

**(2012) 04 KAR CK 0204**

**In the Karnataka High Court**

**Case No : Writ Petition No. 817/08 (GM-RES)**

Environment Support Group

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision :** 11-04-2012

**Acts Referred:**

**Citation :** (2012) 04 KAR CK 0204

**Hon'ble Judges :** K. Sreedhar Rao, J;B.S. Indrakala, J

**Bench :** Division Bench

**Advocate :** S. Siddappa and S. Sunil Duttyadav, Sri Leo Saldanha P2 in Person in Writ Petition No. 817/08GM-RES, Sri Anant V Albal, in Writ Petition No. 13690/2009, M/s. M. Vishwajith Rai to Assist The Court Rama R. Iyer for Supplementary, Petitioner 5 in Writ Petition No. 31343/1995, Sri S.S. Guttal, in Writ Petition No. 18030/2005 and Sri S. Koushik and Kamath and Kamath, in Write Petition No. 6036/2006, for the Appellant; Gururaj Joshi, for R2, Sri D.L.N. Rao for Sri B.C. Muddappa, for R15, Sri B.V. Shankara Narayana Rao, for R7 Sri S.G. Pandit, for R8, Sri M.H. Motigi, for R13, Sri Ashok Harnahalli, for R4, R6 in Writ Petition No. 13690/2009, 31343/1995, 18030/2005, Sri M. Bayyareddy, for R14, Sri Udaya Holla for Aamstel Law Assts. Advocate for R15 and R16 in Writ Petition Nos. 31343/1995, 18030/2005, Sri S. Basavaraj, for R10, R11, R13 in Writ Petition No. 31343/1995, Sri Basavaraj Kareddy, GA for R1, R2, R3, R4, R5, R8, R10 and R12 in Writ Petition No. 13690/2009, 31343/1995, 18030/2005, 6036/2006, Sri B.G. Nanjundardhya, for Proposed R17 R9 and R12-Served in Writ Petition No. 817/08(GM-RES), Sri Shivaprabhu S. Hiremath and Hiremath for R1 and R3, in Writ Petition No. 13690/2009, Sri K.T. Mohan, for R5, R7 in Writ Petition No. 6036/2006, Sri B.N. Shetty, for R6 and R7, Smt Veena Jadhav, for R10, R11 in Write Petition No. 18030/2005, Sri H.S. Sachidananda, for R9, R13 in Write Petition No. 18030/2005, Sri S. Krishna, for R14, M/s King and Partidge, for R16 and 17, Sri Appaji, for R9, R12 in Write Petition No. 6036/2006, Sri L. Venkatarama Reddy, for R11, Sri G. Krishnamurthy, for R1 to 3, 8, M/s Singhania and Partners for IMPL. On MISC. W. 10823/09 and R2 in Writ Petition No. 31343/1995, 13690/2009, 18030/2005 and Smt. M.R. Vanaja Advocate for R5, Sri I.G. Gachchinnath, for R6, R8 and R10 - Served in Write Petition No. 6036/2006, for the Respondent

## Judgement

1. All these writ petitions involve common questions of law and fact. Hence, the above writ petitions have been consolidated for common hearing and passing common order. However, for clear understanding, the facts of each case are set out here under:

W.P. 817/2008 :

The State of Karnataka - 1st respondent constituted 2nd respondent - The Lake Development Authority (Hereinafter referred to as LDA" for short) for proper management and maintenance of the lakes in and around Bangalore City, initially by virtue of notification vide Annexure M. The 1st respondent issued corrigendum dated 30.6.2003 expanding the jurisdiction of the 2nd respondent over lakes situated in Metropolitan Area of Bangalore and includes the area notified under BMRDA. The lakes in the green belt area are also brought within the jurisdiction of the 2nd respondent. The 2nd respondent issued public notifications inviting public participation for development of Agara, Nagawara, Vengaihkere and Hebbal lakes situated within the City of Bangalore. The 14th respondent who applied for the development of Agara lake was granted the contract vide agreement dated 10.4.2007. 15th respondent was granted the contract for development of Nagawara lake vide agreement dated 27.11.2004. 16th respondent was granted the contract for development of Hebbal lake vide agreement dated 19.6.2006 and 17th respondent was given the contract for development of Vengaihkere vide agreement dated 23.5.2005. Petitioners challenged the grant of lease of lakes in favour of respondents 14 to 17 for the following reasons:

a) Hebbal lake was fully developed and maintained with the assistance of Indo-Norwegian Environment Programme.

b) The management of Hebbal lake was handed over to the Hebbal Lake Protection Authority ("HELPA" for short) consisting of two of the bureaucrats and the local people who maintained and managed the lake for about 2 years before the said lake was leased in favour of 16th respondent. The said arrangement was working well. Therefore, grant of lease is not necessary.

c) The lease in favour of 16th respondent is illegal. The transfer of ownership rights of lake to a private person is impermissible in law.

d) The 16th respondent after taking over the lease has tampered the structure of the floor area of the lake, indulged in unscientific de-weeding. Shallow waters of the shore area have been defaced, a portion of the tank bed area has been reclaimed. Tampering of the structural and weed vegetation in the lake resulted in weaning away, if not vanishing the seasonal bird migration to the lake.

e) The Weeds function as natural filters to eliminate toxic elements from the effluent inflow into the lake. The unscientific de-weeding has distorted and destroyed the ecological environment of the lake with disastrous impact on the aquatic life. Besides, prevented the seasonal bird migration to the lake.

f) The terms of lease permit the 16th respondent to misuse the lake for commercial exploitation. The establishment of cafeterias, restaurants, play centres, boating has degraded the ambient and natural environment of the lake.

g) The LDA has virtually bartered its obligation by collecting annual fee and handed over the lake to the control of the lessee. The abdication of the responsibility of the lake maintenance by the 2nd respondent is illegal and untenable.

h) In respect of Nagawara Lake, similar allegations of the violations of law and acts of tampering the natural environment of the lake are made.

i) In respect of Vengaiakere lake, it is submitted that the wet land area in the lake are damaged, bridges are built, the entire lake area under the guise of recreation is converted to a commercial exploitation hosting night parties. The nature of development made in the lake is in conflict with the natural environment required for the elegance and purity of the lake.

2. On the basis of the above allegations, the petitioners pray for canceling the lease granted in favour of respondents 14 to 17 and for a direction to the LDA and to the State authorities to assume for themselves the management and maintenance of lake and prayed for the following reliefs:

(i) Issue Writ or Order in the nature of Mandamus quashing the Agreements of Lease executed by Respondent 2 in favour of Respondents 14, 15, 16 and 17 enclosed as Annexure Q, R and S. S-1 respectively dated 20 April 2007, 27 November 2004, 19 June 2006 and 23 May 2005 respectively.

(ii) Issue Writ or Order in the form of necessary directions directing Respondent 1 to frame a scheme for the effective administration of lakes and tanks in consonance with the Principle of Intergenerational Equity and Public Trust Doctrine, in terms of the recommendations of the Lakshman Rau Committee and also in conformance with principles for wetland conservation and management as laid down by the Union Ministry of Environment and Forests in Annexure Z.

(iii) Issue Writ or Order in the form of necessary directions directing Respondent 1 to ensure that any scheme regarding the preservation and conservation of tanks, lakes and such other water bodies protects free Right of Access to all publics in exercise of traditional and customary rights, and of enjoyment of nature and its resources in a responsible manner.

(iv) Issue Writ or Order directing Respondent 1 to initiate proceedings to fix personal responsibility on the officials of Respondent 2 by instituting necessary Judicial enquiry, for having been directly involved in causing irreparable damage and loss of biodiversity, destruction of wetland habitats and diminishing the quality of the wetland from the point of view of migratory and nesting birds, due to their action in leasing out lakes to private profit making entities in advancing commercial interests in abject violation of the applicable laws and norms.

(v) Issue necessary Writ in the nature of Mandamus directing Respondents 14, 15 and 16 to take necessary steps to restore the lakes concerned to its original restored states prior to entering into Lease Agreements as annexed at Annexure Q, R and S at their expense in accordance with the Polluter Pays Principle.

(vi) Issue any other Writ or Order or Direction as this Hon''ble Court may deem fit in the facts and circumstances of the case.

(vii) In respect of the Hebbal lake the lessee charges heavy prohibitive entry fee for the visitors. The lake is a natural resource, should be a public property for the general public use with a cost-effective service. The lessee is charging heavy entry fee, which denies the plebeian the benefit of enjoyment of the lake environment.

3. The 1st respondent in the counter has stoutly denied the allegations made in the petition. It is stated that private participation for management and maintenance of lake is permitted by the National and State Water Policy. The terms of lease do not permit any commercial exploitation nor the lessees are permitted to degrade the natural environment of the lake. The allegations of tampering the lake area, the encroachment of the lake bed area are stoutly denied. It is said that the contract given to respondents 14 to 17 is in accordance with law. The management and development of lakes involve huge expenditure and constant effective supervision and management. In view of the limitations faced by the 1st respondent and in consonance with the National and State Water Policy, the private participation is permitted.

4. The 2nd respondent in the objection statement assert that the lease granted in favour of respondents 14 to 17 is in accordance with law and that there are no violations of law. The allegation of tampering the natural environment of the lake by the lessee is stoutly denied.

5. The 3rd respondent in the objection statement submits that the Government is not keen in leasing the lakes. However, they would not renew the lease period after its expiry. However, in the objection statement the violations of law in granting lease is stoutly denied. It is contended that if there is no violation of the terms of lease by the lessee, action would be initiated in accordance with law including cancellation of lease.

6. Respondents 4 and 5 have filed objections, which are similar to the one filed by 3rd respondent.

7. Respondent No. 7 contends that it is only a formal party.

8. The respondents had given an endorsement pursuant to the application given by one H S Sudhir vide Annexure "U" to the effect that no request has been made to or received by the respondent regarding the change of land use pertaining to Nagawara and Hebbal lakes.

9. Respondents 8 to 10 have not filed any objections.

10. 11th respondent in the objection statement contends that the commercialisation and privatisation of the lakes is impermissible. However, submits that the Pollution Control Board has given clearance for establishing of a Sewerage Treatment Plant. It is submitted that the respondent does not support or subscribe to the actions of the 2nd respondent in leasing the lakes and in permitting the lakes for commercial exploitation. It is harmful for the ecological balance and prohibits the bird migration and the damage to aquatic life.

11. Respondents 9, 10, 12 and 13 have not filed any objections since they are said to be formal parties and that there is no relief claimed against them.

12. Respondent no. 16 has filed objections denying the allegations made in the petition. It is stated that the development made by the 14th respondent has made a value addition to enhance the ecology and environment of the purity of the lake. The allegations of commercial exploitation are totally denied. The activities conducted in the area beyond the shores are the one permitted under the terms of lease.

13. Respondent No. 15 has denied the allegations made regarding the damage caused to the environment of the lake and to the aquatic life in the lake. It is said that the terms of lease are perfectly legal.

14. The lease granted in favour of respondent no. 14 during the pendency of this petition has been cancelled. It is submitted that an arbitration dispute is pending between the 14th respondent on the one part and the 2nd respondent on the other part. Since, the lease in question in favour of 14th respondent stands cancelled, the legality of lease of 14th respondent may not be germane for consideration in this petition. The rights of the 14th respondent would be subject to the result of the arbitration proceedings.

15. The 17th respondent has totally denied the allegations of tampering the natural environment of the lake. The allegation of commercial exploitation is totally denied. It is said that the recreational activities whatever conducted, in and around the lake area is absolutely in accordance with the terms of the lease.

16. The counsel for the petitioners to substantiate the allegations made in the petition relied upon the report of Dr. P.J. Dilip Kumar, IFS and Principal Chief Conservator of Forest representing 4th respondent. This Court on 4.6.2008 had passed following:

Learned counsel for Respondents 14, 15 and 16 submit that the statements of objections are being filed in the Registry during the course of a day.

Having regard to the nature of issues raised by the petitioners in this Writ petition, It is necessary to know the views/response of Respondents 4 and 5 also. Hence Respondents 4 and 5 are directed to file counter-affidavit answering the averments and allegations in the writ petition and explaining the factual position as obtained now with regard to the nature and condition of lakes in question. The counter-affidavit shall be filed within a week.

17. The 4th respondent pursuant to the said direction had made a spot study and status-quo of the lakes in question and had prepared and submitted a factual report of the lakes in question which came to be filed before the Court as per the directions in the above said order. The counsel for petitioners referred to the contents of paragraphs 4, 5 and 12, which is extracted hereunder in respect of Hebbal lake.

4. When we visited the spot, we found that de-weeding of the aquatic vegetation was in progress on the southern shoreline near the entrance. It is seen that dredged up earth and weeds have been dumped in such a way as to extend the land verge a few feet into the water spread (Photo 001). The shoreline has been disturbed, and the water made deeper at the shoreline. This has obviously degraded the habitat of aquatic birds, which need gently sloping shorelines and mud-flats, and aquatic vegetation (which are called weeds in popular language) for their feeding, breeding and resting. In fact in the adjoining stretches of aquatic vegetation, we saw signs of active breeding of birds, including moorhen with chicks and so on. It was seen that removal of weeds was even now going on (Photo 002 and 003), which is causing the same type of disturbance to the wildfowl habitat and population that induced the DCF, Bangalore Urban Division (Resp.5) to issue the notice in. However, it is apparent that this is one of the approved operations under the project, approved by the LDA. The representative of EIH, however, expressed their willingness to modify their operations guided by forest department and LDA in order to stop such damage to wild bird habitat.

5. In the north-west corner of the lake, there is a "wetland" portion created specifically under the Indo-Norwegian project as a biological water purification system (Photo 004). The wetland portion was divided from the clean water spread by a bund as per the design. The principle of the wetland system is that sewage and storm water drain inflow is taken to a sewage treatment plant first to take out silt and sludge, and then to the wetland to remove nitrogen and phosphorus. The wetland, with its profuse aquatic vegetation, has a very rich bird-life, as we could see. Without the vegetation and the shallow water regions, the bird population would be much poorer. As per the approved plan, EIH are to empty the water, line the bottom with plastic sheets and imported gravel, and raise a lotus pond, which will cause huge damage to the bird life.

12. Photos 015 and 016 show the idol-immersion pond being constructed in the eastern end of Hebbal lake near the highway. The damage caused to the shoreline vegetation is evident in comparing with the background in these photographs. Silt has also been dumped to make a parking lot for tractors bringing the idols.

18. In respect of Nagawara lake, the contents of paragraph 13 are referred to which are extracted hereunder.

13. Nagawara lake has been developed to a greater extent by paving the front shoreline (Photo 017), and erecting structures for cafeteria etc. The lake has

been completely cleaned up, and has not shoreline vegetation, and thus shoreline has been deepened and made vertical by masonry walls (Photo 018), thus not providing water-bird habitat. This lake had also been treated originally under the National Lake Conservation Programme of Ministry of Environment & Forests, Govt. of India, following the wetland model. The wetland portion was not visited, so it is not known whether it still has aquatic vegetation and bird habitat.

In respect of Vengaiyhkere, the observation made in paragraph-18 is relied on which is extracted as hereunder.

18. A visit to Vengaiyankere was also made, as it has been mentioned in the petition, as an example of a lake developed to the maximum for recreation and tourism potential. This lake was also one of those already desilted and refilled (during 2002-03) on the wetland model already described above, including islands for birds, jogging part all round, etc. under the National Lake Conservation Programme, as described in the petition. Now the lake has been developed by a private party, with facilities for picnic, boating, catering, etc., all along the shoreline and even on the islands, as portrayed in photos 023-034. This was a shallow wetland previously, with exposing mudflats and aquatic vegetation, which used to harbour a rich bird life, but now with deepening and de-weeding, it is completely devoid of such habitats, and has very few birds, just a few cormorants (Photo 034) which can dive and catch fish. The contrast between Agara and Vengaiyankere in the nature of the shoreline, i.e. the absence of aquatic vegetation, which form the main water-bird habitats, is obvious. The stone pitching on the steep banks to facilitate boating, has eliminated these bird habitats and led to the complete absence of the water-birds that one sees in Agara and Hebbal as of now. Moreover, this transformation is not restricted to the entrance portion only, but is taken throughout the shoreline and even around the islands, which have also been connected by an arched bridge (Photo 029). The Vengaiyankere lake has reportedly been opened to the public only last week, and there is an entry fee as in Hebbal.

19. The findings and recommendations made in the said report in paragraphs 19 to 27 is relied on to corroborate the allegations made against the respondents and to bring home the point that under the guise of development of the lakes, the lessee have tampered with the natural environment and have misused the natural resource of the lake for commercial exploitation.

20. The counsel also relied upon the report of the Committee appointed by this Court and headed by Justice N K Patil to bring home the point that the public private participation should be bonafide and that the commercial exploitation by the private participation is to be totally prevented.

21. The counsel relied upon the decision of the Supreme Court in M.C. Mehta Vs. Kamal Nath and Others, to contend that the Doctrine of Public Trust enjoined as an obligation on the State should not permit alienation of the natural resource to the private Entrepreneurship. The observations in paragraph 35 in the said case

is relied upon which is extracted hereunder:

We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

22. The decision of the Supreme Court in *INTELLECTUALS FORUM. TIRUPATHI vs STATE OF A. P. & OTHERS* reported in 2006 (2) SCJ 293 is relied on. In paragraph 76 and 88. the following observations are made:

76 "Thus the public trust is ore than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people"s common heritage of streams, lakes, marshlands and tidelands. surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust."

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such action of the Government, the courts must make a distinction between the Government"s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources (Joseph L. Sax "The Public Trust Doctrine in Natural Resource (Jan. 1970) pp. 471-566). According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine (ibid):

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. the property may not be sold, even for cash equivalent;

3. the properly must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.

88. However, some of the environmental activists, as noted in the "The Environmental Activities Handbook" authored by Gayatri Singh, Kerban Ankleswaria and Colins Gonsalves, that the Judges are carried away by the money spent on projects and that mega projects, that harm the environment, are not condemned. However, this criticism seems to be baseless since in Virender Gaur and Others Vs. State of Haryana and Others, , this Court insisted on the demolition of structure which have been constructed on the lands reserved for common purposes and that this Court did not allow its decision to be frustrated by the actions of a party. This Court followed the said decision in several cases issuing directions and ensuring its enforcement by nothing short of demolition or restoration of status quo ante. The fact that crores of rupees were spent already on development projects did not convince this Court while being in a zeal to jealously safeguarding the environment and in preventing the abuse of the environment by a group of humans or the authorities under the State for that matter.

23. Counsel for the petitioners referred to the notification issued by the Government bearing No. 172, ECO. 2007 dated 23.10.2008, the translation of which reads as under:

GOVERNMENT OF KARNATAKA

No. Apajee 172 ECO 2007

Karnataka Govt. Secretariat M.S. Building Bangalore, dated 23.10.2008

Amendment.

In the terms and conditions mentioned in the Govt. Order No. Apajee 172 ECO 2007 dated 28.3.2008, the following terms and conditions shall be added as point No. 8 and read accordingly:

A condition has been prescribed that the Departments taking custody of the tanks for applying developments shall cause to vacate with their own efforts the encroachments taken place in the tanks and shall not take up any kind of developmental works in the area within a distance of 30 meters from the boundaries of the tanks as per the C.D.P. prepared by the Bangalore Development Authority.

By order and in the name of the Governor of Karnataka

Sd/- (N.R. Jagannatha) Under Secretary to Government Dept. of Forest. Environment and Ecology.

24. By referring to the above notification, the learned counsel for the petitioners contended that from the periphery of the tank area no development like constructions activities to take place and the said area should be preserved as a

buffer area for the up keep of the environment of the lake.

25. In the light of the above observations, it was strenuously contended the grant of lease of Hebbal. Nagawara and Vengaihkere lakes is impermissible and contrary to law. The State and the LDA should take up the responsibility of management and maintenance of the lakes in question and with regard to the scheme for maintenance of lake, it is submitted that this Court has already passed an order approving the recommendations made by the Committee headed by Justice N K Patil and directions have been issued for implementing the said recommendations by the Government.

26. Sri D L N Rao. counsel for 15th respondent per contra made the following submissions to rebut the contentions of the petitioners which are as follows:

(1) Reference is made to the report submitted by the Committee headed by Laxman Rao who was appointed by the Government of Karnataka and that Committee consisted of the heads of the department like Forest, Revenue, Pollution Control Board. Irrigation, Town Planning, BDA, BWSSB etc. The observations made in Paragraphs 4. 4(2), 6(1), 84, 85 and 86 in the conclusions at items e and k are referred to which are as follows:

4. General proposals for preservation and development of tanks.

The committee Observed that the present trend regarding the tanks in conurbation area. Is to breach the tanks and utilize the tank beds for formation of the sites for other building activities. The tanks are getting silted up. There is also contamination due to inflow of sludge water and effluents. In some cases the tanks are even used for disposal of solid wastes thereby destroying rich soil of the tank beds and ultimately breaching of tanks is being proposed.

The tank beds could also serve as out door recreational areas which is very much needed for the urban dwellers.

4(2) Bangalore city which will have population of 70 lakhs by 2001. needs more and ore picnic spots to serve as recreational areas and serve as long spaces. Bigger tanks with standing water should water should develop as picnic spots with facilities for boating illumination, oriental parks and such others recreational facilities. If necessary adjoining lands may also acquired for the development of picnic spots, But pending all the above proposals developments, foreshore planting may be taken up immediately:

6(1) Hebbal tank: This is a important tank situated on Bellary Road. Its extent is 65.4 bacts and the atchout is 178.4 bacts. This is one of the big tanks in Bangalore on the cast on part of the city. During the inspection of the committee, it was observed that water hyacinth is covering almost the entire water sheet. Some time back PWD got the weeds removed by m/g Larson and Tourbro Ltd. But now the weeds are back which shows that dewoeding cannot be a one time operation and it has necessarily to be a regular Feature.

However the committee felt happy that the forest department has already taken Up fore - shore development and have raised a very good nursery.

At the same time, it is to be mentioned here that many of the tanks are now completely or partially covered by water hyacinths. The Minor Irrigation Department, which is Incharge of these tanks will have to arrange for de-weeding of these tanks on a continuing basis if the water bodies are to serve any useful purpose.

Conclusion: (e) Existing tanks should be deweeded and aquatic life must be developed.

(k) The possibility of construction of more tanks along the natural valleys which now have a runoff water should be examined and implantation taken up.

Whenever a tank has been successfully reclaimed or renovated, a suitable area adjoining the tank may be earmarked for recreational and tourism activities including rest house, restaurant, toilets etc.

27. The counsel referred to the report of the Committee headed by Justice N K Patil to contend that the public private participation has approved the policy of permitting the private participation for development of the lakes with bonafide purpose without commercial exploitation. In the said report in page 54, the Committee headed by Justice N K Patil which consisted of the bureaucrats, environmental experts had visited the Nagawara lake and have certified that the lake is in good condition. The said recommendation would dispel the allegation of the petitioners that there have been degradation of environment on account of the development made by 15th respondent.

28. The counsel referred to the correspondences made by the Joint Secretary to Government of India. Ministry of Environment and Forest dated 1.12.2009 addressed to the 2nd respondent which is as follows:

The 12th World Lake Conference (Taal 2007) was organized by this Ministry at Jaipur from 28th October-2nd November, 2007. The central theme of the Conference was "Conserving Lakes & Wetland for Future". The Jaipur Declaration incorporating the recommendations of the Conference was adopted at the valedictory session.

Kind attention is drawn to the following recommendations of the Declaration:

"Active participation of all stakeholders including women and youth in local communities be encouraged through awareness programs for the conservation and wise use of water bodies, and traditional knowledge be blended with latest techniques for better results" and

Rational public private partnerships be promoted in conserving lakes and wetlands and maintaining their ecological services"

While public awareness and public participation remain an integral part of all

projects being sanctioned by this Ministry under the National Lake Conservation Plan (NLCP), it is requested that active participation of all stakeholders including women and youth may be encouraged in the programme. Involvement of local community should also be encouraged with a view to blending traditional and modern conservation techniques.

Public Private Partnership (PPP) model has been successfully employed in certain cases, such as Mansagar lake in Rajasthan. Nagawara lake in Karnataka and Thane lakes in Maharashtra, facilitating wise use of water bodies. The State Government/IAS are requested to ensure promotion of rational PPP models in conserving lakes & wetlands for sustainability of the projects.

29. It is submitted that in paragraph 4 of the said correspondence, there is a categorical reference to the Nagawara lake with rich compliments and request to the State Government to ensure promotion of rational public private mode in conserving lakes and wet lands in sustainability of the projects.

30. The counsel submitted with regard to contention that the boating activity would damage the environment of the lake, is an unfounded contention. In the report of Laxman Rao's committee, there is a positive recommendation for promoting boating activity as a part of recreational activity. The counsel referred to current practice of boating activity in Ranganathittu which is supposed to be a major bird sanctuary in the nation where the boating activity is permitted.

31. In respect of the sale of refreshments, it is submitted that the structures put up in the area are quite away from the lake periphery and are only temporary structures to serve as shelters. As per the terms of lease no cooking activity will take place. The edibles are brought from outside and are sold. Precautionary efforts are made to prevent the littering and also to clear the garbage, if any, everyday. The counsel referred to the photographs of status of Nagawara lake before the lease and after the lease to impress that developments have been effected by the 15th respondent for enhancing the environmental excellence of the lake. To corroborate the said contention, reliance is placed upon the certification made by the Committee headed by Justice N K Patil to the effect that the maintenance and condition of the lake is good.

32. With regard to entry fee, it is submitted that 15th respondent collects Rs. 10/- for children and Rs. 20/- for the adults and on week ends the entry fee for adults is Rs. 30/-. It is submitted that the lessee has spent about Rs. 8 crores for the development of the lake and has been paying Rs. 40.00 lakhs per year to the 2nd respondent with an escalation clause. The entry fee collected per month works out to around average Rs. 2-3 lakhs. The respondent has suffered heavy loss and the proceedings under Debt Relief Act are initiated for the recovery of the loans borrowed from the banks, which is invested in the development of the lake. It is submitted that the entry fee collected compared to the cost of investment and the entry fee collected by the Archaeological Department and the National Parks, Bird Sanctuaries etc. is about 1/10th of the fee collected by the

said entries. In that view, it is submitted that the entry fee act as prohibitive costs for the enjoyment of natural resource by the common man, is untenable and unfounded.

33. The contention that the propriety rights of the lakes is handed over to 15th respondent is untenable although the contract is termed as a lease, which is in the nature of a licence. The 15th respondent has developed the lake and the aquatic life in the lake. The Government has been auctioning the fishing rights to Co-operative Society run by woman. The said fact would suggest that no absolute proprietary rights of the lake has been leased in favour of 15th respondent.

34. The contention that recreational activities conducted are detrimental is untenable. The recreational facilities undertaken are only to cater to the minimum needs of the visitors. The Pollution Control Board, BBMP every year have been giving clearance after inspection that there is no violation of the norms in conducting the recreational activities and maintaining the environment of the lake.

35. The contention that undue favour has been shown in for 15th respondent for grant of lease is untenable. The lease was granted after inviting public tenders pursuant to the Government Order. The 15th respondent after having made a substantial development, the petitioners have belatedly filed the writ petition in the year 2008 challenging the lease, which was granted in the year 2004, after a delay of four years. The writ petition in respect of the validity of contract is not maintainable without challenging the Government Order or the tender notification, besides there is delay of four years.

36. The learned Senior Counsel Sri Udaya Holla arguing on behalf of respondent No. 16 submitted the following circumstances and the material to repel the contention of the petitioner that the lease in favour of respondent is illegal and there are violations of law. The learned Senior Counsel by and large adopted the submissions made by Sri D.L.N. Rao, learned Senior Counsel appearing on behalf of respondent No. 15 with reference to the status of Hebbal tank. He relied upon the observations made in the report of the committee headed by Sri Laxman Rao. In para-6(1), the following observations are made :

Hebbal tank:

This is a important tank situated on Bellary road. Its extent is 65.4 bacts and the atchout is 178.4 hacts. This is one of the big tanks in Bangalore on the cast on part of the city. During the inspection of the committee, it was observed that water hyacinth is covering almost the entire water sheet. Some time back PWD got the weeds removed by m/g Larson and Turbo Ltd., But now the weeds are back which shows that deweeding cannot be a one time operation and it has necessarily to be a regular feature.

However the committee felt happy that the forest department has already taken

up fore-shore development and have raised a very good nursery.

37. It is submitted that the wild growth of water hyacinth has been a constant phenomena in the tank which requires a periodical weeding out. Reference is made to the report of the committee headed by Justice N.K. Patil, which had inspected the Hebbal tank and have noted in the report that the Hebbal tank is well maintained and is in good condition. The visit by the committee to the Hebbal tank was after the developments are made by respondent No. 16. With regard to recreational activities, learned Senior Counsel referred to Schedule 1(c) of the Lease Agreement which permits the following activities:

Eco-friendly children park, lightings, rescue watch towers, parking bay. view points, kiosks, boundary protection, arch bridges, solar lighting, floating restaurant and provisions for recreational facilities like bumper boats, electric boats, peddle boats, aqua-scooters etc.

38. It is submitted by learned Senior Counsel for respondent No. 16 that the recreational activities conducted are in consonance with the permitted terms of lease and the concept of floating restaurant permitted under the lease is given up and respondent No. 16 would not carry out the floating restaurant facility. He further submits that the children park, lighting, rescue watch towers, parking bay, view points, kiosks, boundary protection arch bridges, solar lighting which are done are quite eco-friendly and in accordance with the terms of the lease. The Pollution Control Board and the BBMP have been inspecting the lakes and its infrastructure every year and they have giving annual clearance for the continuation.

39. With regard to entry fee the entry into the lake area between 6.00 a.m. to 8.00 p.m. is free to all the citizens for morning walk and jogging. The entry fee is only Rs. 10/-per adult for visiting the lake between 8.00 a.m. to 6.30 p.m. by which time, the gate will be closed for all the persons. There is no entry fee charged for children below 10 years, bird watchers, senior citizens, morning walkers and joggers and for army personnel, 50% discount is provided. It is further submitted that, as per the terms of the lease, to prevent pollution of lake-water on account of immersing the idols, a separate pond is constructed. It is submitted that foreshore area is used without increasing the same.

40. It is further submitted that, respondent No. 16 has incurred Rs. 8,67,000/- towards operational expenses and Rs. 6,34,000/- towards capital expenses. The average monthly entry fee collected is between Rs. 1,50,000/- to Rs. 2,00,000/-. The said status would disclose that there is absolutely no element of commercial exploitation on the part of respondent No. 16. It is further submitted that respondent No. 16 has set up water sewerage plant to treat the sewerage water flowing from Byatarayanapura and Bhadrappa layout. One more sewerage plant, which is contemplated to be constructed has been stopped because of the interim orders passed in this case. It is submitted that the wet lands are well protected and maintained and the scientific de-weeding is taking place and

whatever development done by respondent No. 16 is conducive to the environmental aspects of the lake. Thus submitted that the writ petition deserves to be dismissed.

41. With regard to Venganakere lake, it is submitted that out of total area of 1.6 hectares of the lake shore area, in only one acre, the infrastructure is developed for recreational activities in accordance with the terms of the lease. About 3000 saplings have been planted in the lake shore area. Respondent No. 17 after taking lease, have built up island with thick and dense trees and bushes for the birds nest. The light recreational facilities provided are not in conflict with the environmental norms. It is further submitted that the respondent No. 17 are contemplating to construct a sewerage treatment plant, but because of the interim orders passed in this case, further developments are stopped. It is further submitted that the developments made are in tandem with the environmental aspects of the lake. It is stated that about Rs. 8 crores are invested for the development of the lake. The lake will be opened from 7.00 a.m. to 8.00 p.m. every day. For morning walkers, there is no entry fee. For children, the entry fee is Rs. 15/- and for others Rs. 30/-. The monthly income collected from entry fee is said to Rs. 4 lakhs to Rs. 5 lakhs. The monthly expenditure of the lake is about Rs. 5 lakhs. In the light of the said material, it is submitted that there is absolutely no element of commercial exploitation or damage done to the environment of the lake. It is submitted that the committee headed by Justice N.K. Patil, after inspection, have noted that the lake is in good condition. There are absolutely no adverse reports from the experts" committee. Therefore, the contention that respondent No. 17 has damaged the environmental aspects of the lake is untenable and unfounded.

W.P. No. 13690/2009; This writ petition pertains to Avalahalli lake and in general all the lakes. It is the contention that the lakes are not properly maintained. The petitioner seeks writ of mandamus to constitute a committee to find out the ways and means to preserve and restore various lakes to original position.

W.P. No. 31343/1995 : This writ petition pertains to the tanks and lakes of city of Bangalore. It is contended that the condition of the lakes in city of Bangalore is hopeless and the petitioner seeks for a direction to the authorities to preserve the lake and keep them in good condition.

W.P. No. 18303/2005 : This writ petition pertains to Kaggadaspura lake, Dodda Nekkundi and Byrasandra lakes situated in and around the Bangalore city. It is submitted that lakes are not properly maintained and therefore, the petitioner seeks for writ of mandamus to the respondents to protect the tanks and tank beds and also to prevent encroachments.

W.P. No. 1636/2006 : This writ petition pertains to Devanakere lake. It is contended that there is lot of letting of sewerage water into the lake, creating pollution. Therefore, a direction is sought for against respondents 6 and 7 to prevent the flow of sewerage water into the said lake.

42. It is well intended and well founded apprehension of all the petitioners for proper preservation and maintenance of lakes which are constructed in the times of yore and are built with multipurpose utility to help the mankind and living beings. It is the mandatory obligation of the State on the principle of doctrine of trust to preserve and maintain the lakes in a good condition. The State in its endeavor has been taking steps for the preservation and maintenance of lakes. In view of enmity of unwilling governance of all the State obligation, the 1st respondent in its wisdom has constituted the 2nd respondent-Lake Development Authority to attend to and to supervise, preserve and maintain all the lakes in good condition, except the lakes situated within BBMP area of Bangalore. Prior to 11.1.2010, the lakes situated in BBMP were also coming under the jurisdiction of Lakes Development Authority. Pursuant to the report submitted by the committee headed by Justice N.K. Patil on 3.3.2011, this Court observed that the report of the committee and the recommendations made by the committee would satisfy all the prayers sought for in these writ petitions, except the one belonging to lease holders who have made constructions in the periphery of the land or in the process of making such construction.

43. In view of the above order, the limited issue for our consideration in the instant writ petition and in the connected matters pertains to the rights and obligations of the lease holders.

44. This Court in Writ Petition No. 1841/2006 had issued the following directions for the proper maintenance of lakes:

- (i) The sewage or garbage will not be diverted to the lakes and tanks.
- (ii) The lake area as per the revenue records will be surveyed by the Revenue Department and would be fenced at the cost of the respondents.
- (iii) The Forest Department shall undertake planting of the trees and saplings after getting necessary technical opinion from the experts concerned.
- (iv) The Member Secretary of the State Legal Services Authority shall act as a co-ordinator among all the respondents herein including the revenue department and the forest department for both monitoring the implementation of the undertaking of the above respondents in implementing, executing the work and the ecological and environmental condition of the lakes.

The said directions shall have to be adhered to for the preservation and maintenance of all the tanks and lakes in the State.

45. With regard to the leases in question, the contention that the lessees have damaged the environment of the lake, appears to be an unsubstantiated allegation.

The recreational activities undertaken are the one permitted by the terms of the lease and are not in conflict with the environment and ecological aspects. The material produced by the lessees discloses that there has been an annual

inspection by the Pollution Control Board and by BBMP and they are giving the clearance certificate annually for continuation of the recreational activities. The contention that the boating activity would destroy the environment of the lake and diminish the potentiality of the bird migration also does not appear to be well substantiated because, in the report of the committee headed by Sri Laxman Rao, a specific proposal is made for boating facilities in the lakes. The report of the committee headed by Justice N.K. Patil also approves pedal boating and battery operated boating, which are pollution free. The sale of eateries undertaken is shown to be done quite away from the shore area. There is no cooking activity. The edibles are brought from outside and sold. The constructions installed are also of temporary in nature only to serve as shelters.

46. In view of the above discussed material, it cannot be said that the lakes which are leased in favour of respondents 15 to 17 are not properly maintained. There is no contra material placed on record to show that the recreational activities undertaken are in conflict with the ecology and the environment of the lakes.

47. With regard to entry fee. it appears that the Hebbal lake appears to be more visitor friendly than Nagawara and Venganakere lakes. It is therefore directed that the respondents 15 to 17 shall also make entry free for the children up to 12 years. However, for using the recreational facilities, any separate fee charged have to be paid by the users, including the children.

48. Therefore, in view of the reasons and discussions made above, we find no substance in the contention that the lease granted in favour of respondents 15 to 17 is in violation of law. The public participation in the development of the lakes is in accordance with the National and State water policies. The decision of the Supreme Court in M.C. Mehta -vs- Kamalanath has no application to the facts on hand. In the cited case, there were artificial diversions of the river around the private resorts. In the said context, it was found that the constructions of resorts and diversions amount to encroachment and the same is not permitted in law. The ratio laid down by the Supreme Court in Tirupati's case has also no application to the facts on hand. In the said case, the tank-bund area was encroached and houses were constructed by the Housing Board. The Supreme Court found that the encroachment on the bank area and construction of houses by the Housing Board was held to be improper in law. However, the Supreme Court condoned the default as an exceptional case, with a direction that there should be no further constructions in the tank bed area. In the instant case, there is no issue of any permanent construction or damage caused to the lake by way of encroachment or otherwise. The agreement although is styled as a lease, appears to be a misnomer, because the rights and obligations enjoyed by the lessees does not disclose any transfer of land in favour of the lessees. The terms and conditions suggest that lease is more in the nature of a licence without any absolute rights during the lease period. The fact that the fishing rights are granted by the government to some other organisation would itself suggest that

the lessees have no absolute control over lakes and Lake Area. The terms and conditions imposed and the permitted recreational activities in the lease does not appear to be detrimental to the environment of the lake since the report of the Committee headed by Justice N.K. Patil, which is constituted by bureaucrats, experts and the Judge of this Court, after inspection, they found that the lakes are in a good condition. This Court on two earlier occasions by order dated 7.4.2011 had issued certain directions and in W.P. No. 1841 of 2006 also this Court has issued certain directions for the preservation and maintenance of lakes. Keeping in view the direction issued by this Court, we feel it that it is just and proper that a direction issued have to be consolidated and after hearing the parties, some more directions are necessary to be issued to advance the cause of preservation of lakes. Accordingly, we make the following order:

#### ORDER

1. It is just and necessary that survey of lakes and tanks in Karnataka have to be undertaken by demarcating the boundaries and to make proper fencing.
2. The unauthorised construction within the 30 mtrs of peripheral lake area have to be removed.
3. Removal of silt as also, scientific de-weeding for the rejuvenation of some of the tanks and proper embankments have to be done periodically.
4. Flow of sewerage water into lakes and tanks have to be stopped. The channels, which feed the lakes, have to be properly protected and maintained.
5. The forest department shall undertake to plant the trees and saplings in the buffer area of the lake.
6. The Commissioner of BBMP shall be responsible for the proper maintenance and development of the lakes within the BBMP area.
7. For the Bangalore Metropolitan Area, the Commissioner, Bangalore Development Authority, the Chief Executive Officer, Lake Development Authority and Deputy Conservator of Forest shall be the Committee for proper maintenance and development of lakes in Bangalore Metropolitan area.
8. In respect of City Municipal Corporation, the Deputy Commissioner of District, the Commissioner of City Municipal Corporation and Commissioner of Urban Development Authority shall be the Committee responsible for proper maintenance and development of lakes within the City Municipal Corporation area.
9. In respect of municipal areas, the Deputy Commissioner of District, Commissioner of Municipality and District Water Resources Officer shall be the members of Committee and they shall be responsible for proper maintenance and development of lakes situate in for municipal and taluka areas.
10. There shall be an Apex Committee consisting of Principal Secretary,

Department of Revenue, Chief Executive Officer. Lake Development Authority and Member Secretary of State Legal Services Authority who shall oversee and supervise the maintenance of lakes by above stated committees. The above stated Committees shall send quarterly report about the maintenance and development of lakes to the Apex Committee, which shall supervise the development and maintenance of lakes. The Apex Committee can also entertain complaints and give proper directions to concerned committees for proper maintenance and development of lakes.

11. The first respondent is directed to comply the above said directions by passing necessary orders in accordance with law for ensuring proper preservation, maintenance and development of lakes.

In the terms indicated above, the writ petitions are disposed of.