

(2004) 10 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7544 of 2003

Ashwani Chobisa

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-10-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 48A, 51A

Citation : (2005) 1 RLW 389

Hon'ble Judges : Anil Dev Singh, C.J.; Harbans Lal, J

Bench : Division Bench

Advocate : Bharat Vyas, A.A.G, M. Rafiq, Akhil Simlote and S.K. Shukla, P.S. Asopa, Shobha, Ashwani Chobisa, Ashok Sharma, Amit Kumar, R.S. Chauhan, Manish Bhandari, P.K. Sharma, S.L. Sharma, M.S. Kachhawa, Alok Sharma, D.D. Khandelwal and Praveen Jain, for the Appellant; B.C. Chirania, Ravi Chirania, K.K. Sharma, A.K. Bhandari, S.R. Surana, Rajeev Surana, A.K. Sharma, Azad Ahmed and Anand Sharma, for the Respondent

Judgement

Harbans Lal, J.—These writ petitions, which have been filed by way of public interest litigation, highlight issues of grave environmental and ecological degradation due to large scale illegal, un-authorised, un-scientific and un-systematic mining activities being undertaken in violation of the provisions of various enactments, rules framed and notifications issued thereunder, and the orders of the Supreme Court and this court. Some of the petitioners have made a grievance with regard to the operation of the stone crushers and use of explosive substances for winning the minerals from the mines on the ground that they are causing air and noise pollution. Since these writ petitions pertain to and address the common issues, they have been heard together and are being disposed of by this order.

2. D.B. Civil Writ Petition No. 7544/03 has been filed by one Ashwani Chobisa, who is a practicing lawyer, in the Rajasthan High Court and claims himself to be a public spirited and keenly interested person in protecting the environment and water resources. He has focused on the aspects of large scale illegal un-

systematic, haphazard and un-scientific mining taking place in the entire State of Rajasthan and operation of stone crushers at various places in the State and their benefit repercussions on the ecology. While Chobisa's writ petition deals with the problem of environmental degradation through-out the State of Rajasthan, all other writ petitions have focused on the aforesaid problem in respect of particular areas only. Therefore, Chobisa's writ petition is treated as the lead case.

PETITIONER'S CASE:

3. According to the petitioner (Ashwini Chobisa), the State and its functionaries have been complacent in not strictly enforcing environmental laws and notifications. He has referred to Article 21 of the Constitution, which guarantees the protection of life and personal liberty to an individual. Article 48-A enjoins the State to make every endeavor to protect and improve the environment and to safeguard the forest and wild life of the country. Article 51-A(g) provides that it shall be the duty of the every citizen of India to protect and improve the natural environment including forest, lakes, rivers, wild life and to have compassion for living creatures. Articles 48A and 51A have been inserted in the Constitution through constitutional Amendment Act, 1976. Prior to insertion of these provisions in the Constitution, there have been several legislations on the subject including the Water (Prevention and Control of Pollution) Act, 1974, The Air (Protection and Control of Pollution) Act, 1981. The constitutional and statutory provisions, inter alia are aimed at protecting the individual's rights to fresh air, clean water and pollution free environment.

In *A.P. Pollution Control Board v. Professor M.V. Nayadu and Ors.* (1), while dealing with the principle of inter generational equity, which is of recent origin, has highlighted the Stockholm Declaration, 1972 which declares that environment is a resource for survival of present and future generations.

Even the Supreme Court has accepted "Precautionary Principle" and "Polluter Pays Principle" in *Vellore Citizens Welfare Forum v. Union of India* (2). It has been laid down that:

- a) the environmental measures by the State Government and statutory authorities should anticipate, prevent and check the cause of environmental degradation,
- b) where there are threats of serious and irreversible damage, lack of scientific certainty, the reasons used for postponing the measure to prevent environmental degradation and
- c) the onus to prove is on the actor or on the developer/industrialist to show that his action is environmentally benign. For protection of environment the notifications dated 27.1.1994 and .5.1992 issued by the Central Government in exercise of its powers u/s 3 of the Environmental Protection Act 1986 read with Rule 5 of the Rules framed thereunder are being violated by the persons

operating the mines in the State.

GRIEVANCE OF THE PETITIONERS:

As already pointed out, The petition has been filed to highlight the serious and environmental degradation being caused by excessive mining activity and industrial operations and indiscriminate felling of trees.

4. Notices were issued to the respondents on 17.12.2003. The State was specifically required by the order dated 23.1.2004 to specify in its reply as to how many mining leases had been granted and how many lease holders had got the consent of the Rajasthan State Pollution Control Board to operate the mines and the action taken with reference to the letter of the Central Government dated 10.6.2003. By an interim order the State Government was directed to ensure that no illegal mining is undertaken in the State of Rajasthan in the meanwhile. The State was also directed on 24.2.2004 to comply with the notification of the Central Government dated 27.1.1994 and its letter dated 10.6.2003. It was also required to file a report in compliance with the order dated 4.9.2003 passed in D.B. Civil Writ Petition No. 3879/02. It was claimed by the petitioners that the mining operations were not being conducted in accordance with law and certain mines were being operated without due permission. The respondents, however, denied this fact. Which the view to ascertain the truth, a committee of two advocates namely Shri Ajay Kumar Rastogi (as he then was) and Shri Jag Mohan Saxena was constituted by this Court for making site inspection of mines in Jaipur, Bharatpur and Alwar districts. The committee inspected the mines in various areas and submitted its report. The report reveal that most of the mines are being operated without complying with various orders of this court and the provisions of law.

5. It was not in dispute that every single mine operator before operating the mien had to take consent/clearance from the Rajasthan State Pollution Control Board (for short RSPCB). As per the reply of the State filed in the main writ petition, 9982 mining leases were granted out of which only 1026 lessees had obtained consent/clearance from the RSPCB and 3286 mine operators had applied for consent and 5670 had yet to apply.

6. This petition was initially directed against five respondents; Union of India, State of Rajasthan through, Secretary Mines, State Pollution Control Board, Chief Conservator of Forest and Secretary Environment State of Rajasthan, Jaipur. It appears that Mangalam Cement Ltd. Aditya Nagar Modak, Upper Mall Pathar Vyavasayee Sansthan and Federation of Sand Stone Mining Industries Association were also impleaded as parties after they applied for clarification/modification of the orders passed by this Court.

CASE OF THE STATE:

7. Respondent No. 2, State of Rajasthan has in its reply raised a preliminary objection with regard to the maintainability of this petition. It is stated that

similar writs are already pending either in the Principal Seat of Rajasthan High Court or the Bench and the matter stands concluded by the directions of the Supreme Court with regard to the mining activities in the State of Rajasthan. The petitioner has no right to raise the same issues again and again by way of public interest litigation.

8. In reply it has also been pointed out that nature has been bountiful to the State inasmuch as the nature has provided huge mineral wealth to it. Emphasising the importance of the minerals it is stated to the effect that the minerals serve as raw materials for running the industries, particularly the following commercial enterprises:

- (i) building;
- (ii) Pharmaceuticals;
- (iii) cosmetics;
- (iv) transportation;
- (v) information technology;
- (vi) atomic power generation etc.

Rajasthan has Wollestoneite, Zypsum, Lead, Zinc, serpentine green marble, calcite, soap stone, sand stone etc. It is asserted that the State has monopoly in the world market for Lead, Zinc, serpentine green, soap stone, sand stone etc. Mineral wealth is not only a source of generation of revenue but also provides employment to millions of people. Out of a total income of Rs. 13080 crores per annum from all sources of the State, the mineral sector provides Rs. 450 crores per annum as Royalty, Sales Tax and half of its amount as Excise Duty. It also provides Foreign Exchange. Out of the revenue provided by the mineral sector, the State is able to spend Rs. 2650 crores for developmental works. The State has however, traversed the allegation that it is not complying with the statutory provisions and the rules as well as the notifications issued thereunder. It is claimed that the basic theme of the petition is protection of environment. The State has undertaken all possible steps and has made serious efforts for ecological upgradation by adopting eco-friendly measures. It has initiated campaigns through seminars/workshops in each Districts for emphasizing the importance of ecology, it has also issued guidelines to the officers in the form of circulars and booklets. The State has made it compulsory for each mine owner to submit eco friendly mining plan to be approved by the Mining Engineer, who monitors and watches its strict adherence/implementation on weekly basis. The State is submitting periodical compliance reports in DBCWP No. 3879/2002 pending at the Principal Seat of the High Court regarding allotments of dumping areas and yards. It is pointed out by the State that the prayer for total stoppage of mining activities would be suicidal for the State. The State claims that the petition is motivated by some oblique and hidden agenda and it does not stem with the bonafide and sincere desire for protection and maintenance of the

environment. The sweeping orders for closure of all mines will be rather counter productive to the interest of the public at large, which takes this petition out of the ambit and scope of public interest litigation. In I.A. No. 828 in Writ Petition No. 202/1995 the mining activity was practically stopped in 3/4th of the State. After filing the replies on 30.11.2002 by the State and others, the Supreme Court vide its order dated 16.12.2002 (Annex.R/6) reviewed its earlier order and allowed the mining activity to take place. Therefore, no fresh writ was necessary. Respondent No. 2 has, therefore, prayed for dismissal of this writ petition with costs.

9. DB Civil Writ Petition No. 1967/03 has been filed by the villagers of village Bolkheda through petitioner Nos. 2 to 6, DB Civil Writ Petition No. 4606/03 has been filed by Patram and others, DB Civil Writ Petition No. 4864/03 was initially filed by one Dularam, but he sought permission to withdraw the writ petition which was declined but the present petitioners were allowed to be substituted in his place DB Civil Writ Petition No. 6466/03 has been filed by villagers of village Mahalpura Kachhi, Baroli Brahmin, Kandoli Khata Bakoli Tehsil Roopwas, DB Civil Writ Petition No. 4409/03 has been filed by Gani Mohd., the Sarpanch of Gram Panchayat Dhulap. All these writ petitions highlight the aforesaid issue of environmental degradation due to mining activities being undertaken in various areas of Bharatpur District. These writ petitions also indicate that at certain places monuments of archaeological, historical and religious importance have been endangered due to mining activities. Besides, these petitions highlight the damage to the hills and trees. Some of the respondents have disputed the claims of the petitioners in these petitions in their replies.

10. DB Civil Writ Petition No. 2108/03, which has been filed by Chandra Prakash Dhakad, highlights the issue of grant of lease for excavation of stones from the bed of Kali Sindh river situated in Tehsil Anta District Baran as a result of which the free flow of water in the river has been hampered. The respondents have denied this and have pleaded that leases have been sanctioned subject to the condition that the mining activity should be carried in a manner that it does not adversely affect to the free flow of water in the river.

11. DB Civil Misc. Application No. 332/04 is the application by one Giriraj Singh for permission to intervene in D.B. Civil Writ Petition No. 7544/03 filed by Ashwani Chobisa. He claims to have filed this petition in public interest to bring to the notice of this court the injury being suffered by petitioner on account of illegal mining activities being permitted by the State in spite of the directions of this court and contrary to the compliance report submitted by the State before this court. According to him, mining lease No. 131/91 was granted initially in favour of Ram Avtar Soni 27.2.1992 which was transferred by him to Anoop Kumar Modi with the permission and consent of the mining department given on 15.4.1996, who further transferred it in favour of the applicant after seeking permission under Rule 15 of the Rajasthan Mining Mineral (Concession) Rules, 1960, which was granted on 29.7.1999 and fresh lease-deed was executed in his

favour on 7.10.1999. Although his grievance is personal yet he has tried to submit that due to wide spread illegal mining in the area, he has suffered losses because he is operating his mine as per the provisions of law. According to him, he is not able to approach the concerned single bench of this Court because the connected matter is in seizin of the Division Bench of this court. He has Referred to the various orders of this Court, viz. order dated 17.12.2003, issuing notice in the aforesaid writ petition, order dated 23.1.2004 directing the State Government to file response and in the mean-time to ensure that no illegal mining is undertaken in the State of Rajasthan, order dated 24.2.2004, appointing a committee of two advocates to inspect the mines in Jaipur, Alwar and Bharatpur districts and to submit its report and further directing the State to comply with the circulars dated 27.1.1994 and 10.6.2003 of the Central Government and to submit compliance report of the order dated 4.9.2003, passed in DB Civil Writ Petition No. 3879/02. He has also pointed out that this court has taken suo-motu cognizance on 17.3.2004 of the fact that the orders of this court have not been complied with and has summoned the Director and Secretary Mines, Govern- ment of Rajasthan to appear in person.

12. DB Civil Writ Petition No. 2244/03 has been filed by one Babu Lal Jaju, Regional In-charge of the People for Animals who has raised the issue of cutting of trees for conversion of National High Way NO. 79 into four lane road under the National Road Development Scheme for which project the Government has sanctioned Rs. 1500 crores. It is alleged by him that about 2,25,000 trees will be cut down which will be most dangerous for environment. Besides, air and noise pollution will also increase manifold due to movement of enhanced vehicular traffic on high speed on this road. He has also claimed that the provisions of Forest (Conservation) Act, 1980 have also been flagrantly violated in felling the trees.

13. The respondents have filed separate replies wherein they have stated that the figures with regard to number of trees which have been cut for road widening are not correct. They have also pleaded that 4,11,278 trees in lieu of 1,32,409 trees which would be cut and removed are proposed to be planted. The cutting of trees was necessary but sufficient amount has been deposited with the State Government for plantation of trees by the consumer agency i.e. National High Way Authority and the details of the deposit of amount have been mentioned in the reply of the respondent No. 2 and the reply also contains the number of trees so far planted. Petitioner Babulal Jaju also filed another DB Civil Writ Petition No. 2245/03 touching almost the same issue of cutting of trees due to road widening and failure of the State to carry out compensatory plantation of trees leading to degradation of environment.

14. DB Civil Writ Petition No. 616/04 has been filed by one Arjun Lal Meena. It raises the issue of a Nursery which has been developed by the Forest Department in Khasra No. 160, Khasra No. 1, Khasra No. 91, and Khasra No. 258, measuring 5 Bigha 2 Biswas, 60 Bigha 9 Biswas, 2 Bighas 10 Biswas, 161

Bighas 15 Biswas respectively, situated in village Hardi Khurd, Tehsil Bassi which is recorded as Gair Mumkin Pahad in the revenue records. It is alleged that about 80 illegal mines are being operated in the area without prior permission of the Mining Department, Forest Department and the Rajasthan State Pollution Control Board which has resulted into wide spread pollution and consequence damage to the crops and adverse effect on the health of the citizens. The FIR lodged by him in this regard with the police is also of no avail.

15. We have heard learned counsel for the parties and have perused the materials placed before us including the reports of the committee as well as the eco-friendly Mining Plan prepared and submitted by the State. It may be pointed out that we had appointed a Committee by order dated February 24, 2004 for inspection of mines in various areas. Pursuant to our directions the Committee inspected the areas and gave its report. From a perusal of the report, it is apparent that most of the mines were operating without complying with various orders of this Court which were issued in several connected matters. We have referred to the report in our order dated April 21, 2004 passed in D.B. Civil Writ petition No. 7544/2003. In the nutshell the report points out that by the operation of the mines, large scale environmental degradation has taken place. Most of the mine operators are insensitive to demand of ecology. Their activities are not compatible with and congenial to the environment. From the report it is also manifest that the eco-friendly plan which is being submitted by the mine operators to the Mining Department before securing permission to operate the mines is a mere paper formality and the same is not being complied with. The report also reflects that the ecology is being divested by illegal and unscientific mining, which is taking place unabated in most of the areas. Even no pillar or boundary marks have been fixed by the mine operators to demarcate the areas allotted to them. It appears that due to lack of supervision on the part of the mining Department, the mine operators have a feeling that they are the master of what they survey and they will exploit the mines in the manner they like. They are carrying on mining operations even beyond the mining areas allotted to them.

16. A study of Environmental Problems of Aravali Hills and Preparation of Action Plan for Restoration of Environmental quality was initiated by the Central Pollution Control board and the work was entrusted by it to the Central Mine Planning and Design Institute Limited (CMPDIL), a subsidiary of Coal India Limited, with the following objectives:-

1. To prepare status report of the problems of pollution in Aravali Hills;
2. To prepare environmental management plan to abate various environmental problems; and
3. To prepare action plan for restoration of environmental quality.

The executive summary given at the threshold of the report is instructive and may be quoted:

"Ministry of Environment & Forests, Government of India, vide Gazette Notification dated 7th May, 1992 has prohibited certain developmental and industrial activities on certain lands in Alwar district of Rajasthan and Gurgaon district of Haryana. In the Aravali Hills, a large number of mining activities, operation of stone crushers and pulverisers, deforestation and unplanned construction activities are causing environmental degradation. These mines are usually located in clusters in remote mineral rich districts/areas where living standards is lower and understanding of people towards environmental impacts is also poor. In the past, mine operators look no note even conscious about it. The attitude of mining community is to ignore the environmental concerns. In majority of the cases, the environmental concerns are ignored for making quick profits. The small mines (5 hectares) and the mining of "minor minerals" which are no doubt small individually but have damaging characteristics when in clusters e.g. the mines of granite, marble, slates, quartzite etc. (falling under minor minerals) are no less damaging than the others, especially when the processing is taken into consideration. The mining activities in the region results in disturbance of land surface, altering drainage pattern and land use, besides the pollution problems. This may lead to the following environmental problems:

Air Pollution

Water Pollution

Noise Pollution

Problems related to solid waste management.

Environmental Problems - The CMPDI & CPCB made several visits to the District and held extensive discussions with mine/crusher unit operators, State and Central Government officials. Based on the study and discussions, the environmental problems in the Aravali Range in the district have been identified and remedial measures including the pollution control guidelines and action plan for various stakeholders have been suggested. The following are the environmental problems identified in the Aravali Hills in the district:

Vide Gazette Notification of ministry of Environment & Forests dated 7th May, 1992, Government of India has restricted various developmental and industrial activities in Alwar district. For environmental clearance of the projects proponent has to submit Environmental Statement Report along with Environmental Management Plan.

In large-scale mining projects, the applicant is asked to submit detailed mine plans on mining and processing methods, the technology being used, the financing plan and the environmental management plan (including reclamation) and the training and local benefits envisaged but what it still require is a proposal on district level as to what will be mined, how it will be mined and with what method, how the financing will be arranged, what are the areas of environmental concerns (keeping in view the regional character) which need to be addressed by

the entrepreneur. This does not seem to be adequately addressed keeping in view the environmental degradation of the Aravali Hills.

The Aravali Notification restricts process and operations under certain categories of the land in the district. Though the records of such lands are available at every village level map, there is not record available in the district level in respect of these areas to undertake realistic appraisal & effective monitoring of mining and other projects at the macro level on such lands.

Vide Gazette Notification of Ministry of Environment & Forests dated 29th November, 1999, Government of India has inter alia made provision for preparing the Master Plan integrating the environmental concerns and the future land use of the area."

The situation which is prevalent in Alwar also seems to be prevalent in the other parts of the State as is evident from the report of the aforesaid two member Committee. By and large the mine operators are interested in making money at the cost of environment. They are not being benign to the environment.

(17). In *M.C. Mehta v. Union of India and Ors.* (3), the Supreme Court, while dealing with the question of mining operations in the Aravali range has observed as under:-

"The Aravali is the most distinctive and ancient mountain chain of peninsular India, mark, the site of one of the oldest geological formations in the world. Heavily eroded and with exposed outcrops of the slate rock and granite, it has summits reaching 4950 feet above sea level. Due to its geological location, the Aravali range harbours a mix of Saharan, Ethiopian, Peninsular, oriental and even Malayan elements of flora and fauna. In the early part of this century, the Aravali's were well wooded. There were dense forests with water falls and one could encounter a large number of wild animals. Today, the changes in the environment at Aravali are severe. Though one finds a number of tree species in the hills, timber quality trees have almost disappeared. Despite the increase of population resulting in increase of demand from the forest. It cannot be questioned nor has been questioned that to save the ecology of the Aravali mountain, the laws have to be strictly implemented. The Notification dated 7th May, 1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravali range. The Notification was followed more in its breach."

It cannot be and has not been disputed before us by either side that the State Government and its concerned statutory authorities/functionaries are required to protect environment and ecology including air and water from pollution. It is also well settled that the pollution of environment, air and water tantamounts to violation of the right to life guaranteed by Article 21 of the Constitution of India as without these generous gifts of nature, it is not possible to enjoy life. In this regard the Supreme Court in *Virender Gaur and Ors. v. State of Haryana Ors.* (4), has held as follows:

"The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or action would cause environmental pollution. Environmental, ecological, air, water, pollution etc. Should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment."

18. The UN Conference on Human Environment at Stockholm, declared that man has fundamental right to freedom, quality and adequate conditions of life in an environment of quality and he bears a solemn responsibility to protect and improve the environment. It urged the nation-states to preserve the natural resources of the Earth including Air, Water, Land, Flora and Fauna. Stockholm Declaration, 1972 spelt out the aforesaid aspect of the principle thus:

"The natural resources of the Earth including the Air, Water, Lands, Flora and Fauna and especially representative samples to natural eco-systems must be safeguarded through careful planning or management, as appropriate.

It also declared that not-renewable resources of the earth must be managed in such a way as to guard against the danger of their future exhaustion and to ensure that benefit from such management are shared by all mankind.

19. Rio de Janerio Earth Summit (1992) is also of great significance, it declared two extremely important principles. They are-Concept of Sustainable Development and Inter-generational Equity.

20. It has been observed in the case of Mahavir Nagar Vikas Samiti, Pali v. State of Rajasthan and Ors. (5), by a Division Bench of this court (of which one of us Mr. Anil Dev Singh, CJ was a member), has held as under:-

"In Indian civilization man never considered himself to be an overlord and every other creation to be subservient to his interest. His activities did not disturb ecological balance. In ancient India it was an offence to tinker with nature by defiling, destroying and desecrating it. Kautilya Arts Shastra is testimony to the

respect which was paid to the trees. Felling of trees was made severely punishable. This is reflected in the following Shloka of the Arth Shastra:-

"Vrikshachhedaney dandaparushyan viddat."

21. The natural resources such as air, water and soil cannot be utilized in a manner that results in irreversible damage to them. There has been accelerated degradation of environment due to non-compliance of the statutory provisions. The Supreme Court in *Subhash Kumar v. State of Bihar* (6), have held that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to the enjoyment of pollution free environment, air and clean water for full enjoyment of life.

22. Therefore, we must make use of Articles 21, 48A and 51A(g) of the Constitution to protect and preserve environment, ecology, including air, water, soil, trees and vegetation so that environment is not sacrificed at the alter of economy.

23. In *M.C. Mehta v. Union of India and Ors.* (7), the Supreme Court has held that the life, public health and ecology has priority over un-employment and loss of revenue.

24. The licensees and the illegal operators of mines are not prepared to sacrifice their short term interest for the sake of safeguarding the long term interest of present and future generations. Environmental pollution in fact results from mental pollution. It is their uncontrollable greed which goads them to exploit the ecology by inflicting a permanent injury upon it. It is evident by looking at the areas where mining is being undertaken the how the hills have been cut to exploit the minerals. In some of the cases small hills have been plundered to the point of no return. The exploiters forget that hills cannot be re-created once destroyed. Destruction of hills is an ecological disaster and is irreversible. Even the mining at the cost of trees and vegetation is equally disastrous. But the mines operators" are unmindful of the consequence as they are interested in making as much money as possible by exploiting the nature. Articles 21, 48A and 51A(g) of the Constitution lay down the foundation for the environmental jurisprudence with a view to protect, preserve and improve ecology. Articles 21, 48A and 51A(g) echo the principle of inter-generational equity. They create right of the unborn to the preservation of ecology for his survival. The present generation cannot be allowed to rob the nature and deprive the future generation of its bounties. That means, the present generation must act in consonance with the principles of sustainable development, a development which is not at the cost of environment but is compatible with it.

The Supreme Court in *A.P. Pollution Control Board v. Prof. M.V. Nayadu and Ors.* (8), while dealing with the principle of inter-generational equity has referred to Stockholm Declaration, 1972 emphasising that environment is-resource for survival of the present and future generations.

25. The development and the protection of environments are not antithetical to each other provided the mining operations take place on scientific lines and are not undertaken on hills, Reserved Forests and adequate number of trees are planted in the mining area.

26. It was urged by the petitioners and rightly so that the grant for permission of mining and approving mining plan and the scheme by the Ministry of Mines, Government of India by itself does not mean that the mining operation can commence. Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Rules made thereunder deal inter alia with the aspect for grant of mining lease and not with commencement of the mining operation. However, rules made u/s 18 of the MMDR Act deal with commencement of mining operations and steps required to be taken for protection of environment by preventing or controlling any pollution which is capable of being caused by mining operations. A mining lease holder is required to comply with the statutory provisions such as Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974 and Forest (Conservation) Act, 1980. Mere approval of the mining plan would not absolve the lease holder from complying with the other provisions. Rules 31 to 41 contained in Chapter V of the Mineral Conservation and Development Rules, 1988 deals with the measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof. These rules inter alia provide that every holder of the mining lease shall take all possible pre-cautions for the protection of environment and control of pollution. While conducting mining operations every holder of a prospecting licence or mining lease, must remove the top soil, wherever it exists, and it to be excavated for prospecting or mining operations separately for the purpose of restoration or rehabilitation of the land once it is no longer required for mining operations: The holder is also required to take steps so that the overburden, waste, rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, salting and beneficiation or metallurgical operations shall be stored in separate dumps which shall be properly secured to prevent escape of material therefrom in harmful quantities, which may cause degradation of environment. These measures are not required to remain only on paper but strictly complied for the protection of environment and control of pollution as a result and consequence of mining operations.

27. Most of our environmental problems would be solved in case the State and the people acquire kind and reverential attitude towards the nature. In ancient India, mountains were venerated, they being sources of rivers, flora, fauna and various other life-sustaining materials, and habitats for birds and animals. People were aware of the great usefulness of the mountains in helping cloud formation and ultimate breaking of rains over parched lands, rendering them fertile to satisfy the need of the human beings and animals, for food.

28. In the past, man understood nature better. He preserved and protected the same. For its kindness, he used to prostrate before it. Gratitude was expressed by feeling of love and admiration for nature. In contrast, today, nature is being plundered for short term gains, the kindness of mountains is being returned by denuding them of trees, fauna and flora. Birds and animals are being killed. Man is not mindful of the fact that trees are the very life line of human existence.

29. In order to protect and preserve ecology the Ministry of Environment and Forests, Government of India issued two notifications dated 7th May, 1992 and 27th January, 1994. Notification dated 7th May, 1992 issued u/s 3(1) and Section 3(2) (v) of the Environment (Protection) Act, 1986 and Rule 5(3) (d) of the Environment (Protection) Rules, 1986, imposes restrictions on certain activities in specified area of Aravali Range, which are causing environmental degradation. It prohibits the carrying on of the following process and operations, except with prior permission, in the areas specified in the table appended to the notification:-

- i) Location of any new industry including expansion modernization;
- ii) (a) All new mining operations including renewals of mining leases.
(b) Existing mining leases in sanctuaries/national Park and areas covered under Project Tiger and/or
(c) Mining is being done without permission of the competent authority.
- iii) Cutting of trees;
- iv) Construction of any clusters of dwelling units, farms houses, sheds, community centers, information centers and any other activity connected with such construction (including roads a part of any infrastructure relating thereto)
- v) Electrification (laying of new transmission lines).

The table specifies the following areas where carrying on of the processes and operations without permission is prohibited:

- i) all reserved forests, protected forests or any other area shown as "forest in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of the State of Haryana and the Alwar District of the State of Rajasthan.
- ii) All areas shown as:
 - a. Gair Mumkin Pahar, or
 - b. Gair Mumkin Rada, or
 - c. Gair Mumkin Behed, or
 - d. Banjad Beed, or
 - e. Rundh

Another notification was issued by the Government of India on 27th January, 1994. This notification has been amended from time to time. It applies to entire country and requires preparation of environmental plan by proponent of a project. It directs that on and from the date of publication of the notification expansion or modernization of any activity shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the notification. A person desirous of seeking environmental clearance for the projects has to fulfill the following requirements and to follow the below mentioned procedure:-

"1(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, an Environment Management Plan and details of public hearing" as specified in Schedule IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of (i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities; (ii) widening and strengthening of highways; (iii) mining projects (major minerals) with lease area upto 25 hectares, (iv) units located in Export Processing Zones, Special Economic zones and (v) modernization of existing irrigation projects.

(b) Cases rejected due to submission of insufficient or inadequate data and Plans may be reviewed as and when submitted with complete data and Plans. Submissions of incomplete data or plans for the second time would itself be a sufficient reason for the Impact assessment Agency to reject the case summarily.

II. In case of the following site, specific projects:

- (a) mining;
- (b) pit-head thermal power stations;
- (c) hydro-power, major irrigation projects and/or their combination including flood control;
- (d) ports and harbours (excluding minor ports);
- (e) prospecting and exploration of major minerals in areas above 500 hectares;

The project authorities will intimate the location of the project site to the Central government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central government in the Ministry of

Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining.

III(a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in schedule III of the Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorized by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment-Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities, supplemented by data collected during visits to sites or factories if undertaken, and details of public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project. No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. Order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities.

3. Nothing contained in this Notification shall apply to:

(a) any item falling under entry Nos. 3, 18 and 20 of the Schedule- 1 to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; S.O. No. 416 (E) dated 20th June, 1991 and S.O. No. 319 (E) dated 7th May, 1992.

(b) any item falling under entry Nos. 1,2,3,4,5,9,10,13,16,17,19,21,25 and 27 of

Schedule I if the investment is less than Rs. 50 Crores.

(c) any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.

(d) defence related road construction projects in border areas.

(e) any item falling under entry No. 8 of Schedule I covered by the Notification G.S.R. 1037 (E) dated 5th December, 1989.

4. Concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data, would also be revoked. Misleading and wrong information will cover the following :-

False information

False data

Engineered reports

Concealing of factual data

False recommendations or decisions."

30. According to the Notification dated 27th January, 1994, any person desirous of undertaking any. new project in any part of India or desirous of expansion or modernization of any existing industry on the project listed in Schedule-1 thereto shall submit an application to the Secretary, Ministry of Environment & Forests, New Delhi. Schedule-I contains lists of projects requiring environmental clearance from the Central Government. The list includes major mineral mining projects with lease area of more than 5\\hctrs. The application is required to be made in proforma specified in Schedule-II of the Notification and the application is required to be accompanied by a project report which, inter alia, includes environmental impact assessment report, environmental management plan and the details of public hearing as specified in Schedule-IV of the Notification. The Notification also lays down the procedure for seeking environmental clearance for prospecting and exploration of the major minerals leases above 5 hctrs. Whenever, any expansion or modernization of any existing mining project relating to major minerals with lease area of more than 5 hctrs is planned to be undertaken, the procedure for applying for the approval of the Central Government must be followed. Without environmental impact assessment report and environmental management plan, the application cannot be made. The State Government should not allow any person to exploit the mineral without the permission of the Central Government.

31. According to the Notification of the Central Government dated 29th November, 1999 which was issued in exercise of the power conferred by Section 23 of the Environment (Protection) Act, 1986, read with sub-rule (4) of Rule 5 of the Environment (Protection) Rule, 1986, the Central Government delegated the

powers conferred on it for adopting measures for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution, to be exercised also by the State Government as notified in the Notification of the Government of India in the Ministry of Environment and Forests vide S.O. No. 319(E) dated 7th May, 1992 subject to the following conditions:

(1) the State Government concerned, namely, Haryana and Rajasthan shall constitute an Expert Committee for each state as per the composition given in the Schedule-I annexed to this Notification;

(2) each State Government shall also constitute a Monitoring Committee, under the chairmanship of the District Collector concerned (Gurgaon in Haryana and Alwar in Rajasthan) as given in the Schedule-II annexed to this Notification which shall inter alia monitor the compliance of the conditions stipulated while according environmental clearance by such State Government no report to such State Government about the violations, if any, and the action taken thereon;

(3) The District Collectors of Gurgaon in Haryana and Alwar in Rajasthan shall be authorized by the respective State Governments to take necessary action u/s 5 of the said Act in respect of cases where the project proponents fail to implement to the conditions. The State Government is also required to initiate steps to prepare a Master Plan for the development of the area covered by the Notification S.O. 319(E) dated 7th May, 1992 integrating environmental concerns and keeping in view the future land use of the area. The State Government is bound to prepare the Master Plan and is also required to constitute an Expert Committee for each State and the Monitoring Committee under the Chairmanship of the district Collector in accordance with Schedule-I and Schedule-II, respectively. We have referred to these Notification with a view to direct the State Government not to allow the mining operations in the concerned and specified areas without the compliance of the provisions of the notification.

32. It was argued by learned counsel for the respondents, who have secured leases for exploiting major minerals over areas above 5 hctrs, that for renewal of the lease they are not required to file project management plans as the renewal of lease does not fall under para I (a). read with para 2 (a). We regret our inability to agree with the submission of the learned counsel for the respondents. When a lease expires and it is to be renewed it tantamounts to undertaking a new project and falls within the province of the notification.

33. It is seen that by and large mine operators of major minerals in violation of the Notification of the Government of India are carrying on the operations. The same is also true for other mine operators as they are not complying with the environmental laws and requirement of Articles 21 and 51-A(g).

34. As already pointed out that on 23rd January, 2004, we had directed the State to specify as to how many mining leases have been granted and how many lease-holders have got the consent of the Rajasthan Pollution Control Board to operate

the mines. We had also directed the State to look into the circular of the Government of India dated 14th May, 2002, which pertains to alleged violations"of the earlier Notification dated 27th January, 1994 and subsequent amendments thereto. The State was also directed to ensure that no illegal mining is undertaken in the State of Rajasthan. On 17th March, 2004, the State did not dispute before us the fact that every single mine operator was required to take the consent/clearance from the Rajasthan Pollution Control Board before operating the mines. It was not disputed that thousands of mines were being operated without obtaining consent/clearance from the Pollution Control Board. Besides, it was also not disputed that only 3,286/- operators had applied for consent from the Pollution Control Board, while thousands of others had yet to apply to the Board for consent to operate the mines. On 17.3.2004, we expressed our anguish for the State Government was allowing the mine operators to continue their mining operations without the requisite consent/clearance from the Pollution Control Board. We had stated in our order that the State Government had failed in its duty to ensure that eco-friendly mining operations take place in the State. In these circumstances we directed the State Government to take action in accordance with law and stop the mining operations which were taking place in contravention of the provisions of law and Notifications of the Central Government dated 27th January, 1994 and letter dated 10th June, 2003, which pertains to requirement to comply with the Notification dated 27th January, 1994. We also directed that State to take steps to ensure that only eco- friendly mining is permitted. It appears that after these orders the mining operations in thousands of mines were stopped as the mine operators had not taken con- sent/clearance from the Rajasthan Pollution Control Board before operating the mines. Thereafter, the Pollution Control Board in a matter of few days granted the permissions to the thousands of mining operators, after they had submitted eco-friendly mining plans. We fail to appreciate how in a short span of time the Pollution Control Board could give consent/clearance to thousands of mine operators. It appears that the grant of consent/clearance by the Rajasthan Pollution Control Board was a mere formality, without seriously considering the question whether or not the activities of the mine operators were compatible with the environment. It also seems to us that the State and the most of the mine operators have exhibited callous and insensitive disregard towards environment. Because of the mining operations which are not in consonance with ecology the following damages have been caused:-

- (i) Loss of forests;
- (ii) Pollution of water resources;
- (iii) Loss of vegetation and plantation;
- (iv) Disappearance of hills;
- (v) Destruction of catchment areas;

(vi) Deep pits/craters appear in the hills and other areas due to pervasive mining; and

(vii) Soil erosion.

35. This court has also held in the case of *Mahavir Nagar Vikas Samiti Pali v. State of Rajasthan and Ors.* (supra), that the State, its functionaries, the citizens and the courts have a special duty to discharge in the protection of the environment. The intervention of the High Court to protect environment and to prevent degradation of ecology is sanctioned by the Constitution. Under the Constitution, the High Court has to act as a sentinel on the qui vive to protect the fundamental right to life guaranteed under Article 21 of the Constitution, which inter alia mandates protection and preservation of the bounties of nature, including water, land, air etc. without which it is not possible to enjoy life. Courts have by invoking Article 21 of the Constitution of India and the other provisions of the environmental laws endeavoured to reverse the tide of pollution by passing various directions to preserve the ecology. Here also, the High Court having come across flagrant violation of the environmental laws/rules, the various orders of the High Court and the Supreme Court is required to intervene and pass suitable directions for the protection and preservation of ecology.

36. It is the case of the petitioners that several mine operators are winning the minerals through use of explosive substances. Rule 113 of the Explosive Substances Rules, 1983 provides that no person shall possess, sell or use any explosive substance except in accordance with the licence granted under these Rules. Sub-clause (2) of Rule 113 provides that the licensee shall be responsible for all operations, in connection with the possession, sale or use of explosives, which may be conducted in the premises covered by the licence. A reading of Rule 113 leaves no manner of doubt that not only a licensee is required to possess the explosive substances but the premises are also required to be covered by the licence. No person can claim that the premises in which the explosive substances are to be used may not be licensed.

37. From the material on record it also appears that crushers are another source of pollution, since most of them are not using pollution control devices and are violating various environmental laws.

38. In view of above discussion, it appears to us that the grievance of the petitioners is factually and legally well founded and directions need be issued to the State Government to discharge its constitutional obligations and duties for the protection of environment and to implement the provisions of various enactments in this regard and to ensure that no further environmental degradation taken place.

39. It is, therefore, directed that:

(1) The State and its statutory authorities/functionaries shall ensure actual

implementation of the eco-friendly mining plan, in its true letter and spirit and shall not treat it as a merely paper formality;

(2) The State and its functionaries shall ensure that the mining activities in the State of Rajasthan are carried on after obtaining proper consent/clearance from the concerned authorities and in accordance with the provisions of the law and the rules and also the orders of the Supreme Court and this court issued from time to time;

(3) The State shall ensure that illegal un-scientific and un-systematic mining operations shall not be permitted to be carried on unless mining lease holders adopt and adhere to the norms prescribed under the law and the rules;

(4) The State shall take immediate steps to ensure compliance of the recommendations made in the report of the Central Mine Planning, Design Institute Ltd., Gondwana, Place Kantac Road, Ranchi;

(5) The State shall ensure that the stone crushers comply with the norms laid down under the Environmental Protection Act, 1986 and MMDRA Act.

(6) The State shall take effective steps for reclamation of abandoned mines by having them filled up by over burden, waste and fly ash from the thermal power plants.

(7) Mines from which water is being discharged should be closed to prevent wastage of water and depleting of ground water;

(8) The State shall designate and earmark sites for dumping the over-burden;

(9) All out efforts should be made for plantation of trees in the mining areas as well as along the National High Way No. 79, where trees have been cut in large number for widening of the road. The number and variety of trees, vegetation and shrubs to be planted in the mining areas shall be as per the advice of the Forest Department. No mining activity shall take place before planting of trees, shrubs and vegetation in accordance with the advice of the Forest Department and acting thereupon. That apart the mine owners shall secure a certificate from the Forest Department certifying the extent and nature of the plantation which is required to be undertaken;

(10) The mine owners shall not be allowed to increase their production without receiving the permission from the Ministry of Environment and consent from the Rajasthan Pollution Control Board.

With these observations, all the writ petitions and misc. application are disposed of. The contempt petitions are not being decided and the same be listed before the appropriate Bench for further proceedings.