselves the Constitution and these basic rights are an essential feature of the Constitution; the Constitution was also enacted by the people to secure justice, political, social economic. Therefore, the moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in Part IV are not specifically enforceable as against the State by a citizen in a Court of law in case the State fails to implement its duty but, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation; must pour its content in the light of its experience. Restrictions, abridgement; curtailment and even abrogation of these rights in circumstances not visualised by the Constitution-makers might become necessary; their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Par IV. Whether at a particular moment in the history of the nation, a particular Fundamental Right should have priority over the moral claim embodied in Part IV or must yield to them is a matter which must be left to be decided by each generation in the light of its experience and its values.”

Again in State of Kerala and another v. N.M. Thomas and others, (1976) 2 S.C.C. 310, the Supreme Court held that the directive principles formed the

fundamental feature and the conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.

Thus it is clear that the directive principles are fundamental in the governance of the country and they can be effective if they are prevail over fundamental rights in order to subserve the common good. While most cherished freedoms and rights have been guaranteed, the Government has been laid under a solemn duty to give effect to the directive principles.

It was in fulfillment of this duty that the Principal Act and the Amendment Act 44 of 1991 have been enacted to conserve wild life. The destruction or depletion of the other form of life would create ecological imbalances endangering human life. No one can be given the privilege to endanger human life as that would violate Article 21 of the Constitution. Basically, it is extremely essential for the survival of man to co-exist with nature and to preserve and protect wild life.

As already seen, the directive principles of State policy are based upon moral principles and considerations. The protection of wild life has seeds in the history of time, and in the history of moral and ethical principles evolved by every society through various ages. A society which does not have ethical and moral values and fails to live in harmony with nature whithers and perishes. The sooner this truth is realised the better it would be for the welfare of the people. It has come to us through centuries to show compassion towards animals and birds as all are considered to have come from the same source. Lord Krishna in the Bhagwad Geeta declared that SARVE YONISU AHAM BIJA PRADAHPITAH' which means that I am the father of all. The followers of the Geeta are steeped in the belief that even the leaves of the trees, the petals and the flowers have life and God pervades in them. This belief is generated, nurtured and sustained by declarations of the Lord in the various shlokas particularly in the following :-

Chapter VI Text 30

'Yo_Mam Pas' Yati Sarvatra Sarvam ca mayi pas' yati Tashyaham na Pranas' yami sa ca me na pranasyati.'

Meaning

He who sees me present in all beings, and all beings existing within me, never loses sight of me, and I never lose sight of him. (Translation as culled out from 'Bhagvad-Gita' published by Gita Press Gorakhpur).

Chapter X Text B

'Aham Sarvasya Prabhavo mattah sarvam pravartate iti matva bhajante mam budha bhava-samanvitah'.

Meaning

I am source of all creation and everything in the world moves because of me : knowing this the wise, full of devotion, constantly worship me. (Translation as culled out from The Bhagavad Gita published by Gita Press Gorakhpur).

In various Ahadis the killing of animals for pleasure is deprecated. Equally the multilation of animals is decried.
The debates in the Parliament with regard to the amendment Bill reflects the same views as have been expressed above. At this state it will be convenient to set out the views of some of the Hon'ble Members :-
xx xx xx

SHRI SYED SHAHABUDDIN : Mr. Deputy Speaker, Sir, I rise to support the Bill. I welcome it as a comprehensive legislation for the protection and conservation of our natural flora and fauna and I am happy that it is based primarily on the expert advice given by the National Board of Wild Life. I am particularly happy that plants have been included in the definition of wild life. I think it is indeed a fitting gesture in a country whose basic philosophy is unity of all forms of life. I recall not only the philosophy of Mahavir but also the fact that the great scientist, Jagdish Chandra Bose was instrumental in establishing that plants too have life and for that, he had received the followship of the Royal Society.

xx xx xx

SHRI SUKHENDU KHAN : ……. People should be aware of the urgency of protecting wild life. This we can do through publicity, through some educative programme with the help of all kinds of medias. In Sikkim we have seen that the teachings of Buddha were preached through media. In those teachings of Buddha the kindness for animals and the trees …….
xx xx xx

SHRI AYUB KHAN : …… Our religious book say that just as a man worships God similarly plants, trees also worship God. Some trees are even worshiped; therefore it is inappropriate on the part of man to fell trees. The Hon. Minister has taken the responsibility to provide complete protection to them and I hope that he will get the reward for it. I would call it a sacred deed. Most of the people grow 'Tulsi' in front of their houses ……"

Apart from the beliefs which are personal to a person or society or people or section of people, it is now scientifically established that animals, trees, flora, fauna, insects, birds and human beings are linked with each other for their survival. Each specie is indispensable for the preservation of ecology, which is necessary for our existence. Even a lowly earth worm in the soil has also a function to perform to help us survive. It makes the soil fertile which gives us our food and nourishment. The trees were venerated in the past and are still being venerated by some as being sacred. This is not without reason. The trees take carbon dioxide from the atmosphere and replace it by life giving oxygen. Man forgetting the grand design of nature in which every living organism or being has to do its bit, has assumed the role of plunderer and destroyer of ecology for his greed. Man has been killing animals for the satisfaction of his uncontrolled thirst for money or hunting animals for pleasure and sport. The addiction is so immense that he is not bothered even about the survival of his progeny on this planet. The earth is a trust in the hands of the present generation for the posterity. Man has over exploited nature. The largest land animal, the Elephant, is no exception. It has been used as a beast

of burden, for hauling logs, employed in temples for various errands and in circuses. For all these it has been hunted to the point of extinction. In our country, as already seen, the tusker population has dropped to a mere 1500. when precepts lose their efficacy and are violated, legislation steps in for realizing the necessity to maintain orderly existence. It is in this context that the Amendment Act No. 44 of 1991 assumes great importance for the survival of the elephants.

Having regard to the above discussion we hold that :-

(1) no citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported;
(2) assuming trade in ivory to be a fundamental right granted under Article 19(1)(g), the prohibition imposed thereon by the impugned Act is in public interest and in consonance with the moral claims embodied in Article 48A of the Constitution; and
(3) the ban on trade in imported ivory and articles made therfrom is not violative of Article 14 of the Constitution and does not suffer from any of the maladies, namely, unreasonableness, unfairness and arbitrariness.

Whether section 39(1)(c)and 49C(7) read with section 51(2) of the impugned legislation are void since they do not provide for payment of compensation to the owners on account of extinguishment of their title in the imported ivory or articles made therefrom. These provisions have already been extracted in the earlier portion of the judgment and it is not necessary to extract them again. In regard to these provisions it was contended that even after the Constitution (Fourty-fourth) Amendment Act, 1978 whereby Article 31 was deleted from Part IV of the Constitution w.e.f. June 20, 1979, a citizen cannot be deprived of his property without being paid compensation for the same in accordance with Article 300A, which is a reincarnation of Article 31. Learned counsel referred to the decisions of the Supreme Court in Chiranjit Lal Chowdhuri v. The Union of India and others, 1950 S.C.R. 869; The State of West Bengal v. Subhodh Gopal Bose and others, 1950 S.C.R. 869; The State of West Begal v. Subhodh Gopal Bose and others, 1954 S.C.R. 587; Saghir Ahmad and another v. State of U.P. and others, AIR 1954 S.C. 728; Rustom Cavasjee Cooper v. Union of India, AIR 1970 S.C. 564; and Basantibai Fakirchand Khetan and others v. State of Maharashtra and another, AIR 1984 Bombay 366. On the basis of these decisions, which were rendered in the context of Article 31 of the Constitution he submitted that the State has no police powers under the Constitution to acquire the property without payment of compensation. The submissions of the learned counsel do not arise in the facts and circumstances of the instant case and the above decisions have no application thereto.

The Amendment Act 44 of 1991 does not deal with the acquisition or requisitioning of the property for a public purpose. The right guaranteed by Article 300A of the Constitution relates to compulsory acquisition and requisitioning of property for a public purpose. None of the provisions of Chapter V-A deal with acquisition of property for a public purpose. As already noticed, the object and purpose of the provisions are meant for providing protection to the elephant which is a threatened specie.

In Mumbai Upnagar Gramodyog Sangh (supra) the Supreme Court also inter-alia decided the question whether the impugned law was void because it did not provide for the compensation for the loss occasioned to the owner of the carcass resulting from the extinction of its title thereto. The Apex Court found that the law providing for extinction of ownership without making provision for payment of compensation to the owner of carcass and creation of interest in the Corporation in the carcass was not bad as such a law was not a law for acquisition of property for public purpose since its main objective was the destruction of carcass in public interest and not utilisation of the property for a public purpose. In this regard, it was held as follows :-

"Since the amendment by the Constitution (Fourth Amendment) Act, 1955, cls. (2) &(2A) of Art. 31 deal with the acquisition or requisitioning of property – movable or immovable – for a public purpose. The protection of cl. (2) is attracted only if there is acquisitioning of the property for a public purpose i.e., for using the property for some purpose which would be beneficial to the public. The right guaranteed by Art. 31(2) is that property shall not be compulsorily acquired or requisitioned for a public purpose save by authority of law which provides for compulsorily acquired or requisitioned for a public purpose save by authority of law which provides for compensation for the property so "acquired or requisitioned. The expression "acquired or requisitioned …….. for a public purpose" means acquired or requisitioned for being appropriated to or used for a public purpose. But the law which provides for extinction of the ownership and creation of an interest in the Corporation for the purpose of disposal of the carcass is not a law for acquisition of property for a public purpose; its primary purpose is destruction of the carcass in the public interest, and not utilisation of the property for a public purpose. In this regard, it was held as follows :-

"Since the amendment by the Constitution of (Fourth Amendment) Act, 1955, cls. (2) & (2A) of Art. 31 deal with the acquisition or requisitioning of property – movable or immovable – for a public purpose. The protection of cl. (2) is attracted only if there is acquisition or requisitioning of the property for a public purpose i.e., for using the property for some purpose which would be beneficial to the public. The right guaranteed by Art. 31(2) is that property shall not be compulsorily acquired or requisitioned for a public purpose save by authority of law which provides for compensation for the property so "acquired or requisitioned …….. for a public purpose" means acquired or requisitioned for being appropriated to or used for a public purpose. But the law which provides for extinction of the ownership and creation of an interest in the Corporation for the purpose: its primary purpose is destruction of the carcass in the public interest, and not utilisation of the property for a public purpose. The case would not, therefore, fall within the terms of Art. 31(2). In any case the statute is squarely protected by cl. (5)(b)
(ii) of Art. 31 and on that account the owner is not entitled to compensation for loss of his property. The words of Art. 31(5)(b)(ii) are express and specific. Nothing in cl.(2) shall affect the provisions of any law which the State may hereafter make for the promotion of public health or the prevention of danger to life or property. If a law is enacted directly for the promotion of public health or for the prevention of danger to life or property, then, notwithstanding that it may incidentally fall within the terms of cl. (2), no compensation is payable. Where the State acquires property and seeks

to utilise it for promotion of public health or prevention of danger to life or property, the State is liable to pay compensation. But a law which liable to pay compensation. But a law which prevent danger to life or property falls within the exemption under cl. (5)(b)(ii) even if thereby the interest of the owner in property is extinguished interest in that property is vested in the State for destruction of the property."

Again in Fatehchand Himmatial & others vs. State of Maharshtra etc. 1977(2) SCR 828 where existing debts of some classes of indigents had been liquidated by Maharashtra Debt Relief Act, 1976 and the money lenders had been deprived of their loans while being forced to repay their lenders, the Supreme Court on the socio-economic considerations held that the law was reasonable even though it did not provide for compensation to the money lender.

Similarly in State of Gujarat v. Vora Saivedbhai Kadarbhai and others, (1995) 3 SCC 196, which required the creditors to return to the debtors the properties pledged or mortgaged as security with them for their debts, was in question. Even in cases where the debts were scaled down enabling the debtors to pay the same in small instalements spread over a period of 10 years or more without interest, the Supreme Court, upholding the constitutionality of the legislation, held as follows :-

"Therefore, when we look at the provision in sub-section (2) of Section 14 of the Act in the light of the observations of this Court made in Fatehchand and other decisions adverted to by us, we find that the Legislature of Gujarat which had a human problem of saving the poverty-stricken debtors from the clutches of non-institutional creditors, relieving them of their debts to the extent found necessary and getting their properties returned from the creditors given as security for their debts, it was very much justified in introducing the provision in sub-section (2) of Section 14 of the Act, which enabled the debtors to get back their properties given as security, from the creditors for making use of them in their own way to eke out their livelihood, inasmuch as such provision cannot be considered as that not made in social interest by the legislature for promoting social and moral progress of the community as a whole. Therefore, the High Court was wholly wrong in its view that the provision in sub-section (2) of Section 14 of the Act to the extent it made, the creditors who were entitled to get the scaled down debts from certain debtors would have the effect of depriving the creditors of security for the debt, was an unreasonable restriction under Articles 19(1)(f) and 19(1)(g) of the Constitution and that view called to be interfered with. As is observed by this Court in the judgments to which we have adverted, even if social legislations such as Debt Relief Legislation enacted by a legislation are to make a few creditors victims of such legislation in one way or the other, the same cannot be regarded as an unreasonable restriction which cannot be imposed in respect of the rights exercisable by the citizens under Article 19(1)(f) and Article 19(1)(g) of the Constitution."

In Jesse W. Clarke v. Haberle Crystal Springs Brewing Company, 280 U.S. 384, it was held by the United States Supreme Court that when a noxious business is extinguished under the Constitution the owners cannot demand compensation from the State.

The above legislation which provides for extinction of the ownership of a person in imported ivory is not a law for the purpose of acquisition and requisitioning of property by the State. Its primary object is the preservation of the Elephant, and not for utilisation of the property for public purpose. This being so, Article 300A is not attracted. At this stage we may point out that the State had sufficient authority to enact the impugned law in exercise of its sovereign powers as distinguished from police powers of the State.
In Synthetics & Chemicals Ltd. etc. v. State of U.P. and others, AIR 1990 SC 1927, the State observed as follows :-

We would not like, however, to embark upon any theory of police power because the Indian Constitution does not recognise police power as such. But we must recognise the exercise of sovereign power which gives the States sufficient authority to enact any law subject to the limitations of the Constitution to discharge its functions. Hence, the Indian Constitution as a sovereign State has power to legislate on all branches except to the limitation as to the division of powers between the Centre and the States and also subject to the fundamental rights guaranteed under the Constitution. The Indian State, between the Centre and the States, has sovereign power. The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people. Sovereignty is difficult to define. This power, according to some constitutional authority, is to the public what necessity is to the individual. Right to tax on levy imposts must be in accordance with the provisions of the Constitution."

Having regard to the above decisions it is not necessary for the State of pay compensation to the petitioners for extinguishment of title of the petitioners in imported ivory or articles made therefrom. Since the State is not under any obligation to buy the stocks of the petitioners in acceptance of the one time sale proposition propounded by the petitioners, we cannot direct the State to either buy the same or pay compensation for it.

Mr. Thakur, learned counsel for the petitioners further submitted that under Article VII(2) of the CITES, permission to export or re-export pre-convention stocks of ivory or articles created therefrom can be granted in case the management authority of the State for export or re-export is satisfied that the specimen was acquired before the provisions of the present convention, and, therefore, the total ban imposed by the Amendment Act 44 of 1991 on the trade of imported ivory goes beyond the CITES agreement. He also submitted that the reasons advanced in the counter affidavit for banning of the trade in imported ivory on the basis of the CITES agreement are not well founded and have no proximity with the objects sought to be achieved by the amendment.

We have given our earnest consideration to the submission of the learned counsel but we are unable to agree with the same for the reason that the export or re-export of the specimen is also controlled by the provisions of Articles VIII and XIV of the CITES. As per Article VIII, the parties to the convention are required to take appropriate measures to enforce the provisions of the present convention. The measures contemplated by article VIII are as follows :-

(1) to penalise trade in, or possession of such specimen, or both; and
(2) to provide for the confiscation or return to the State of export of such specimen.

As per Article XIV, the parties to the Convention are a liberty to adopt stricter domestic measures regarding the conditions of trade, taking possession or transport or specimen or species included in Appendix I, II and III, or the complete prohibition thereof. At this stage, it will be convenient to set out Article XIV(1):-

"1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
(b) domestic measures restricting or prohibiting trae, taking possession, or transport of species not included in Appendices I, II or III."

As contemplated by the above Article, a member State to the convention can completely prohibit the trade of specimen included in Appendix I, II & III of the CITIES. This would depend upon the conditions prevailing in the countries the respective parties. As is brought out in the affidavit of the respondents, the parties to the convention have banned the trade in ivory. Besides, as per our reading Article VII, it does not permit a buyer to acquire a specimen after the provisions of the present convention came in force. If a foreign tourist buys the specimen for personal or household use after the coming into force of convention from a seller who may have acquired the specimen before coming into force of the convention, the exemption under Article VII(2) will not apply in such a case. Interpretation accords with clause 3 of Article VII. Under Clause 3 of Article VII exemption, inter alia, is given specimens that are personal or household effects but exemption is not to apply where the owner acquires specimens outside his State of usual residence and are the imported into that State. Therefore, the above submission of the learned counsel is not tenable and the same is rejected.

Mr. Thakur then submitted that the Parliament not authorised to make possession of the imported in which was lawfully acquired by the petitioners, as an offence under section 51 read with section 49C(7) of Amendment Act 44 of 1991. Learned counsel submitted this amounted to creation of an offence retroactively is hit by Article 20(1) of the Constitution. We do agree with the submission of the learned counsel as legislature has not created any offence retroactively. This stage it will be important to mention that the elephant was included in Appendix I of the CITIES in the 1975, which meant that international trade in Asian ivory or articles made therefrom was prohibited and as a consequence of it Indian ivory could be sold only in the domestic market. India being a signatory to CITES was also bound to ban trade in Indian ivory. The traders knew that such a ban was coming. India actually banned the trade in Indian ivory in 1986. The traders should have disposed of their stocks of Indian ivory from 1975 to 1986. As regards the African elephant it was proposed on October 18, 1989 to be included in Appendix-I of the CITIES and was so included on January 18, 1990. Ivory traders were allowed to carry on

domestic trade in imported ivory till the expiry of six months from the coming into force of the Amendment Act of 1991. Furthermore, as a result of interim stay granted by this Court the petitioners could dispose of their stocks by July 7, 1992. From the above it is clear that ivory traders were under a notice of the intending ban since 1989 and had sufficient time to dispose of their stocks of ivory in the domestic market. Though the statute gave six months time to the petitioners to liquidate the stocks from the specified date, the petitioners actually being under the protection of the Court's order could trade upto 7th July, 1992. It is significant to note that the Parliament has merely made the possession of imported ivory and articles made therefrom after the specified date an offence. The petitioners are not being subjected to a penal law on account of their having imported ivory during the period when there was no ban in existence.

Learned counsel for the petitioners also submitted that the Parliament by imposing the ban took over the functions of the judiciary. Learned counsel submitted that an organ of the State cannot take upon itself the functions which have been assigned by the Constitution to the Courts. In support of his submission learned counsel relied upon the decision of the Supreme Court in Smt. Indira Nehru Gandhi v. Shri Raj Narain, AIR 1975 S.C. 2299. It is true that the Constitution has assigned demarcated areas of operation for the legislature, judiciary and the executive. It is also true that legislation is the responsibility of the legislature and adjudication is the function of the judiciary, while the executive is to provide governance and to implement the provisions of the State travels beyond its assigned sphere of activity, the same would be violative of the Constitution. But we fail to see how the legislature in enacting the Amendment Act 44 of 1991 assumed the role of the judiciary. The provisions relating to the banning of the trade in imported ivory does not amount to a judicial determination by the Parliament. The Parliament, as already pointed out above, having regard to the public interest and the treaty obligations enacted Amendment Act 44 of 1991. The principle laid by the Supreme Court in Smt. Indira Nehru Gandhi v. Shri Raj Narain (supra) in para 55 (3) at page 2435 is as follows :

"It is true that there is no mention or vesting of judicial power, as such, in the Supreme Court by any Article of our Constitution, but, can it be denied that what vests in the Supreme Court and High Court is really judicial power? The Constitution undoubtedly specifically vests such power, that is to say, power which can properly be described as "judicial power", only in the Supreme Court and in the High Courts and not in any bodies or authorities whether executive or legislative, functioning under the Constitution, Could such a vesting of power in Parliament have been omitted if it was the intention of the Constitution makers to clothe it also with any similar judicial authority or functions in any capacity whatsoever?"

There cannot be any quarrel with the principle laid down in the above decision, but the question is whether the Parliament has entrenched upon the sphere of activity of the judiciary. Our emphatic answer is in the negative.

The Contentions of the learned counsel for the petitioners in Writ Petition Nos. 1303/92 and 1964/93 that the impugned legislation does not apply to mammoth ivory as the same is not covered by the provisions thereof and in any case

the Parliament was not competent to legislate with regard to the subject of mammoth ivory, does not appeal to us. It is significant to note that Act 44 of 1991 inserted clause (ia) in Section 49-B (1)(a) in the principal Act. As per this clause, no person can commence or carry on business as a dealer in ivory imported into India or articles made therefrom or as a manufacturer of such articles. It is also noteworthy that sub-clause (ia) uses the 'words' ivory imported into India. These words have been designedly and deliberately used by the legislature. The legislation was intended to cover all descriptions of ivory imported into India including mammoth ivory. This was to prevent Indian Ivory from entering into the market under the pretext of mammoth ivory or African ivory. Once the mammoth ivory is shaped into an article or curio, it looks exactly like an article made from elephant ivory. This we can say on the basis of the articles shown to us in Court-both of mammoth ivory as well as elephant ivory. The respondent, Union of India, in its affidavit dated May 19, 1992 has also expressed the same difficulty in distinguishing between articles of mammoth ivory and elephant ivory. Para 4 of the affidavit reads as follows :-

"Superficially this may be so, but when an article is manufactured from ivory it is impossible to distinguish whether that article is manufactured from mammoth ivory or from elephant ivory. The petitioner is in no position to guarantee that no ivory derived illegally from Indian elephant would be sold in the garb of mammoth ivory because there is no method by which one can distinguish the articles made from Indian ivory and mammoth African ivory ……."

Learned counsel for the petitioners, however, took pains in pointing out to us certain distinguishing marks. But they were hardly visible to the naked eye. Dr. Singhvi also made us look at the base of the articles made from mammoth ivory and elephant ivory through a magnifying glass but that did not make any difference for us as we do not have the discerning eye and experience which an expert in this line may have. We are, however, conscious of the fact that by using a scanning electron microscope, one may be able to distinguish ancient tusks from modern ones as has been mentioned by Doughlas H. Chadwick in his above said book. This is what he says :-

"Fortunately, scientists at the National Fish and Wildlife Forensics Laboratory in Ashland, Oregon, recently discovered a method to distinguish ancient tusks from modern ones. Using a scanning electron microscope, they focus on the tooth's characteristic crosshatched patterns, called Schreger lines. These are formed by tiny dentinal tubules, which turn out to be twice as dense in mammoths and mastondons as in modern elephants. As a result, the Schreger lines meet at angles of less than 90 degrees in the bygone species but more than 110 degrees in existing elephants, a minor but unmistakable difference. Forensic techniques can also distinguish proboscidean ivory form that of hippos, wart hogs and walruses. Conservationists hope that advances in chemical "fingerprinting" techniques will soon enable specialists to identify which particular elephant population a tusk came from, on the basis of DNA from tissues coating the basee of the tooth."

When a buyer intends to buy a curio, he is not interested to know whether it was created form elephant ivory or mammoth ivory. An average buyer also does not have the expertise or the knowledge to distinguish between articles made from mammoth ivory and Indian and Indian ivory. To him the translucent

whiteness of the ivory matters. He buys it purely on aesthetic considerations or as a status symbol. To give permission to trade in Articles made from mammoth ivory would result in laundering of Indian ivory – a result which the legislation wants to prevent for the reasons already explained above. Learned counsel for the petitioners referred to certain correspondence with the Secretariat of the CITES in support of his contention that it is possible to identify mammoth ivory form the ivory of the Asian and African elephants. This may be so but the identification can be made by experts in the field or those who have experience in this line and not by a lay man who sets out to buy an ivory article. Learned counsel also invited our attention to page 753, Vol. 7 of the New Encyclopedia Britannica, 15th Edition, and submitted that ivory which is drawn from mammoth, an extinct genus of elephants found as fossils in pleistocene deposits over every continent except Australia and South Africa (pleistocene epoch began 2,50,000 years ago and ended 10,000 years back) is fossil mammoth ivory and not ivory in the sense in which the same is used in the Act. We are unable to accept the submission that the mammoth ivory is not ivory in the sense in which it is used in the Act. In Case the legislation was not to apply to mammoth ivory the Parliament would have made an exception in this regard. We cannot attribute to the legislature that it was not aware of mammoth ivory found as fossils in large parts of the world. In the Shorter Oxford Dictionary, the meaning of the ivory is given as under :-

(i) The hard, white, elastic and find grain substance (being dentine of exceptional hardness) composing the main part of the tusks of the elephant, mammoth (fossil) ……..

(ii) A substance resembling ivory or made in limitation of it.

Thus the words ivory imported into India occurring in Section 49B(1)(a)(ia) would include all descriptions of imported ivory, whether elephant ivory or mammoth ivory.

We are also of the view that the impugned legislation falls within the power and competence of the Parliament as the same is meant to protect the Indian elephant. In order to achieve that purpose, the Parliament has undoubted power to deal with matters which effectuate the same. It can legislate with regard to all ancillary and subsidiary subjects including the imposition of ban on trade in imported ivory of all descriptions, whether drawn from mammoth or elephant, for the salutary purpose of the preservation of the Indian elephant.

For the foregoing reasons we do not find any merit in the writ petitions and the same are dismissed, but without any order as to costs.

(ANIL DEV SINGH)

(M. JAGANNADHA RAO)
Chief Justice.

March 20, 1997. (MANMOHAN SARIN)

Judge.

Appendix – 54

(RELEASE OF GOVERNMENT PROPERTY)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION No. 493 of 2000

State of Haryana through Deputy Conservator of Forests, Yamuna Nagar.

……. Petitioner.

Vs.

1. Abid S/o Nasiru vill. Jattanwala,
P.O. Darpur, PS Khizrabad.
Distt. Yamuna Nagar.

2. Nazim S/o Sindu Vill. Jattanwala,
P.O. Darpur, P.S. Khizrabad, Tehsil Chhachhruli,
Distt. Yamuna Nagar.

……. Respondents.

Petition under Section 401 Cr. P.C. for the revision of the order of Court of Sh. A.K. Raghav, Addl. Distt. and Sessions Judge, Hisar, dated 19.04.2000, accepting the revision and setting aside the order passed by the Ld. trial Court and the truck in question is ordered to be released on superdari to its registered owner on his furnishing superdagi-name to the tune of Rs. 5,00,000/- with one surety in the like amount to the satisfaction of Id. Presiding Officer, Environment Court, Hisar on the terms and conditions of the superdari that he will not change or sell it in any manner till the decision of the case.

Case No. 265

u/s 33 of the Indian Forest Act, 1927.

Case No. 10 Cr. R.

Order : Released the truck on superdari.

It has been Prayed from the grounds of Revision that this revision may kindly be accepted and the impugned order dated 19.4.2000 passed by the Ld. Additional Sessions Judge, Hisar may kindly be set aside in the interest of justice and fair play.

Dated the 20th March, 2001.

PRESENT

THE HON'BLE MR. JUSTICE K.S. GAREWAL

For the Petitioner – Mr. A.S. Grewal, DAG, Haryana.

For the Respondent – Mr. S.S. Dinarpur, Advocate.

Judgment……

Criminal Revision No. 493 of 2000

State of Haryana Versus Abid and another

Present: Mr. A.S. Grewal, DAG, Haryana,
for the petitioner.

Mr. S.S. Dinarpur, Advocate,
for the respondent.

K.S. GAREWAL, J.

On February 7, 2000 at about 6.30 A.M. truck No. HYG 3133 was chased by forest officials of the Chhachhrauli Range from Chiken C-5 area in the Wild Life Sanctuary and finally stopped at Sahjadwal. The truck was found carrying 88 logs of Khair wood which had been cut from Darpur and Chiken south beats of the protected forest which fell within the area of the Wild Life Sanctuary. The wood had been illegally cut in violation of 32 of the Indian Forest Act, 1927 (hereinafter referred to as the Forest Act). Furthermore, illegal felling of trees from a protected area which had also been declared a Wild Life Sanctuary amounted to the destruction of habitat of Wild life. Therefore, the Deputy Conservator of Forest, Yamuna Nagar ordered seizure of the truck under section 52 of the Forest Act and Section 50 of the Wild Life (Protection) Act, 1972 (hereinafter called the Wild Life Act).

The registered owner of the truck namely Abid presented an application before Special Environment Court at Hisar which had jurisdiction in the matter and prayed for the release of the truck on sapurdari. Vide order dated March 27, 2000. It was held that the truck could not be released on sapurdari and the application was dismissed.

A revision petition was presented by Abid before the Sessions Court and vide order dated April 19, 2000 the petition was allowed and the truck in question was ordered to be released on sapurdari to its registered owner on his furnishing bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the Special Environment Court. The State of Haryana was filed the

instant petition challenging the order of the learned Additional Sessions Judge. It has been pleaded that the learned Additional Sessions Judge. It has been pleaded that the learned Additional Sessions Judge has failed to appreciate that the Special Environment Court had taken up the proceedings under the provisions of the Wild Life Act for violation of Section 33 of the Forest Act. Therefore, it was an error on the part of the learned Additional Sessions Judge to hold that no proceedings had been conducted for confiscation of the vehicle by the competent authority for which reason the truck could not be detained and must be released on sapurdari.

In support of the revision the learned D.A.G. has referred to Section 52 of the Forest Act and Section 50 of the Wild Life Act. The relevant provisions of the Forest Act entitled a Forest Officer to seize all tools, boats, carts on cattle used for committing a forest offence but Section 53 of the Act empowers the Forest Officer to release the seized property to the owner on execution of a bond. However, the Wild Life Act while also empowering the Chief Wild Life Warden or the authorized officer or any forest officer to seize any Vehicle used for committing an offence under the Wild Life Act does not give a corresponding power to him to release the property. In the present case cutting and removal of khair wood from a forest which was part of a Wild Life Sanctuary amounted to destruction of the habitat which is the natural home of Wild animals and was prohibited by Section 29 of the Wild Life Act. For this reason the wood alongwith the truck was confiscated. Reference was further made to Section 39(1) (d) which declared that any vehicle used committing an offence and which has been seized under the provisions of the Act shall be property of the State Government. The truck having been seized under the provisions of the Wild Life Act, could not be released on sapurdari because there was no provisions in the Act in this regard.

Opposing the contentions of the State and supporting the impugned order, the learned counsel for the truck owner argued that under the Code of Criminal Procedure criminal courts did possess the power to order return of the property on sapurdari. Reference was made to provision of Chapter XXIV regarding disposal of property and to State of Madhya Pradesh and others Vs. Rameshwar Rathod A.I.R. 1990 S.C. 1849, Balwinder Singh Vs. State of Punjab 1998(1) R.C.R. 45, Bhupinder Kumar Vs. State of Punjab 1995(2) C.L.R. 108 and Karamjit Singh

Machanda Vs. The State of Punjab 1995 (2) C.L.R. 123. All the above authorities were cases under the Essential Commodities Act barring the last case which was one under the Narcotic Drugs and Psychotropic Substances Act. Under Section 6(a) of the Essential Commodities Act, the Collector possessed the powers to confiscate the essential commodity seized and also the Vehicle used for carrying such essential commodity. Under the Narcotic Drugs and Psychotropic Substances Act as well the vehicle carrying the contraband could be seized. However, the vehicle carrying the contraband could be seized. However, the vehicle carrying the essential commodity in contravention of law or the vehicle carrying the contraband could be released under the provisions of the Code. The counsel placed heavy reliance on the Supreme Court rulings cited above.

A comparative study of the various Acts and the Wild Life Act shows that the provisions of latter Act are much more stringent. Section 29 of the said Act prohibits destruction or damage to habitat. Section 39(1) (d) provides that the vehicle which has been seized shall be the property of the Government and Section 50(1) (c) allows seizure of vehicle which has been used for committing a Wild Life offence. Under section 51(2) and (3) the vehicle was liable to be forfeited to the State after conviction has been recorded and this forfeiture was in addition to any other punishment that may be awarded. However, Section 53 makes wrongful seizure an offence. There is no provision under the Wild Life Act for release of the seized property. Therefore, the truck cannot be released under any provision of the Wild Life Act. However, the truck could still be considered for release under section 451 Cr. P.C. as it was a general provision of law and the rulings cited by the learned counsel for the respondent.

The question to be determined is whether such release on sapurdari would be in the interest of promoting the objects of the Wild Life Act. The learned Additional Sessions Judge directed the release of the truck to its owner after holding that there was no provision that any proceeding had been conducted for the confiscation of the truck by the competent authority under the Wild Life Act and it was premature to keep the truck in custody as it could not be maintained by the Department and the report which had been called for from the prosecution had not been filed. None of the above reasons are sufficient grounds to release the truck on

sapurdari because the provisions of the Act are very stringent. Protection of Wild Life requires that its habitat is also protected. It is very sad to note that modern day man in his greed has undertaken large scale destruction of habitat of Wild Life by wanton cutting of trees and grazing in wild life sanctuaries. In the long run destruction of habitat amounts to destruction of wild life itself. Felling of trees in a sanctuary is like shooting down a herd of deer. Just as the weapon of offence in murder case is not released on sapurdari, similarly the vehicle used for destruction of habitat of Wild life does not deserve to be released on sapurdari. ***If the court records conviction then it is expected that some order regarding the disposal of the vehicle shall also be passed. However, if the court records acquittal then consequential relief would be available to the respondent. At this stage, it was not proper for the Additional Sessions Judge to release the truck on sapurdari.*** This petition is accepted and the order dated April 19, 2000 passed by Additional Sessions Judge, Hisar is hereby set aside.

March 20,2001
RSK

Sd/- K.S. GAREWAL
JUDGE

****

2003 CRI. L. J. 2954
(RAJSTHAN HIGH COURT)
(JAIPUR BENCH)

A.C. GOYAL, J.

Ayyub, Petitioner v. State of Rajasthan, Respondent.

Cri. Misc. Petn. No. 257 of 2003, D/-7-4-2003.

(A) Wild Life (Protection) Act (53 of 1972), S.39 - Custody (Supardigi) of vehicle - Imposition of condition of furnishing bank guarantee during pendency of case - Is not improper.

The main object of the Wild Life (Protection) Act, 1972 is to preserve and protect Wild animals, birds and plants. Liberal approach in such matters with respect to the property seized, which is liable to confiscation, is uncalled for us the same is likely to frustrate the provisions of the Act. The liberal approach in such matters would perpetuate the commission of more offences with respect to wild animals etc.. and, therefore, the Court may release the vehicle during pendency of the case and furnishing a condition. Thus, there is no legality in the impugned order with regard to imposing a condition of furnishing bank guarantee of Rs. 40,000/-.

(Para – 7)

(B) Wild Life Protection Act (54 of 1972), S. 50(3A) - Custody of vehicle - Forest Officers under S. 50(3A) have no power to give custody of vehicles - They have power to give custody of only captive animal or wild animal - Therefore plea that Magistrate has power to release vehicle only on execution of surety bond - Is not tenable.

(Para - 6)

Cases Referred : Chronological Paras

Kela Ram v. State of Rajasthan, 2002(3) Raj Cri C 1206 4
Sultan Khan v. State of Rajasthan, 2001(1) Raj Cri C 97 3,4
State of Karnataka v. K. Krishnan, 2000 Crl LJ 3971 : (2000) 9 JT (SC) 356 : AIR 2000 SC 2729 : 2000 AIR SCW 2911 4,6
Jahangir Gulikhan v. State of M.P., 1988 Cri LJ 1889 (Madh Pra) 3,5

Rajnish Gupta, for petitioner; Ms. Rekha Dhakad, Public Prosecutor, for the State.

ORDER :- A Jeep bearing No. RNV 2235 was seized by the Regional Forest Officer, Mandrayal District, Karauli, carrying fishes in violation of the Wild Life

(Protection) Act, 1972. (in short 'the Act') 1972. After registration of the case for the offence punishable under Section 51 of the Act, 1972, this jeep along with fishes was seized.

2. An application was moved on behalf of the petitioner for 'Supardigi' of this jeep Learned A.C.J.M. Karauli, considering the provisions of Sections 39 and 50 of the Act 1972, ordered to deliver this jeep to the petitioner on certain conditions including the condition of furnishing a bank guarantee of a sum of Rs. 40,000/- vide impugned order. Hence, this petition under Section 482, Cr. P.C. against the condition of bank guarantee.

3. Learned counsel of the petitioner submitted that according to sub-section (3A) of section 50 of the Act, 1972, vehicle may be given for custody on the execution of a bond for the production of the same when so required. According to learned counsel, there is no provision of furnishing bank guarantee. He placed reliance upon Jahangir Guli Khan v. State of Madhya Pardesh, 1988 Cri LJ 1889 and Sultan Khan v. State of Rajasthan, 2001(1) Raj Cri C 97.

4. Learned Public Prosecutor contended that this jeep is now Government property in view of Section 39 of the Act, 1972, hence condition of bank guarantee was rightly imposed. Reliance was placed upon Kela Ram v. State of Rajasthan, 2002(3) Raj Cri C 1206 and State of Karnataka v. K. Krishnan, (2000) 9 JT (SC) 356 : (2000 Cri LJ 3971).

5. I have considered the rival submissions, Section 39(I) (d) makes a provision that every vehicle etc. that has been used for committing an offence and has been seized under the provisions of this Act shall be the property of the State Government. It was held in Sultan Khan's case (2001 (1) Raj Cri C 97) (supra) that the articles seized will become Government property only after it is proved by the prosecution that such seized articles etc. had actually been used in commission of the crime and thus the order of Judicial Magistrate declining to release the jeep was set aside. Taking similar view in Jahangir Guli Khan's case (1988 Cri LJ 1889) (supra), the Madhya Pradesh High Court held that Magistrate has jurisdiction to release the vehicle for interim custody even though cognizance on a complaint is not taken. Section 50 of the Act, 1972, provides for powers of entry, search, arrest and detention. Sub-section (3A) of Section 50 is relevant which is as under :-

"(3A) :- Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or Wild Life Warden, who, or whose subordinate, has seized any captive animal or wild animal under Cl. (c) of subsection (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."

6. A bare perusal of these provisions goes to show that authorised forest officers may give any captive animal or wild animal for custody on the execution of a bond for the production of such animal if and when so required. Thus, the forest officers under sub-section (3A) of S. 50 have got power to give an 'Supardagi' only captive animal or wild animal and not the vehicle. Therefore, the contention of

learned counsel cannot be accepted that the Magistrate had power to release this jeep only on execution of surety bond. While dealing with the similar provisions of search, seizure and release of the forest produce and vehicles under the Karnataka Forest Act, 1963 in K. Krishnan's case (2000 Cri LJ 3971) (supra), it was held by the Hon'ble Apex Court that "Generally, therefore, any forest produce and the tools boats vehicles, cattles, etc. used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar, the officers and the authorities under the Act including the appellate authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition."

7. The main object of the Act, 1972 is to preserve and protect wild animals, birds and plants. Liberal approach in such matters with respect to the property seized, which is liable to confiscation, is uncalled for as the same likely to frustrate the provisions of the Act. The liberal approach in such matters would perpetuate the commission of more offences with respect to wild animals etc. and, therefore, the Court may release the vehicle during pendency of the case and furnishing a bank guarantee should be the minimum condition. Thus, there is no illegality in the impugned order with regard to imposing a condition of furnishing bank guarantee of Rs. 40,000/-

Consequently, this petition along with stay application is hereby dismissed.

Petition dismissed.

Appendix – 56

2004 CRI. L.J. 164

(GAUHATI HIGH COURT)

P.P. NAOLEKAR, C.J. AND

I.A. ANSARI, J.

Pu. C. Thangmma, Petitioner v. The State of Mizoram and others, Respondents.

W.P. (C) PIL No. 34 of 2001, D/-26-5-2003

Constitution of India, Art. 226-Public Interest Litigation - Allegations of killings of rare wild animals - Report of enquiry conducted by Chief Secretary (C.S.), Forest Department showing prima facie commission of offence under Wild Life (Protection) Act - However, Chief Minister of State directed C.S. not to initiate any action against accused who is Minister of State - Said officer of Government is duty bound to follow law and cannot refuse to perform his duties under guidance and directions of any authority - Directions given to C.S. to take appropriate steps in matter.

Wild Life (Protection) Act (53 of 1972), S. 39.

(Paras 2,3)

H. Roy, N. Sinha, U. Goswami and D. Bhattacharjee, Advocates, for Petitioner; A. Dasgupta, B.K. Sharma, U.K. Nair and A. K. Sharma, for Respondents; K. N. Choudhary, D.K. Das, Mrs. M.B. Sharma and Mrs. A. Baruah, for intervenor.

NAOLEKAR, C.J. :- This PIL has been filed making allegations as contained in paragraphs 5,6 and 7, they are reproduced below-

"5. That the petitioner states that one Pu. Hranghleikapa of Samphai in the State of Mizoram donated a barking deer on 14-6-2000 which he found in the forest at Samphai to Pu. K. Vanlaluava, Minister of State, Government of Mizoram for handling over the same to the Government run Mini Zoo at Aizawl. Then the said Minister by his Government Gypsy vehicle No. MZ-01-2082 carried the deer to Aizawl. While transporting the said wild animal, the said Shri K. Vanialuava did not obtain any permission from the Chief Wild Life Warden of any Authorized Officer of the State Government as contemplated under Section 48(A) of the Wild Life (Protection) Act, 1972. Later on, it was found that the servants of the said K Vanlaluava prepared the meat of the animal for the purpose of the dinner hosted by K. Vanlaluava in honour of the Hon'ble Chief Minister of the State.

6. That the aforesaid facts were reported in the local newspapers in Mizoram and on the demand of animal lovers of the State, the Government of Mizoram,

through the Chief Secretary directed Sri S.S. Patnaik, the Principal Chief Conservator of Forests-cum-Secretary, Environment and Forests to conduct the enquiry into the matter either by himself or through the DFO (Wildlife), Aizawl. That the Divisional Forest officer (Wildlife), Aizwal made necessary enquiry into the matter and submitted his report before the Principal Chief Conservator Forests on 4-7-2000. On the basis of the said report, the Principal Chief Conservator of Forests-cum-Secretary, Environment and Forests by his letter under memo No. UOPB/1/9B/CON/PCCF, dated 7-7-2000 intimated the Chief Secretary that the Barking Deer which was killed by the Minister of State falls under Schedule 3 of the Wild Life (Protection) Act, 1972 and he has committed an offence under Section 39(3)(A) and Section 48(A) of the Wild Life (Protection) Act, 1972.

A copy of the report dated 7-7-2000 along with the statement of Pu. K. Vanlalauva made before the Enquiry Officer are annexed herewith and marked as Annexures 1 and 2 respectively.

7.That your petitioner states that after the receipt of the enquiry report, the Government assured the Public as well as the Legislative Assembly that appropriate action will be initiated soon against Pu K. Vanlalauva for his commission of offence under Wild Life (Protection) Act, 1972. But surprisingly enough, in the very first week of August, 201, the Chief Minister has directed the Chief Secretary no to pursue the matter and not initiate any action under the Wild Life (Protection) Act against his aforesaid colleague. Being encouraged by such direction, the said colleague of Chief Minister and his other colleague have started visiting different forests and have resorted to indiscriminate killings of rare wild animals, such as Barking Deer, Wild life Boar etc.....".

2. The report of the enquiry conducted by Sri B.S. Patnaik, the Chief Conservator of Forests-cum-Secretary, Environment and Forests, Government of Mizoram, has also been filed along with the petition and the enquiry report submitted thereof, it prima facie appears that some offence has been committed under the Wild Life (Protection) Act and the Rules framed thereunder and the Chief Secretary to the Government of Mizoram is duty bound to follow the law and cannot refuse to perform his duties under the guidance and directions of any authority.

3. Under the facts and circumstances, we direct the Chief Secretary to the Government of Mizoram to take appropriate steps in the matter in accordance with law within a period of one month from the date of placement of a certified copy of this order before him.

4. The petition stands disposed of.

order accordingly.

Appendix – 57

(IVORY RELATED)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURIDICTION
CIVIL APPEAL NO. 7536 OF 1997

Balram Kumawat .....Appellant

Versus

Union of India & Ors. ....Respondents.

W I T H

CIVIL APPEAL No. 7537 of 1997

J U D G M E N T

S.B. SINHA. J :

QUESTION :

Whether 'mammoth ivory' imported in India answers the description of the words 'ivory imported in India' contained in Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the said Act') as amended by Act No. 44 of 1991 is the question involved in these appeals which arise out of a common judgment and order dated 20.3.1997 passed by a Division Bench of the Delhi High Court.

FACTUAL BACKGROUND :

The appellants M/s Unigems had imported mammoth fossil said to be of an extinct species in the year 1987. The stock of mammoth fossil held by the appellants is said to be periodically checked by the statutory authorities. The appellant in the other case Balram Kumawat is a carver.

Mammoth is said to be pre-historic animal which disappeared due to climatic conditions prevailing in Alaska and and Siberia. According to the appellants the distinction between mammoth and elephant ivory of elephant is of an extant living animal. The appellants state that mammoth ivory is distinguishable by visual and non-destructive means vis-à-vis elephant ivory and even in Convention on International Trade in Endangered Species (CITES) their distinguishing features have been pointed out.

SUBMISSIONS :

Mr. Sanghi and Mr. Parikh, the learned counsel would contend that trade in mammoth fossil ivory is not banned either under the said Act or under the CITES and, thus, the impugned judgment of the High Court cannot be sustained.

The learned counsel would take us through the history of CITES as mentioned in the impugned judgment of the High Court and would urge that the purport and object of the Act cannot be sub-served by placing a ban on trade in mammoth ivory. Taking us to the provisions of the said Act, the learned counsel would argue that as mammoth ivory does not answer the description of 'Wild animal', the provisions contained in Chapter VA of the said Act would not be attracted.

As Mammoth is an extinct species and as what is being used for carving is its fossil which is called ivory because it has white and hard dentine substance which is also available in other animals, namely, whale, Walrus, Hippos and Warthog; it was urged, they cannot be included in the term 'ivory' within the meaning of the provisions of the said Act.

It was contended that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that mammoth ivory being deceptively similar to elephant ivory to the naked eye, the impugned Act would be applicable in relation thereto also. The learned counsel would contend that if this is taken to its logical conclusion, then even trade in plastic articles which would be deceptively similar to elephant ivory may also held to have been banned. It was argued that the intention of the Legislature cannot be to ban any article irrespective of the purport and object it seeks to achieve only on the banned item. There exists scientific procedure, it was urged, whereby and whereunder mammoth ivory can be distinguished from elephant ivory and with a view to buttress the said argument, a large number of literature had been placed before us.

The preamble of the Act as also the 'Headings', the learned counsel would contend, should be taken into consideration for the interpreting the provisions of the said Act.

FINDINGS :

In the connected matter in Indian Handicrafts Emporium & Ors. Vs. Union of India & Ors. (Civil Appeal No. 7533 of 1997) disposed of this date, this Court upheld the constitutional validity of the provisions of the said Act. This Court held that in terms of Sub-Section (7) of Section 49-C of the Act all persons in general and traders in particular have become disentitled from keeping in their control any animal article including ivory imported in India.

This Court further held that as a logical corollary to the said finding, the statutory authorities would be entitled to take possession of such ivory in terms thereof; the purport and object of the Act being to impose a complete ban on trade in ivory. A complete prohibition has been imposed in the trade of ivory (whether imported in India or extracted by killing Indian elephants) for the purpose of protecting the endangered species. Trade in ivory imported in India has been prohibited further with a view to give effect to the provisions contained in Article 48A as also Article 51A(g) of the Constitution of India.

Why despite passage of time the trade in stock could not be disposed of within a period of four years has not been disclosed by the appellants. It is not in dispute that even in terms of Act 44 of 1991, six months time was granted for disposing the stock of ivory.

For the reasons stated hereinafter, it may not be necessary for us to go into the question as to whether scientifically mammoth ivory can be deciphered from elephant ivory.

What has been banned is ivory. There is complete prohibition of trade in ivory. Such a complete prohibition is a reasonable restriction within the meaning of Clause (6) of Article 19 of the Constitution of India. The impugned Act being not unreasonable does not also attract the wrath of Article 14 of the Constitution of India.

For the purpose of determination of the question, we need to consider only the dictionary meaning of the term 'ivory'. Commercial meaning or technical meaning of an object or article is required to be taken recourse to when the same is necessary for the purpose of meeting the requirements of law. The law in no uncertain terms says that no uncertain terms says that no person shall trade in elephant ivory or other types of ivory. The purport and object of the Act, as noticed in the judgment in Indian Handicrafts Emporium (supra), is that nobody can carry on business activity in imported ivory so that while doing so, trade in ivory procured by way of poaching of elephants may be facilitated. The Parliament, therefore, advisedly used the word 'ivory' instead of elephant ivory. The intention of the Parliament in this behalf, in our opinion, is absolutely clear and unambiguous. We cannot assume that the parliament was not aware of existence of different types of ivory. If the intention of the Parliament was to confine the subject matter of ban under Act 44 of 1991 to elephant ivory, it would have said so explicitly.

As noticed hereinbefore, the object of the Parliament was not only to ban trade in imported elephant ivory but ivory of every description so that poaching of elephant can be effectively restricted. An article made of plastic would by no means resemble ivory.

In the Shorter Oxford Dictionary, the meaning of 'ivory' is stated as under

(i) The hard, white, elastic and fine grain substance (being dentine of exceptional hardness) composing the main part of the tusks of the elephant, mammoth (fossil) ….
(ii) A substance resembling ivory or made in imitation of it.

In Collins English Dictionary, 'ivory' has been defined as :

(i) A hard smooth creamy white variety of dentine that makes up a major part of the tusks of elephants, walruses, and similar animals.
(ii) A tusk made of ivory.
(iii) A yellowish-white colour; cream
(iv) A substance resembling elephant tusk.

(Emphasis supplied)

'Ivory', therefore, even as per dictionary meaning is not confined to elephant ivory.

At this stage, we are not concerned with a criminal crial. The appellants are not being proceeded against in a criminal case. Their civil rights, if any, are only required to be dealt with. The appellants in these matters complain of civil injuries only.

Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature.

In State of West Bengal vs. Union of India [AIR 1963 SC 241 at p. 1265], the learned Chief Justice stated the law thus :

"The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

The said principle has been reiterated in R.S. Raghunath vs. State of Karnataka and another (AIR 1992 SC 81 at p. 89).

Furthermore, even in relation to a penal statute any narrow and pedantic, literal and Texical construction may not always be given effect to. The law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so.

G.P. Singh in his celebrated treatise 'Principles of Statutory Interpretation' distinguished between strict construction of penal statutes which deals with crimes of aggravated nature vis-a-vis the nature of the activities of the accused which can be checked under the ordinary criminal law stating :

"In Joint Commercial Tax Officer, Madras v. YMA, Madras, SHAH, J. observed : "In a criminal trail or a quasicriminal proceeding, the court is entitled to consider the substance of the transaction and determine the liability of the offender. But in a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability." With great respect the distinction drawn by SHAH, J. does not exist in law. Even in construing and applying criminal statues any reasoning based on the substance of the transaction is discarded.

But the application of the rule does not permit the court in restraining comprehensive language used by the Legislature, the wide meaning of which is in accord with the object of the statute. The principle was neatly formulated by LORD

JUSTICE JAMES who speaking for the Privy Council stated : "No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip; that there has been a casus omissus; that the thing is so clearly within the mischief that it must have been included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statue, where such doubt or ambiguity would clearly not be found of made in the same language in any other enactment." The above formulation has been cited with approval by the House of Lords and the Supreme Court. In the last-mentioned case, SUBBARAO, J., referring to the Prevention of Corruption Act, 1947, observed : "The Act was brought in to purify public administration. When the Legislature used comprehensive terminology – to achieve the said purpose. It would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used there." Similarly, the Supreme Court has deprecated a narrow and pedantic construction Act, 1954 likely to leave loopholes for the adulterator to escape. And on the same principle the court has disapproved of a narrow construction of section 135 of the Customs Act, 1962, Section 489A of the Penal Code, Section 12(2) of the Foreign Exchange Regulation Act, 1947, section 630(1)(b) of the Companies Act, 1956, section 138 of the Negotiable Instruments Act, 1881. So, language permitting a penal statute may also be constructed to avoid a lacuna and to suppress the mischief and advance the remedy in the light of the rule in Heydon's case. Further, a commonsense approach for solving a question of applicability of a penal enactment is not ruled out by the rule of strict construction. In State of Andhra Pradesh v. Bathu Prakasa Rao, rice and broken rice were distinguished by applying the commonsense test that at least 50% must be broken in order to constitute what could pass off as marketable 'broken rice' and any grain less than 3/4th of the whole length is to be taken as broken.

The rule of strict construction does not also prevent the court in interpreting a statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the statute. Thus psychiatric injury caused by silent telephone calls was held to amount to 'assault' and 'bodily harm' under sections 20 and 47 of the Offence Against the Person Act, 1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury."

(See also Lalita Jalan & Anr. Vs. Bombay Gas Ltd. & Ors. Reported in 2003 (4) SCALE 52).

A statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well-known principle of law. In Tinsukhia Electric Supply Co. Ltd. vs. State of Assam (AIR 1990 SC 123), this Court stated the law thus :

"The courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness.

This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but What a court of construction, dealing with the language of statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co. ((1900) 2 Ch 352, Farwell J. said : (pp. 360-61))

"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."

In Fawcett Properties Ltd. v. Buckingham County Council ((1960) 3 All ER 503) Lord Denning approving the dictum of Farwell, J. said :

"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the courts have to say what meaning the statute to bear rather then reject it as a nullity."

It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable. In whitney v. Inland Revenue Commissioners (1926 AC 37) Lord Dunedin said :

"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

The Courts will therefore reject that construction which defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. (See Salmon vs. Duncombe [(1886) 11 AC 627 at 634]. Reducing the legislation futility shall be avoided and in a case where the intention of the Legislature cannot be given effect to, the Courts would accept the bolder construction for the purpose of bringing about an effective result. The Courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that the Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. (See BBC Enterprises Vs. Hi-Tech Xtravision Ltd., (1990) 2 All ER 118 at 122-3)

In Mohan Kumar Singhania and Others vs. Union of India and Others (AIR 1992 SC 1), the law is stated thus :

"We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statues. However, it will suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/rules/regulations relating to the subject matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation."

In Murlidhar Meghraj Loya Vs. State of Maharashtra [(1976) 3 SCC 684] while dealing with the provisions of Food Adulteration Act it was stated :

"5. It is trite that the social mission of food laws should inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal statutes calculated to protect the public health and the nation's wealth."

In State of U.P. vs. Chandrika [(1999 8 SCC 638], this Court held that in matters involving economic crime, food offence and other cases, the doctrine of plea bargaining should not be applied. While holding so it referred with approval Madanlal Ramchandra Daga vs. State of Maharashtra [AIR 1968 SC 1267 = (1968) 3 SCR 34), Murlidhar Meghraj Loya (supra), Ganeshmal Jashraj vs. Government of Gujarat [(1980) 1 SCC 363], Thippaswamy vs. State of Karnataka [(1983) 1 SCC 194] and Kasambhai Abdulrehmanbhai Sheikh vs. State of Gujarat [(1980) 3 SCC 120].

Yet again in Superintendent and Remembrancer of Legal Affairs to Govt. of West Benal Vs. Abani Maity [AIR 1979 SC 1029: (1979) 4 SCC 85] the law is stated in the following terms :

"19. Exposition ex visceribus actus is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word "may" would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, "of an ineffectual void in vain". "If the choice is between two interpretations", said Viscount Simon L.C. in Nokes v. Doncaster Amalgamated Collieries, Ltd. ((1940) AC 1014, 1022) "the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder

construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

This decision was followed in State of Karnataka and others vs. Saveen Kumar Shetty [(2002) 3 SCC 426].

In State of Himachal Pradesh vs. Pirthi Chand and Another. [(1996) 2 SCC 37], this Court while dealing with a case of contraband article following amongst others in Abani Maity (supra) stated :

"It would be seen that the organized traffic in contraband generates deleterious effect on the national economy affecting the vitals of the economic life of the community. It is settled law that illegality committed in investigation does not render the evidence obtained during that investigation inadmissible. In spite of illegal search property seized, on the basis of said search, it still would form basis for further investigation and prosecution against the accused. The manner in which the contraband is discovered may affect the factum of discovery but if the factum of discovery is otherwise proved then the manner becomes immaterial."

The said principle has been reiterated in Khet Singh vs. Union of India [(2002) 4 SCC 380] stating :

"Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and find out whether any serious prejudice had been caused to the accused."

In State of Maharashtra vs. Natwarlal Damodardas Soni [AIR 1980 SC 593: (1980) 4 SCC 669] this Court was concerned with search and seizure of gold under the Customs Act and the Defence of India Rules. The Court was dealing with smuggling of gold into India affecting the public economy and financial stability of the country and in that context the Court applied the Mischief Rule. While interpreting the words 'acquires possession' or 'keeping' in clause (b) of Section 135(1) of the Customs Act, this Court observed that they are not to be restricted to 'possession' or 'keeping' acquired as an owner or a purchaser of the goods observing :

"Such a narrow construction – which has been erroneously adopted by the High Court- in our opinion, would defeat the object of these provisions and undermine their efficacy as instruments for suppression of the mischief which the legislature had in view. Construed in consonance with the scheme of the statute, the purpose of these provisions and the context, the expression "acquires possession" is of very wide amplitude and will certainly include the acquisition of possession by a person in a capacity other than as owner of purchaser. This expression takes its colour from the succeeding phrase commencing with the word "or", which is so widely worded that even the temporary control or custody of a carrier, remover, depositor, harbourer, keeper of dealer of any goods which he knows or has reason to believe to be smuggled goods which he knows or has reason to believe to be smuggled goods or prohibited goods (liable to confiscation under Section 111),

cannot escape the tentacles of clause (b). The expressions “keeping” and “concealing in the second phrase of clause (b) also cover the present case.”

This Court while setting aside a judgment of acquittal passed in favour of the Respondents therein on the basis of the interpretation of the Customs Rules observed:

“The High Court has held that those rules do not apply because the accused respondent had not acquired possession of these gold biscuits by purchase or otherwise within the meaning of these rules. Such a narrow construction of this expression, in our opinion, will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. As was pointed out by this Court in Balkrishna Chhaganlal v. State of West Bengal (AIR 1974 SC 120), Rule 126-P(2)(ii) penalizes a person who has in his possession of this Part, and the court cannot cut back on the width of the language used, bearing in mind the language used, bearing in mind the purpose of plenary control the State wanted to impose on gold, and exempt smuggled gold from the expression “any quantity of gold” in that sub-rule. These provisions have, therefore, to be specially construed in a manner which will suppress the mischief and advance the object which the legislature had in view. The High Court was in error in adopting too narrow a construction which tends to stultify the law. The second charge thus had been fully established against the respondent.”

These decisions are authorities for the proposition that the rule of strict construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of the Parliament to combat crimes of special nature would be defeated.

We are, however, not oblivious of the fact that potential public mischief cannot be a ground to invoke the court’s interpretative role to make a new offence. Making of legislation is not the job of the judiciary. Making of legislation is not the job of the judiciary. Making of a penal legislation by the judiciary is strictly out of its bound. However, when the law working in the field is clear then what is necessary for it is to find out as to whether any offence has been created or not. Once it is held that the subject matter comes within the purview of the law, the Court may not go further and say by interpretive reasonings that the same in not so created.

We do not think that in a case of this nature where the principles of law as enunciated hereinbefore as also the doctrine of purposive construction, which have been discussed in details in Indian Handicraft Emporium (supra), any useful purpose would be served by referring to a large number of decisions relied upon by Mr. Parikh as regards efficacy of referring to the preamble of a statute or its heading, in view of the well-settled principles of law that where plain and dictionary meaning can be given, reference to preamble on a heading may not be of much use. The submission of Mr. Parikh that in a case of this nature a restrictive meaning should be attributed to the word ‘ivory’ cannot be acceded to inasmuch as, in our opinion, the dictionary meaning should be adhered to for the purpose of giving effect to the purport and object of the Act.

It is no doubt true that normally a technical meaning should be attributed rather than a common meaning to a word if the same relates to a particular

trade, business or profession, art or science or words having a special meaning as has been held in Union of India Vs. Garware Nylons Ltd. [AIR 1996 SC 3509 and Unwin vs. Hanson [1891 (2) QB 115]. But we are not dealing with an ordinary/taxing statute. We are dealing with a law which has been enacted in larger public interest and in consonance with Articles 48A and 51A(g) of the Constitution of India as also International Treaties and Conventions.

As pointed out hereinbefore, the Parliament has enacted the Amending Acts of 1986, 1991 and 2003 not only for the purpose of banning trade in elephant ivory but with a view to create a blockade of the activities of poachers and others so that a complete prohibition in trade in ivory is achieved. By reason of the Amending Acts, the Parliament was anxious to plug the loop-holes and impose a ban on trade in ivory so that while purporting to trade in imported ivory and carvings therefrom, poaching of Indian elephants and resultant illegal trade by extracting their tusks may not continue.

The submission of Mr. Parikh that the doctrine of proportionality should be applied in a case of this nature cannot also be acceded to.

In Om Kumar and Others vs. Union of India [(2001) 2 SCC 386], to which a pointed reference has been made, this Court made a distinction between the primary and secondary review of administrative between the primary and secondary review of administrative orders. As indicated in Indian Handicraft Emporium (supra), this Court while constructing the provisions of the Act vis-à-vis restrictions imposed in terms of clause (6) of Article 19 of the Constitution of India has come to the conclusion that the provisions of the Ameding Acts satisfy even the strict scrutiny test. In Om Kumar (supra), this Court pointed out that the area of discretion of administrator would vary in different situations stating :

"While the courts' level of scrutiny will be more in case of restrictions on fundamental freedoms, the courts give a large amount of discretion to the administrator in matters of high-level economic and social policy and may be reluctant to interfere : (R. V. Secy of State for the Environment, ex p Nottinghamshire County Council (1986 AC 240 : (1986) 1 All ER 199 : (1986) 2 WLR 1 (HL)); R. V. Secy. of State for Environment, ex p Hammersmith and Fulham London Borough Council (1991) 1 AC 521 : (1990) 3 All ER 589 : (1990) 3 WLR 898) (AC at p. 597). Smith speaks of "variable margin of appreciation". The new Rule 1 of the Civil Procedure Rules, 1999 permits the courts to apply, "proportionality" but taking into account the financial issues, complexities of the matter and the special facts of the case."

In Papanasam Labour Union vs. Madura Coats [(1995) 1 SCC 501] whereupon Mr. Parikh has placed reliance, this Court held that while a power has been conferred upon a higher authority, a presumption can be raised that he would be conscious of its duties and obligations and so would act promptly and reasonably.

There is also no quarrel on the proposition of law laid down therein for the purpose of judging the constitutionality of the statutory provisions in the light of Article 19 of the Constitution of India. The impugned act fulfill the said criteria.

For the reasons aforementioned, we are of the opinion that the opinion that the impugned judgment cannot be faulted. Accordingly, the appeals are dismissed but without any order as to costs.

…….. CJI

…….J.
[S.B. Sindha]

…….J.
[Arun Kumar]

New Delhi
August 27, 2003.

Appendix – 58

(RETURN OF GOVERNMENT PROPERTY)

IN THE CURT OF XVI METROPOLITAN MAGISTRATE, GEORGE TOWN, CHENNAI-1

Present: Thiru V.S. Kumaresan, B.A., B.L.,
XVI Metropolitan Magistrate.

Crl. M.P. No. 4922 of 2003
in
Crl. M.P. No. 732 of 2003

Friday, the 30th day of April, 2004

M/s Transcoastal Cargo & Shipping Service Pvt. Ltd.,
Rep. by its Director "Cattholic Centre", 1st floor,
108, Armenian Street,
Chennai.1
…/Petitioner/Respondent
Vs
The Inspector (Wildlife Preservation),
Wildlife Regional Office (S.R.)
Govt. of India, Ministry of Environment & Forests,
C.2 A Rajaji Bhavan, Chennai-90
…/Respondent /Petitioner

This petition is coming up before me for hearing in the presence of M/s Shanthi Vinayagam and E.Nelson Noronha for the petitioner and Tr. N. Muralikumaran, Addl. Central Govt. standing counsel for the respondent and on hearing the arguments of both the sides, this court delivers the following.

ORDER

This is an application filed by the petitioner U/s 451 of Cr.P.C. for the return of the property namely container bearing No. LL.C.U.504256-4.

On 12.3.04 an order for production of the contained before this court was passed. However, the respondent herein contended that, the said contained could not be produced before this court. In view of its voluminous nature and it was further contended that an intimation about the seizure of the property was sent to this court and that itself sufficient and satisfy the requirement of section 50(4) of the wild life protection Act, 1972. To support his contention, the counsel for the respondent relied

on an unreported judgment of Hon'ble High Court of Madhya Pradesh Bench at Gwalior in State of M.P. through Director National Park, Shivpuri Versus Asad Amin Wherein it has been observed as follows.

Section 2(14) of the act defines the Govt. Property which means a property referred to in section 39. Therefore, Magistrate before whom seized property produced has to deal with according to law. Since the property has become Govt. Property the magistrate looses jurisdiction to deliver the property. The meaning can be drawn from the "phraseology" according to law. The question has been considered by the Bench of this court in the case of State of M.P. Vs. Ali reported in 1895 MPLJ-791. It has been held that section 39 of the Act as amended 1991, clearly lays down that any vehicle seized which is involved in the offence under the provision of the act shall be the property of the State Government. Accordingly as a consequence of amendment in section 39 of the Act, Section 50 of the act has also been amended whereby power of returning the vehicle seized by the officials has been withdrawn, in such circumstances. Once the property has become the property of the State, no orders for delivery of property could be passed. Similar is the provision in section 52(a) of the Forest Act where intimation of seizure is sent to Magistrate but Magistrate has no jurisdiction to dispose of the seized goods therefore the Magistrate has no jurisdiction to release, the property on supurdnama. This view has been taken by the single Bench of this court of Laxmichand V. State of M.P. report in 1995 JLJ 746.

Further the counsel for the respondent relied on the unreported judgment of Hon'ble Apex court in Spl. L.P (Crl.) No. 233/00 in State Karnataka Vs K. Krishnan dated 17.08.2000. The said judgment was rendered in a matter of return of vehicle involved in the offence under forest Act. The Apex court refused to order return of the vehicle by observing that " we are the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party until the culmination of all the proceedings, if any …

Any such easy release would make the forest offence's to repeat commission of such offences" Citing the said judgment, the counsel for the respondent drawn

analogy between the two enactments the purpose of both being to save the forest and the precious forest animals and living being and pleaded that the container being involved in offence has become property of state and it cannot be ordered to be returned to the petitioner. This court accept the said contention of the respondent.

On the contrary the counsel for the petitioner contented that the petitioner is not the accused in the crime and the irrespect of the property it is having a leasehold right and because of it being kept idle, it is losing its lease hold right over the property and that apart Rs. 100/- per day has been charged as demurrages from the petitioner for keeping the container in the dock and thus pleaded for the return of the property. This court is helpless. In view of the non availability of the property before this court, it cannot exercise power U/s 451 to order return of property that too at this stage of the proceeding. This court has no inherent power to order for return of the property which was not produced before it, and which has become the property of the state on its seizure order for the waiver of demurrages which is being collected from the petitioner for keeping the container. Hence in the above circumstances and for the reasons above stated, this application for return of property is dismissed.

//pronounced by me in the open court this the 30th day of April 2004.//

Sd/-

XVI Metropolitan Magistrate.

Appendix – 59

(RELEASE OF GOVERNMENT PROPERTY)

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.02.2005

CORAM
THE HONOURABLE MR JUSTICE M. CHOCKALINGAM
CRIMINAL REVISION CASE NO. 1322 OF 2004
AND
CRL. M.P.NO. 8454 OF 2004

M/S TRANSCOASTAL CARGO &
Shipping Service Pvt. Ltd.,
Rep. by its Director
"Catholic Centre" I Floor
108, Armenian Street
Chennai – 600 001.
…. Petitioner
Vs.
The Inspector
(Wild Life Preservation)
Wild Life Regional Office
Govt. of India
Ministry of Environment &
Forests, C-2A, Rajaji Bhavan
Chennai – 600 090.
….. Respondent

Criminal Revision Petition under sections 397 and 401 or Cr. P.C. praying to set aside the order passed in Crl. M.P. No. 4922 of 2003 in Crl. M.P. No. 732 of 2003 dated 30.04.2004 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai.

For Petitioner : Mr. K.F. Manavalan
For Respondent : Mr. P. Wilson, Spl. P.P. (Forest)

O R D E R

An order of XVI Metropolitan Magistrate, Madras dismissing an application seeking return of the property, namely, a container, is challenged by the petitioner herein.

2. On 28.02.2002, when the Wild Life Inspector (Wild Life Preservation), Regional Office, Southern Region, Government of India opened and examined the container before the mahazar witnesses found them to contain items 1,2,3 and 4, which are banned and protected wild lives, the container was seized. A case was

registered and also a complaint was lodged before the Court which took cognizance. Pending the same, an application was filed seeking to return of the said container in Crl. M.P. No. 4922 of 2003. After hearing both asides, the said Court directed the Department to produce the container before the said court directed the Department to produce the container before the Court within a week. A memo was filed stating the reasons for not producing the container before the Court and the same was recorded and the main application seeking for return of the property, namely Crl. M.P No. 732 of 2003 was taken up for consideration.

3. What are all contended by the learned counsel for the petitioner before the lower court, equally before this court also is that the container is a property belonged to the Government of India. The petitioner was not having any lease hold rights for the past three years. The subject matter in the prosecution was only the Wild Life items, which are to be protected and in respect of that, prosecution has also been lodged and not in respect of he container and the lower court should have ordered the return of the container.

4. The learned counsel for the petitioner also relied on a decision of the Apex Court in SUNDER BHAI AMBALAL DESAI VS. STATE OF GUJARAT reported in AIR 2003 S.C. 638, wherein the Supreme Court has ordered for disposal of the property pending trial. The Court has to take note of the fact that the powers of the court under Section 451 should be exercised expeditiously and judiciously and the Court has to pass appropriate orders immediately and the articles are not to be kept for a long time at police station, in any case for not more than 15 days to one month.

5. In answer to the said contention, learned counsel for the respondent-Department would submit that the specific case of the prosecution was that the wild life items were actually kept and about to be transported only in that container and in view of the same, the said container was seized and hence, till the culmination of the proceedings no order for return of the property could be passed and part form that possibility, the confiscation of the power is also vested and in support of his contention, he also relied an unreported decision of the Ap* Court in S.L.P. Criminal No. 233 of 2000 wherein after hearing both sides, the Supreme Court was of the considered opinion that the order of the lower court in refusing to return the property has got to be sustained. It is true that the four items of wild lives were found which are to be protected was the subject matter of prosecution was that when the

container in question was opened and examined on 28.2.2002, it was found to contain the banned and protected marine items etc., and thus the prosecution case is that it was the container, which was used for the purpose of transportation of the same, this Court is of the considered opinion that the decision cited by the learned counsel for the petitioner is applicable to the case in general, but in the instant case while it was found that when the container was seized on the allegations that it was used for committing the offence, the same shall not be returned to a party until the culmination of all the proceedings in respect of such offence including the confiscation proceedings, if any, in the instant case.

6. Apart from that, under Section 2 sub-clause 14 of the Wild Life (Protection) Act, 1972, which defines the "Government Property" means any property referred to in Section 39 also. Therefore, in the instant case, the learned counsel for the respondent would submit that the container falls within the definition of the property defined under section 2 sub-section 14 of the Act. Under such circumstances, the order of the lower court till the culmination of the proceedings has got to be sustained. Hence, the contention of the learned counsel for the petitioner carries no merit and does not require counsel for the petitioner carries no merit and does not require any interference, as there is no illegality or infirmity.

7. Learned counsel for the petitioner would submit that the case has got to be disposed of within a time frame. In answer, the learned counsel for the Department contended that the matter is under investigation by the CBI. Under such circumstances, this Court is of the considered opinion that time frame cannot be stipulated at this stage.

8. With the above observation, the criminal revision case is dismissed.

Sd/-
Asst. Registrar

Sd/-
Sub Asst. Registrar

TO

1. The Inspector
(Wild Life Preservation)
Wild Life Regional Office
Govt. of India
Ministry of Environment &
Forests, C-2A, Rajaji Bhavan
Chennai – 600 090.

Appendix – 60

GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS

No. 21-110/WSR/03 Dt.22/3/05

To,
The Addl. DG (WL) & Director (WLP)
Ministry of Environment & Forests,
Govt. of India,
Paryavaran Bhavan,
New Delhi.

Sir,

Sub:- Important Judgement concerning the status of seized property – questions of law under S.39(1)(d) r.w. S.50(4) of Wild Life (Protection) Act, 1972 – Hon'ble High court of Madras – Information – reg.

It is to submit as under: -

1) that in 1991 an amendment was made to S.39 of the Wildlife (Protection) Act, 1972 inserting a new S.39(1)(d) which declares that any property seized for offences under the Act is the property of government during the pendency of the trail.

2) that normally such property seized has to be dealt with according to S.50(4) r.w. S.451 Cr.P.C. wherein the competent Court of Law trying the case can release the vehicle on Jummanama.

3) that a question of law arose as to what is the effect S.39(1)(d) upon S.50(4) *in re* Asad Amin Vs State of MP.

4) that giving the above citation, success was obtained by the undersigned in cases dealt by the undersigned in Andamans (Viz. CR Case No: 16 & 17/1996 before Hon'ble JMFC, Mayabunder).

5) that however, the above citation belonging to M.P. High Court has in the eyes of law only a reasonable degree of acceptance under the jurisdiction of other superintending Courts.

6) that inspite of the above limitation, similar line of arguments further taking umbrage of the obiter dictum of Hon'ble Apex Court in re Krishan Vs State of Karnataka vide SP (Crl) No. 233/2000. were taken up in the cases filed by Sourthern Regional Office and success was obtained before the trail courts.

7) that subsequently one of the cases went before the Hon'ble court of Madras in criminal appeal and that the undersigned humbly informs that the above line of argument taken by the prosecution has been upheld.

8) that as per the judicial procedures, if a question of law is taken up and decided in similar manner through a series of judgements by different High Courts, it achieves the status of a settled principle of law.

9) that the Judgement of Hon'ble Court of Madras is a great step in this direction and will prove to be invaluable help to other prosecution agencies.

10) that the same is therefore brought to the kind notice for perusal and appropriate necessary action.

Yours faithfully

Sd/-
(P. Subramanyam)
Regional Dy. Director (WLP)
Southern Region, Chennai.

Copy submitted to the Director (PE/PT) for kind favour in information and necessary action.

Copy submitted to the Chief Wildlife Warden (Andhra Pradesh, A & N Islands, Karnataka, Kerala, Tamil Nadu, Pondicherry, Lakshdweep) for kind favour of information and necessary action.

Copy to the Regional Dy. Director (WLP), NR/WR/ER for information and necessary action.

(MANAGEMENT PLAN HAVE TO BE PREPARED FOR WORKS IN SANCTUARIES)

S U P R E M E C O U R T OF I N D I A

RECORD OF PROCEEDINGS

I.A. Nos. 1430-1432 in W.P. (C) No. 202/1995

T.N. GODAVARMAN THIRUMULPAD Petitioner (s)

VERSUS

UNION OF INDIA & ORS Respondent (s)

(for directions, ad-interim and exemption from O.T.)

WITH
I.A. No. 1370 in I.A. No. 566 in W.P. (C) No. 202/1995
(for directions on behalf of State of Chhattisgarh.)
I.A. No. 1442 in W.P. (C) No. 202/1995
(for necessary orders and directions)
I.A. No. 1186 in I.A. Nos. 205-206, 645, 723-724, 737, 738-739 & 763 in W.P. (C) No. 202/1995
(for recommendation of CEC in I.A. Nos. 206-206, 645, 723-724, 737-739 & 763)
I.A. Nos. 1202, 1206 in W.P. (C) No. 202/1995
(for stay and directions)
I.A. Nos. 1220 in I.A. Nos. 548 and I.A. 994 in W.P. (C) No. 202/1995
(interim report of CEC in I.A. No. 548)
I.A. No. 1226 and 1231 IN w.p. (C) No. 202/1995
(for directions and permission to file additional documents)
I.A. No. 1232 and 1352 in I.A. No. 963-964 in W.P. (C) No. 202/1995
(Report of HPC in I.A. No. 963-964 & IInd report of HPC) and
WITH
SLP(C) No. 6202 of 2002 (Kapoor Chand v/s State of Maharashtra and Others)
(With Report(s) for exemption from of the impugned judgment and permission to place additional documents on record and permission to submit additional document(s) and with prayer for interim relief)

Date : 25/11/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

A Curiae	Mr. U.U. Lalit, Sr. Adv. Mr. Sidhartha Chowdhury, Adv. (Mr. Harish N Salve, Sr. Adv. (NP))
For Petitioner (s) in WP in SLP	Mr. P.K. Manohar, Adv. (NP) Mr. K.K.S. Krishnaraj, Adv. Mr. Vencateshwar Rao Anumolu, Adv. for Mr. Gopal Balwant Sathe, Adv.

I.A. Nos. 1220 (interim report of CEC in I.A. Nos. 548 and I.A. 994)

Some of the State Governments/Union Territories have filed their responses to the recommendations of the CEC. Such of the States/Union Territories which have not filed the same are granted further four weeks time.

None of the States has filed any objection to the recommendation of the CEC made in paras 14 and 15 in relation to clarification about allowing conservation and protection related activities for better management of the protected areas. The recommendation contained therein are, accordingly, accepted and the order dated 14th February, 2000 is clarified according. Accepting the said recommendations we direct as under :

(A) Various activities such as removal of weeds, clearing and burning of vegetation for fire lines, maintenance of fair weather roads, habitat improvement, digging, temporary water holes construction of anti poaching camps, chowkies, check posts, entry barriers, watch towers, small civil works, research and monitoring activities, etc. are undertaken for protection and conservation of the protected areas and therefore permissible under the provisions of Section 29 of the Wildlife (Protection) Act, 1972. These activities are necessary for day to day management of the protected areas besides it does not involve any type of commercial exploitation.

The activities above-mentioned are permissible under the various provisions of other environment laws as well.

(B) The order dated 14th February, 2000 will not be applicable to the following activities provided that they (i) are undertaken as per the Management Plan approved by the competent authority; (ii) are consistent with the provisions of the Wild Life (Protection) Act, 1972; (iii) are undertaken consistent with the National Wildlife Action Plan; (iv) are in conformity with the guidelines issued for the management of the protected areas from time to time and (v) the construction and

related activities are designed to merge with the natural surroundings and as far as possible use forest friendly material.

(a) Habitat improvement activities.

Weed eradication, maintenance and development of meadows/grass land required for wild herbivores which are prey base for the carnivores, digging and maintenance of small water holes and small anicuts, earthen tanks, impoundment of rain water, relocation of villages outside the protected area and habitat improvement of areas, so vacated.

(b) Fire protection measures

Clearance and maintenance of fire lines as prescribed in the Management Plan by undertaking controlled cool or early burning and construction of watch towers.

(c) Management of wet grassland habitats

Early or cool controlled winter burning of grasslands habitats such as in Kaziranga and Manas National Parks in Assam, to facilitate growth of fresh grass.

(d) Communication and protection measures

Construction of wireless towers, improvement and maintenance of fair weather non-tarred forest roads not exceeding three meters in width, small bridges, culverts, fences etc.

(e) Anti poaching initiatives

Construction, maintenance and improvement of small anti-poaching camps/chowkies, patrolling camps, check posts, barriers, boundary walls, construction of small staff quarters for the front line staff, etc.

I.A. Nos. 1226 and 1234

The learned counsel for the State of Maharashtra shall supply a copy of the affidavit to Mr. A.D.N. Rao, learned counsel appearing for the Ministry of Environment of Forests (MoEF); The MoEF is granted further four years period to file reply. List after four weeks.

I.A. Nos. 1232 and 1352 (Reports of HPC in I.A. Nos. 963-964)

After arguing for the applicant- M. Indrasen Singh for considerable time, the learned counsel was unable to explain the status of M. Indrasen Singh vis-à-vis Al Baari 4 sons, Moreh, Manipur. The counsel seeks one week's time to file an additional affidavit. Though we allow the prayer, but having unnecessarily wasted the time of this Court, we impose on the applicant-M. Indrasen Singh costs of Rs. 25,000/- (Rupees twenty five thousand) as a pre-condition for hearing of these applications. The amount of costs shall be deposited with the CEC within one week. The IAs are adjourned. List after one week.