CASE NO.:
Appeal (civil) 7533 of 1997

PETITIONER:
Indian Handicrafts Emporium & Ors.

RESPONDENT:
Vs.
Union of India & Ors.

DATE OF JUDGMENT: 27/08/2003

BENCH:
CJI, Y.K. Sabharwal & S.B. Sinha.

JUDGMENT:
J U D G M E N T

W I T H
CIVIL APPEAL NOS.7534, 7535/1997
AND W.P. (C) No. 35/2003
.....

S.B. SINHA, J :

INTRODUCTORY REMARKS:

Applicability of the provisions of the Wild Life (Protection) Act, 1972 is in question in this set of appeals which arise out of a common judgment and order dated 20.3.1997 passed by a Division Bench of the Delhi High Court. The appellants herein are engaged in the business of manufacture and sale of articles relating to art and craft manufactured from ivory. The appellants herein imported ivory from African countries. They have manufactured certain articles out of the same. It is not in dispute that the said import had legally been made as there did not exist any restriction in that regard.

The Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the said Act' for the sake of brevity) was enacted to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary thereto or incidental therewith. Indian elephant was brought within the purview of Schedule A of the Act on or about 5.10.1977. The Union of India also banned export of ivory in the said year.

Chapter V of the said Act deals with trade or commerce in wild animals, animal articles and trophies. By Act No. 28 of 1986 Chapter V-A was inserted therein whereby and restrictions were imposed on trade or commerce in wild animals, cattle and trophies. By Act No.44 of 1991, Section 49-C was inserted in Chapter V-A whereby and where-under a total prohibition in trade of imported ivory was imposed. The said Act was brought into force by the Government of India by issuing a Notification dated 27.9.1991 with effect from 2.10.1991. Six months' time had been granted to make the said Act operational, that is to say, until 2.4.1992. Within the aforementioned period, the trader, thus, could dispose of his stock.

The appellants herein filed writ petitions before the Delhi High Court, inter alia, questioning the constitutionality and validity of the 1991 Amendment Act prohibiting trade in the imported ivory on several grounds. The High Court by an interim order dated 26.3.1992 stayed the operation of the Act. The said interim order was, however, vacated on 22.5.1992. The appellants herein did not take any step to

dispose of the imported ivory held in stock by them even during the said period.

By reason of the impugned judgment the High Court upheld the vires of the said Act. Against the said judgment the appellants are in appeal before us.

SUBMISSIONS OF THE APPELLANTS

Mr. G.L. Sanghi, the learned senior counsel appearing for the appellants, would urge that the impugned provisions of the Act are violative of Article 19(1)(g) of the Constitution of India inasmuch as thereby the right of the appellant to trade in ivory has unjustly been prohibited. The learned counsel would submit that restrictions imposed by reason of the said Act being excessive, the same must be held to be confiscatory in nature. The Amending Act is also ultra vires Article 14 of the Constitution of India, being irrational and arbitrary. The learned counsel has drawn our attention to the fact that the population of elephants has gone up in several countries, e.g., Botswana, South Africa, Namibia and Zimbabwe, and these countries have been permitted by Convention on International Trade in Endangered species of Wild Fauna and Flora (for short 'CITES') to deal in ivory subject of course to certain restrictions. Our attention has further been drawn to the fact that ivory which was placed in Appendix-I of the CITES has now been placed in Appendix-II thereof. It was also submitted that ivory collected from dead animals should also be permitted to be dealt in.

It was urged that even assuming that the Amending Act of 1991 was a valid piece of legislation, in the year 1991 having regard to the subsequent event viz. increase in the population of Elephant worldwide the same may be held to be ultra vires Article 14 of the Constitution of India. Strong reliance in this behalf has been placed on Motor General Traders and Another vs. State of Andhra Pradesh and Others [(1984) 1 SCC 222], Rattan Arya and Others vs. State of Tamil Nadu and Another [(1986) 3 SCC 385] and Synthetics and Chemicals Ltd. and Others vs. State of U.P. and Others [(1990) 1 SCC 109]. The learned counsel would submit that in any event the Amending Act being vague in nature, the same should be held ultra vires Article 14 of the Constitution of India. Reliance in this connection has been placed on Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another vs. Union of India and Others [(1960) 2 SCR 671].

Mr. Sanghi, would further submit that the ivory which has legally been imported by the appellants herein prior to coming into force of the 1991 Amendment Act, having not vested in the Government, the appellants should be held to be at liberty to deal therewith. According to the learned counsel ivory having lawfully been imported and the appellants having, thus, been in lawful possession thereof, there could be no reason as to why they should be deprived of the possession therefrom, particularly having regard to the provisions of sub-section (3) of Section 49-C thereof. It was urged that once such a declaration is filed in terms of sub-section (1) of Section 49-C, the Chief Wild Life Warden should be held to be statutorily obligated to give to the appellants a certificate of ownership in respect of the entire stock-in-trade, entitling them to transfer the same to any person whether by way of gift, sale or otherwise, as is provided under sub-section (6) thereof. The learned counsel would argue that there does not exist any provision in the said Act for payment of compensation and as the property vests in the Government only on certain conditions, the appellants herein cannot be dispossessed therefrom without any authority of law and in that view of the matter, the impugned provisions must be held to be ultra vires Article 300A of the Constitution. Sub-section (7)of Section 49-C, Mr. Sanghi would submit, must be construed so as to uphold the right of property of the

appellants in the property as otherwise the same would be rendered unconstitutional.

According to the learned counsel, the Parliament amended the Act by way of Act 16 of 2003, in terms whereof Section 40A was inserted enabling the holders of stock of ivory to file a fresh declaration. The learned counsel would contend that having regard to the fact that the appellants are prohibited from carrying on any trade or business in ivory, for all intent and purport, they should be held to be covered by the aforementioned provisions. In any event, the learned counsel would contend that the guidelines issued by the respondents must be held to be ultra vires Section 63 of the Act as also the rules framed thereunder, and, thus, the Central Government cannot be said to have any jurisdiction to direct that out of the seized articles, only one item shall be released and the rest would be destroyed. Such a power conferred upon the statutory authority being wholly arbitrary as thereby unbriddled power has been conferred, the same must also be held ultra vires Article 14 of the Constitution. Mr. Sanghi would urge that the statute cannot be construed only with reference to its objective sought to be achieved without considering the constitutionality thereof. Strong reliance in this behalf has been placed on Rustom Cavasjee Cooper vs. Union of India [(1970) 3 SCR 530].

The learned counsel would further submit that the High Court wrongly applied the principle of 'res extra commercium' in the instant case which is per se inapplicable.

SUBMISSIONS OF THE RESPONDENTS:

Mr. Malhotra and Mr. Panjwani, learned counsel appearing on behalf of the respondents, on the other hand, would submit that having regard the purpose and object, the said Act seeks to achieve, there cannot be any doubt whatsoever that the Parliament has the requisite legislative competence. By reason of the provisions of the Amending Act 28 of 1986, trade in various articles had been prohibited. Imported ivory was, however, brought within the purview of Act 44 of 1991. The learned counsel would contend that a bare perusal of the provisions of the 1986 and 1991 Amending Acts would clearly go to show that the intention of the Parliament was that those who carry on trade or business in the imported African ivory should dispose of the same within a period of six months i.e. before coming into force thereof whereafter their possession would become illegal, subject, however, to the grant of certificate of ownership by the Chief Wild Life Warden in terms of sub-section (3) of Section 49-C of the said Act. It was submitted that a trader cannot claim the entire imported ivory or the articles manufactured therefrom to be necessary for his bona fide personal use and in that view of the matter the Chief Wild Life Warden has been conferred with a discretionary jurisdiction in relation thereto and only such articles in respect whereof the certificate of ownership is issued, can be subject matter of the transfer in terms of sub-section (6) of Section 49-C of the Act. Any article in respect whereof no certificate of ownership has been granted, would fall within the mischief of sub-section (7) of Section 49-C. Such a provision, it was urged, must be held to be reasonable as a trader was given sufficient time to dispose of all the articles in his possession.

Drawing our attention to the provision of the Wild Life (Protection) Act, 1972, Mr. Malhotra would submit that the trade and possession of ivory having been totally prohibited. Even non-traders are not entitled to possess the same in terms of Section 40(2A) of the Act. The learned counsel would further submit that it would not be correct to contend that legislative policy has changed in India inasmuch from the minutes of meeting of CITES, it would appear that India and Kenya differed with the proposal of five African countries

that they be permitted to trade in ivory for any purpose whatsoever. Our attention was further drawn to the fact that ivory still is in Appendix-I so far as India is concerned.

STATUTORY PROVISIONS:

The said Act was enacted to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary thereto or incidental therewith. Section 2 thereof contains the interpretative provisions. Some of the relevant provisions are :

2. Definitions.--In this Act, unless the context otherwise requires,--
[(1) "animal" includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs;]
(2) "animal article" means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal [has been used, and ivory imported into India and an article made therefrom];
(11) "dealer" in relation to any captive animal, animal article, trophy, uncured trophy, meat or specified plant, means a person, who carries on the business of buying or selling any such animal or article, and includes a person who undertakes business in any single transaction;
(14) "Government property" means any property referred to in section 39; [or section 17H;]
(36) "wild animal" means any animal specified in Schedules I to IV and found wild in nature;"

Chapter V of the Act deals with trade or commerce in wild animals, animal articles and trophies.

Section 39(1)(c) occurring in Chapter V of the said Act provides that every 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 there-under has been committed, shall be the property of the State Government.

Section 40 provides for declaration. Sub-section (1) whereof is in the following terms :
40. Declarations.--(1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, [or animal article, trophy or uncured trophy] derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept".

Sub-section (2) of Section 40 prohibits acquisition, receiving, keeping in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animals specified in Schedule I or Part II of Schedule II and allied things by any person whatsoever. Sub-sections (2A) and (2B) which have been inserted by Act 16 of 2003 read thus :

"(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.
(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40:
Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.]
(3) Nothing in sub-section (1) or sub-section (2) shall apply to a recognised zoo subject to the provisions of section 381 or to a public museum.
(4) The State Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer [any animal or animal article] or trophy (other than a musk of a musk deer or horn of a rhinoceros) or salted or dried skins derived from an animal specified in Schedule I or Part II of Schedule II in his control, custody or possession in such form, in such manner, and within such time, as may be prescribed."

Section 40A provides for immunity in certain cases which is in the following terms :

"40A. Immunity in certain cases.- (1) Notwithstanding anything contained in sub-sections (2) and (4) of section 40 of this Act, the Central Government may, by notification, require any person to declare to the Chief Wild Life Warden or the authorised officer, any captive animal, animal article, trophy or uncured trophy derived from animals specified in Schedule I or Part II of Schedule II in his control, custody or possession, in respect of which no declaration had been made under sub-section (1) or sub-section (4) of section 40, in such form, in such manner and within such time as may be prescribed.

(2) Any action taken or purported to be taken for violation of section 40 of this Act at any time before the commencement of the Wild Life (Protection) Amendment Act, 2002 shall not be proceeded with and all pending proceedings shall stand abated.

(3) Any captive animal, animal article, trophy

or uncured trophy declared under sub-section (1) shall be dealt with in such manner and subject to such conditions as may be prescribed."

Section 41 deals with inquiry and preparation of inventories which is in the following terms :

41. Inquiry and preparation of inventories.--
(1) On receipt of a declaration made under section 40, the Chief Wild Life Warden or the authorised officer may, after such notice, in such manner and at such time, as may be prescribed,--
(a) enter upon the premises of a person referred to in section 40;
(b) make inquiries and prepare inventories of animal articles, trophies, uncured trophies, salted and dried skins and captive animals specified in Schedule I and Part II of Schedule II and found thereon; and
(c) affix upon the animals, animal articles, trophies or uncured trophies identification marks in such manner as may be prescribed.
(2) No person shall obliterate or counterfeit any identification mark referred to in this Chapter.

Chapter V-A was brought into the statute book by Act No.28 of 1986. "Scheduled animal" has been defined in clause (a) of Section 49-A in the following terms :

"(a) 'scheduled animal' means an animal specified for the time being in Schedule I or Part II of Schedule II;"

Clause (c) of Section 49-A defines 'specified date' which in relation to ivory imported into India or an article made therefrom would mean the date of expiry of six months from the commencement of Wild Life (Protection) Amendment Act, 1991. The said provision was inserted by Act No. 44 of 1991.

Section 49-B provides that subject to the other provisions of the said Section, on and after the specified date, no person shall commence or carry on the business as a manufacturer of, or dealer in, scheduled animal article, or a dealer in ivory imported into India or articles made therefrom or a manufacturer of such articles.

Section 49-C of the said Act reads as under :

"49-C. Declaration by dealers. - (1) Every person carrying on the business or occupation referred to in sub-section (1) of Section 49-B shall, within thirty days from the specified date, declare to the Chief Wild Life Warden or the authorised officer, -

(a) his stocks, if any, as at the end of the specified date of -

(i) scheduled animal articles;
(ii) scheduled animals and parts thereof;
(iii) trophies and uncured trophies derived from scheduled animals;

(iv) captive animals, being scheduled animals;
(v) ivory imported into India or articles made therefrom;

(b)the place or places at which the stocks mentioned in the declaration are kept; and

(c)the description of such items, if any, of the stocks mentioned in the declaration which he desires to retain with himself for his bona fide personal use.

(2) On receipt of a declaration under sub-section (1), the Chief Wild Life Warden or the authorised officer may take all or any of the measures specified in Section 41 and for this purpose, the provisions of Section 41 shall, so far as may be, apply.

(3) Where, in a declaration made under sub-section (1), the person making the declaration expresses his desire to retain with himself any of the items of the stocks specified in the declaration for his bona fide personal use, the Chief Wild Life Warden, with the prior approval of the Director, may, if he is satisfied that the person is in lawful possession of such items, issue certificates of ownership in favour of such person with respect to all, or as the case may be, such of the items as in the opinion of the Chief Wild Life Warden, are required for the bona fide personal use of such person and affix upon such items identification marks in such manner as may be prescribed :

Provided that no such items shall be kept in any commercial premises.

(4) No person shall obliterate or counterfeit any identification mark referred to in sub-section (3).

(5) An appeal shall lie against any refusal to grant certificate of ownership under sub-section (3) and the provisions of sub-sections (2), (3) and (4) of Section 46 shall, so far as may be, apply in relation to appeals under this sub-section.

(6)Where a person who has been issued a certificate of ownership under sub-section (3) in respect of any item, -

(a) transfers such items to any person, whether by way of gift, sale or otherwise, or

(b) transfers or transports from the State in which he resides to another State any such item,

he shall, within thirty days of such transfer

or transport, report the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected.

(7) No person, other than a person who has been issued a certificate 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 a scheduled animal article or ivory imported into India or any article made therefrom."

Section 50 deals with power of entry, search, arrest and detention.

Section 51 deals with penalties. The relevant portion of Section 51 is as follows :

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 [twenty-five thousand rupees] or with both:

Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.

(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than [three years] but which may extend to seven years and also with fine which shall not be less than [ten thousand rupees].]

(1B) Any person who contravenes the provisions of section 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 with fine which may extend to five thousand rupees.

Section 63 empowers the Central Government to makes rules.

INTERPRETATION OF THE ACT:

The provisions of the said Act must be construed having regard to the purport and object it seeks to achieve. Not only inter alia wild animal is to be protected but all other steps which are necessary therefor so as to ensure ecological and environmental security of the country must be enforced. The interpretation provisions as regard 'wild animal' employs the word 'includes' and, thus, must be assigned a broad meaning. The Amending Acts must be viewed in that perspective. Protection and conservation of wild animal is essential for very existence of human life. A trade in wild animal which is sought to be prohibited with an object to oversee survival of human beings must be given its full effect. The CITES was formulated keeping in view the aforementioned policy. India is a member State of the Convention. It is a signatory to the other treaties and conventions in this behalf. Appendix I of CITES which came into effect from 18th January, 1990 provided for complete prohibition of internal and trans border trade in ivory. The Parliament enacted the Amendment Act (Act No. 44 of 1991) with a view to save the species of Indian Elephant and to give effect to the said international treaties. Prior thereto, that is 1989, the African Elephant was proposed to be brought in Appendix I of CITES.

In the Press Release of October, 2002, the following appears:

"Another high-profile item is the African elephant. After an eight-year ban on ivory sales, in 1997 CITES agreed to allow three African countries - Botswana, Namibia and Zimbabwe - to make one time sales from their existing legal stocks of raw ivory. The ivory - which weighed 49,574 kg. and represented 5,446 tusks - was sold to Japan in 1999 and earned some USD5 million. The funds were used for elephant conservation activities in the three range states.

In the year 2002, the three countries plus South Africa and Zambia are proposing one-off sales of existing ivory stocks to be followed later by annual quotas. The proposals are for a first sale of 20,000 kg. and an annual quota of 4,000 kg. for Botswana, 10,000 Kg. and 2,000 kg. respectively for Namibia, 30,000 kg. and 2,000 kg. for South Africa and 10,000 kg. and 5,000 kg. for Zimbabwe. Zambia is proposing a one-off sale of 17,000 kg. A proposal from India and Kenya, on the other hand, argues that further ivory sales from African elephants should be clearly prohibited as a precautionary measure for reducing future threats to the elephant.

Meanwhile, Japan is seeking to open up trade in most northern hemisphere populations of minke whale and a Pacific population of Bryde's whale. Its proposals stress the use of national legislation and DNA identification of individual whales to monitor catches and trade. Similar proposals were presented without success at the most recent CITES conferences in 1997 and 2000. This year's debate is likely to involve issues related to science, sustainable

use, possible enforcement problems, and the international Whaling Commission's moratorium on commercial whaling."

Further, in the Press Release of 12th November, 2002, the following appears:

"CITES has conditionally accepted proposals from Botswana, Namibia and South Africa that they be allowed to made one - off sales of 20, 10 and 30 tonnes, respectively, of ivory. The ivory is held in existing legal stocks that have been collected from elephants that dies of natural causes or as a result of government - regulated problem - animal control.

Similar proposals from Zambia and Zimbabwe for 17 and 10 tonnes, respectively, were not accepted. Today's decisions by CITES must still be formally adopted by the full Plenary on Friday, when the current two - week conference ends."

The rival contention as regard the interpretation and application of the said Act must be considered having regard to the aforementioned principles as also the international treaties and developments which took place subsequently.

WHETHER THE AMENDING ACT 44 OF 1991 IS ULTRA VIRES ARTICLES 19(1)(g) AND 14 OF THE CONSTITUTION OF INDIA

Appellant No. 1 herein appeared to have imported ivory from 1971 to 1986. It was in possession of 755.930 Kgs. Of solid Ivory Articles and 10.050 Kgs. with metal.

Dealing in imported ivory so long the law permits may be a fundamental right but if the statute prohibits it, it must be held to be a law within the meaning of Clause (6) of Article 19 of the Constitution of India in terms whereof reasonable restriction is imposed. A trade which is dangerous to ecology may be regulated or totally prohibited. For the aforementioned purpose, regulation would include prohibition.

What would be a reasonable restriction which can be imposed in public interest is a matter which is no longer res integra.

In Narender Kumar and Others Vs. Union of India and Others [1960] 2 SCR 375, this 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."

(See also State of Maharashtra Vs. Mumbai Upnagar Gramodyog Sang [1969] 2 SCR 392)

In Synthetics and Chemicals Ltd. (supra), this Court held:

"76. Balsara case (1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361) dealt with the question of reasonable restriction on medicinal and toilet preparations. In fact, it can safely be said that it impliedly and sub-silentio clearly held that medicinal and toilet preparations would not fall within the exclusive privilege of the States. If they did there was no question of striking down of Section 12(c) and (d) and Section 13(b) of the Bombay Prohibition Act, 1949 as unreasonable under Article 19(1)(f) of the Constitution because total prohibition of the same would be permissible. In K. K. Narula case (K. K. Narula v. State of J & K, (1967) 3 SCR 50 : AIR 1967 SC 1368) it was held that there was right to do business even in potable liquor. It was not necessary to say whether it is good law or not. But this must be held that the reasoning therein would apply with greater force to industrial alcohol."

In Ramana Dayaram Shetty Vs. The International Airport Authority of India and Others [AIR 1979 SC 1628 : 1979 (3) SCR 1014], this Court held:

"...We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privilege set out in Section 22 was not denied. It was also not disputed that these privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate.
It will be seen from these observations that the validity of clause (6) of the Order dated January 6, 1971 was upheld by this Court on the ground that having regard to the object of holding the auction, namely, to raise revenue, the Government was entitled to reject even the highest bid, if it thought that the price offered was inadequate. The Government was bound to accept the tender of the person who offered the highest amount and if the Government rejected all the bids made at the auction, it did not involve any violation of Article 14 of 19(1)(g). This is a self-evident proposition and we do not see how it can be of

any assistance to the respondents."

In Har Shankar and Others Vs. Dy. Excise and Taxation Commissioner [AIR 1975 SC 1121 : (1975) 3 SCR 254], this Court held:

"...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. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In American Jurisprudence", Volume 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control (page 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the state to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime (pp. 539, 540, 541)."

In order to determine whether total prohibition would be reasonable the Court has to balance the direct impact on the fundamental right of the citizens thereby against the greater public or social interest sought to be ensured. Implementation of Directive Principles contained in Part IV is within the expression of restrictions in the interest of the general public.

In Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another [AIR 1986 SC 1205 : (1986) 2 SCR 700], this court held:

"15. Before proceeding to deal with the points urged on behalf of the appellants it will be appropriate to refer to the well-established principles in the construction of the constitutional provisions. When the validity of a law placing restriction on the exercise of a fundamental right in Article 19(1)(g) is challenged, the onus of proving to the satisfaction of the court that the restriction is reasonable lies upon the State. If the law requires that an act which is inherently dangerous, noxious or injurious to the public interest, health or safety or is likely to prove a nuisance to the community shall be done under a permit or a licence of an executive authority, it is not per se unreasonable and no person may claim a licence or a permit to do that act as of right. Where the law providing for grant of a licence or permit confers a discretion upon an administrative authority regulated by rules or principles, express or implied, and exercisable in consonance with the rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion the law ex facie infringes the

fundamental right under Article 19(1)(g). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition.

"20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See Jyoti Prasad v. Union Territory of Delhi ((1962) 2 SCR 125 : AIR 1961 SC 1602). If the expression 'in the interest of general public' is of wide import comprising public order, public security and public morals, it cannot be said that the standing orders closing the slaughter houses on seven days is not in the interest of general public."

The primal object for which dealing in ivory imported from Africa had been prohibited was to see that while holding the stock, the people may not deal in Indian ivory which may be procured from illegal killings of Indian Elephant. The Amending Act indirectly seeks to protect Indian Elephant and to arrest their further depletion.

It may be necessary to go into the history of legislation leading to enactment of the said Act for the purpose of undertaking how small restrictions were replaced by and by with bigger ones and ultimately to a total prohibition. We may notice that the first legislation for protection of birds was enacted in 1887 known as the Wild Birds Protection act, 1887 (Act No. X of 1887) which was followed by the Wild Birds and Animals (Protection) Act, 1912. As the object sought to be achieved by the said Acts was not fulfilled, the same was amended in the year 1935 in terms of which the Provincial Government could declare any area to be a sanctuary for the birds or animals and their killing was made unlawful. As wild life was a State subject of legislation, in the year 1972 several States adopted resolutions in terms of Article 252 of the Constitution of India empowering the Parliament to pass the necessary legislation.

The provisions contained in the 1972 Act were found to be inadequate necessitating extensive amendment. One of the Objects and Reasons for the said Act was to see that the wild animals or articles and derivates thereof may not be smuggled out to meet the demand in foreign markets as there is hardly any market within the country therefor. A clandestine trade abetted by illegal practices of poaching which had taken a heavy toll of our wild animals and birds were sought to be restrained. It was pointed out that the stocks declared by the traders at the commencement of the Wild Life (Protection) Act, 1972 are used as a cover for such illegal trade.

The Parliament in its wisdom thought to amend the said Act further in the year 1991 in terms whereof the following changes were made:

"(i) It substituted new section for sections 9, 29 and 55 of the Principal Act;

(ii) It omitted sections 10, and 13 to 17 of the Principal Act;
(iii) It inserted two new chapters, namely, Chapter IIIA and Chapter IVA, in the Principal Act; and
(iv) It inserted new Schedule, namely, Schedule VI, in the Principal Act."

At this juncture, we may usefully take notice of the Statement of Objects and Reasons of the said Act.

"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 products without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government Officers as well as 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.

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

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 purposes 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 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."

The Parliament while enacting the said Amending Act took note of serious dimensions of poaching of wild animals and illegal trade giving exponential rise of wild animals and their products.

The Hon'ble Minister of State of the Ministry of Environment and Forest in the House stated:

"Population of Indian elephants, particularly in South India, are under serious threat by ivory poachers. Although the trade in Indian 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."

During pendency of these matters, as noticed hereinbefore, the Parliament enacted the Wild Life (Protection) Amendment Act, 2002 (Act No. 16 of 2003) which came into force with effect from 1st April, 2003.

By reason of the Amending Act of 2003, the possession of an ivory whether by a trader or a person is completely banned.

There cannot be any doubt whatsoever that a law which was at one point of time was constitutional may be rendered unconstitutional because of passage of time. We may note that apart from the decisions cited by Mr. Sanghi, recently a similar view has been taken in Kapila Hingorani Vs. State of Bihar [JT 2003 (5) SC 1] and John Vallamattom and Anr. Vs. Union of India [JT 2003 (6) SC 37].

In this case, however, we are faced with a different situation. We are concerned with the reason and object for which the amendments have to be made. We must take into consideration the text and context of the amending Acts and the circumstances in which they had to be brought about.

The provisions of the statute are also required to be considered keeping in view Article 48-A and Article 51A(g) of the Constitution of India which are in the following terms:

"48-A. Protection and improvement of environment and safeguarding of forests and wild life.-- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

"51-A. Fundamental duties. -- It shall be the duty of every citizen of India --

... ...

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

We cannot shut our eyes to the statements made in Article 48-A of the Constitution of India which enjoins upon the State to protect and improve the environment and to safeguard the forests and wild life of the country. What is destructive of environment, forest and wild life, thus, being contrary to the Directive Principles of the State Policy which is fundamental in the governance of the country must be given its full effect. Similarly, the principles of Chapter IVA must also be given its full effect. 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. The amendments have to be carried out keeping in view the

aforementioned provisions.

It is, therefore, difficult to accept the contention of Mr. Sanghi that protection and preservation of wild life would not be in public interest and/ or cannot be extended to imported ivory. Wild Life forms part of our cultural heritage. Animals play a vital role in maintaining ecological balance. The amendments have been brought for the purpose of saving the endangered species from extinction as also for arresting depletion in their numbers caused by callous exploitation thereof.

In D.D. Basu's Commentary on the Constitution of India (Sixth Edition, Volume C) at page 45-46, the law has been summarized in the following manner:

"It is now settled that no inflexible answer to this question is possible, and that it is the nature of the business or property which is an important element in determining how far the restriction may reasonably go:

(A) In the case of inherently dangerous or noxious trades, such as production or trading in liquors or cultivation of narcotic plants, or trafficking in women, it would be a 'reasonable restriction' to prohibit the trade or business altogether.

(B) Where the trade or business is not inherently bad, as in the preceding cases, it must be shown by placing materials before the Court that prohibition of private enterprise in the particular business was essential in the interests of public welfare. Thus -

In order to prevent speculative dealings in 'essential commodities' (such as cotton), during a period of emergency, the State may impose a temporary prohibition of all normal trading on such commodities. In the later case of Narendra Vs. Union of India (supra), the Supreme Court has sustained even a permanent law leading to the elimination of middle-men from the business in essential commodities in order to ensure the supply of such goods to the consumers at a minimum price."

The Amending Acts satisfy also the strict scrutiny test.

The stand of the State that by reason of sale of ivory by the dealers, poaching and killing of elephants would be encouraged, cannot be said to be irrational. Mr. Sanghi, as noticed hereinbefore, has drawn our attention to the changes sought to be effected in CITES at the instance of Botswana, South Africa, Namibia and Zimbabwe. The question as to whether a reasonable restriction would become unreasonable and vice-versa would depend upon the fact situation obtaining in each case. In the year 1972 when the said Act was enacted there might not have been any necessity to preserve the elephant as also ivory. The species might not have been on the brink of extinction. The Objects and Reasons set out for brining in amendments in the said Acts in the years 1986, 1991 and 2003 clearly bring into fore the necessity to take more and more stringent measures so as to put checks on poaching and illegal trade in ivory. Experience shows that poaching may be difficult to be completely checked. Preventive measures as regard poaching leading to killing of elephants for the

purpose of extraction of their tusks is a difficult task to achieve and, thus, the Parliament must have thought it expedient to put a complete ban in trade in ivory to meet the requirement of the country.

India being a sovereign country is not obligated to make law only in terms of CITES; it may impose stricter restrictions having regard to local needs.

In John Vallamattom and Anr. Vs. Union of India [JT 2003 (6) SC 37] this Court speaking through the Hon'ble Chief Justice of India held:

"Furthermore, India being a signatory to the Declaration on the Right to Development adopted by the World Conference on Human Rights and Article 18 of the United Nations Covenant on Civil and Political Rights, 1966, the impugned provision may be judged on the basis thereof."

Referring to Article 1 of the Declaration on the Right to Development and Article 18 of the United Nations Covenant on Civil and Political Rights 1966, this Court following Kapila Hingorani Vs. State of Bihar [JT 2003 (5) SC 1] observed that the provisions of law must be judged keeping in view the international treaties and conventions stating:

"It is trite that having regard to Article 13(1) of the Constitution, the constitutionality of the impugned legislation is required to be considered on the basis of laws existing on 26th January, 1950, but while doing so the court is not precluded from taking into consideration the subsequent events which have taken place thereafter. It is further trite that that the law although may be constitutional when enacted but with passage of time the same may be held to be unconstitutional in view of the changed situation.

Justice Cardoze said :

"The law has its epochs of ebb and flow, the flood tides are on us. The old order may change yielding place to new; but the transition is never an easy process".

Albert Campus stated :

"The wheel turns, history changes". Stability and change are the two sides of the same law-coin. In their pure form they are antagonistic poles; without stability the law becomes not a chart of conduct, but a gare of chance: with only stability the law is as the still waters in which there is only stagnation and death."

Although in that case Section 118 of the Indian Succession Act was declared unconstitutional but we are of opinion that legal principles enunciated therein will have to be applied for the purpose of judging the constitutionality of impugned provisions keeping in view the subsequent changes.

Submission of Mr. Sanghi to the effect that the Amending Acts provide for arbitrary unguided and unbridled power is stated to be rejected. The submission of learned counsel was made on the premise that after ban was imposed on trade in ivory, all traders become non-traders and, thus, traders and non-traders could not have been treated differently. When a trade is prohibited as has sought to be done by reason of the 1991 Amendment Act by inserting Chapter VA, the matters incidental thereto or connected therewith must be dealt with accordingly. For all intent and purport the statute would treat the traders on a different footing than non-traders. They form a different and distinct class.

The appellants used to trade in ivory stands admitted. They, thus, would come within the purview of the definition of the trader also is undisputable. The manner in which despite legal ban on trade a person may not take recourse to illegal trading is a matter which squarely falls within the purview of the legislative competence. It is now well-settled that the Parliament can not only enact a law for avoidance or evasion of commission of an illegal trade but also may make law to see that the law is not evaded by taking recourse to machination or camouflage. The loopholes, if any, in such matters can and should be plugged. "Means Affecting Means" principle as adumbrated in United States Vs. Darby [312 US 100 (1941)] is an illustration on the point. Both substantial and procedural provisions can be made to make a law in furtherance of the object for which the Act has been enacted and to see that what is sought to be prohibited directly may not be achieved by the traders indirectly.

For the purpose of Chapter VA the appellants remained traders despite the fact that they have been prohibited from carrying on any business. How after imposing the ban, stock in trade is to be dealt with is again a matter which can be dealt with by the Legislature. It has the requisite competence therefor. Furthermore, it is now idle to contend having regard to the provisions contained in Section 40(2A) of the Act that the traders have been discriminated with vis-Ã -vis the non-traders. Traders are class by themselves and as such no question of any discrimination arises. The classification is well-defined and well-perceptible. Traders and non-traders constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other.

A machinery must be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable - ut res magis valeat quam pereat. (See D. Saibaba & Bar Council of India and Anr. reported in JT 2003 (4) SC 435 and Welfare Assocn. A.R.P. Maharashtra & Anr. Vs. Ranjit P. Gohil & Ors. reported in 2003 (2) SCALE 288)

Submission of Mr. Sanghi that the definition of wild animal is vague cannot be accepted. Hamdard Dawakhana (supra) whereupon Mr. Sanghi has placed strong reliance is wholly mis-placed.

In Hamdard Dawakhana (supra) the 'magic remedy' was held to be incapable of giving a fixed meaning and, thus, was held ultra vires Article 14 of the Constitution being vague in nature. We do not find any such vagueness in any of the provisions of the impugned Acts including the definition of 'wild animal'. It is clear and unambiguous.

Reliance placed by Mr. Sanghi on Rustom Cavasjee Cooper (supra)is

equally mis-placed. In that case, this Court was dealing with nationalization of banks. The Court held that the provisions impugned therein are ultra-vires. In that situation, it was held:

"Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution."

There is no quarrel with the aforementioned propositions inasmuch as herein we are upholding vires of the statutes holding that the restrictions imposed is reasonable.

The Amending Acts in our opinion are constitutional, legal and valid.

RES-EXTRA COMMERCIUM:

We, however, agree with Mr. Sanghi that in a case of this nature the doctrine of 'res extra commercium' cannot be invoked. When trade in a particular commodity is governed by a statute, the same has to be given its full effect. Trade in ivory was permissible in law. It was restricted in 1986. It has totally been prohibited in the year 1991. The Amendment Act, 2003 brought about further changes in terms whereof further restrictions have been imposed even on the private owners to possess ivory or any other animal article.

CITES banned trade in ivory but as regard some countries the ban has been relaxed. At least in five countries ivory has been placed in Appendix II from Appendix I. We do not know whether in a few years from now having regard to increase in population of elephant, a restricted trade in ivory would be permitted. If that is permitted by amending the said Act, the trade in ivory would be legal.

The submission of the appellants, however, to the effect that the elephant has been downlisted from Appendix I to Appendix II of CITES is incorrect. All international trade in elephants or articles thereof including Asian elephants (Indian species) is prohibited as it continues to be listed in Appendix I excepting for certain specified African elephant populations of Botswana, Namibia, South Africa and Zimbabwe which have now been listed in Appendix II. This limited trade has been allowed under very strict conditions as mentioned in the CITES Appendix. Further, India at the CITES Conference (2002) had seriously opposed permitting of such limited trade and had even submitted a proposal for a continuation of the ban on ivory trade.

Education having regard to its nature was held to be beyond pale of business or occupation within the meaning of Article 19(1)(g) of the Constitution of India.

In Unni Krishnan J.P. and Others Vs. State of Andhra Pradesh and Others [(1993) 1 SCC 645], it was observed:

"198. We are, therefore, of the opinion, adopting the line of reasoning in State of Bombay v. R.M.D. Chamarbaugwala (1957 scr 874 : air 1957 sc 699) that imparting education cannot be treated as a trade or business. Education cannot be allowed to be converted into commerce nor can the petitioners seek to obtain the said result by relying upon the

wider meaning of "occupation". The content of the expression "occupation" has to be ascertained keeping in mind the fact that clause (g) employs all the four expressions viz., profession, occupation, trade and business. Their fields may overlap, but each of them does certainly have a content of its own, distinct from the others. Be that as it may one thing is clear - imparting of education is not and cannot be allowed to become commerce. A law, existing or future, ensuring against it would be a valid measure within the meaning of clause (6) of Article 19. We cannot, therefore, agree with the contrary proposition enunciated in Sakharkherda Education Society v. State of Maharashtra (air 1968 Bom LR 690) Andhra Kesari Education Society v. Govt. of A.P. (AIR 1984 AP 251 : (1984) 1 APLJ 45)and Bapuji Educational Assn. v. State.(AIR 1986 Kant 80)"

An 11-Judge Bench of this Court in T.M.A. Pai Foundation Vs. State of Karnataka [(2002) 8 SCC 481], however, held that imparting of education would come within the purview of the definition of occupation within the meaning of Article 19(1)(g) of the Constitution of India. This court following Sodan Singh Vs. New Delhi Municipal Committee [(1989) 4 SCC 155] opined:

"In Unni Krishnan's case (Unni Krishnan, J.P. v. State of A.P. (1993) 1 SCC 645 at p. 687) while referring to education, it was observed as follows :-

"It may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right."

While the conclusion that "occupation" comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the state or affiliation from the concerned university is, with the utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject-matter of controls.

The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that

education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh case (Sodan Singh v. New Delhi Municipal Committee, (1989) 4 SCC 155) correctly interpret the expression "occupation" in Article 19(1)(g)."

The said view has been reiterated recently by a Constitution Bench in Islamic Academy of Education and Anr. Vs. State of Karnataka and Ors. decided on 14th August, 2003 [JT 2003 (7) SC 1].

The High Court has referred to the decision in P. Crowley Vs. Henry Christensen [(1890) 34 Law. Ed. 620] so as to hold that a citizen has no inherent right to sell intoxicating liquors. Therein the U.S. Supreme Court was dealing with a federal law imposing restrictions on a person dealing in retail trade in liquor without obtaining a due licence therefor. The law was upheld negativing the contention that the restriction was unreasonable. It was not held therein that trade of liquor is impermissible in all situations.

Restriction in trade, therefore, would depend upon the nature of the article and the law governing the field. By reason of judicial vagaries, fundamental right under Article 19(1)(g) of the Constitution cannot be further restricted. (See Krishna Kumar Narula Vs. The State of Jammu and Kashmir & Ors. AIR 1967 SC 1368).

Dr. D.D. Basu in his Commentary on the Constitution of India (Sixth Edition) Volume L at page 238 stated:

"In Chamarbaugwala's case (supra) as well as in Fatehchand's case (AIR 1977 SC 1825), the Court relied upon the observations of Taylor, J. in Mansell's case (1956) C.L.R. 550, in support of the theory of res extra commercium, but as appears from the following observations of Wynes (1970), p. 263, the doctrine has not had a peaceful career in Australia, and has produced conflicting decisions which are not beyond criticism:

"The question whether exceptions to the otherwise express provisions of s.92 based upon inherent quality of goods can be made has not been settled... Since the Hughes case (1954) 93 C.L.R. 1 it is no doubt true to say that a State may legitimately regulate the incidents of traffic in such cases, but this does not derive from inherent quality, but from the proposition that regulation can be consistent with freedom.."

WHETHER THE APPELLANTS ARE ENTITLED TO POSSESS ANIMAL ARTICLES:

A mere perusal of the definition of 'animal article' in Section 2(2) of the Act would show that the imported ivory falls within it. In that view of the matter the question as to whether the African elephant is a scheduled animal or not is irrelevant. Dealing in trade in ivory is prohibited under Chapter VA. The appellants, therefore, being traders in ivory would come within the purview of the prohibitions

contained therein. Once they come within the purview of the said Chapter, they have to be dealt with accordingly. If he has been a trader, he must make a declaration in terms of Sub-Section (1) of Section 49-C of the Act. Chapter IV would not apply in his case. The said Chapter deals with the matters contained therein. Traders in ivory forming a different class have been dealt with in Chapter VA. Doctrine of 'generalia specialibus non derogant' would be applicable in this case. We would deal with this subject in details a little later.

The contention of the appellants that it is covered by the newly added provision Section 40-A or that the said section discriminates individual owners and traders is ill-founded.

At the time of passing of the main Wild Life Protection Act in 1972, there were two categories of persons who could be in possession of animal articles, etc. namely (a) individual (non-traders) - who had possession of animals articles for their own personal use and (b) traders - who had possession of such articles for the purpose of sale. Consequently, the 1972 Act requires individuals to declare and apply for ownership certificates of the animal articles which were in their possession. And as regard the traders, Sections 44 to 48 and 49 mandated the traders to declare their stocks and to apply for a licence. Section 40-A has been incorporated solely for the purpose of mitigating the omission of individual non-traders who due to lack of information or ignorance could not declare the animal articles in their possession within the limited period of 30 days from the commencement of the 1972 Act as specified in Section 40 of the Act. By reason thereof another chance has been given to the non-traders to make a declaration. All the appellant traders on the other hand had admittedly applied within the period of 30 days as specified in Section 44 of the Act. Hence, the object and purpose of Section 40-A is limited to individual non-traders and does not discriminate the traders or inter se the traders.

In any event after the incorporation of Chapter V-A and the inclusion of ivory in the said Chapter the appellant traders are governed by the provisions of Chapter V-A. The provisions of Chapter V which includes Section 40-A is not applicable to the appellant traders. Chapter V-A is a complete Code in itself and it would be a fallacy to read into or extend by implication the mitigating provision of Section 40-A into Chapter V-A. The Legislature, had it so desired could have incorporated a similar provision in Chapter V-A.

Section 49-C provides that every person carrying on the business or occupation referred to in sub-section (1) of Section 49-B, within thirty days from the specified date, declare to the Chief Wild Life Warden or the authorised officer, his stocks, if any, as at the end of the specified date of ivory imported into India or articles made therefrom, the place or places at which the stocks mentioned in the declaration are kept and the description of such items, if any, of the stocks mentioned in the declaration which he desires to retain with himself for his bona fide personal use. Sub-section (3) of Section 49-C further provides that where, in a declaration made under sub-section (1), the person making the declaration expresses his desire to retain with himself any of the items of the stocks specified in the declaration for his bona fide personal use, the Chief Wild Life Warden, with the prior approval of the Director, may, if he is satisfied that the person is in lawful possession of such items, issue certificate of ownership in favour of such person with respect to all, or as the case may be, such of the items as in the opinion of the Chief Wild Life Warden, are required for the bona fide personal use of such person and affix upon such items identification marks in such manner, as may be prescribed. Sub-section (6) of Section 49-C further provides that where a person who has been issued a certificate of ownership under sub-section (3) in respect of any item, it is permissible for him to

transfer any such item to any such person, whether by way of gift, sale or otherwise, or transfer or transport from the State in which he resides to another State any such item and he shall within thirty days from such transfer or transport, report the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected.

On coming into force of Act No.28 of 1986 or Act No.44 of 1991, however, it may be true that the property does not automatically vest in the Government. It is not in dispute that in terms of clause (c) of Section 39 of the Act which was inserted by Act No.44 of 1991 only ivory imported into India and articles made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed, would be the property of the State Government and not otherwise. But the issue is required to be considered from a different angle.

On or from the specified date, however, carrying on any trade or commerce, inter alia, in relation to ivory imported into India or any article made therefrom is completely prohibited. Despite such provision, however, a person carrying on a business or occupation or dealing in trophies, animal articles etc. derived from scheduled animals would be, in terms of sub-section (1) of Section 49-C of the Act, entitled to file a declaration disclosing his stocks of ivory imported into India or articles made therefrom. Once such a declaration is made and in the event such person makes a declaration expressing his desire to retain with himself any of the items specified therein for his bona fide use, a certificate of ownership may be granted for such item or items which in the opinion of the Chief Wild Life Warden are required therefor. Only in relation to items for which such certificate of ownership has been granted, a transfer thereof is permissible subject to the restrictions imposed under sub-section (6) of Section 49-C. Sub-section (7) of Section 49-C, however, provides for prohibition of such ivory imported into India or any article made therefrom from being kept under the control of the trader for sale or offer for sale or transfer to any person whatsoever.

The upshot of the aforesaid provisions is that any trader who has imported ivory legally into India prior to coming into force of the Act No.44 of 1991, although would not be entitled to carry on any business or trade in respect thereof, but having regard to the provisions referred to hereinbefore, unless he commits an offence in relation thereto, the same would not vest in the Government. He would, however, not be entitled to keep possession thereof except in the mode and manner provided for in Section 49-C of the Act.

On a conjoint reading of the aforesaid provisions, there cannot be any doubt whatsoever that any person who has obtained such a certificate under sub-section (3) of Section 49-C only may keep possession of the property i.e. subject to grant of ownership certificate. In the event he complies with the aforesaid provisions, he would be entitled to transfer or transport such item as provided for in sub-section (6) of Section 49-C. There cannot further be any doubt that in the event no certificate of ownership is granted in favour of a trader in terms of sub-section (3) of Section 49-C, the question of his becoming entitled to transfer or transport the property would not arise, in which event, in terms of sub-section (7) of Section 49-C, he would be disentitled not only from selling or offering for sale or transfer the said items but also from keeping the said items under his control.

The statutory provisions, in our opinion, are absolutely clear

and unambiguous.

The submission of Mr. Sanghi to the effect that the Chief Wild Life Warden has been conferred with an unguided power to declare any item as being capable of bona fide personal use of a trader cannot be accepted. Not only in terms of the provisions of the said Act, a trade or commerce, inter alia, in relation to ivory has been prohibited, having regard to the proviso appended to sub-section (3) of Section 49-C, even such item cannot be kept for display in any commercial premises. As such ivory or any article made therefrom can neither be subject matter of trade or commerce nor displayed in any commercial premises for any reason whatsoever. By reason of the provisions of the said Act, the trader was given six months' time to dispose of the articles in his possession. No foundational fact has been laid before the High Court nor any contention has been raised before us that the period specified therein under the Act was not reasonable. Articles which cannot be subject matter of trade or commerce can only be kept for personal use. Such personal use must be a bona fide one. Once the requirement for keeping the possession of such article by a trader had specifically been laid down, it cannot be said that the Chief Wild Life Warden had been conferred with unguided and uncanalized power. In the event, an order is passed, the person dissatisfied therewith, may prefer an appeal in terms of sub-section (5) thereof.

Against such original orders or appellate orders, even a judicial review would be maintainable.

Sub-section (7) of Section 49-C would be applicable only in relation to such items or articles wherefor certificate of ownership has not been granted. If a person keeps under his control, sells or offers for sale or transfers the same to any other person, he would be subject to a penalty as provided under sub-section (1-A) of Section 51 of the Act.

Sub-section (2) of Section 51 empowers the competent court to direct that such property be forfeited by the Government, in which event, clause (c) of Section 39 would be attracted. We, therefore, do not find that the provisions of the said Act are anomalous in nature. It is true, as has been pointed out by Mr. Sanghi, that the respondents made a statement before the High Court that the property in possession of the appellants did not vest in the Government but such a statement was made evidently having regard to the provisions of clause (c) of Section 39 of the Act read with sub-section (2) of Section 59 thereof. Such property would vest in the Government subject to an order of forfeiture and subject to an order of conviction and sentence against the offender for violation of sub-section (7) of Section 49-C is recorded. We, in view of the provisions of the said Act, therefore, must hold that not only trade or occupation in relation to ivory in question is prohibited but possession or any transfer thereof in any manner whatsoever is prohibited under the Act subject, however, to the provisions of sub-sections (1), (3) and (6) of Section 49-C of the Act.

The legislature has deliberately used the words 'bonafide personal use' in Section 49-C and has placed the onus on the traders to prove the same so as to be entitled to retain the articles out of the stocks decalred by it. This requirement is due to the fact that the acquisition of an animal article by an individual non-trader at the time of purchase would be presumed to be one for his own personal bonafide use while on the other hand in the case of the traders the acquisition of animal articles as reflected in the stocks of a trader would be solely be for the purpose of sale. Hence, the imposition of the requirement of personal bonafide use in the case of traders cannot be said to be discriminatory or arbitrary or irrational or perverse entitling the Appellants to continue to have control thereover.

WHETHER THE IVORY VESTS IN THE GOVERNMENT?

We, however, do not agree with the contention of Mr. Malhotra that having regard to the fact that appellants have admittedly been found to be in possession of animal article, they have committed an offence and as such they would come within the purview of Section 39(a)(i) of the Act as a result whereof the same could vest in the State.

The question as to whether an offence under the Act has been committed or not at that stage cannot be determined. Such a determination furthermore cannot be left for adjudication at the hands of the executive authority. As and when a seizure is made and the trader is prosecuted for alleged commission of an offence having regard to sub-section 7 of Section 49-C of the Act; adjudication therefor must be made by a competent court of law having jurisdiction in this behalf. Before a person is convicted a Court has to arrive at the finding that the accused has committed an offence wherefor a full-fledged criminal trial would be necessary. In absence of such criminal trial and offence having been found committed, Section 39 may not have any application. In that view of the matter it is evident that the properties do not stand vested in the Government in terms thereof.

HOW THE DICHOTOMY SHOULD BE RESOLVED?

The question, however, would remain as to what would happen to the property in question. In our opinion, the answer must be found out by reading all the provisions in their entirety.

It is now well-settled that for the purpose of interpretation of statute the entire statute is to be read in entirety. The purport and object of the Act must be given its full effect.

Furthermore, in a case of this nature, principles of purposive construction must come into play.

In Chief Justice of A.P. Vs. L.V.A. Dikshitulu [AIR 1979 SC 193 : (1979) 2 SCC 34], this Court observed:

"The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole,

each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

In Kehar Singh Vs. State (Delhi Admn.) [AIR 1988 SC 1883 : (1988) 3 SCC 609], this Court held:

"During the last several years, the 'golden rule' has been given a go-by. We now look for the "intention" of the legislature or the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences."

In District Mining Officer Vs. Tata Iron & Steel Co. [JT 2001 (6) SC 183 : (2001) 7 SCC 358], this Court stated:

"A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public

evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

In State of A.P. Vs. Mc. Dowell Company [AIR 1996 SC 1627], this Court held:

"An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the need of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (See Council of Civil Services Union Vs. Minister for the Civil Services (1985 AC 374), which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in R. v. Secretary of State for the Home Department Ex-parte Brind, (1991 AC 696 at 766-67 and 762). It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled."

In High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others[(2003) 4 SCC 712] this Court noticed:

"In Reserve Bank of India vs. Peerless Co. reported in 1987(1) SCC 424, this Court said:-

"Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can

be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to any as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation, Statutes have to be construed so that every word has a place and everything is in its place..."

In "The Interpretation and Application of Statutes" by Reed Dickersen, the author at page 135 has discussed the subject while dealing with the importance of context of the statute in the following terms:-

"...The essence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called 'conceptual map of human experience'."

The purport and object of the Statute is to see that a Tribunal becomes functional and as such the endeavors of the Court would be to see that to achieve the same, an interpretation of Section 10 of the Act be made in such a manner so that appointment of a President would be possible even at the initial constitution thereof.

Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been succinctly dealt with by Francis Bennion in his Statutory Interpretation. At Section 304, of the treatise; purposive construction has been described in the following manner:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by -

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction),

or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

In DPP vs. Schildkamp (1971) AC 1, it was held that severance may be effected even where the 'blue pencil' technique is impracticable.

In Jones vs. Wrotham Park Settled Estates (1980) AC 74 at page 105, the law is stated in the following terms:-

"..I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. Kammins Ballrooms Co. Ltd. vs. Zenith Investments (Torquay) Ltd. (1971 AC 850) provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed."

In Principles of Statutory Interpretation of Justice G.P. Singh, 5th Edition, 1992, it is stated:

"The Supreme Court in Bangalore Water Supply vs. A. Rajappa (AIR 1978 SC 548) approved the rule of construction stated by DENNING, L.J. while dealing with the definition of 'Industry in the Industrial Disputes Act, 1947. The definition is so general and ambiguous that BEG, C.J. said that the situation called for "some judicial heroics to cope with the difficulties raised". K. IYER, J., who delivered the leading majority judgment in that case referred with approbation the passage extracted above from the judgment of

DENNING,L.J. in Seaford Court Estates Ltd. vs. Asher. But in the same continuation he also cited a passage from the speech of LORD SIMONDS in the case of Magor & St. Mellons R.D.C. vs. Newport Corporation, 1951(2) All ER 839 as if it also found a part of the judgment of DENNING, L.J. This passage reads: "The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited." As earlier noticed LORD SIMONDS and other Law Lords in Magor and St. Mellon's case were highly critical of the views of DENNING, L.J. However, as submitted above, the criticism is more because of the unconventional manner in which the rule of construction was stated by him. In this connection it is pertinent to remember that although a court cannot supply a real casus omissus it is equally clear that it should not so interpret a statute as to create a casus omissus when there is really none."

In Hameedia Hardware Stores vs. B. Mohan Lal Sowcar reported in (1988) 2 SCC 513 at 524 the rule of addition of word had been held to be permissible in the following words:-

"We are of the view that having regard to the pattern in which clause (a) of sub-section (3) of Section 10 of the Act is enacted and also the context, the words 'if the landlord required it for his own use or for the use of any member of his family' which are found in sub-clause (ii) of Section 10(3)(a) of the Act have to be read also into sub-clause (iii) of Section 10(3)(a) of the Act. Sub-clauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clauses by adding a conjunction 'and' between the said two sub-clauses, in which event the clause would have read thus : 'in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own'. If the two sub-clauses are not so read, it would lead to an absurd result.

In Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and Ors. reported in (1990) 3 SCC 682, this Court held: "The court has to interpret a statute and apply it to the facts. Hans Kelsen in his Pure Theory of Law. (p. 355) makes a distinction between

interpretation by the science of law or jurisprudence on the one hand and interpretation by a law-applying organ (especially the court) on the other. According to him "jurisprudential interpretation is purely cognitive ascertainment of the meaning of legal norms. In contradistinction to the interpretation by legal organs, jurisprudential interpretation does not create law". "The purely cognitive interpretation by jurisprudence is therefore unable to fill alleged gaps in the law. The filling of a so-called gap in the law is a law-creating function that can only be performed by a law-applying organ; and the function of creating law is not performed by jurisprudence interpreting law. Jurisprudential interpretation can do no more than exhibit all possible meanings of a legal norm. Jurisprudence as cognition of law cannot decide between the possibilities exhibited by it, but must leave the decision to the legal organ who, according to the legal order, is authorised to apply the law". According to the author if law is to be applied by a legal organ, he must determine the meaning of the norms to be applied : he must 'interpret' those norms (p. 348). Interpretation therefore is an intellectual activity which accompanies the process of law application in its advance from a higher level to a lower level. According to him, the law to be applied is a frame. "There are cases of intended or unintended indefiniteness at the lower level and several possibilities are open to the application of law." The traditional theory believes that the statute, applied to a concrete case, can always supply only one correct decision and that the positive-legal 'correctness' of this decision is based on the statute itself. This theory describes the interpretive procedure as if it consisted merely in an intellectual act of clarifying or understanding; as if the law-applying organ had to use only his reason but not his will, and as if by a purely intellectual activity, among the various existing possibilities only one correct choice could be made in accordance with positive law. According to the author : "The legal act applying a legal norm may be performed in such a way that it conforms (a) with the one or the other of the different meanings of the legal norm, (b) with the will of the norm-creating authority that is to be determined somehow, (c) with the expression which the norm-creating authority has chosen, (d) with the one or the other of the contradictory norms; or (e) the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame."

In S. Gopal Reddy vs. State of Andhra Pradesh reported in (1996) 4 SCC 596 this Court observed :

"It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary."

(See also M/s. DLF Qutab Enclave Complex Edu. Charit. Trust Vs. State of Haryana & Ors. 2003 (2) SCALE 145)

The words, which are used in declaring the meaning of other words may also need interpretation and the legislature may use a word in the same statute in several different senses. In that view of the matter, it would not be correct to contend that the expression as defined in the interpretation clause would necessarily carry the same meaning throughout the statute.

The question came up for consideration before this Court in State of Maharashtra vs. Indian Medical Association and Others [(2002) 1 SCC 580] wherein this Court speaking through one of us (Khare V.N., CJI) was concerned with the term "management" occurring in Maharashtra University of Health Sciences Act, 1998. Therein a question arose as to whether the State Government is required to obtain the approval of the Medical Council of India for establishment of new medical college. "Management" as contained in Section 2(21) of the Act, which was in the following terms:-

"Section 2. In this Act, unless the context otherwise requires, -

(21) 'Management' means the trustees, or the managing or governing body, by whatever name called, of any trust registered under the Bombay Public Trusts Act, 1950 Bom. XXIX of 1950 or any society registered under the Societies Registration Act, 1860 21 of 1800 under the management of which one or more colleges or recognised institutions or other institutions are conducted and admitted to the privileges of the University.

Provided that, in relation to any college or institution established or maintained by the Central Government or the State Government or a local authority such as a Zila Parishad, municipal council or municipal corporation, it means, respectively, the Central Government or the State Government or the concerned local authority that is the Zila Parishad, municipal council or municipal corporation, as the case may be."

The question which arose for consideration was as to whether the State Government would come within the purview of the said Act. This Court answered the said question in the negative holding that the expression 'Management' must be read contextually in the following

terms:

"We are, therefore, of the opinion that the defined meaning of the expression 'management' cannot be assigned or attributed to the word 'management' occurring in Section 64 of the Act. The word 'management' if read in the context of the provisions of Section 64 of the Act, means any one else excepting the State Government applying to a State Government for permission to establish the proposed medical college at proposed location to be decided by the State Government."

The doctrine of purposive construction, thus, must be applied in a situation of this nature.

A trader in terms of a statute is prohibited from carrying on trade. He also cannot remain in control over the animal article. The logical consequence wherefor would be that he must be deprived of the possession thereof. The possession of the animal article including imported ivory must, therefore, be handed over to the competent authority. In a case of this nature where a statute has been enacted in public interest, restriction in the matter of possession of the property must be held to be implicit. If Section 49(7) is not so construed, it cannot be given effect to.

We, therefore, are of the opinion that the appellants have no right to possess the articles in question. Keeping in view of the fact that the provisions of the statute have been held to be intra vires the question of compensating the appellants would not arise as vesting of possession thereof in the State must be inferred by necessary implication.

ARE THE PROVISIONS OF THE AMENDING ACT VIOLATIVE OF THE RIGHT OF PROPERTY OF THE APPELLANTS?

It is true that right to property is a human right as also a constitutional right. But it is not a fundamental right. Each and every claim to property would not be property right.

Control of property by the State short of deprivation would not entail payment of compensation. (See Davies Vs. Minister of Land, Agriculture and Water Development [1997] 1 LRC 123 (Zimbabwe Supreme Court)[Interpreting Convention Rights by Hugh Tomlinson and Vina Shukla - page 470]

As at present advised, we do not intend to deal with the question as regard sovereign power of the State vis-Ã -vis the maxim "salus populi suprema lex" as stated in Charan Lal Sahu vs. Union of India [1990) 1 SCC 613],the same may have to be considered in an appropriate case.

ARE THE GUIDELINES CONSTITUTIONAL?

We, however, are of the opinion that the guidelines issued by the Central Government do not meet the requirements of law particularly Section 63 of the Act. Keeping in view the clear and unambiguous provisions contained in Sub-section (1), (3), (5) and (6) of Section 49-C, the Central Government could not have directed that the

appellants would be entitled to only one piece of article and the rest would be destroyed. These guidelines,

therefore, in our opinion cannot be given effect to and the appellants may pursue their remedies, if any, in terms of Sub-Section (3) of Section 49-C of the Act and their applications filed in this behalf, if any, must be disposed of in terms of the aforementioned law.

CONCLUSION:

We, therefore, are of the opinion that the respondents would be entitled to take physical possession of the ivory now in seizure. The question, however, would be as to whether the Central Government should destroy the articles including idols of gods and goddesses and household items like sofa sets depicting cultural and religious heritage.

It is stated that similar articles are being displayed in museums as a part of cultural and religious heritage of India.

In view of our findings aforementioned, the appropriate authority would be entitled to continue to keep in possession the said articles. We, however, direct that the same be kept at appropriate museums or at such suitable places where the statutory authorities feel fit and proper but they should not be destroyed.

With the aforementioned directions and observations, these appeals and writ petition are dismissed.