àºITEM NO.1A COURT NO.10 SECTION PIL
(For jt.)

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

I.A.Nos. 1433&1477 In W.P.(C)No. 202/1995

T.N. GODAVARMAN THIRUMULPAD Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date: 13/2/2012 These I.As. were called on for judgment today.

For petitioners: Mr. P.S.Narasimha,Sr.Adv.(A.C.)
Mr. Gaurav Agarwal,Adv.

Mr. K.Parmeswar,Adv.

Mr. Haris Beeran,Adv.

Mr. P.K. Manohar,Adv.

Mr. Atul Jha,Adv.
Mr. Sandeep Jha,Adv.
Mr. D.K.Sinha,Adv.

Mr. C.D.Singh,Adv.

Mr. Tarjit Singh,Adv.
Mr. Manjit Singh,Adv.for
Mr. Kamal Mohan Gupta,Adv.

Ms. A.Subhashini,Adv.

For State of Kerala Ms. Bina Madhavan,Adv.

Hon'ble Mr. Justice K.S. Radhakrishnan pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Chandramauli Kr. Prasad.

Applications are disposed of.

[SUMAN WADHWA] [S.S.R. KRISHNA]
COURT MASTER COURT MASTER

Signed Reportable judgment is placed on the file.
REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I. A. Nos. 1433 and 1477 of 2005

IN

WRIT PETITION (C) NO. 202 OF 1995

T.N. Godavarman Thirumulpad .. Petitioner (s)

Versus

Union of India & Others .. Respondent(s)

J U D G M E N T

K.S. Radhakrishnan, J.

Asiatic Wild Buffalo is reported to be the most impressive and magnificent animal in the world. Often it is found in the Western and Eastern Ghats of the country. Learned Amicus Curiae has moved this Court seeking a direction to the Union of India and the State of Chhattisgarh to prepare a rescue plan to save Wild Buffalo, an endangered specie from extinction and to make available necessary funds and resources required for the said purpose and also for a direction to take immediate steps to ensure that interbreeding between the wild and domestic buffalo does not take place and the genetic purity of the wild species is maintained. Direction was also sought for to prepare a scheme in consultation with the villagers for relocation of villagers from the Udanti Sanctuary to ensure the survival of the endangered wild buffalo. Direction was also sought for that all research and monitoring inputs including scientific management of the wild buffalo and its habitat be made available on long term basis by involving institutes such as the Wildlife Institute of India, the Bombay Natural History Society etc.

2. The State of Chhattisgarh filed its reply affidavit on 30.01.2006 explaining the steps taken to conserve and preserve the endangered species which was declared as a State Animal. Along with the affidavit, a comprehensive operational Management Plan for Udanti Wildlife Sanctuary was also enclosed stating that the execution of the said Management Plan had suffered setbacks due to acute financial shortage for its implementation. Further, it was stated that the funds allotted under Central Assistance from the Government of India, Ministry of Environment and Forests was not in tune with the budget requirement for development of the sanctuary and the conservation of the

endangered species. A chart showing shortfall in funds for the development of the sanctuary has also been annexed with the affidavit, so also a table showing the census figures of wild buffalos. The reasons for the decline of the wild buffalos have also been explained. In order to overcome those hurdles, it was stated that an MoU was entered into with the Wildlife Trust of India on 21.03.2005 which included special efforts for maintaining the genetic purity of those species and for breeding thereof. Steps taken to relocate the villagers residing within the sanctuary area has also been highlighted.

3. This Court on 08.09.2006 passed an order directing the Central Empowered Committee (CEC) to conduct an enquiry and submit a report. Affidavit filed by the State was also placed before the CEC and it had detailed discussions with the officials of the State of Chhattisgarh and MoEF. State of Chhattisgarh constituted a task force by its order dated 24.05.2007 for suggesting steps and formulating an action plan for the conservation and increasing the number of wild buffalos in the State. Proposal made by the Chief Wildlife Warden to replace the domestic buffalos reared by the villagers with cows and bullocks it was stated, was also given active consideration. CEC after consultation with the MoEF as well as the officials of the State Government submitted its report on 10.09.2008.

4. Steps taken by the State of Chhattisgarh to preserve and conserve the wild buffalo which was declared as a State Animal is far from satisfactory. When the matter came up for final hearing, the counsel appearing for the MoEF made available a copy of the Centrally Sponsored Scheme of 2009 (CSS) titled "Integrated Development of Wildlife Habitats". The Scheme was formulated during the Eleventh Five Year Plan. The Scheme has also incorporated additional components and activities for implementing the provisions of the Wildlife (Protection) Act, 1972 [for short the Act], National Wildlife Action Plan (2002-2016), recommendations of the Tiger Task Force, 2005, and the

National Forest Commission, 2006 and the necessities felt from time to time for the conservation of wildlife and biodiversity in the country.

5. Before coming into force of the Act, the scheme which was in force was "Assistance for the Development of National Parks and Sanctuaries" which used to support only National Parks and Wildlife Sanctuaries. However, following the amendment to the Act, in 2003, two more categories of Protected Areas (PAs) i.e. the Conservation Reserves and Community Reserves have been recognized. Conservation Reserves, which are government land, but do not require acquisition of rights, nor the curtailment of activities as envisaged in National Parks and Wildlife Sanctuaries are stated to be the most appropriate strategy for connecting protected areas, by providing corridors. Community Reserves are entirely based on efforts of the local people on privately owned lands which require financial and technical assistance for their future management. The Central Government before the Act came into force did not have much control over the States and the Union Territories for implementation of its various schemes and the Parliament, in order to give effect to Article 51A(g), enacted the Act for the protection of wild animals, birds and plants and for matters connected therewith, with a view to ensure the ecological and environmental security of the country. Article 48A of the Constitution of India imposes a duty on the State to protect and improve the environment and to safeguard the forest and wildlife of the country.

6. Article 51A(g) states that it is the duty of every citizen of India to protect and improve the natural environment including the wildlife and to have compassion for the living creatures. By the 42nd Amendment Act 1976 of the Constitution "Forests" was added as Entry 17A in the Concurrent List and the "protection of wild animals and birds" was added as Entry 17B. Consequently, both the Central and State Governments/UTs are mandated with the responsibility of protection and conservation

of wildlife and its habitat. Chapter IV of the Act deals with the "protected areas." Earlier headings 'Sanctuaries', 'National Parks' and 'Closed Areas', was substituted by the words "protected areas" by Act 16 of 2003. Section 18 of the Act empowers the State Government to declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment. Chapter IV also confers various other powers upon the State Government like acquisition, initiation of acquisition proceedings, declaration of areas as sanctuary, restriction on entry to the sanctuaries etc. It is unnecessary to refer to those provisions for the purpose of the instant case.

7. Section 36A of the Act empowers the State Government, after consultations with the local communities, declare any area owned by the Government, particularly the areas adjacent to National Parks and sanctuaries and those areas which link one protected area with another, as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat. The Act also empowers the State Government, where the community or an individual has volunteered to conserve wildlife and its habitat, declare any private or community land not comprised within a National Park, Sanctuary or a Conservation Reserve, as a Community Reserve, for protecting fauna, flora and traditional or cultural conservation values and practice. The management of Community Reserves shall primarily be done by the communities/individuals themselves. The Centrally Sponsored Scheme (CSS), therefore, intended to bring these two categories of PAs also under the ambit of the Scheme along with the existing National Parks and Wildlife Sanctuaries.

8. The State of Forest Report 2005 states that the forest and tree cover in the country is around 23.39%, of which forests constitute around 20.64%. However, the PA network covers only 4.8% of the geographical area of the country with most of the PAs forming part of the forest area. At present, India has a network of 99 National Parks, 515 Wildlife Sanctuaries, 43 Conservation Reserves and 4 Community Reserves in different bio-geographic zones. Protected Areas, i.e. Conservation Reserves and Community Reserves have an important role to play in maintaining geographical integrity of the Nation. Fact is that many important habitats still exist outside those areas which require special attention from the point of view of conservation. Habitat of Sandalwood, red sanders, white cedar, rhododendrons, Southern Tropical Montane forests, grasslands, alpine meadows of Himalayan region, corridors connecting PAs and crucial wildlife habitats, deserts, tropical swamps, rivers, estuaries, bamboo and reed breaks, mangroves, coral reefs, deserts etc. are examples of such habitats existing outside conventional PAs. The tenurial status of such habitats ranges from government-controlled Reserved Forests to Protected Forests, revenue forests, interspersed vegetation in plantation sector, revenue lands, village forests, private forests, religious forests, territorial waters, Community Conserved Areas etc. Such habitats also act as corridors for wildlife between PAs thus ensuring connectivity in the landscape.

Human-wildlife conflict

9. Human-wildlife conflict is fast becoming a critical threat to the survival of many endangered species, like wild buffalo, elephants, tiger, lion etc. such conflicts affect not only its population but also has broadened environmental impacts on ecosystem equilibrium and biodiversity conservation. Laws are man-made, hence there is likelihood of anthropocentric bias towards man, and rights of wild animals often tend to be of secondary importance but in the universe man and animal are

equally placed, but human rights approach to environmental protection in case of conflict, is often based on anthropocentricity.

10. Man-animal conflict often results not because animals encroach human territories but vice-versa. Often, man thinks otherwise, because man's thinking is rooted in anthropocentrism. Remember, we are talking about the conflict between man and endangered species, endangered not because of natural causes alone but because man failed to preserve and protect them, the attitude was destructive, for pleasure and gain. Often, it is said such conflicts is due human population growth, land use transformation, species habitat loss, degradation and fragmentation, increase in eco-tourism, access to natural reserves, increase in livestock population, etc. Proper management practices have to be accepted, like conservation education for local population, resettlement of villages, curbing grazing by livestock and domestic animals in forest, etc., including prey-preservation for the wild animals. Provision for availability of natural water, less or no disturbance from the tourists has to be assured. State also has to take steps to remove encroachments and, if necessary, can also cancel the patta already granted and initiate acquisition proceedings to preserve and protect wildlife and its corridors. Areas outside PAs is reported to have the maximum number of man-animal conflict, they fall prey to poachers easily, and often invite ire of the cultivators when they cause damage to their crops. These issues have to be scientifically managed so as to preserve and protect the endangered species, like wild buffalo and other species included in Schedule 1 Part 1 of the Wildlife Protection Act, as well as other species which face extinction.

11. Management plan for Udanti Wildlife Sanctuary (2002-2003, 2011-2012) published by the Forest Department of Government of Chattisgarh, paragraph 3.6.2 of the Report reveals much more than what meets the eyes which reads as follows:-

"Prior to declaration as sanctuary this area was part of East Raipur Division in which rules to regulate illegal poaching and hunting existed.

Before declaration of Govt. forest it was under control of Bindrawagrah Zameendar.

In those days shooting was allowed after receiving a fee of Rs.25/- at that time. Shooting of wild buffalo was prohibited after Govt. Notification no.1905-1517-4 dt. 27.08.1935 but in this zameendari one shooting licence holder was entitled to shoot one Bison, one Barasingha, Tow spotted deer and one Sambhar. Game rules of C.P. and Bear Game Act, 1935 and CP & Bear Bird game 1942 were existing in this are during past.

After end of Zameendari system when these forest became Govt. forest rules were enforced to regulate hunting vide notification no.788-2319 DT.19.8.53.

In these shooting rules of 1953 shooting of wild Buffalo was allowed after formal permission of Govt. But shooting of bison was prohibited. In shooting rules of 1955 different fee was decided for hunting. Shooting of Bison, wild buffalo, Barasingha, Tiger, Sambhar, Leopard, Sloth Bear and Cheetal were allowed.

These hunting rules were not very effective for regulation of shooting and hunting and therefore shooting was stopped by Govt. of M.P. completely vide notification no. 6036-10(2)-71 dt. Govt. of India in this regard started 11.11.1971. Effective steps after enforcement of wildlife protection act 1972."

12. Paragraph 3.6.3.2 deals with encroachment and other illegal activity, which reads as follows :-

Encroachment and other Illegal activity

In UWLS encroachment for land hunger is not common practice. Sometime due to lack of clearcut demarcation live or boundaries, cases of encroachment have been observed. Therefore, village boundary should be development of villages and for the betterment of villagers in the revenue villages inside and around the sanctuary. These department are revenue, ICDS, Veterinary Health Services, Medical Department, State Electricity Board etc., semi Govt. village institutions like village and Janpad Panchayat are also working for development activities.

More development activity causes more interference in forest and the privacy of wild life. These ultimately cause conflict with wildlife.

Conflict with wildlife to the abnormal behaviour of wild animals like aggressiveness of monkey, cattle lifting by carnivore, injury by bears during Mahua season etc.

Development of people is always welcome but not in the cost of negative ecological in the ecosystem.

13. Report clearly states that development activities causes

more interference in forest and also the privacy of wildlife and these ultimately cause conflict with wildlife. Man-animal conflict often takes place when wild animals cause damage to agricultural crop and property, killing of livestock and human beings. Human population growth, land use transformation, species loss of habitat, eco-tourism, too much access to reserves, increase in livestock population bordering the forest, depletion of natural prey base etc., often stated to be reasons for such conflict. Central Govt. the State Governments, and the Union Territories should evolve better preservation strategies, in consultation with Wildlife Boards so that such conflicts can be avoided to a large extent. Participation of people who are staying in the Community Reserves is also of extreme importance. The necessity of implementing proper management measures for preserving the wild buffalo has also been elaborately stated in the Report.

14. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature centred where humans are part of nature and non-human has intrinsic value. In other words, human interest do not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature include both human and non-humans. National Wildlife Action Plan 2002-2012 and centrally sponsored scheme (Integrated Development of Wildlife Habitats) is centred on the principle of ecocentrism.

15. The National Wildlife Action Plan (2002-2016) is intended to

provide adequate protection to wildlife in multiple use areas such as Government forests outside PAs, various Community Conserved Areas like sacred groves, community and panchayat forests, identified private forests such as interspersed forests in tea, coffee and cardamom gardens and other protection landscapes, farm lands, wastelands, wetlands, coastal habitats, heronries, wintering wetlands of birds, catchment forests, turtle nesting sites, pastures for livestock and wild herbivore, deserve ecosystems etc.

Recovery Programmes

16. The Centrally Sponsored Scheme also deals with Recovery programmes for saving critically endangered species and habitats. It was noticed that, due to variety of reasons, several species and their habitats have become critically endangered. Consequently, the scheme intends to extend support to such recovery programmes for saving critically endangered species and their habitat based on the requirement felt from time to time. The objective of this recovery plan of saving critically endangered species/ecosystems cannot be covered under the components of Conservation of PAs and protection of wildlife outside PAs as disjunct population across a wider landscape/seascape. Several programmes are proposed under the recovery plan, of which one is to save the critically endangered species of Asian Wild Buffalo and grasslands and riverine forests of central and north India. Several other components were also included in the recovery plan such as Dolphin and River Systems, Nilgiri Tahr, Asiatic Lion etc. The scheme envisages that the Director, Wildlife Preservation, Government of India, in consultation with the Wildlife Institute of India or the relevant scientific institute/organization and with the approval of the Standing Committee of the National Board for Wildlife can initiate other recovery programmes or wind up the ongoing programme. The Director, Wildlife Preservation, is also authorised to undertake assessment of the effectiveness of any

'recovery programme' already undertaken or being undertaken. The Integrated Development of Wildlife Habitats scheme specifically highlighted the necessity to preserve and conserve the habitat of wild buffalo. The scheme states as follows:

> "Wild buffalo is one of the worst affected mammalian species in the recent times. Domestication of the species and continuous interbreeding with domestic buffalo has led to inbreeding, genetic disorders, competition and mortality due to disease. Apart from this, habitat fragmentation, degradation, and poaching are the main threats to the conservation of this globally threatened species. Urgent and concerted efforts are needed to recover this species from the brink of extinction."

17. Conservation and Management of Wildlife, as per the Act, is primarily vested in the States / UTs who are in physical possession of the area. It was noticed that many States/UTs have set up various regular wildlife wings within the States/UT Forest Departments and implemented a scheme as to be done in accordance with a work programme covering the 11th Plan period. The Centrally Sponsored Scheme, therefore, envisages that the State/UTs are required to submit Annual Plan of Operations (APOs) to the Central Government detailing the proposed course of action, which consists of management planning and capacity building, anti-poaching and infrastructure development, restoration of habitats, eco-development and community oriented activities etc. so as to qualify for the financial assistance under the scheme. The concerned State/UTs have to follow certain conditions which have been enumerated in the scheme.

18. The State of Chhattisgarh, in the instant case, has pointed out that they could not effectively give effect to some of the programmes for preservation and conservation of wild buffalo due to lack of funds. The scheme envisages 100% assistance. It is relevant to extract the Pattern of Funding and the same reads as follows:

> Pattern of Funding
>
> 3. Under the Scheme, 100% assistance is provided for non-

recurring items of expenditure for National Parks, Wildlife Sanctuaries, Conservation Reserves and Community Reserves.

1. 50% cost of recurring expenditure is provided for National Parks, Wildlife Sanctuaries, Conservation Reserves and Community Reserves where the State Government provides for the balance 50% as the matching share.

1. National Parks, Wildlife Sanctuaries, Conservation Reserves and community Reserves in mountain regions, coastal zones, deserts, or those areas which support highly endangered species i.e. Snow Leopard, Red Panda, Rhino, Sangai Deer, Phayre's leaf monkey, Musk Deer, Hangul, Great Indian Bustard, Great Indian Hornbill, Siberian Crane, Chinkara, Chowsingha, Black Buck, Marine Turtles, Nilgiri Tahr, Lion Tailed Macaque, Bustards, Floricans, Pelicans, Gyps Vultures, Wild Ass, Grizzled Giant Squirrel, Clouded Leopard, Wild Buffalo, Hoolock Gibbon and Lion are eligible for 100% central assistance for both recurring and non-recurring items of expenditure.

1. In the case National Parks, Wildlife Sanctuaries, Conservation Reservation and Community Reserves falling in the high mountainous, snow clad regions (where working season is limited to a few months) in the States of Jammu and Kashmir, Himachal Pradesh, Uttarakhand and Sikkim, the central assistance shall be given in one instalment. For other States, the approved allocation shall be released in two instalments (80 per cent as 1st instalment and balance as 2nd instalment.)

1. Similarly, subject to site-specific adjustments, as a guiding principle, a 40:40:20: proportion of financial sharing shall be ensured between Centre, State as owners of the privately held land, when such areas are involved in the case of Community Reserves.

19. State of Chattisgarh has maintained the stand that they do not have sufficient funds to undertake various programmes for protection of wild buffalo within the national parks, sanctuaries and also at conservation reserves and community reserves. This stand cannot be countenanced now, especially after the introduction of the Scheme.

20. Wild buffalo has been included as Item No. 41, Part I of Schedule I of the Act. Once it is included in Schedule I, the State Board for Wildlife has to advise the State Government in the selection and management of the areas to be declared as protected areas, in the formulation of policy for protection and conservation of the wildlife etc., as per Section 8 of the Act. Section 9 of the Act states that no person shall hunt any wild

animal specified in Schedule I to IV, except as provided under Sections 11 and 12.

21. The International Union for Conservation of Nature (IUCN) has calculated the percentage of endangered species as 40% of all organisms. IUCN Red List refers to specific categories of endangered species and includes critically endangered species. IUCN Red List of Threatened Species uses the term endangered species as a specific category of imperilment, rather than as a general term. Under the IUCN Categories and Criteria, endangered species is between critically endangered and vulnerable. Wild water buffalo is included in the category of endangered species. Apart from the human-animal conflict, the most important threat to wild buffalo is inbreeding with feral and domestic buffalo, habitat loss/degradation and hunting. Diseases and parasites (transmitted by domestic livestock) and competition for food and water between wild buffalo and domestic stock are also serious threats. Habitat loss is also a major concern for species endangerment. When wild buffalos' eco-system is not maintained, they lose their home and either forced to adopt new surroundings or human habitat. Eminent ecologists have proposed biological corridors, biosphere reserves, ecosystem management and eco-regional planning as approaches to integrate biodiversity conservation and socio-economic development at increasingly larger spatial scales.

22. We have seen the subjects 'forest' and 'protection of animals and birds' are in the concurrent list of the Constitution and it is the fundamental duty of every citizen of India under Article 51A(g) of the Constitution to protect and improve the natural environment including forests, lakes, rivers and wildlife. It is to achieve the above objective and also to give effect to the purpose of the object of the Act that the Central Government has sponsored "the Integrated Development of Wildlife Habitats". As per the Scheme and the Act, the State Government is empowered to notify conservation reserves and

community reserves for protecting the landscape, seascapes, flora and fauna and their habitat. The Act also empowers the State Government to declare any private and community land not comprised within the national parks, sanctuaries or conservation reserves or community reserves for protecting fauna, flora and traditional or cultural conservation values and practice.

23. We are, therefore, inclined to dispose of this application with the direction to the State of Chhattisgarh to give effect fully the Centrally Sponsored Scheme - "the Integrated Development of Wildlife Habitats", so as to save wild buffalo from extinction. The State also would take immediate steps to ensure that interbreeding between wild and domestic buffalos does not take place and genetic purity of the wild species is maintained. The State is also directed to take immediate steps to undertake intensive research and monitor the wild buffalo population in Udanti Wildlife Sanctuary and other areas, where the wild buffalo may still be found, including preparing them their genetic profile for future reference. The State is also directed to take appropriate steps to initiate wildlife training programmes for the officials of the State Forest Department, especially for managing the above sanctuary and other areas where the wild buffalos are found. The State is also directed to submit Annual Plan of Operations to the Central Government detailing the proposed course of action, if not already done, as per the "Integrated Development of Wildlife Habitats" scheme, within a period of three months from today. All effective steps should be taken by the State to protect the Asian wild buffalo (Bubalus bubalis), which is declared as a State animal by the State of Chattisgarh.

24. The applications are disposed of as above.

.....J.
(K.S. Radhakrishnan)

.....J.
(Chandramauli Kr. Prasad)

New Delhi,
February 13, 2012
ITEM NO.1B COURT NO.10 SECTION PIL
(For jt.)

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

I.A.Nos. 1287, 1570-1571, 1624-1625, 1978, 2395, 2795-2796 In W.P. (C)No. 202/1995

T.N. GODAVARMAN THIRUMULPAD Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

WITH

IA Nos. 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2966-2967 In 1287 In WP(C)202/1995

Date: 13/2/2012 These I.As. were called on for judgment today.

For appearing parties: Mr. P.S.Narasimha,Sr.Adv.(A.C.)

Mr. Mohan Jain,ASG.
M/s. D.K.Thakur,Prabhat Kumar,
Karthik Ashok,Sheethal Menon,
Namrata Bhatia,S.N.Terdal,Advs.
Mr. Gaurav Agarwal,Adv.

Mr. K.Parmeswar,Adv.

Mr. Haris Beeran,Adv.

Mr. P.K. Manohar,Adv.

For State of Kerala Ms. Bina Madhavan,Adv.

Mr. M.P.Maharia,Adv.

Ms. Sangeeta KUmar,Adv.

Ms. Anitha Shenoy,Adv.

Mr. T.N.Rao,Adv.

Mr. Balraj Dewan,Adv.

M/s. Aruputham Aruna & Co.

M/s. Parekh & Co.

Mr. M.N.Krishma,Adv.
Mr. N.Ganapathy,Adv.
Mr. Ajay K.Dutta,Adv.

Mr. S.Prasad,Adv.

Ms. Anitha Shenoy,Adv.

M/s. Suresh A.Shroff & Co.

Mr. D.Bharathi Reddy,Adv.

Ms. A.Subhashini,Adv.

Mr. Tarjit Singh,Adv.
Mr. Manjit Singh,Adv.for
Mr. Kamal Mohan Gupta,Adv.

Hon'ble Mr. Justice K.S. Radhakrishnan pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Chandramauli Kr. Prasad.

Applications are disposed of.

[SUMAN WADHWA]
COURT MASTER

[S.S.R. KRISHNA]
COURT MASTER

Signed Reportable judgment is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I. A. Nos. 1287, 1570-1571, 1624-1625, 1978, 2395, 2795-2796
IN
WRIT PETITION (C) NO. 202 OF 1995
With
I.A. Nos. 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2966-2967, in I.A. No.1287 in W.P.(C) 202 OF 1995

T.N. Godavarman Thirumulpad .. Petitioner(s)

Versus

Union of India & Others .. Respondent(s)

J U D G M E N T

K.S. Radhakrishnan, J.

We are in this case concerned with the question whether sandalwood (Santalum album Linn) stated to be an endangered species, be declared as a "specified plant" within the meaning of Section 2(27), and be included in the Schedule VI of The Wild Life (Protection) Act, 1972 (for short the Act). On going through the various international conventions, we thought it appropriate to examine the repeated requests made by the State of Andhra Pradesh to the Central Govt. to notify Red Sanders (Pterocarpus santalinus) as a 'specified plant' and be included

in the Schedule VI of the Act.

2. A non-governmental organisation moved the Central Empowered Committee (CEC) to initiate steps for closure of all unlicensed sandalwood oil industries, particularly in the State of Kerala. CEC after conducting a detailed enquiry and hearing the state officials, representatives of the sandalwood industries and various other interested persons, submitted its report dated 24th February 2005 before this Court praying that all unlicensed sandalwood oil industries be also brought within the purview of this Court's order dated 30.12.2002 by which this Court had ordered the closure of all unlicensed saw mills, veneer and plywood industries in the country. Various other directions were also sought for. Report of the CEC was listed along with IA 1287 of 1995 which came up for hearing on 1.4.2005 and this Court issued notices to the States of Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, which are the major sandalwood growing states of the country. This Court then passed an order on 10.2.2006 directing closure of all the unlicensed sandalwood oil extracting factories, operating in various parts of the country. Consequently, 24 unlicensed sandalwood oil factories functioning in the State of Kerala were closed down.

3. The State of Kerala and few other states submitted their reply to the reports submitted by the CEC and pointed out that no private sandalwood oil extracting units are now functioning in most of the sandalwood growing states but only the state owned public sector undertakings. The Karnataka Soaps and Detergent Ltd., a Karnataka State owned undertaking also submitted their views. MoEF also filed a detailed affidavit before this Court stating that they have no objection in the closure of all unlicensed sandalwood oil manufacturing factories in the country.

4. Indian Sandalwood Association got themselves impleaded and filed objections to the CEC Report. CEC later submitted three

other reports dated 8.1.2008, 2.9.2009, 15.11.2010. CEC in the reports took the stand that the sandalwood oil industries could be permitted to function outside the sandalwood growing states and that import of sandalwood as such should not be banned. The Additional Principal Chief Conservator of Forests, Karnataka also submitted before the CEC that there are no matured sandalwood trees available in the State of Karnataka and the State has not approved any felling of sandalwood trees due to non-availability. State of Tamil Nadu also stated before the CEC that no felling of sandalwood tree was officially undertaken due to want of matured trees. State of Maharashtra and Andhra Pradesh have also filed affidavits stating that whatever little sandalwood growth was there in those states needs to be protected and that sandalwood species is under imminent threat. MoEF in its affidavit dated 24th October, 2010 has stated as follows:

> "The Ministry supports the contention that all illegal sandalwood oil units should be closed down. As far as closing of sandalwood units in non-sandalwood growing States is concerned the Ministry has "No Objection" in allowing the legal private entrepreneur from setting up sandalwood oil units in non-sandalwood producing States provided that only legally sourced sandalwood for which Certificate of Origin has been obtained, is used and the regulatory enforcement mechanisms, set up by the State for detection, control and action against proceedings of illegal units are well in place."

The CEC, however, in its report dated 2.9.2009 maintained the following stand:

> "In the light of the facts highlighted above the CEC is unable to agree with the contention of the Applicants that they should be permitted to establish /continue the sandalwood oil units in non-sandalwood producing States under appropriate supervision and regulations and that the imported sandalwood is a substitute for Indian sandalwood. The CEC is of the considered view that if the present state of affairs is allowed to continue, sandalwood, so unique and a special gift of nature to India would become extinct in the not too distant future. The protection of sandalwood forest is simply not possible without first ensuring that the establishment / functioning of sandalwood oil units are severely restricted / regulated in the country particularly when the sandalwood has become an almost extinct commodity. One is duty bound to protect in public interest whatever sandalwood forests are left. This is one instance where the public interest necessarily and unhesitatingly has to take precedence over private interest. However, sandalwood oil units, based exclusively on imported sandalwood may be

permitted in identified locations subject to strict supervision and regulations by the Forest Department.

5. MoEF however in its affidavit dated 24.3.2011 stated that in the light of the non-availability of sandalwood, it would review its policy about permitting the export of sandalwood chips and oil, particularly, with reference to its adverse effect on the production of sandalwood in the country and also would examine the imposition of complete ban on sale/auction of confiscated sandalwood in view of the alarming rate at which sandalwood is disappearing and may become extinct in not too distant future.

6. MoEF however in its latest affidavit dated 6.9.2011 expressed the apprehension that the inclusion of the sandalwood species in Schedule VI in the Wild Life Protection Act, 1972 would alienate people from growing the species on a large scale and hence it is of the view that an "All India Sandalwood Legislation" would be an adequate solution, in the event of which it was stated the species would be fully protected within the country and at the same time trade could also be regulated. Ministry has also expressed the view that sandalwood may be allotted to public sector units and that would ensure that the artisans dealing with sandalwood would get raw materials which would give them a greater impetus for taking up their traditional work/skills and also give them an economic boost as well as earn foreign revenue as sandalwood handicrafts have high demand for export.

7. The Sandalwood Oil Manufacturers Association expressed the apprehension that the inclusion of the sandalwood as a specified plant under the Act would not be conducive and beneficial for the cultivation and preservation of the trees. Reference was also made to the various provisions of Chapter IIIA of the Act and stated that the members of the Association who have cultivation of sandalwood in the State of

Chhattisgarh, Madhya Pradesh and involved in the business of manufacturing products using sandalwood oil if covered by Section 17A(b) would be put to considerable difficulties. The Association also maintained the stand that if Chapter IIIA of the Act is fully implemented by declaring the sandalwood as a specified plant then it would adversely affect the interest of the cultivators of sandalwood and would lead to further extinction of the species.

8. We have heard the learned amicus curiae, Mr. P.S. Narasimha, Senior Counsel Mr. Rajiv Dutta, and other counsels at length. Learned amicus curiae referred to the affidavits filed by the MoEF and other state governments and submitted that there is consensus among all major sandalwood growing states and the Union of India that the export of sandalwood would be of serious threat and may lead to the extinction of the species. Few of the states have maintained the stand that no matured sandalwood trees are available for felling which, according to the amicus curiae leads to the inescapable conclusion that Indian sandalwood is in fact endangered. Learned senior counsel highlighted the necessity of the inclusion of sandalwood in Schedule VI of the Act and submitted that the apprehension expressed by the MoEF that it would discourage the cultivation of sandalwood has no basis. Learned senior counsel extensively referred to the provisions of Chapter IIIA of Act and the provisions of Bio Diversity Act, and submitted that when we deal with the issue of an endangered species, the question to be examined is not whether the species is of any instrumental value to human beings, but its intrinsic worth. Learned senior counsel extensively referred to the anthropocentric and ecocentric approach and submitted that anthropocentric approach would depend upon the instrumental

value of life forms to human beings while ecocentric approach stresses on the intrinsic value of all life forms. Learned senior counsel stressed that the bio-diversity law departs from the traditional anthropocentric character of environmental law and that our Constitution recognises ecocentric approach by obliging every citizen to have compassion for all living creatures, so also the preamble to Act. Learned counsel also submitted that public trust doctrine developed in M.C. Mehta v. Kamalnath 1997 (1) SCC 388 is based largely on anthropocentric principles and the precautionary and polluter-pay principle affirmed by this Court in Vellore Citizens Welfare Forum v. Union of India and others 1996 (5) SCC 647 are also rooted in anthropocentric principle, since they too depend on harm to humans as a pre-requisite for invocation of those principles.

9. Learned senior counsel also highlighted the principle of sustainable development and inter-generational equity and stated that they too pre-suppose the higher needs of human beings and lays down that exploitation of natural resources must be equitably distributed between the present and future generation. Learned senior counsel also highlighted that the above principle would be of no assistance when a Court is called upon to decide as to when a species has become endangered, or the need to protect irrespective of its instrumental value. Learned senior counsel pointed out the CEC and the States of Tamil Nadu and Kerala have produced enough materials to show that the sandalwood trees are critically endangered and that illegal felling and trade go on unabated and regulation on cultivation and use of sandalwood would definitely be in public interest and therefore constitutional. Further it was also pointed out that Chapter IIIA altogether does not prohibit or abolish either the cultivation, possession or dealing in specified plants, but it merely regulates the cultivation and use of specified plants though a licensing

system of the Chief Wildlife Warden. He therefore urged that this Court must interpret Chapter IIIA along with the constitutional provisions and international obligations in a holistic manner to ensure that the Central Government is duty bound to protect sandalwood by including the same in Schedule VI of the Act.

10. Learned senior counsel, Shri Rajiv Dutta also offered his suggestion/comments on the question of notifying sandalwood as a specified plant under Schedule VI of the Act. The apprehension voiced by learned senior counsel was that on such inclusion there would be blanket restrictions and conditions covering big and small private cultivators, to farmers, to menial vendors and hawkers who possess sandalwood and/or any part of and/or any derivative of sandalwood in any product that uses a part of or derivative of sandalwood. Learned senior counsel also pointed that they have no objection in the prohibition of picking and uprooting sandalwood tree from forest area or any area specified by notification by the Central Government but they are more concerned with the applicability of Section 17A(b). Further it was pointed that once it is notified as a specified plant, Section 17B would be attracted that would only discourage the trade leading to the stoppage of many of the sandalwood oil industries in the country. Learned senior counsel also referred to Sections 17C, 17D, 17E, 17F and other relevant provisions and highlighted the difficulties that they would experience if sandalwood is declared as a specified plant. Learned senior counsel also pointed out that they have no objection in imposing proper regulation in the trade of sandalwood and all India legislation is a better option.

11. We have heard the arguments of learned senior counsel appearing on either sides and perused the affidavits filed by various state governments, MoEF and the reports of the CEC and

other relevant materials. Sandalwood is an evergreen tree which generally grows in the dry, deciduous forests of the Deccan Plateau. Sandalwood is also mentioned in one of the oldest epics, the Ramayana. Descriptions are also made by Kalidasa of its use in his literary works as well. In short, it is part of Indian culture and heritage and its fragrance has spread not only in India but also abroad and its rich oil content led to its large scale exploitation as well. Exploitation of this rare endangered species went on unabatedly, especially in the southern states of India and on intervention of this Court, the State of Kerala has closed down 24 unlicensed sandalwood oil factories. Similar steps were being taken by other states as well. Before we refer to various contentions raised by counsel on either sides, we will refer to some of the legislative measures taken by some of the states, which are as under:

State of Kerala:

12. In State of Kerala best quality sandalwood trees are grown in the forest of Marayoor, spread over 93 Sq.Km which generate the best quality sandalwood oil in the world. Recently, the Kerala Forest (Amendment) Act, 2010 introduced a new chapter, Chapter 6A entitled "Provisions relating to sandalwood" which regulates cutting and possession of sandalwood. Section 47A provides that no individual shall cut, uproot, remove or sell any sandalwood tree without previous permission in writing from the forest officer. There is also absolute prohibition on transport and possession of sandalwood or sandalwood oil in excess of one Kilogram or 100 ml respectively without a license from the forest officer under Section 47C of the Act. Under Section 47C(3) only the government or the public sector undertakings (PSU) owned by the government shall manufacture or distil, refine or sell sandalwood oil. Section 47F imposes restrictions on purchase

and sale of sandalwood from any person other than government or authorised officer. Provision is also there for seizure of sandalwood and its oil under Section 47H and penalty for offences can be imposed. Act also provides for imprisonment for three years, extendable upto seven years and fine not less than Rs.10,000/- extendable upto Rs.25,000/-.

State of Tamil Nadu

13. Tamil Nadu Forest Act, 1882 -- Section 40G of the Act provides that teak, blackwood, ebony, sandalwood and also ivory and teeth of elephants, either grown or found on government land or private property are royalties and no trade shall be carried on in them unless they have been duly obtained from the government. Section 40G(2) places restrictions on felling of trees by any person without the permission of the Chief Conservator of Forest or any other person authorised by him. The state of Tamil Nadu has also enacted the Tamil Nadu Sandalwood Possession Rules, 1970 and also Tamil Nadu Sandalwood Transit Rules, 1967, and the Act also provides for imposing penalties and imprisonment.

State of Karnataka

14. Karnataka Forest Act, 1963 and the Rules made thereunder have removed the restrictions on growing sandalwood trees in private lands. Section 83 of the Act provides that where a person is an owner of sandalwood trees before the commencement of 2001 Amendment Act, he shall not fell or sell such sandalwood tree or convert or dress sandalwood obtained from such tree or possess or store or transport or sell the sandalwood except in accordance with the provisions of the Act. The Act also provides for imposition of penalty and imprisonment.

State of Andhra Pradesh

15. A.P. Forest Act, 1967, A.P. Sandalwood Possession Rules, 1969, A.P. Sandalwood and Red Sanderswood Transit Rules, 1969

generally deal with the possession, control and transit of sandalwood and Red Sanders etc., but there is no restriction as such on the felling of sandalwood trees. The Act also provides for punishment for contravention of the provisions of the Act or the rules made thereunder.

16. State of Maharashtra has also enacted the Felling of Trees (Regulation) Act, 1964, The Bombay Forest Rules 1942, which deal with sandalwood as well. State of Madhya Pradesh has also enacted Madhya Pradesh Revenue Code. States like Gujarat, Orissa have framed special provisions for dealing with sandalwood. It is unnecessary to refer to the laws made by the various states in the country, suffice to say lack of uniform legislation, dealing with this endangered species, is clearly felt.

17. Article 48A of the Constitution introduced by the Constitution (42nd Amendment) Act 1976 states that the State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country. Article 51A(g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. By the same constitutional amendment Entry 17A "forest" and 17B "protection of wild animals and birds" were included in List III - Concurrent List so that the Parliament as well as the States can enact laws to give effect to the Directive Principles of State Policy as well as various international obligations. Earlier, by virtue of Entry 20 of the State List VII Schedule to the Constitution, namely protection of wild animals and birds, only the State had the power to legislate and Parliament had no power to make law in this regard applicable to the State unless the legislatures of two or more states passed a resolution in pursuance of Article

252 of the Constitution empowering the Parliament to pass necessary legislations on the subject. However, by virtue of (42nd Amendment) Act 1976 of the Constitution, the Parliament has got the power to legislate for the whole country. Consequently, The Wildlife (Protection Act) 1972 was enacted by the Parliament to provide for the protection to wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensure the ecological and environmental security of the country. The Act was later amended and Chapter-IIIA was inserted by Act 44 of 1991 enacting provisions for the protection of "specified plants".

18. Biological Diversity Act, 2002 was also enacted by the Parliament with the object of conserving biological diversity, sustainable use of its components and for fair and equitable sharing of the benefits arising out of utilization of genetic resources. Biological diversity includes all the organisms found on our planet viz., the plants, animals and micro organisms. Environmental Protection Act, 1986 enacted by the Parliament empowers the Central Government under Section 3 to take such measures for the purpose of protecting and improving the quality of environment. When we examine all those legislations in the light of the constitutional provisions and various international conventions like Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES), the Convention of Biological Diversity 1992 (CBD) evidently, there is a shift from environmental rights to ecological rights, though gradual but substantial. Earlier, the Rio Declaration on Earth Summit asserted the claim "human beings are the centre of concern". U.N. Conference on Environment and Development (UNCED-1992), was also based on anthropocentric ethics, same was the situation in respect of

many such international conventions, that followed.

19. The public trust doctrine developed in M.C. Mehta vs. Kamalnath (1997) 1 SCC 388, is also meant to ensure that all humans have equitable access to natural resources treating all natural resources as property and not life. That principle also has its roots in anthropocentric principle. Precautionary principle and polluter-pays principles affirmed by our Court in Vellore Citizens Welfare Forum vs. Union of India and Others (supra) are also based on anthropocentric principle since they also depend on harm to humans as a pre-requisite for invoking those principles. The principle of sustainable development and inter-generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between the present and future generations. Environmental ethics behind those principles were human need and exploitation, but such principles have no role to play when we are called upon to decide the fate of an endangered species or the need to protect the same irrespective of its instrumental value.

20. Anthropocentrism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species. Resultantly, any species that are of potential use to humans can be a reserve to be exploited which leads to the point of extinction of biological reserves. Further, that principle highlights human obligations towards environment arising out of instrumental, educational, scientific, cultural, recreational and aesthetic values that forests has to offer to humans. Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being. On the other hand ecocentric approach to environment stress the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Ecocentrism supports the

protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth. (See Environmental Ethics, Stanford Encyclopaedia of Philosophy 2002; Revised 2008.) The same book also gives a clear distinction between instrumental value and intrinsic value which reads as follows:-

> "In the literature on environmental ethics the distinction between instrumental value and intrinsic value (meaning "non-instrumental value") has been of considerable importance. The former is the value of things as means to further some other ends; they are also useful as means to other ends. For instance, certain fruits have instrumental value for bats who feed on them, since feeding on the fruits is a means to survival for the bats. However, it is not widely agreed that fruits have value as ends in themselves. We can likewise think of a person who teaches others as having instrumental value for those who want to acquire knowledge. Yet, in addition to any such value, it is normally said that a person, as a person, has intrinsic value, i.e., value in his or her own right independently for his or her prospects for serving the ends of others. For another example, a certain wild plant may have instrumental value because it provides the ingredients for some medicine or as an aesthetic object for human observers. But if the plant also has some value in itself independently of its prospects for furthering some other ends such as human health or the pleasure from aesthetic experience, then the plant also has intrinsic value. Because the intrinsically valuable is that which is good as an end in itself, it commonly agreed that something's possession of intrinsic value generates a prima facie direct moral duty on the part of morel agents to protect it or at least refrain from damaging it."

Above principle had its roots in India, much before it was thought of in the Western world. Isha-Upanishads (as early as 1500 - 600 B.C) taught us the following truth:-

> "The universe along with its creatures belongs to the Lord. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

21. Father of the Nation Mahatma Gandhi has also taught us the same principle and all those concepts find their place in Article 51A(g) as well. The intrinsic value of the environment as we have already indicated also finds a place in various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, The Protocol to Antarctic Treaty on Environmental Protection 1998, The Bern Convention on Conservation of European Wildlife and Natural Habitats 1982,

CITES, and CBD etc.

CBD in its preamble states as follows:-

"The Contracting Parties,

Conscious of the intrinsic value of biological and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.

Affirming that the conservation of biological diversity is a common concern of humankind."

India is a signatory to CBD, which also mandates the contracting parties to develop and maintain necessary legislation for protection and regulation of threatened species and also regulate trade therein. CITES in its preamble also indicates that Fauna and Flora are irreplaceable part of the natural environment of the earth and international cooperation is essential for the protection of certain species against over exploitation and international trade.

22. CITES, to which India is a signatory, classifies species into different appendices in the order of their endangerment, and prescribes different modes of regulation in that regard.

23. Parties to the CITES are also entitled to take (a) stricter domestic measures regarding conditions of trade, taking possession or transport of specimens of species included in Appendix-I, II and III, or the complete prohibition thereof or; (b) domestic measures restricting or prohibiting trade, taking possession or transport of species not included in Appendix I, II or III. As indicated earlier species listed in Appendix - II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival and other species which must be subject to regulation in order that trade in specimens of certain species referred to earlier may be

brought under effective control.

CITES and CBD highlight the following principles:-

1. The State is bound to initiate measures to identify threatened species.
2. The State is obliged to initiate measures to conserve and protect such threatened species.
3. The State is also required to formulate policies, legislation and appropriate laws to curb those practices (including trade) that result in extinction of species.
4. The State is obliged to undertake in-situ conservation of biological diversity as it is not sufficient that a species is cultivated elsewhere. It, ought to be protected in its natural habitat.

Indian sandalwood (Santalum album Linn) is not seen included in the species listed in Appendix-II of CITES, however red sandalwood (Pterocarpus Santalinus) is seen included in Appendix-II. At the same time International Union for Conservation of Nature (IUCN) which is an international organization dedicated to finding pragmatic solutions of our most pressing environment and development challenges has included Santalum album Linn in its Red List of threatened species as "vulnerable" and red sandalwood (Pterocarpus Santalinus) in the Red List as "endangered". Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as "threatened with extinction", "endangered". A taxon is critically endangered when the available evidence indicates that it meets with the criteria of extremely high risk of extinction. It is Endangered when it meets with the criteria of facing a very high risk of extinction. A taxon is vulnerable when it is considered to be facing a high risk of extinction. Near threatened, means a taxon is likely to qualify for a threatened category in the near future.

24. Red sandalwood is a species of Pterocarpus native of India seen no where in the world. It is reported that the same is found only in South India, especially in Cuddapah and Chittoor in the States of Tamil Nadu and Andhra Pradesh border which is also known as Lal Chandan /Rakta Chandan in Hindi which is an endemic and endangered species. Red sandalwood possesses medicinal properties viz., an anticoagulant, improves local circulation and used on traumatic wounds, aberrations and bruises. Since the trading is mostly in South India, especially in Andhra Pradesh (AP) it is stated that A.P. Forest Corporation has been appointed as an agent to Govt. of A.P. for disposal of red sandalwood available with Forest Department.

25. Red Sanders is an endemic and endangered species as already mentioned, found only in the State of A.P. A.P. Government has banned the sale of Red Sanders even by private parties, the wood is of huge demand in Japan, China and Western world and is very costly and it is included in the negative list of plant species for export purposes, implemented by the Directorate General of Foreign Trade, Ministry of Commerce, placing restrictions on international trade of Red Sanders. Large scale smuggling of Red Sanders is however reported from various quarters. In order to protect the species, a proposal was made by the State of A.P. to Government of India for its inclusion in Schedule VI of the Act which, in our view, is justified.

26. CITES as well as IUCN has acknowledged that Red Sandalwood is an endangered species. It is settled law that the provisions of the Treaties/Conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law. Ref. Vellore Citizens (Supra), Jolly George vs. Bank of Cochin (1980) 2 SCC 360, Gramaphone Company of India vs. Birendra Baldev Pandey (1984) 2 SCC 534. Under the above mentioned circumstances, following the ecocentric principle, we are inclined to give a direction to the Central Government to take

appropriate steps under Section 61 of the Act to include Red Sanders in Schedule-VI of the Act as requested by the State of A.P., within a period of six months from the date of this judgment. We are giving this direction, since, it is reported that nowhere in the world, this species is seen, except in India and we owe an obligation to world, to safeguard this endangered species, for posterity. Power is also vested with the Central Government to delete from the Schedule if the situation improves, and a species is later found to be not endangered.

27. Sandalwood as such we have already indicated finds no place in CITES but it is included in the Red List of IUCN as "vulnerable" and hence call for serious attention by the Central Government, considering the fact that all the sandalwood growing states have stated that it faces extinction. Section 61 of the Act empowers the Central Government to add or delete any entry to or from any schedule if it is known that it is expedient so to do. Section 5 deals with the constitution of National Board for Wildlife (NBWL) which is headed by the Prime Minister as Chairman. Section 5C deals with the functions of the NBWL which states that it shall be the duty of the National Board to promote the conservation and development of wildlife and forests by such measures as it thinks fit. Section 5C(ii)(a) states that the measures may provide for promoting policies and advising Central Government and State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products and also for reviving from time to time the progress in the field of wildlife conservation in the country and suggesting measures for improvement thereto. Various other powers have also been conferred on the National Board which consists of experts in the field of environment. In such circumstances rather than giving a positive direction to include sandalwood in

Schedule VI we are inclined to give a direction to the Central Government to examine the issue at length in consultation with NBWL and take a decision within a period of six months from today as to whether it is to be notified as a specific plant and be included in Schedule VI of the Act.

28. We are also inclined to give a direction to the Central Government to formulate a policy for conservation of sandalwood including provision for financial reserves for such conservation and scientific research for sustainable use of biological diversity in sandalwood. Central Government would also formulate rules and regulations under Section 3 and 5 of Environmental Protection Act 1986 for effective monitoring, control and regulation of sandalwood industries and factories and that it should also formulate rules to ensure that no imported sandalwood is sold under the name of Indian sandalwood and adequate labelling to this effect be mandated for products manufactured from or of import of sandalwood. States are directed to immediately close down all un-licensed sandalwood oil factories, if functioning and take effective measures for proper supervision and control of the existing licensed sandalwood oil factories in states.

29. We are also of the view that time has also come to think of a legislation similar to the Endangered Species Act, enacted in the United States which protects both endangered species defined as those "in danger of extinction throughout all or a significant portion of their range" and "threatened species", those likely to become endangered "within a foreseeable time". The term species includes species and sub-species of fish, wildlife and plants as well as geographically distinct populations of vertebrate wildlife even though the species as a whole may not be endangered. We hope the Parliament would

bestow serious attention in this regard. With the above

directions, all the applications are disposed of.

.....
.....J.
(K.S. Radhakrishnan)

.....
.....J.
(Chandramauli Kr. Prasad)

New Delhi
February 13, 2012

ITEM NO.301&322 COURT NO.10 SECTION PIL

PH

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

301. SLP(C)No. 19628-19629/2009

DEEPAK KUMAR ETC. Petitioner(s)

VERSUS

STATE OF HARYANA & ORS. ETC. Respondent(s)

(WITH OFFICE REPORT)
(WITH I.A. NOS. 2-3-APPLN. FOR PERMISSION TO FILE ADDL. DOCUMENTS, I.A.NO. 4-5-APPLNS. FOR ISSUANCE OF APPROPRIATE DIRECTIONS, I.A.NOS. 6-7-APPLNS. FOR PERMISSION TO WITHDRAW I.A. NOS. 4-5, I.A. NOS. 8-9-APPLNS. FOR CLARIFICATION/DIRECTIONS AND I.A. NOS. 10-11-APPLNS. FOR URGENT LISTING OF I.A.NOS. 8-9)

AND

SLP(C)NOS. 729-731/2011

(WITH APPLN. FOR EXEM. FROM FILING C/C OF THE IMPUGNED JUDGT. AND OFFICE REPORT)

SLP (C) .....CC 16157/2011

(WITH APPLN. FOR PERMISSION TO FILE SLP AND WITH PRAYER FOR INTERIM RELIEF AND OFFICE REPORT)

SLP(C) ....CC 18235/2011

(WITH APPLN. FOR C/D IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 21833/2009

(WITH OFFICE REPORT)

SLP(C) NO. 12498-12499/2010

(WITH APPLN. FOR DIRECTIONS AND CLARIFICATION/DIRECTION AND WITH OFFICE REPORT)

302. I.A. NO. 3047-3048 IN W.P.(C) NO. 202/1995

(FOR IMPLEADMENT/DIRECTIONS AND EXEMPTION FROM FILING O/T)

304. SLP(C) 22856/2011

(WITH APPLN. FOR EXEM. FROM FILING C/C OF THE IMPUGNED JUDGMENT AND WITH PRAYER FOR INTERIM RELIEF)

PART-B LIST FOR FINAL DISPOSAL

305. I.A. NO. 2469 WITH I.A. NOS. 2782, 2939-2940 AND I.A. NOS. 3023-3024 IN IA 2782, 3030 AND 3032 IN W.P.(C) NO. 202/1995

(FOR PERMISSION AND INTERVENTION AND DIRECTION M/S. AND BRINGING ON RECORD AND EXEMPTION FROM FILING O.T., INTERIM DIRECTIONS AND PERMISSION TO FILE ADDITIONAL AFFIDAVIT)

WITH

W.P.(C) NO. 130/2011

(WITH APPLN. FOR EXEM. FROM FILING O.T. AND OFFICE REPORT)

PART-HEARD

306. IA NO. 100 IN W.P.(C) NO. 337/1995

(FOR INTERVENTION)

307. I.A. NOS. 1308, 1323, 1455, 1468, 1478 IN W.P.(C) NO. 202/1995

(FOR DIRECTIONS, INTERVENTION AND EXEM. FROM FILING OT.)

308. SLP(C) 30622/2011

(WITH APPLN. FOR EXEM. FROM FILING O.T. AND WITH PRAYER FOR INTERIM RELIEF AND OFFICE REPORT)

309. ASKOT MUSK DEER SANCTUARY

I.A.NOS. 1791-1792 IN WP(C) NO. 202/1995

(FOR PERMISSION TO DEMARCATE BOUNDARIES OF ASKOT MUSK DEER WILDLIFE SANCTUARY AND EXEM. FROM FILING O.T.)

310. IA NOS. 2716 3369 IN 2716 IN W.P.(C) 202/1995

(RECOMMENDATION OF CEC IN APPLN. NO. 408 AND DIRECTIONS)

311. SLP(C) NOS. 24627-24628/2011

(FOR PERMISSION TO FILE ADDL. DIRECTINS AND WITH OFFICE REPORT)
(FINAL DISPOSAL)

312. SLP(C) 3941/2010

(FOR C/D IN FILING/REFILING SLP AND PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD AND WITH OFFICE REPORT)(FINAL DISPOSAL)

313. SLP(C) 28519/2008

(PRAYER FOR INTERIM RELIEF AND WITH OFFICE REPORT)(FINAL DISPOSAL)

314. I.A. NOS. 2642 IN W.P. (C) NO. 202/1995

(FOR DIRECTIONS)

315. I.A. NO. 2717 IN I.A.NOS. 1135-1136 IN W.P.(C) NO. 202/1995

(FOR DIRECTIONS)

316. I.A. NO. 2785 & 3025 IN W.P.(C) NO. 202/1995

(FOR DIRECTIONS)

317. PANCHMARHI MATTERS (TIGER RESERVE ETC.)

I.A. NOS. 2202-2203, I.A.NOS. 2601 & 2915-2917 IN I.A. NOS. 2202-2203, 2602, 2929-2931 WITH 1606, 2002-2004, 2011, 2062-2063 IN 1220 IN 548, 3308-3310 IN W.P. © NO. 202/1995

(FOR DIRECTIONS, EXEM. FROM FILING O.T., PERMISSIN & CLARIFICATION/MODIFICATION OF RECOMMENDATION OF C.E.C. DATED 16.09.2008, INTERVENTION AND IMPLEADMENT)

WITH

I.A. NO. 1697 IN 548 AND 2595-2596 IN W.P.(C) NO. 202/1995

(FOR CLARIFICATION/MODIFICATION OF ORDER DT. 14.2.2008 PERMISSION TO BRING ONR ECORD THE ADDL. FACTS AND DOCUMENTS AND EXEM. FROM FILOING O.T.)

318. I.A. NOS. 2155-2156 & 2680 IN IA NO. 2156, 3275 IN W.P.(C) NO. 202/1995

(FOR IMPLEADMENT, PERMISSION AND DIRECTION TO REJECTION OF CEC REPORT AND PERMISSION TO FILE AFFIDAVIT)

319. I.A. NO. 3117 IN IA 1991 AND 1991 IN W.P.(C) NO. 202/1995

(FOR DIRECTIONS AND SETTING ASIDE REPORT DT. 18.9.2008 OF CEC)

320. I.A. NO. 925 WITH CONMT. PET. (C) NO. 193/2001, I.A. NO. 1127 IN 925 AND I.A.NO.4 IN CONMT. PET.(C) NO. 193/2001 IN W.P.(C) 202/1995

(WITH APPLN. FOR DIRECTIONS)

321. I.A.NOS. 2843-2844 IN W.P.(C) 202/1995

(FOR IMPLEADMENT/INTERVENTION AND DIRECTIONS)

Date: 13/02/2012 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

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-5-

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302. Mr. Manish Pitale,Adv.
Mr. Wasi Haider,Adv.
Mr. C.S.Ashri,Adv.

Mr. Ranbir Chandra,Sr.Adv.
Ms. Asha G.Nair,Adv.

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304. Mr. Sanand Ramakrishnan,Adv.

Ms. Meena C.R.,Adv.

305. Mr. Kamlendra Misra,Adv.

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306. Mr. Vijay Panjwani,Adv.

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307. Mr. Milind Kumar,Adv.

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Mr. Shibashish Mishra,Adv.

Mr. Irshad Ahmad,Adv.

308. Ms. Prerna Mehta,Adv.

309. Ms. Rachna Srivastava,Adv.

310. Ms. Asha G.Nair,Adv.

Mr. S.M.Jadhav,Adv.

311. Ms. Asha G.Nair,Adv.

Mr. Shiv Kumar Suri,Adv.

312. Mr. G.Prakash,Adv.

Mr. E.M.S.Anam,Adv.

313. Mr. Gopal Singh,Adv.

Mr. Subhro Sanyal,Adv.

314. Mr. B.K.Prasad,Adv.

315. Mr. Himinder Lal,Adv.

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316. Mr. Himinder Lal,Adv.

Ms. Asha G.Nair,Adv.

Ms. Anitha Shenoy,Adv.

317. Mr. L.R.Singh,Adv.

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Mr. C.D.Singh,Adv.

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Mr. K.S.Bhati,Adv.

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Ms. Sumita Hazarika,Adv.

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319. Ms. Pragati Neekhra,Adv.

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320. Mr. R.Nedumaran,Adv.

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Mrs. Revathy Raghavan,Adv.

Mr. L.C.Agrawala,Adv.

321. Mr. Ashwani Bhardwaj,Adv.

Ms. Anitha Shenoy,Adv.

UPON hearing counsel the Court made the following

O R D E R

In 301:

Hearing concluded.

Orders reserved.

In 302:

Three weeks' time granted for filing the report of CEC.

List thereafter.

In Rest of the matters:

Not taken up.

I.A.No. 3371-72/2012

Upon being mentioned, taken on Board.

List on 21/2/2012.

[SUMAN WADHWA]
COURT MASTER

[S.S.R. KRISHNA]
COURT MASTER