Reserved On : 07/05/2026
Pronounced On : 25/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 26530 of 2006

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2015
In R/SPECIAL CIVIL APPLICATION NO. 26530 of 2006
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2017
In R/SPECIAL CIVIL APPLICATION NO. 26530 of 2006
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2017
In R/SPECIAL CIVIL APPLICATION NO. 26530 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
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TATA CHEMICAL LTD. & ANR.
Versus
STATE OF GUJARAT THRO' SECRETARY & ORS.

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Appearance:
MR.MIHIR THAKORE, SENIOR COUNSEL WITH MR.DEVANG NANAVATI, SENIOR COUNSEL WITH MR.SIDDHANT GUJARATHI, ,R.ROHAN LAVKUMAR AND MS.DIVYA SHAH FOR NANAVATI ASSOCIATES(1375) for the Petitioner(s) No. 1,2
MR.KAMAL TRIVEDI, LD.ADVOCATE GENERAL WITH MS.HETAL PATEL, ASST.GOVERNMENT PLEADER for the Respondent(s) No. 1
MR ANKIT SHAH(6371) for the Respondent(s) No. 4
MR.G.H. VIRK WITH MS.DEVANSHEE N. KARIEL AND MR SIMRANJITSINGH H VIRK(11607) for the Respondent(s) No. 5
MS DHARMISHTA RAVAL(707) for the Respondent(s) No. 3
RULE SERVED for the Respondent(s) No. 6
RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

CAV ORDER / JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

[I] <u>Oral order dictated in the open Court on 04.05.2026.</u>

1. Inspite of sufficient time granted to the Union of India to file their response, no affidavit has been filed even after the last opportunity was granted on 15.04.2026. The request made by Mr. Ankit Shah, learned advocate appearing for the Union of India to grant further time, cannot be acceded to and hence, rejected.

2. This writ petition has been filed with the following reliefs:-

> *"64(A) A Writ in the nature of Certiorari for setting aside/quashing (in part) of the order No.JMN-2801-2006 dated 10-04-2006 passed by the Collector, Jamnagar rejecting the Petitioner's Application for recognizing / accepting the existence of its rights for discharge of the waste water into the sea through the inter tidal zone in an area of 200 hectares which were in use prior to and after 1982.*
>
> *(B) To declare and confirm the existence of the system of waste water disposal in operation prior to and after 1982 and recognize the Petitioner's claim made vide Applications dated 11-08-2003/15-09-2003 in terms of the submission made in the Applications dated 08-05-2006 read with applications dated 14-08-2006/24-10-2006;*

(C) Admit the petitioner's claim and/or existence of petitioner's right for release of waste water through channels into the sea through inter tidal zone in an area of approximately 200 hectares which has become part of Marine Sanctuary Area after July 1982.

(D) Alternatively issue a Writ in the nature of mandamus directing the Collector, Jamnagar to dispose of the Petitioner's Application dated 08-05-2006 read with the applications 14-08-2006/24-10-2006 made for correction/ modification of the order dated 10-04-2006.

(E) To call for records of the case.

(F) That pending hearing and final disposal of the present petition be pleased to restrain the respondents/their servants/agents from taking any action in pursuance to para 5 of the order dated 10-04-2006 of the Collector, Jamnagar pending the disposal of the Writ Petition."

3. By way of an amendment brought in terms of the order dated 29.04.2009, the petitioner (TATA Chemicals Ltd.) added the reliefs as under:-

"(A-1) to quash and set aside the notifications No. AKH-138(1)- WLP-1081-126827-V.2 and No. AKH-138(2)-82-WLP-1081-126827-V.2 both dated 20-7-1982 issued by the Government of Gujarat, Agriculture and Forest Department and published in the Gujarat Government Gazette dated 2-9-1982 Part IV-PF 818 to 848 under Sections 18(1) and 35(1) of the Wild Life (Protection) Act, 1972.

(A-2) to quash and set aside the Notification No. GVN-100-87- WLP-1081-126827-V.2 dated 26.11.1987 (P.79 Annexure-9) issued by the Government of Gujarat and published in the Gujarat Government Gazette, Part IV-A of 26.11.1987.

(B-1) to permanently restraining the respondent's, their agents and servants from requiring the petitioner no.1 to desist from discharging industrial effluent or waste from its factory at Mithapur and from doing any act necessary or incidental thereto in the estimated 40 hectares of land referred to in the letter dt.23.3.1987 and from prosecuting or proceeding with any prosecution against the petitioner no.1 under the Indian Forest Act, 1927 and/or the Wild Life (Protection) Act, 1972 as threatened.

(C1) A Writ in the nature of Certiorari setting aside/ quashing of the order dated 12-02-2007 passed by the Collector, Jamnagar rejecting the Petitioner's Application dated 08-05-2006/14-08-2006 (24-10-2006/10-02-2007) filed for modification/ correction of the order dated 10-04-2006 of the Collector.

(C2) A Writ in the nature of Certiorari setting aside/quashing of the order dated 14.03.2007 passed by the Collector, Jamnagar rejecting the petitioner's application dated 24.10.2006 and 10.02.2007 filed in support of the petitioner's application dated 08.05.2007 for modification/correction of the order dated 10.04.2006 of the Collector.

(F1) This Hon'ble Court may please grant orders of Status-quo to the Petitioner Company for discharge of waste water into the sea i.e the Gulf of Kutch, through inter tidal zone from its plant at Mithapur."

4. This petition was being listed before the Single Bench for sometime, however, as per the roster, the matter came up before this Court, when a detailed order dated 11.03.2026 was passed permitting the learned counsel for the petitioners to file a comprehensive additional affidavit bringing on record the subsequent developments. In compliance thereto, the additional affidavit dated 26.03.2026 has been filed by the

petitioners, wherein it is stated that the petitioners sought permissions / NOCs which have been granted by the various competent authorities in the matter of laying of closed pipeline, for discharge of treated waste water into the Gulf of Kutch near village Padli, Taluka Okhamandal. However, the contention is that open channels for discharge of the waste water are being used by the petitioners since the year 1962. With the notifications issued in the year 1982 and 1987, declaring certain areas in the Gulf of Kutch as 'Marine Sanctuary', the petitioner company claimed its right over the area in question to continue such use, which was rejected by the Collector and hence, this writ petition.

5. The petitioner company has been granted interim protection to continue discharge vide order dated 11.05.2010. However, during the pendency of the writ petition, vide notification dated 01.06.2011, the Ministry of Environment and Forest, Government of India has revised the standards of discharge of waste water for the Soda Ash Industry. To meet the revised standards, TATA Chemicals decided to lay closed pipelines and a diffuser system to discharge treated waste water into the deep sea.

6. The said Project conceived by the petitioner, has received Permission/Clearance/NOC from different agencies, inasmuch as, the consent to establish dated 01.10.2015 has been granted by the Gujarat Pollution Control Board (GPCB) and the same has been extended from time-to-time. The Gujarat Maritime Board has given No Objection Certificate on 16/17.12.2015. The Forest and Environment Department,

Government of Gujarat made recommendations dated 02.02.2016 permitting laying of pipeline in Eco Sensitive Zone for disposal of treated waste water into the Gulf of Kutch. The Coastal Regulation Zone (CRZ) Clearance has been granted by the Ministry of Environment, Forest & Climate Change, Government of India under Coastal Regulation Zone Notification, 2011 issued under the Environment (Protection) Act, 1986, as on 10.07.2017. The permission under the Wildlife (Protection) Act, 1972 has also been granted on 01.06.2017 by the Principal Chief Conservator of Forests for use of 11,2680 Hectares land of Block No.25 in Marine Sanctuary for laying of 2504 Meters long and 45 Meters wide waste water pipeline. The Ministry of Environment, Forest and Climate Change granted permission dated 22.02.2019 under Section-4 of the Forest (Conservation) Act, 1980 for diversion of forest area of 11,2680 Hectares (protected forest land). Stage-II final approval has been granted by the Ministry of Environment, Forest & Climate Change under Section-4 of the Forest (Conservation) Act 1980 on 23.09.2021. On 01.05.2022 the Chief Wildlife Warden, Jamnagar had granted working permission to carry out the work for laying pipeline in line with the Stage-II approval granted by the concerned Ministry. An Office Memorandum dated 13.10.2022 has been as issued by the Forest & Environment Department, Government of Gujarat for execution of the Project on the approval granted by the Ministry.

7. It is then stated in the aforesaid affidavit that pending the construction and setting up of the new pipeline, the

treated waste water is being discharged into the sea through the existing open channels in compliance with the stringent standards set out by the GPCB and the GPCB is conducting the periodic tests of the discharged water.

8. The contention is that, in all probability, the Project work of laying close pipelines shall be completed and operationalized by the end of May' 2026 after satisfactory commissioning trials of the equipments.

9. The said information has also been brought on record by way of Civil Application (For Direction) No.2150 of 2015 filed with an additional affidavit, whereafter the Court required the concerned authorities namely, the Secretary Forest Department, the District Collector, the Gujarat Pollution Control Board and the Ministry of Environment, Forest and Climate Change, Government of India, Principal Chief Conservator of Forest, State of Gujarat and the Gujarat Maritime Board to be impleaded and file their response on the said additional affidavit filed by the petitioners. All the respondents herein have filed their affidavit in response to submit that they have given nod to the project submitted by the petitioners after completion of the necessary formalities. The Gujarat Maritime Board has also given NOC for the Project of closed pipelines.

10. Noticing the above, we may also record that the Gujarat Pollution Control Board in its affidavit has categorically stated that Tata Chemicals Limited (TCL) has been under continuous regulatory supervision of the GPCB and is operating under

valid statutory permissions including Consent to Operate/ Consolidated Consent and Authorization valid up to 11.08.2027. The periodic inspection are being undertaken by the GPCB, the most recent inspection dated 12.03.2026 wherein the effluent treatment system, discharge mechanism and deep sea disposal pipeline infrastructure were physically verified and found to be operational and in conformity with the permissions granted. The Tata Chemicals Limited has also made provision for future needs.

11. The submission of GPCB is that the comprehensive review of the analytical data from 2008 to 2026 reveals that the unit has over a sustained period largely complied with the prescribed environmental norms. The data reflects that pH values have consistently remained within the permissible range, temperature has been within limits, colour levels have remained negligible, Ammonical Nitrogen has generally remained within prescribed limits and oil & grease has predominantly been recorded as “BDL” indicating negligible presence. In view of the stand of the GPCB that upon holistic review of the comparative analytical data, except isolated instances, in the long term trade analysis, it can be viewed that the unit is complying with the discharge parameters of the industrial wastewater.

12. Taking note of the above, we may further record that as per the stand of the learned senior counsel for the petitioners, the closed pipeline has already been installed and the trial has commenced. It is expected that the said pipeline will be commissioned before 01.06.2026.

13. The learned advocate appearing for the GPCB would submit that once the pipeline is commissioned, the Consent to Operate will be issued to the petitioner company, upon fulfillment of the necessary formalities as per the prescribed norms. It is submitted that the GPCB undertakes to continue with the periodic inspection to make sure that the treated effluent discharge norms are being followed scrupulously and strictly and there shall be no abrasion.

14. Noticing the above recent development, we are required to look into the merits of the matter from another angle, inasmuch as, the petitioner - Tata Chemicals Limited is engaged in manufacturing of sea water based products like Soda Ash, Vaccum Salt and other chemicals since the year 1939 at the plant at Mithapur, located 10 kilometers from Okha port at the head of Okhamandal peninsula. The Salt Works are spread over an areas of 60 square kilometers having a capacity of generating two million tones of solar salt, basic raw material of almost 27 chemicals that are produced by Tata Chemicals Limited. The petitioner company caters to 40% of total salt production of the country.

15. It seems that local villagers made a complaint to the Minister for Home and Industries, Government of Gujarat vide letter dated 21.06.1962 pointing out that the saline dirty water was being released in Survey No.77 of village Surajkaradi asserting that the same should be thrown into the Sea through Channels. The TCL prepared a scheme for laying of two pipelines for pumping effluents into the sea. It is stated in the writ petition that looking to the existing problem of

disposing of effluent based water, request was made for grant of 7 Acres and 26.44 Gunthas land.

16. The contention is that a joint survey of lands was carried out by the Surveyor of Special Land Acquisition Officer in the year 1963 and TCL. A Notification dated 18.01.1963 under Section-4 of the Land Acquisition Act' 1894 was published. The lands notified were falling in villages Surajkaradi and Arambhda. The said land was acquired by the State Government for TCL for laying of the effluent disposal pipeline for discharge of waste water through the open channels into the Inter-tidal zone and into the sea, to avoid any damage to the nearby farmers' field. License was granted by the competent authorities laying for the pipeline.

17. The contention is that the petitioner – company discharged waste water through various effluent channels passing through survey no.48 in the Inter-tidal zone into the sea, created by TCL over a period from 1963 / 1964 onwards. This contention is that the system of discharge of waste water into the sea through the various channels constructed / created over a period of time passing through survey no.48 and the inter-tidal zone was in existence prior to 1982, and even in 1982, the TCL continued with the same system for waste water disposal into the sea. The contention is that two deep channels are the result of reorganization because of consolidation of production process when a better system of disposal of water was adopted viz. dilution of waste water with sea water before discharging the same into the sea through the inter-tidal zone.

18. A notice dated 23.03.1987, however, had been issued by the Assistant Conservator of Forest, MNP, Jamnagar to TCL alleging encroachment upon the land adjoining survey no.48 of Arambada village for the purpose of digging, fencing, construction etc. and discharge of ash and concentrated chemicals in an area of 40 Hectares of 'Marine Sanctuary' and required TCL to produce evidence, proof or permission or sanction for use of such land declared as 'Marine Sanctuary'. The TCL in its reply dated 09.04.1987 stated that survey no.48 of Arambada village was purchased by it in October' 1962, out of which the strip of land (7 Acre 26.44 Gunthas) has been purchased vide notification dated 24.10.1962 for laying of pipelines and the plant for discharge of effluent into the Gulf of Kutch.

19. The Assistant Conservator of Forrest vide letter dated 15.09.1987 directed TCL to stop the effluent discharge in the areas adjoining survey no.48. The petitioner made a request to withdraw the notices and then filed a writ petition being Special Civil Application No.5465 of 1987 challenging the vires of Sections–18, 27, 35 of the Wildlife (Protection) Act' 1972 and praying for quashing of the Notification dated 20.07.1982 issued by Government of Gujarat, Agriculture & Forests Department declaring the area as a Marine Sanctuary and to restrain the respondents to desist the petitioner in pursuance to the notice dated 23.03.1987 from discharging the effluent into the Gulf of Kutch. The reliefs prayed in the said writ petition are extracted hereinunder:-

> "a) to declare that Section 18, 27, 32 and 35 of the Wild Life (Protection) Act, 1972 are unconstitutional and void.

(b) to quash and set aside the notifications No.AKH-138(1)-WLP-1081-126827-V.2 and No.AKH-138(2)-82-WLP-1081-126827-V.2 both dated 20.07.1982 issued by the Government of Gujarat, Agricultural and Forest Department and published in the Gujarat Government Gazette dated 02.09.1982 Part IV-A pp 818 to 848 under Sections 18(1) and 35(1) of the Wild Life (Protection) Act' 1972.

(b-1) to quash and set aside the Notification No.GVN-100-87-WLP-1081-126827-V.2 dated 26.11.1987 (p. 79 Annexure 9) issued by the Government of Gujarat and published in the Gujarat Government Gazette, Part IV-A of 26.11.1987.

(c) to permanently restrain the respondents, their agents and servants from requiring the petitioner no.1 to desist from discharging industrial effluent or waste from its factory at Mithapur and from doing any act necessary or incidental thereto in the estimated 40 Hectares of land referred to in the letter dated 23.3.1987 of the third respondeent and from instituting or proceeding with any prosecution against the petitioner no.1 under the Indian Forest Act, 1927 and / or the Wild Life (Protection) Act, 1972 as threatened.

(d) to restrain pending the hearing and final disposal of this Petition the respondents, their agents and servants in terms of prayer (c) above.

(e) to grant such other and further reliefs as this Hon'ble Court deems fit and proper.

(f) to provide for the costs of this Petition."

20. It is the case of the petitioners that as per the recommendations of the NIO (National Institute of Oceanography) in its report of August 2000, TCL submitted an application/ proposal on 21.05.2001 to the Conservator of Forests seeking for permission for substitution of the open channels by an underground submarine pipeline for discharge of waste water into the sea through the inter-tidal zone. The matter remained pending at various stages and consent given

by GPCB continued to be extended. The effluents being discharged by the TCL were meeting the parameters prescribed by GPCB, which was passing through the survey no.48 into the inter-tidal zone and then, into the sea.

21. It seems that with respect to the dispute of utilization of area of the Marine Sanctuary adjoining to Survey no.48, the Collector, Jamnagar granted hearing to the petitioner on 29.12.2003 and 12.01.2004 in respect of the applications of the petitioner dated 11.08.2003 and 15.09.2003, wherein the petitioner claimed continuation of its right of use in and over the area through which the brine pipeline and the effluent channels are passing for discharge of waste water into the inter-tidal zone and into the sea falling in the area of the Marine Sanctuary.

22. The Collector vide order dated 10.04.2006 has rejected the claim while recording that the chemical waste was being dumped in survey no.48 through pipeline before the year 1982 and when the department initiated action under law in 1987, the company obtained a status quo by filing a case before the High Court. It is noted that admittedly the TATA Chemicals Limited (TCL) kept on discharging waste water in the open area of survey no.48 and also the adjoining land thereto. The letters on record written by the TCL also admits the said fact. The stand of the company in the writ petition is that it was trying to acquire more land for discharge of the treated effluents, but that was not made possible.

23. There are repeated letters written to the petitioner, one being dated 25.03.1987 categorically stating that the it has made illegal encroachment in the land adjoining survey no.48 of Arambhda village admeasuring 40 hectares, which was declared and included in the lands of 'Marine Park and Marine Sanctuary' vide Government Notification dated 20.07.1982. It is stated therein that the encroachment had been done in the land by way of excavations, building retaining poles, channels and pans etc.

24. We may note from the record that the notification dated 20.07.1982 had been issued by the Government of Gujarat, Agriculture and Forest Department including the areas of Okha and Jamnagar bases in the Gulf of Kutch in Jamnagar District considering its ecological faunal and floral, geo-morphological natural or zoological importance, to be established as 'Marine National Park' for the purpose of propagating and developing wild life therein. From the schedule to the said notification, it can be seen that the Marine National Park (Okha Base) was divided into different areas such as "Coral Area near Mithapur Village, Coral Area near Okha village, Cora Area near Chandri village, Coral Area near Shankhodar, Coral Area near Paga reef within its Coral Area Boria Reef, etc.

25. In the affidavit filed on behalf of the State respondents by the Deputy Secretary, Forest and Environment Department, Sachivalay, Gandhinagar, it is stated that vide two notifications dated 20.07.1982, the Government of Gujarat in its Agriculture and Forest Department declared the

area indicated therein as Marine Sanctuary and Marine National Park; respectively, under the provisions of Section 18(1) of the Wildlife (Protection) Act' 1972. Out of the area which has been declared as Marine Sanctuary, the area in question is at Serial No.25 as 'Gulf of Area near Okha' admeasuring 4648 hectares with its boundaries for Marine Sanctuary. It is categorically stated therein that the petitioner company was admittedly discharging its liquid effluents through its pipeline in the land bearing Survey no.48 of Arambhada village. The effluent was carried from the factory of the petitioner company through pipeline till boundary of the land of survey no.48, wherein the same was getting settled.

26. Pursuant to the said notification, the Collector Jamnagar issued a public notice dated 16.09.1982 requiring any person claiming any right over the land in question to lodge his/ her claim before the Deputy Collector, office of the Marine National Park, Jamnagar. None of the petitioners nor anyone else had lodged any claim or objection in that behalf within the specified period of two months. Thereafter, a resolution dated 22.05.1987 was passed by the Deputy Collector entrusting the possession of the land in question to the Forest Department. It is pertinent to note, at this stage, that the area in question is a Government land, adjoining the land bearing survey no.48.

27. It is further contended therein that over a passage of time, a position came to be created after 1982, whereby there was no further possibility for the deposit of concentrated material over the land bearing survey no.48. As a result of it,

the discharged water travelled beyond the land bearing survey no.48 into inter-tidal zone, i.e. the Government land of Marine Sanctuary admeasuring 40 hectares and therefrom in further portion of the Government land admeasuring 60 hectares and thus, leading to encroachment of an area approximately 100 hectares by the year 2001, which still continues to increase.

28. On 25.03.1987, the Assistant Conservator of Forests, Marine National Park, brought to the notice of the petitioner company that there was encroachment and that irregular activities are being carried out by the company which may entail criminal proceedings. In its reply dated 09.04.1987, the company asserted that some experiments were being conducted in recent years for settling the effluent solids by building settling-ponds in their own land, i.e. survey no.48 and so as to see that cleansed effluent could be discharged into the Gulf of Kutch which would get dispersed in the sea water during high tides. It was stated therein that some solids, mostly inorganic and compatible in nature are getting deposited in the land of survey no.48, however the company admitted encroachment by saying that there was no intention on its part to encroach upon any forest land, but some settling had taken place.

29. It is stated in the affidavit that prior to the year 1982, the company was using only its own land bearing survey no.48 for off-loading of its effluent, which was not the position after 1982, as recorded in 1987. On 15.09.1987, last warning was given by the Assistant Conservator of Forests to stop the

disposal of industrial refuse and polluted chemicals into the Forest land in question adjoining survey no.48 of Arambhada village, failing which legal action would be taken.

30. It is also stated in the affidavit that various notices and opportunities were granted to the petitioner company after issuance of the notification dated 20.07.1982 and to the claim of the company that the system of discharge of waste water was continuing since prior to 1982 in approximately 200 hectares of land, a categorical statement has been made therein that it was always open for the company to obtain permission from the appropriate authority for laying down underground submarine pipeline. A copy of the map of the land in question at Page – '341' of the paper-book has been placed before us by the learned Advocate General to demonstrate that the entire land over which the discharge is being made by the petitioner is a Government land, adjacent to survey no.48, which is showing North – South in the map.

31. In the rejoinder affidavit, no dispute has been raised with regard to the discharge of waste water/ industrial effluent over the land beyond survey no.48, which is adjacent to the said plot. It is, however, sought to be submitted therein that the petitioner company, as existed prior to 1982, is claiming its right in and over the area through which the waste water channels are running. By the notification dated 26.11.1987, the area of inter-tidal zone through which the waste water channels of the petitioner are running became a part of the Marine Sanctuary, therefore, and the petitioner made applications dated 11.08.2003/ 15.09.2005 for

continuation of its rights in the Marine Sanctuary areas in respect of the waste water channels (for discharge of waste water) passing through the inter-tidal zone into the sea.

32. The contention of the petitioner therein is that the Collector, by order dated 10.04.2006 only relying on the comments of the Chief Wildlife Warden, without applying his mind, rejected the petitioner's claim in a mechanical manner. Time and again, the Collector has reiterated the view/ opinion of the Chief Wildlife Warden that the petitioner's company was found to violate the provisions of the Act, inasmuch as, it has been guilty of dumping waste in Survey no.48 and when the said plot was filled up, the waste water was released in the areas adjoining Survey no.48 which forms part of the Marine Sanctuary area. The contention is that infact if the petitioner is right in its submission that the area became a part of Marine Sanctuary only with effect from 26.11.1987, the stand of the State that there is violation committed as stated in the Collector's order dated 10.04.2006 becomes wholly misconceived. The Collector without any valid reasoning had rejected the claim of the petitioner company seeking declaration of its rights in respect of its waste water channels though it has already accepted the rights of the petitioner in the adjoining areas for the brine pipeline.

33. The contention in the rejoinder, thus, is that the orders dated 10.04.2006; 12.02.2007 and 14.03.2007 passed by the Collector rejecting the petitioner's applications claiming rights and continuation thereof under the provisions of the Wildlife (Protection) Act' 1972 are otherwise vitiated,

arbitrary, illegal and liable to be set aside. By the notification dated 20.07.1982 under Section-18(1) of the Wildlife (Protection) Act' 1972 the State Government declared only the 'forest areas' falling in Jamnagar Forest Division, Jamnagar District as specified therein as a Marine Sanctuary. The petitioner company claimed its rights in respect of its waste water channels of Marine Sanctuary. The contention is that the action of the respondent and other authorities initiated in the month of March' 1987 on the mistaken assumption that the inter-tidal zone through which the waste water channels are running was declared as 'Marine Sanctuary' area in 1982, and their action is wholly illegal and misconceived.

34. It is also stated therein that Tata Chemicals (TCL) has constructed a sump near sea side of survey no.48 for smooth discharge of waste water and obtained permission from GPCB from the year 1980 onwards through various channels running through the inter-tidal zone into the sea. It is wrong to say that the waste water was being settled in survey no.48. It is then contended that since in the year 1982, the area in question did not form part of 'Marine Sanctuary area', the petitioner company did not move any application claiming its rights in respect of the lands through which the brine pipeline and the waste water channels are running. The applications, however, were made in the year 2003 claiming its rights and over the lands and for continuation of the said rights falling in the Marine Sanctuary area.

35. From the above noted facts reflected from the statement made in the writ petition, affidavit-in-reply of the respondent

and the rejoinder affidavit atleast it is clear that the petitioner namely TATA Chemicals Limited (TCL) was discharging waste water/ industrial effluent in the adjoining land to survey no.48, which was declared as Marine Sanctuary/ Marine Park vide notification dated 26.11.1987. Repeated statements are made by the petitioner in the writ petition and in rejoinder affidavit that the petitioner company was discharging the waste water in the same way since the year 1982 and the area in question was declared as Forest only on 20.07.1982, whereaafter applications were moved to the Forest Authorities to permit to continue to use the said land.

36. The contention of the petitioner is that even after the notification dated 26.11.1987 for establishment of Marine Park/ Marine Sanctuary, the petitioner is entitled to continue to discharge its waste water over the said area, as it leads to inter-tidal zone into the sea.

37. From the own submission of the petitioner in the writ petition, it is evident that the petitioner is utilizing the Government land for discharge of its waste water trade effluent even after the year 1982 when it was declared as forest land ‘Marine Park’. The purpose of declaration of the area in question as Marine Park was to preserve ecological faunal and floral, geomorphological natural or zoological importance of the area which was to be developed as Coral area at identified places and Paga reef within its Coral Boria Reef and other places.

38. Another affidavit dated 21.11.2007 of the Deputy Secretary, Forest and Environment Department, Gandhinagar, has been filed as clarification to avements made in the affidavit-in-rejoinder of the petitioner. The assertion therein is that the petitioners are trying to confuse between two notifications dated 20.07.1982 and 26.11.1987 issued under the provisions of Wildlife (Protection) Act' 1972 by alleging interalia that the land in question contiguous to survey no.48 which is the Government land became 'Marine Sanctuary' only on the issuance of the notification dated 26.11.1987 and not prior thereto. It is contended that the area of the said land was covered vide the earlier notification dated 20.07.1982, whereby it was declared as the 'forest areas in the Gulf of Kutch', specified in the notification and located in Jamnagar Forest Division including the areas in question, which later came to be specified vide notification dated 26.11.1987.

39. It is, thus, submitted that in the notification dated 20.07.1982, all the areas and not only 'forest areas' of Jamnagar Forest Division was declared as Marine Sanctuary. When it was realized that in the said notification instead of the word 'areas in Gulf of Kutch', the word 'Forest' has crept in, the notification dated 26.11.1987 was issued clarifying that the area notifying be corrected as 'Marine Sanctuary'.

40. The submission, thus, is that the area in question has been declared as 'Marine Sanctuary' in the year 1982 itself and not in the year 1987 as sought to be agitated by the petitioner.

41. It is pertinent to note from the affidavit of the Forest Officer that reliance of the petitioners on the GPCB consent orders is totally misplaced, inasmuch as, the petitioners is not entitled to discharge their waste water into 'Marine National Sanctuary' area. It is submitted therein that by consent order, the GPCB has permitted discharge into the Gulf of Kutch and not in the Marine Sanctuary. It is further submitted that the land bearing survey no.48 at Arambhada which in the ownership of the petitioner is roughly up to distance of 2 kms and beyond that entire area is Gulf of Kutch where there is Marine Sanctuary. The petitioner has never been permitted to discharge the treated effluents into the Marine Sanctuary area by the GPCB under its consent orders. All the areas beyond the land of the petitioner have remained in the ownership of the State Government and the petitioner has no right of whatsoever nature in respect of the said area and therefore, there was no question for determination of right under Section-19 of the Wild Life (Protection) Act' 1972. The order dated 10.04.2006 clarified the same, lastly, stated in Paragraph-12 as under:-

> "12. I respectfully say that as on today, the petitioners have been flagrantly violating the provisions of sections 27 and 29 of the Act in respect of the areas in question. Petitioners' claim of there being no vegetation or habitat in the areas in question more particularly admeasuring about more than 100 hectares of land is merely because of the petitioners continuous discharge of waste effluent water right from their inception, which has over a passage of time caused immense damage to the existence of flora and fauna and geographical, natural or zoological significance."

42. Looking to the stand of the Deputy Secretary, Forest and Environment Department Gandhinagar and all other material on record, it is more than evident that the petitioner has illegally encroached over the Forest area/ Marine Park area notified by the notifications dated 20.07.1982 and 26.11.1987, on the premise that it was continuing to discharge waste water into the said area prior to the year 1982 and since it was declared as Marine Sanctuary later, the petitioner made an effort to seek declaration of its rights in the land in question, however, the Collector has turned down the request illegally.

43. A perusal of the stand of the Deputy Secretary, Forest Department in the affidavit dated 21.11.2007 indicates that the petitioner has flagrantly violated the provisions of sections 27 and 29 of the Act in respect of the areas in question and because of the continuous discharge of waste effluent water right from their inception over a passage of time immense damage has been caused to the existing flora and fauna and geographical, natural or zoological significance of the area.

44. In response to the said affidavit, a Sur-rejoinder has been filed by the TATA Chemicals Limited dated 17.12.2007 wherein reiterating the same stand as has been taken in the writ petition and rejoinder, in Paragraph-‘11’, it is stated that the respondents have grossly erred in not appreciating the petitioner’s contention with respect to the rights of use claim and continuation thereto under the provisions of the Wildlife (Protection) Act, 1972, in and over the areas through which the waste water channels are running. Enough evidence had been produced by the petitioner to show that the rights which

had been claimed in and over the areas through waste water channels are running for discharging into the sea may be beyond survey no.48, but between the low tide level and high tide level, where the sea boundary starts.

45. In reply to Paragraph-‘12’ of the aforesaid affidavit of the Deputy Secretary, Forest Department, it is submitted in the said paragraph itself, that the discharge of the waste water by the petitioner company right from inception, i.e. 1982 and the claim and right of the petitioner over the area through which the various channels are running for discharging waste water into the Gulf of Kutch, are required to be recognized.

46. It is urged that the contention of the respondent that over a passage of time immense damage has been caused, is wholly wrong and misleading. The site for discharge by the petitioner was chosen site for the reason that the area had never supported any vegetation.

47. It seems that under the interim order passed by this Court, the petitioner company is still discharging waste water in the land notified for Marine Park vide notifications dated 20.07.1982 and 26.11.1987. The contention of the petitioner in the entire writ petition is that it has a right to continue to discharge waste water as it was discharging it from the 1962, even after notification of the area declaring it as Forest Area and Marine Park since 1982/1987 and that the District Authorities and the Collector had wrongly rejected the rights claimed by the petitioner to continue with the discharge over the said area, seems to be misconceived at the outset.

48. The petitioner claims right, title or interest over a land which has been declared as Forest Area and Marine Area/Marine National Park in the year 1982/1987, inspite of all objections raised by the petitioner and claims of right made by it into the said land having been upturned by the competent authorities.

49. It seems to us that there is an interim order passed in the present petition to maintain the status quo as to the land in question, but the fact remains that usage of the Forest/ Marine Park land by virtue of the interim order passed by this Court will not absolve the petitioner of its liability to pay damages caused to the land in question and illegal utilization of Government/ Forest land for Marine Park for discharge of the waste water, only on the premise that prior to the year 1962, the waste water was being discharged in the same manner.

50. After much time, now the Project for close pipelilne for discharge of trade effluent has been conceived some where in the year 2015 and is nearly on completion in June' 2026, but still as on today the petitioner is discharging waste water trade effluent in the Government land without any order/permission or authority of law, by asserting its right to discharge waste water over the piece of land which has been declared 'Forest Land' and 'Marine Park' later in the year 1982/ 1987.

[II]. After the abovenoted part of the order (upto paragraph No.‘50’) was dictated in the open Court on 04.05.2026, a vehement request was made by the learned Senior Advocate appearing for the petitioner to adjourn the matter to enable him to formulate his arguments after seeking further instructions from the petitioner. We, therefore, kept the draft of the order unsigned and posted the matter on 06.05.2026.

51. The matter was heard at length on three dates, i.e. on 04.05.2026, 06.05.2026 and 07.05.2026, when the judgment was reserved. Continuing further to what has been noted in the dictated part of the oral order in the open Court, hereinbefore, we may record the submissions of the learned Senior Counsel for the petitioner to substantiate the case of the petitioner about its right to discharge industrial waste water through inter-tidal zone into the sea.

52. Placing page No. ‘238’ of the paper-book, it was submitted by the learned Senior Counsel for the petitioner that when the order impugned dated 10.04.2006 was passed by the Collector, Jamnagar rejecting the petitioner’s application for recognizing / accepting the existence of its right for discharge of the wastewater into the sea through the inter-tidal zone in an area of 200 hectares, which was in use prior to and after 1982, the petitioner filed further applications dated 08.05.2006 and 14.08.2006 seeking for correction / modification of the said order dated 10.04.2006 passed by the Collector, as it was the consistent case of the petitioner that the unit was discharging waste water into the

sea and its case was required to be considered of having this right from the year 1962.

53. It was vehemently argued by the learned Senior Advocate for the petitioner that the findings in paragraph No. '5' of the impugned order dated 10.04.2006 are contrary to the records and primarily based on the contents of the letter of the Chief Wildlife Warden, who had no role to play in the matter of settlement of the existing right, under the Act' 1972 which was solely within the domain of the Collector.

54. Placing Sections 19 to 24 of the Wildlife Protection Act, 1972 (for short, "the Act' 1972"), it was argued that Section 19 ensures protection of existing rights of any person in an area, which has been declared by the State Government's notification into a Sanctuary. When a notification has been issued under Section 18, the Collector is mandated to inquire into and determine the existence, nature and extent of rights of any person in or over the land comprised within the limits of the sanctuary. This inquiry was required to be completed in accordance with the provisions of Sections 19 to 24, and the stage at which the Chief Wildlife Warden could be consulted, was the only stage of passing of the order under Section 24 (2) in accordance with Clause(c) of Sub-section (2) of Section 24.

55. In the instant case, the Collector, on receipt of the application of the petitioner at the very inception, consulted the Chief Wildlife Warden and rejected the claim of the petitioner referring to his advice only. There is no

independent application of mind by the Collector to the entire material before him to demonstrate that the petitioner was discharging treated waste water as per the GPCB norms into the inter-tidal zone and consequently, to the sea since the year 1962.

56. Further reference has also been made to two previous applications dated 11.08.2003 and 15.09.2003 (at page Nos. '220' and '222' of the paper-book) to submit that the petitioner – TCL had submitted its claim under Sections 21(b) and 22(b) of the Act' 1972 for ascertaining and continuing its right for use of the land / area for running and maintaining the brine pipelines and wastewater disposal channels installed at different points of time. The petitioner only claims its right of usage, over the lands of surveys falling in the villages of Nambde, Samlasar, Hamosar and Padli within the limits of the Sanctuary.

57. The request was made to re-inquire into the claims of the petitioner to ascertain its right for usage of the said area by regularization of the existing brine pipelines passing through the Marine Sanctuary in the revised format under Section 2 of the Forest Conservation Act, 1980 and seeking clearance under Section 29 of the Act' 1972.

58. It was submitted that while the aforesaid applications of 2003 were pending before the competent authority, the petitioner approached the Apex Court in the matter of settlement of forest rights in ***Halar Utkarsh Samiti & Anr. versus State of Gujarat & Ors.,*** wherein orders dated

01.09.2003 / 05.09.2003 were passed to the effect that the pending applications of the petitioner dated 28.04.2003 and 11.08.2003, shall be decided by the authority concerned by reasoned order.

59. The Collector, however, intimated vide letter 18.10.2003 (page No. ‘288’ of the paper-book) that the procedure under Sections 19 to 25 of the Act’ 1972 have already been completed and hence, the petitioner was required to contact the Conservator of Forest, Marine National Park, Jamnagar for the land of Marine National Park area in Samlasar and Padli.

60. The petitioner, therefore, filed another application I.A. No.1 of 2003 before the Apex Court praying for setting aside the communication dated 18.10.2003 of the Collector, Jamnagar and directing for considering and deciding the applications of the petitioner dated 11.08.2003 and 15.09.2003. An order dated 08.12.2003 was passed directing as under:-

> “The petitioners' claim under Section 22-B of the Wild Life Protection Act, 1972 (for short, 'the Act') will be determined by the Collector as if the claim has been made within the time specified under new Section 21 of the Act, without prejudice to the contentions of the respondents that the application was grossly time barred and without deciding in favour of the petitioners that the limitation did not apply.
>
> In view of the letter circulated by the learned advocate for the State of Gujarat, the transferred cases are adjourned for six weeks to enable the State to file a reply to the interlocutory application.”

61. It is sought to be argued that even the Apex Court has directed the Collector to consider the petitioner's claim under Section 22(b) Act' 1972 in accordance with Section 21 of the Act' 1972, ignoring the contention of the respondent about the application being time barred.

62. Placing the order of the Collector dated 10.04.2006, it was vehemently argued by the learned Senior Counsel for the petitioner that the procedure prescribed under Sections 21 to 24 of the Act' 1972 for settlement of existing rights has not been followed by the Collector in rejecting the claim of the petitioner even after directions were issued by the Apex Court.

63. In so far as the applications dated 08.05.2006 and 14.08.2006 are concerned, they are rejected by the order 12.02.2007, passed by the Collector during the pendency of the present petition, which was challenged by way of amendment. Another order 14.03.2007 was passed by the Collector, Jamnagar rejecting the petitioner's application dated 24.10.2006 and 10.02.2007, which has also been made subject matter of challenge in the present petition by way of the amendment.

64. Before proceeding further, we may note the contents of the petitioner's application dated 14.08.2006, during the pendency of which the present petition has been filed in the month of November 2006 as under:-

> "1. TCL submitted applications dated 11-08-2003/15-09-2003 under section 21(b) and 22(b) of Wild Life (Protection) Act, 1972 for
>
> i) Continuation of its rights of use of areas declared as

Marine Sanctuary Area for discharge of waste water through channels in the inter tidal zone into the sea; and

ii) For continuation of its rights of use of areas through which the brine pipelines pass

2 That after the passing of the order dt. 8th December 2003 by the Hon'ble Supreme Court, documents were submitted and hearing was granted to TCL/its officers on 29-12-2003/12-1-004; whereafter the order was passed on 10-04-2006 inter alia holding that there is enough proof that the brine pipelines were laid before 1982. In the said order it is further held after having gone through records including the consent given by GPCB valid reasons are found for having system for waste water disposal in operation before 1982.

3. In the said order there are references/discussions to the facts after the issuance of the said notification dt 20.7.1982. At the outset it is submitted that it was incumbent upon the authority to restrict itself to the facts as on the date of the issuance of the Notification dated 20-7-1982 declaring the area as Marine Sanctuary Area while deciding the applications dt 11 Aug 2003/15 Sept 2003 submitted by TCL claiming its rights. Any reference to the facts thereafter and the consequent findings recorded with respect thereto is without jurisdiction and a nullity.

4. It is submitted that incorrect facts contrary to the records have been recorded in paragraph 5 of the order dated 10-4-2006 by the Collector primarily based on the contents of the letter of the Chief Wild Life Warden.

5. The Applicant/TCL without prejudice to the aforesaid contention, on 8-5-2006 made an application for correction / modification of the order dated 10-4-2006; and in view of the submission made therein, prayed for correction of the last 2 lines of the paragraph 3(d); the rights of TCL for release of waste water through the channels into the inter tidal zone into the sea declared as a Marine Sanctuary Area be confirmed and the contents of paragraph 5 of the order dt 10.4.2006 be corrected in light of the submissions made

therein. The applicant TCL further requested for an opportunity of hearing while considering and deciding the said application."

6. The present application is being submitted by TCL in supplement to/in addition to the application filed on 8-5-2006 to further substantiate the Applicant's/TCL's case with regard to existence of various channels in Marine Sanctuary Area prior to 1982 for discharge of waste water through the various channels passing through survey No. 48 into the inter tidal zone into the sea. The various channels because of reorganization through consolidation of production process and for further ambient dilution limited it two channels for discharge of waste water into the inter tidal zone into the sea.

7. It is stated that the Applicant TCL approached the Indian National Centre for Ocean Information Services (INCOIS), Department of Ocean Development, Govt. of India, Hyderabad for satellite imagery with regard to the existence of various channels prior to 1982 and called for a report based on the satellite imagery. The INCOIS, Hyderabad is the only prime institute for such satellite imageries in the country. The INCOIS for the study used the Landsat MSS data acquired in January 17, 1979 and after undertaking on screen digitization of features, in its report dated 12 Aug 2006 opined/concluded – that the presence of a linear feature connecting Mithapur TCL Works area to Padli Salt Works area clearly seen from the imagery. This could be the pipelines that were present in 1979. There were many channels running from Padli into the Gulf of Kutch, are also clearly seen. There were many channels (approx. covering an area of 200 ha.) running along the inter tidal zone into Gulf of Kutch out of which a few channels were being used for disposal of Effluent.

In the report under heading 'Results and Conclusions' it is stated
"The analysis of the Satellite Image reveals that the Effluent (Waste water) pipelines from Mithapur to Padli and the Waste water disposal channels into inter tidal zone upto sea

(low tide level) from Padli to Gulf of Kutch existing during 1979".

A copy of the report of the INCOIS dated 12th August 2006 is enclosed herewith.

8. The Applicant/TCL states that with a view to fortify the case of the Applicant of the existence of various channels for effluent discharge it was necessary to obtain the report of the INCOIS canvassed all along particularly in its application submitted on 8-5-2006. It is submitted that the report of the Institute supports the case of the Applicant/TCLs of the existence of various channels for effluent discharge passing through survey No.48 into the inter tidal zone into the sea. It is reiterated that because of reorganization of the production process and for further ambient dilution the Applicant limited the discharge of waste water to two channels passing through survey no. 48 into the inter tidal zone into the sea. The report supports the applicants case of the various channels passing through survey no.48 for release of waste water into the inter tidal zone into the sea.

9. The finding in the order dated 10.04.2006 that the chemical waste was being dumped in survey no.48 through pipeline before 1982 and when department initiated action under law in 1987 the company/TCL went and obtained status quo by filing case in Hon'ble High Court; when chemical waste was disposed into the Marine Sanctuary Area adjoining survey no.48 is incorrect and misleading. Further the findings/conclusions that the chemical waste discharged in survey no.48 and thereafter in Marine Sanctuary Area after having dug two channels in survey no.48 is again wrong and incorrect.

Further the finding in the order that because of the status quo order that the chemical waste which was dumped in survey no.48 and when survey no.48 got filled up chemical waste was dumped in 40 hectares adjoining survey no.48 and at present is spread around 100 hectares is also incorrect. In view of the report of INCOIS wherein it is categorically observed "that there were many channels (approx. covering

an area of 200 ha.) running along the inter tidal zone into the Gulf of Kutch out of which a few channels were being actively used for disposal of effluent.

10. In the circumstances, it is therefore submitted that findings/conclusion in paragraphs 5 of order 10-4-2006 are wholly untenable and unsustainable Hence the Application dated 8th May 2006 and the present supplementary application for correction/clarification.

11. That the present supplement application be taken on record as part and parcel of the application dated 8-5-2006 submitted by TCL for correction/modification of the order dt. 10.4.2006.

12. It is in the interest of the justice that TCL/its officers be granted an opportunity for a hearing while considering and deciding the application/s dated 8-5-2006 and the present supplementary application.

It is further requested that the opportunity of hearing be granted at the earliest."

65. Further, referring to a report dated 12.08.2006 of Indian National Center for Ocean Informatics Services (INCOIS), Department of Ocean Development, Government of India, Hyderabad (mentioned at page No. '350' in the paper-book), (reference of which has also been made in the application dated 14.08.2006), it was vehemently argued by the learned Senior Counsel for the petitioner that INCOIS concluded in its report categorically that the waste water disposal channel into inter-tidal zone up to sea (low tide level) from Padli to Gulf of Kachchh, existed during the year 1979. The extract of the said report placed before us at page No.251' of the paper-book 11 is to be noted hereinunder:-

“Methodology

Satellite image has been rectified and enhanced to highlight the features. The image was analysed and the interpretation done on the basis of Tonal Signature using the False Colour Composite generated from bands 1, 2 and 4. On screen digitization of features has been done. The presence of a linear feature connecting Mithapur TCL Works area to the Padli Salt Work area is clearly seen from the imagery (Figure). This could be the pipe lines that were present in 1979. Further, the channels running from Padli into the Gulf of Kutch are also clearly seen. It is observed that there were many channels (approximately covering an area of 200 ha) running along the inter-tidal zone into the Gulf of Kutch out of which a few channels were being actively used for disposal of Effluent.

Results and conclusions

The analysis of the Satellite Image reveals that the Effluent (waste water) Pipe lines from Mithapur to Padli and the Waste Water Disposal Channels into inter-tidal zone up to sea (Low tide level) from Padli to Gulf of Kutch. existed during 1979.”

66. Further placing the application 24.10.2006 at page No. ‘252’ of the paper-book submitted before the Collector, it was contended that the petitioner again approached INCOIS on 19.08.2006 and its report dated 19.10.2006 was duly placed before the Collector along with the said application. The report dated 19.10.2006 at page No. ‘256’ of the paper-book is further placed before us to assert that the findings of the institute, which is part of the Ministry of Earth Science, Government of India was same as in the previous report dated 12.08.2006 to the effect that there is clear evidence of the wastewater being discharged into the Gulf during 1989, and all these channels (both active and inactive) are part of the network of channels measuring about 200 hectares that

already existed in 1979. The relevant portion of the said report placed before us from page No. '257' of the paper-book is to be extracted hereinunder:-

> **"Methodology**
>
> Satellite image of 22 January 1989 has been rectified and enhanced to highlight the features. The image was analysed and the interpretation done on the basis of Tonal Signature. The on screen digitization technique has been done using the FCC (bands 1, 2, 4). The NIR band used for the land/water boundary and the band 1 and band 2 were used to observe the plumes associated with discharge.
>
> **Results**
>
> The analysis of satellite data reveals that there is clear evidence of the waste water being discharged to the Gulf during 1989 through one or two active channels that appear to be the same that are being used now. The association of plumes at the portal end of active channels indicate that the waste water was being discharged through these channels. Apart from these active channels, the presence of a few other inactive channels is also observed on either side of the active channels (dashed lines in figure). On comparison with the data of 1979, it is observed that all these channels (both active and inactive) are part of the network of channels measuring about 200 hectares that already existed in 1979."

67. Heavily relying upon the aforesaid reports, it was vehemently argued by the learned Senior Counsel for the petitioner that these reports are clear evidence of the existing rights of the petitioner since 1979 and that the network of channels admeasuring about 200 hectares, existing since 1989 was the same as in 1979.

68. At this stage only, we may record that the submissions made by the learned Senior Counsel for the petitioner based on the INCOIS report deserve to be outrightly rejected for two reasons namely:-

i. The report of INCOIS has been prepared by utilizing Satellite remote sensing tool which was being used for natural resources mapping to identify and monitor the features present on the earth surface;

ii. And, the said report cannot be used to stress upon the right of the petitioner to continue to discharge waste water at the disputed place, when no such rights exist at all.

iii. Moreover the said report obtained by the petitioner on its own, cannot be relied upon to record anything in favour of the petitioner based on the findings there in.

69. The Collector, while rejecting the applications dated 14.08.2006 and 24.10.2006 referring to the INCOIS report by the orders dated 12.02.2007 and 14.03.2007 category recorded that:-

<u>હુકમ:-</u>

૧. ઓખા મંડળ તાલુકાના આરંભડા, પાડલી, હમુસર, શામળાસર ગામોના દરીયાકાંઠાની જમીન કે જે ગલ્ફ ઓફ કચ્છ તરીકે ઓળખાય છે તે વિસ્તારમાં આવેલ જંગલને વન્ય પ્રાણી (સંરક્ષણ) અધિનિયમ-૧૯૭૨ ની કલમ-૧૮ હેઠળ "દરીયાઈ અભયારણ્ય" (મરીન સેન્ચ્યુરી) તરીકે જાહેર કરવા અંગેની જાહેરાત તા.૧૬/૯/૮૨ થી બહાર પાડવામાં આવેલ. સદરહું જાહેરાતની તારીખે મોજુદ હક્ક-દાવા અંગે આ કચેરીના વંચાણ-૧ ના હુકમથી તાતા કેમીકલ્સ લી. ની ત્રણ બ્રાઈન પાઈપ લાઈનો મોજુદ અને કાર્યરત હોવાનું માન્ય રાખવામાં આવેલ છે. જ્યારે વેસ્ટ વોટરના નિકાલની વ્યવસ્થા અંગે વંચાણ-૧ માં જણાવેલ હુકમના ફકરા-૫ ની વિગતે વન્ય પ્રાણી (સંરક્ષણ) અધિનિયમ-૧૯૭૨ ની કલમ-૨૪(૨)(સી) ની જોગવાઈ મુજબ મુખ્ય વન સંરક્ષકશ્રી અને ચીફ વાઈલ્ડ લાઈફ વોર્ડનશ્રી, ગુજરાત રાજ્ય, ગાંધીનગરએ અરજદાર કંપનીના હક્ક-દાવાને સમર્થન નહી આપતાં વેસ્ટ વોટરના નિકાલની ચેનલ અંગે અરજદાર

કંપનીએ સરકારશ્રીના વન અને પર્યાવરણ વિભાગમાંથી મંજુરી મેળવી લેવા નિર્ણય કરવામાં આવેલ છે.

૨. અરજદાર તાતા કેમીકલ્સ લી. મીઠાપુરએ અત્રેના વંચાણ-૧ માં જણાવેલ તા. ૧૦/૪/૦૬ ના હુકમ અન્વયે વંચાણ-૨ માં દર્શાવેલ અરજીઓથી રજૂઆત કરી વેસ્ટ વોટરના નિકાલની વ્યવસ્થા ૧૯૮૨ ની સ્થિતિએ કાર્યરત હોવા અંગેના પુરતા પુરાવા હોય તેમના હક્ક-દાવા માન્ય રાખવા અંગે પુનઃ વિચારણા અરજીઓ રજૂ કરેલ. અરજદાર કંપની તરફથી મળેલ રજૂઆત તથા તેની સાથેના આધાર-પુરાવાઓ વન્ય પ્રાણી (સંરક્ષણ) અધિનિયમ-૧૯૭૨ ની કલમ-૨૪(૨)(સી) ની જોગવાઈ મુજબ મુખ્ય વન સંરક્ષકશ્રી અને ચીફ વાઈલ્ડ લાઈફ વોર્ડનશ્રી, ગુજરાત રાજ્ય, ગાંધીનગરને પુનઃ વિચારણા કરી યોગ્ય નિર્ણય થવા માટે મોકલવામાં આવેલ.

૩. વંચાણ-૩ માં જણાવેલ મુખ્ય વન સંરક્ષકશ્રી અને ચીફ વાઈલ્ડ લાઈફ વોર્ડનશ્રી, ગુજરાત રાજ્ય, ગાંધીનગરના તા. ૬/૨/૦૭ ના અહેવાલથી જણાવવામાં આવ્યા અનુસાર કંપની દ્વારા રાસાયણીક કચરો એકત્ર કરવા માટે આરંભડા ગામના સર્વે નં.૪૮ ની જમીન મેળવવામાં આવેલ. સમયાંતરે રાસાયણીક કચરા દ્વારા સર્વે નં. ૪૮ નો વિસ્તાર ભરાઈ જતાં કંપની દ્વારા સર્વે નં.૪૮ ને લાગુ આવેલ મરીન સેન્ચ્યુરી વિસ્તારમાં કચરો ઠાલવવાનું શરૂ કરેલ. જે ધ્યાન ઉપર આવતાં મદદનીશ વન સંરક્ષક, જામનગર દ્વારા સને ૧૯૮૭ માં વન્ય પ્રાણી (સંરક્ષણ) અધિનિયમ-૧૯૭૨ હેઠળ ગુન્હો બુક કરવામાં આવેલ. તે સમયે આ પેશકદમીનો વિસ્તાર ૪૦ હેક્ટર જેટલો હતો. ત્યારબાદ તા.૧૭/૮/૦૧ ના દિવસે કરવામાં આવેલ પંચનામામાં કંપનીના અધિકારીઓ પણ હાજર હતા અને સહમત હતા તે પ્રમાણે કંપની દ્વારા આરંભડાના સર્વે નં.૪૮ ને લાગુ આવેલ મરીન સેન્ચ્યુરીનો ૪૦ હેક્ટર જેટલો અગાઉની પેશકદમીવાળો વિસ્તાર વધી ૧૦૦ હેક્ટર થયેલ હતો અને હજુ પણ મરીન સેન્ચ્યુરી વિસ્તારમાં ના. વડી અદાલતમાં ચાલતા કેસ નં. એસ.સી.એ. નં. ૫૪૬૫/૮૭ માં અપાયેલ મનાઈ હુકમનો દુરૂપયોગ કરી રાસાયણીક કચરો ઠાલવવાનું ચાલુ છે, આમ કંપનીએ સર્વે નં. ૪૮ સિવાય મરીન સેન્ચ્યુરી વિસ્તારમાં મોટા પાયે ઠાલવેલ રાસાયણીક કચરો જે સેન્ચ્યુરી વિસ્તારમાં એન્ક્રોચમેન્ટ (પેશકદમી) છે. વન્ય પ્રાણી (સંરક્ષણ) અધિનિયમ-૧૯૭૨ હેઠળ ગુન્હો બને છે. આ સંજોગોમાં કંપનીનો સેન્ચ્યુરી વિસ્તારમાં રાસાયણીક કચરો ઠાલવવાનો

અને પાઈપ લાઈન નાખવાનો કોઈ અધિકાર બનતો નથી. જેથી તેમની અરજી માન્ય રાખવા પાત્ર થતી ન હોવાનો અભિપ્રાય આપેલ.

૪. ઉપર જણાવેલ એકંદર વિગતોએ અરજદાર તાતા કેમીકલ્સ લી. તરફથી વેસ્ટ વોટરના નિકાલની વ્યવસ્થાના ભાગરૂપે કરાવેલ ચેનલ ૧૯૮૨ પહેલાં અમલમાં ન હોવાનું અને આ ચેનલ મરીન અભયારણ્ય વિસ્તારમાં અભયારણ્ય જાહેર થયા પછી કરવામાં આવેલ હોવાનું મુખ્ય વન સંરક્ષકશ્રી અને ચીફ વાઈલ્ડ લાઈફ વોર્ડનશ્રી, ગુજરાત રાજ્ય, ગાંધીનગર તરફથી સ્પષ્ટ કરવામાં આવેલ હોય તેઓશ્રીના અભિપ્રાયને લક્ષમાં લેતાં અરજદાર તાતા કેમીકલ્સ લી. ની વંચાણ-૨ માં દર્શાવેલ તા. ૮/૫/૨૦૦૬ અને તા. ૧૪/૮/૦૬ ની પુનઃ વિચારણા અરજીઓ અગ્રાહ્ય રાખવા વંચાણ-૪ થી હુકમ કરવામાં આવેલ છે. અરજદાર કંપનીએ સરકારશ્રીના વન અને પર્યાવરણ વિભાગમાંથી ધોરણસરની પરવાનગી મેળવી લેવા જણાવવામાં આવેલ છે.

૫. અરજદાર કંપનીએ પ્રસ્તુત બાબતે ના. ગુજરાત હાઈકોર્ટમાં સ્પે. સી. એ. નં. ૨૬૫૩૦/૦૬ ની કરેલી છે. સદરહું કામે તેમણે તાજેતરમાં સુધારા અરજી રજુ કરેલ છે. જેમાં તેમની વંચાણ-૫ માં જણાવેલી અરજીઓ પરત્વે નિર્ણય થાય તેવી માંગણી કરી છે. અરજદાર કંપનીએ તેમની અરજી સાથે ઈન્ડીયન નેશનલ સેન્ટર ફોર ઓશન ઈન્ફોર્મેશન સર્વિસીસ (આઈ.એન.સી.ઓ.આઈ.એસ.) ના અહેવાલની નકલ રજુ કરેલ છે. જેમાં સેટેલાઈટ ડેટા આધારે લેવાયેલ ૧૯૭૩, ૧૯૭૯, ૧૯૮૯ અને ૧૯૯૯ ના પીક્ચરો આધારીત અહેવાલની નકલ રજુ થયેલ છે. ૧૯૮૨ પછીના પીક્ચરો અંગે અત્રેથી કોઈ વિચારણા કરવાની રહેતી નથી. ૧૯૭૩ અને ૧૯૭૯ ના જે પીક્ચરો રજૂ થયા છે તે કોઈ એક ચોક્કસ સમય પુરતી સ્થિતિ દર્શાવેલ છે. આવા પીક્ચર આધારે જે તે સમયની ચોક્કસ સ્થળ-સ્થિતિનું વેરીફીકેશન હાલના તબક્કે થઈ શકે નહી. વધુમાં આવા પીક્ચર આધારે વેસ્ટ વોટરના નિકાલની વ્યવસ્થા સતત અને કાયદેસર રીતે ચાલુ હતી તેવું કોઈ સમર્થન દસ્તાવેજી પુરાવા આધારે મળતું નથી.

અરજદાર કંપનીએ નેશનલ ઈન્સ્ટીટ્યુટ ઓફ ઓશનોગ્રાફી (આઈ.એન.ઓ.) ના તા.૭/૬/૮૦ ના પત્ર સાથે સંસ્થાના નિષ્ણાતોના સ્થળ તપાસ અહેવાલની નકલ રજુ કરેલ છે. તા.૨૮/૫/૮૦ ના રોજ આઈ.એન.ઓ. ના નિષ્ણાતોએ લીધેલ મુલાકાતનો અહેવાલ કોઈની સહીથી અધિકૃત થયેલો નથી. તેમજ સંસ્થાના

તા.૭/૬/૮૦ ના પત્રની વિગતે અરજદાર કંપનીએ આગળની કોઈ ચર્ચા યોજેલ હોય કે પૂર્તતા કરેલ હોય તેવી કોઈ વિગતો સ્પષ્ટ થતી નથી. જે તે સમયે કોઈ વાંધા જનક પરિસ્થિતિ ઉદ્ભવેલ હોય તે કારણે આ સંસ્થાના નિષ્ણાતોએ સ્થળ તપાસ કરવાની ફરજ પડી હોય તેવી શક્યતા નકારી શકાય નહી. સંસ્થાના સ્થળ તપાસના અહેવાલ પછીની કાર્યવાહી અધુરી છે. આવા અહેવાલ આધારે અરજદારનો હક્ક-દાવો ગ્રાહ્ય રાખી શકાય નહી. સંપાદનથી ફાળવેલી જમીન તથા વેચાણથી ફાળવેલી સરકારી જમીન મરીન સેન્ચ્યુરી વિસ્તારમાં આવતી નથી. માન. મંત્રીશ્રીના પત્રને સરકારશ્રીની કોઈ મંજુરી ગણી શકાય નહી. સરકારી જમીનની ધોરણસરની મંજુરી વિના ૨૦૦ હેક્ટર જેટલો વિસ્તાર રાસાયણીક કચરાના ઉપયોગ માટે માન્ય ઠરાવી શકાય નહી. રાસાયણીક કચરાના નિકાલ માટે જે તે સમયે કોઈ યોગ્ય ધોરણો જળવાયા હોવાના સ્વીકાર્ય પુરાવાઓ રજુ થયા નથી. રાસાયણીક કચરો દરીયાઈ જીવ સૃષ્ટિને વિપરીત અસર પહોંચાડે તેવી શક્યતા નકારી શકાય નહી. ના. સુપ્રિમ કોર્ટની ગાઈડલાઈન મુજબ અરજદાર કંપની ધોરણસરની પ્રક્રિયા અનુસરીને સરકારશ્રીની મંજુરી મેળવે તે જ વ્યાજબી અને યોગ્ય છે. સબબ અરજદાર કંપનીની તા.૨૪/૧૦/૦૬ અને તા.૧૦/૨/૦૭ ની અરજીમાં થયેલ રજુઆત આથી અગ્રાહ્ય રાખવામાં આવે છે. અરજદાર કંપનીને સરકારશ્રીના વન અને પર્યાવરણ વિભાગની મંજુરી મેળવી લેવા જણાવવામાં આવે છે.

English Translation

-:: ORDER ::-

A notification was issued on 16/09/1982 to declare the forests situated in the coastal land areas of Arambhada, Padli, Hamusar, and Shamlasar villages of Okhamandal Taluka, known as the Gulf of Kutch, as a "Marine Sanctuary" under Section 18 of the Wildlife (Protection) Act, 1972. Regarding the rights and claims existing as of the date of the said notification, three brine pipelines of Tata Chemicals Ltd. were recognized as existing and operational vide the order mentioned at Reference-1 of this office. However, regarding the arrangement for waste water disposal, as per the details in Paragraph-5 of the order mentioned at Reference-1

hereinabove, the Principal Chief Conservator of Forests and Chief Wildlife Warden, Gujarat State, Gandhinagar, did not support the rights/claims of the applicant Company as per the provisions of Section 24(2)(c) of the Wildlife (Protection) Act, 1972. Consequently, a decision was made that the applicant Company must obtain approval for the waste water disposal channel from the Forest and Environment Department of the Government.

2. Pursuant to the order dated 10/04/2006 mentioned at Reference-1 hereinabove, the applicant Tata Chemicals Ltd., Mithapur, submitted representations through the applications mentioned at Reference-2 hereinabove, stating that there is sufficient evidence of the waste water disposal arrangement being operational as of the status in 1982. They submitted review applications to have their rights/claims recognized. The representations received from the applicant Company, along with supporting evidence, were sent to the Principal Chief Conservator of Forests and Chief Wildlife Warden, Gujarat State, Gandhinagar, for reconsideration and an appropriate decision as per the provisions of Section 24(2)(c) of the Wildlife (Protection) Act, 1972.

3. According to the report dated 06/02/2007 from the Principal Chief Conservator of Forests and Chief Wildlife Warden, Gujarat State, Gandhinagar, mentioned at Reference-3 hereinabove, land at Survey No. 48 of Arambhada village was acquired by the Company for the collection of chemical waste. Over time, as the area of Survey No. 48 became filled with chemical waste, the Company began dumping waste into the Marine Sanctuary area adjacent to Survey No. 48. Upon this coming to light, an offense was booked by the Assistant Conservator of Forests, Jamnagar, in the year 1987 under the Wildlife (Protection) Act, 1972. At that time, the encroached area was approximately 40 hectares. Subsequently, as per the Panchnama (spot memorandum) conducted on 17/08/2001, in which Company officials were also present and in agreement, the previous encroached area of the Company had increased to 100 hectares. Furthermore, the dumping of chemical waste

continues in approximately 40 hectares of the Marine Sanctuary area adjacent to Survey No. 48 of Arambhada, by misusing the stay order granted in Case No. SCA No. 5465/1987 pending before the Honourable High Court. Thus, the large-scale dumping of chemical waste by the Company in the Marine Sanctuary area beyond Survey No. 48 constitutes encroachment in the Sanctuary area and is an offense under the Wildlife (Protection) Act, 1972. Under these circumstances, the Company has no right to dump chemical waste or lay pipelines in the Sanctuary area. Therefore, an opinion was rendered that their application is not liable to be accepted.

4. Based on the overall details mentioned above, the Principal Chief Conservator of Forests and Chief Wildlife Warden, Gujarat State, Gandhinagar, has clarified that the channel created as part of the waste water disposal arrangement by the applicant Tata Chemicals Ltd. was not in existence prior to 1982 and that this channel was created after the declaration of the Marine Sanctuary area. Considering this opinion, an order was passed vide Reference-4 to treat the review applications dated 08/05/2006 and 14/08/2006 of the applicant Tata Chemicals Ltd. (mentioned at Reference-2) as inadmissible. The applicant Company was directed to obtain formal permission from the Forest and Environment Department of the Government.

5. Regarding the present matter, the applicant Company has filed Special Civil Application (SCA) No. 26530/2006 in the Honourable Gujarat High Court. In the said proceedings, they have recently submitted an amendment application requesting a decision regarding their applications mentioned at Reference-5 hereinabove. Along with their application, the applicant Company has submitted a copy of the report from the Indian National Centre for Ocean Information Services (INCOIS), which includes a report based on pictures from 1973, 1979, 1989, and 1999 taken via satellite data. No consideration is required regarding the pictures after 1982. The pictures submitted for 1973 and 1979 represent the status for a specific point in time only. Verification of the exact site conditions of that time based on such pictures cannot be done at this stage. Furthermore, based on such

pictures, no support is found through documentary evidence that the waste water disposal arrangement was continuous and legal.

The applicant Company has submitted a copy of the site inspection report by experts of the institution along with a letter dated 07/06/1980 from the National Institute of Oceanography (NIO). The report of the visit taken by NIO experts on 28/05/1980 is not authorized by anyone's signature. Also, as per the details of the institution's letter dated 07/06/1980, no details are clear regarding whether the applicant Company held any further discussions or completed any requirements. The possibility cannot be ruled out that the experts of this institution were compelled to conduct a site inspection because some objectionable situation had arisen at that time. The proceedings following the institution's site inspection report are incomplete. The applicant's right/claim cannot be accepted based on such a report. Land allotted through acquisition and government land allotted through sale do not fall within the Marine Sanctuary area. A letter from the Honourable Minister cannot be considered as any approval from the Government. An area of approximately 200 hectares cannot be validated for the use of chemical waste without formal approval of the government land. No acceptable evidence has been presented to show that proper standards were maintained for the disposal of chemical waste at that time. The possibility that chemical waste adversely affects marine life cannot be ruled out. As per the guidelines of the Honourable Supreme Court, it is only reasonable and proper that the applicant Company follows the formal process to obtain approval from the Government. Consequently, the representations made in the applicant Company's applications dated 24/10/2006 and 10/02/2007 are hereby rejected as inadmissible. The applicant Company is directed to obtain approval from the Forest and Environment Department of the Government.

70. At this stage, we may note the contents of the *Panch Rojkam* dated 17.08.2001 at page No. ‘338’ of the paper-book filed along with the affidavit in reply of the State – respondent No.1 admittedly prepared in the presence of the

representative of the petitioner, on the joint inspection of the site in question recording the status of the area in question, which categorically records as under:-

"આથી અમો ઉપર લખ્યા પંચોને રે.ફો.ઓ. શ્રી મ.ન.પા. દ્વારકા તથા તાતા કેમી. લી.ના અધિકારીઓએ આજ રોજ અમોને રૂબરૂ સમજણ આપ્યા મુજબ અમો રાજીખુશીથી ઉપરોક્ત સ્થળે હાજર થઈએ છીએ. રે.ફો.ઓ.શ્રી મ.ન.પા. દ્વારકાના હુકમ નં. ક/જમન/૨૪/સને ૨૦૦૧-૦૨ તા.૧૩-૮-૦૧ અન્વયે ઉપરોક્ત વિસ્તારની માપણી વન સંરક્ષકશ્રીની કચેરી, જામનગરના સર્વેયર દ્વારા માપણી થયેલ તે મુજબ સ્થાનિકે અમોએ જાતે માપણી વખતે હાજર રહી જોતાં બરાબર માલુમ પડેલ છે.

જેના નકશામાં બ્લ્યુ લાઈનથી દર્શાવેલ વિસ્તાર ૫૦૦ મી.X૮૦૦ મી. = ૪૦ હેક્ટર વિસ્તાર છે. તે હાઈકોર્ટ કેસ નં. ૫૪૬૫/૮૭ વાળો વિસ્તાર આવેલ છે, તે વિસ્તારમાં ઉંચા કલીનકર ઔધોગિક રસાયણીક કચરો ઘન સ્વરૂપે પડેલ છે. જે વિસ્તાર જુનો યથાવત સ્થિતિમાં હોય તેમ જણાય છે.

તે વિસ્તારની ઉત્તર, પૂર્વ અને દક્ષિણ બાજુએ તે મળી કુલ વિસ્તાર ૬૦ હેક્ટર થાય છે તે લાલ કલરથી નકશામાં દર્શાવેલ છે. તે વિસ્તારમાં સફેદ સ્લીટી (છારી) સ્વરૂપે જોવા મળે છે. તે સાથે અમો બધા સહમત છીએ.

અમારા પંચો રૂબરૂ તાતા કેમી. લી. મીઠાપુરના અધિકારીઓએ જણાવ્યા પ્રમાણે આ વિસ્તારમાંથી અમારી ચેનલ ૧૯૮૭ પહેલાની પસાર થતી હતી અને તે ચેનલ દ્વારા ઔધોગિક રસાયણીક કચરો (પ્રવાહી) સ્વરૂપે ચેનલમાં થઈને દરીયામાં ગુજરાત પોલ્યુશન કંટ્રોલ બોર્ડના નિયમો પ્રમાણે જાય છે. તે ચેનલના બંને કાંઠા ઉપર ઘન સ્વરૂપે કચરો પડેલ છે. તે ૧૯૮૭ પહેલાનો પડેલ છે. બાકીના વિસ્તારમાં સફેદ સ્લીટી (છારી) વાળા વિસ્તારમાં દરીયાના ભરતી અને ઓટના પાણી ચેનલ વાળા ભાગ સિવાયમાં આવે છે. તે સફેદ સ્લીટી (છારી) વાળો ભાગ કું.એ નાંખેલ નથી તેમ જણાવેલ છે.

આ રોજકામમાં સફેદ સ્લીટી (છારી) વાળો ભાગ જે દર્શાવેલ છે તે ખરેખર શું છે તે લેબોરેટરીમાં તપાસ થયા બાદ કાઠી શકાય. તેમજ કું.એ આ સાથે તેઓની લેબોરેટરીમાં કરેલ ટેસ્ટ રીપોર્ટ સામેલ છે.

ઉપરોક્ત ૪૦ હેક્ટર વાળા વિસ્તારમાં જે કલર દેખાય છે તેનાથી ૬૦ હેક્ટર વાળા વિસ્તારના ભાગનો કલર અલગ દેખાય છે. જેનો નકશો આ સાથે સામેલ છે.

ઉપરોક્ત રોજકામ અમો પંચો/અધિકારીઓએ કોઈની શેહ શરમ વિના અમારી શુધ્ધ બુધ્ધીથી વાંચી, સાંભળી, લખાવેલ છે, જે બરાબર હોવાની ખાત્રી બદલ આ નીચે અમારી સહીઓ કોઈપણ જાતની કેફી હાલત વિના + રાજી ખુશીથી કરી આપીએ છીએ.”

English Translation

Accordingly, we, the witnesses mentioned hereinabove, are present at the aforementioned site of our own free will, as per the understanding given to us in person today by the Range Forest Officer, M.N.P. (Marine National Park), Dwarka, and the officials of Tata Chemicals Limited. Pursuant to Order No. K/JMN/24 of 2001-02, dated 13/08/2001, of the Range Forest Officer, M.N.P., Dwarka, the measurement of the aforementioned area has been carried out by the surveyor from the Office of the Forest Conservator, Jamnagar; accordingly, the locals who were personally present during the measurement found it to be correct.

In the map thereof, the area marked with a blue line is 500 meters x 800 meters = 40 hectares. This area pertains to High Court Case No. 5465/1987. In this area, high levels of clinical industrial chemical waste are lying in solid form. This area appears to be in its old, original (as-is / status quo) condition.

Adjacent to the North, East, and South sides of that area, the total area amounts to 60 hectares. It is marked in red color on the map. In that area, it is observed in the form of white silt (crust/slurry). We all agree with this.

As stated by the officials of Tata Chemicals Limited, Mithapur in the presence of us witnesses, their channel was passing through this area prior to 1987. Through this channel, industrial chemical waste in liquid form flows into the sea in accordance with the rules of the Gujarat Pollution Control Board. Solid waste is lying on both banks of the said channel, which has been lying there since before 1987. In the

remaining area, i.e., the area with white silt (crust/slurry), sea water from high and low tides enters areas other than the channel part. They state that the white silt (crust/slurry) part has not been dumped by the Company.

What the white silt (crust/slurry) part mentioned in this Rojkam actually consists of can only be stated after laboratory testing; additionally, the test report conducted by the company in their laboratory is enclosed herewith.

The color seen in the aforementioned 40-hectare area appears different from the color of the part of the 50-hectare area. The map for the same is enclosed herewith.

We, the witnesses/officials, have dictated the aforementioned Rojkam after reading and hearing it with a sound mind and without any fear or favor. In witness of its correctness, we hereby affix our signatures below of our own free will and without being under the influence of any intoxicants."

71. The learned Senior Counsel for the petitioner further referred to the report of the National Institute of Oceanography (NIO) dated 07.06.1980 to submit that the said report also indicates that the petitioner was discharging wastewater into the inter-tidal zone. The content of the said report are also to be extracted hereinunder:-

"Report on visit to Tata Chemicals Limited. Mithapur (Qularat)

Visitors: Dr.B.N.Prabhu and Shri.S.N.Gajbhiye.
Purpose of visit: To discuss the proposed survey work to be carried out in the coastal region on Mithapur.

Date : 28th May 1980.

Persons called:
(1) Mr.M.K.Vadgama (Development Manager)
(2) Dr.V.N.Rao (Research Division)
(3) Dr.Sharma (Chief Chemist)
(4) Mr.Ganapathi (Research)

Tata Chemicals Ltd., at Mithapur is a huge industrial complex manufacturing Soda Ash. They produce about half of the total amount of soda ash produced in India. Soda ash, in this industrial complex is produced by Solvay's Process.

Huge amounts of sodium chloride required for the process are procured from their own salt pans and lime stone is obtained from Porbunder. The process plant generates about 11000 kilo-litres of wastewater per day, which at present is released into the Bay of Kutch, through pipelines (about 4 km from the factory). The pipeline terminates on the shore and the waste water from the plant is then allowed to flow into the sea through canals.

In addition to this soda ash effluent, cooling water from heat transfer plants and sludge from salt works are also released at this point. Due to shortage of fresh water supply, sea water is being used as cooling water.

Effluent Characteristics :
(1) Soda Ash Effluent: (Two pipelines)
Quantity of effluent discharged per day: 11,000 kilolitres.
PH : 11.0
Temperature : 60-70°C
Suspended solids: 1x105 mg/1.
(2) Cooling Water Effluent :
Sea water is used as cooling water and the hot water is released via another pipeline on shore and flows via canals into the sea.

(3) Sludge from salt works:
Sludge from salt works is also let into the sea (separate pipe) via the canals on shore.

The major portion of waste water is the soda ash effluent (11000 kilolitres) and contain very high amounts of suspended solids. The suspended solids consists of mainly impurities from lime stone used in the process. Due to very high suspended solids, the main problem faced in the disposal, is the clogging of the pipeline and the defacing of the beach. The

deposits inside the pipeline are at present being removed by physical means. Also the need for two pipelines has arisen due to this problem of clogging of the pipelines by the suspended load.

Mithapur has a population of about 20000 and the sewage from the residential sectors is being released into the Arabian Sea. Here again, the discharge point is on shore and the sewage is allowed to flow on the beach.

Tata Chemicals Limited had approached the Cement Research Institute to find out the suitability of the deposits of suspended solids formed on the shore, as a constituent in cement manufacture. The deposit was tested by CRI and was found unsuitable. Now TCL has approached the Central Road Research Institute to find out whether the deposits can be used for road building. TCL is also reluctant to treat the soda ash effluent in sedimentation tank, since here again they will be facing the sludge disposal problem. They have also carried out some work on acid treatment of these wastes. The efficiency of this treatment has been found to be very low, for reasons not known.

Visits were made to both the disposal sites and surrounding areas. The coastal region at both places are shallow. The depth of water upto about 500 m from the low water line in only 1 m and there is no proper mixing of waste water with the sea water since the discharge points are on the coast. A portion of the total suspended load also settled in the canal dug out for the flow of the discharge into the sea, which again is being removed by physical means.

Comments:

Release of high magnitude of suspended load in the coastal region is not advisable since it could permanently damage the spawning benthic animals. Pre-treatment to reduce the load and to decrease the temperature is therefore essential. Removal by preliminary screening and/or settling should be looked into. Detailed study of acid treatment of the waste to dissolve some of the load may also prove helpful.

Allowable suspended load can only be decided after

> determining the background levels in the area and after studying the productivity of the region.
>
> The treated waste water has to be suitably released at a point which can only be decided after detailed seasonal hydro-graphic survey of the region. Factors such as circulation pattern currents, dilution and dispersion characteristics, stratification should be evaluated. Base-line data on physico-chemical parameters should also be collected for the region for future comparisons."

72. Commenting on the *Rojkam* / site visit report dated 17.08.2001, it is vehemently submitted by the learned Senior Counsel for the petitioner that even the said report indicates that in 40 hectares (out of total 100 hectares) there were pre-existing deposits, which area was being used as per the status quo orders of this Court in Special Civil Application No.5465 of 1987. The remaining 60 hectares beyond that was reflecting the presence of white slurry because of the sea water coming to the area during the high tides.

73. Placing the map at page No. '341' of the paper-book, part of the affidavit in reply, it was submitted that in the dotted area therein, white colour slurry was reported and the dotted and diagonal area both are the areas, wherefrom channels of the petitioner were passing through, prior to the year 1982 when the area in question has been brought under the Forest Act by notification of it as a "Marine Sanctuary".

74. From a perusal of the said map prepared by the Range Forest Officer, as demonstrated by the learned Advocate General, the area covered by dotted and diagonal line is beyond survey No.48, which is the land belonging to the petitioner.

75. The ad-interim relief in terms of paragraph No. 7(c) granted in favour of the petitioner on 13.10.1987 was restraining the respondents from requiring the petitioner No.1 (TCL) to desist from discharging industrial effluents or waste water from its factory at Mithapur and from doing any act necessary or incidental thereto in the estimated 40 hectares of land referred to in the letter dated 23.03.1987 of the respondent No.3 and from instituting or proceedings with any prosecution against the petitioner No.1 (TCL) under the Indian Forest Act' 1927 and / or the Act' 1972, as threatened, pending hearing of the notice for admission returnable on 09.11.1987 of the writ petition, as is evident from annexure 'Z-1' at page No. '170' of the paper-book.

76. The said writ petition, however, was dismissed as withdrawn on the prayer made by the petitioner vide order dated 07.05.2009, which reads as under:-

> "Perused the order dated 29.4.09 passed by the learned single Judge in Civil Application No.3837 of 2009 in Special Civil Application No.26530 of 2006. In view of the said order dated 29.4.09 passed by the learned single Judge, learned counsel for the petitioners seeks withdrawal of this petition. Permission granted. Disposed of accordingly."

77. The submission by the learned Senior Counsel for the petitioner is that the withdrawal of the previous petition of 1987 was sought in view of the order dated 29.04.2009 passed by this Court in the present petition, whereby the amendment was sought in the main petition seeking for prayers to challenge the notifications of 1982 and 1987. The order dated

29.04.2009 placed before us is also relevant to be extracted hereinunder:-

> "1. The applicants - ori. petitioners have filed this application seeking amendment in the main petition by introducing grounds and prayers as submitted in para 17 and 18 of this petition. Mr.Kamal Trivedi, learend Advocate General appearing for the State of Gujarat, has submitted that these very averments and prayers are made petition in the Special Civil Application No.5465 of 1987 which is pending before the Division Bench. Mr.K.B.Nanavati, learned Senior Advocate appearing for the applicants ori. petitioners, submits that the petitioners will withdraw the said petition from the Division Bench on the basis of statement which is made by Mr.Trivedi before this Court that no further action will be taken by the State Government till 6.5.2009. Mr.Trivedi has fairly made a statement that no action will be taken till 6.5.2009.
>
> 2. In view of the above facts, amendment prayed for in the present application is granted. The applicants shall carry out the amendment on or before 5.5.2009.
>
> 3. Office is directed to place main petition i.e. Special Civil Application No.26530 of 2006 and Civil Application No.3838 of 2009 for further hearing on 6.5.2009 at 2:00p.m."

78. We may note that after withdrawal of the writ petition of 1987 vide order dated 07.05.2009, an interim order of status quo in the present petition has been passed on 11.05.2010 in the following manner:-

> "Heard learned advocates for the parties.
> RULE returnable on 23rd June, 2010. By way of an ad-interim relief, status-quo to be maintained as on today. Civil Application No.13080 of 2009 to be heard along with main petition. Direct service is permitted."

79. However, prior to 11.05.2010, the statement recorded of the learned Advocate General by the Court in the order dated

29.04.2009 that no further action will be taken by the State Government against the petitioner, had continued. The fact remains that the petitioner continued to discharge industrial effluent waste water based on the interim orders passed by this Court from time to time since the year 1987 up till date.

80. It is also the case of the petitioner that the claim of the petitioner for settlement of rights into the land in question has been recognized by the forest authority namely Forest Settlement Officer vide order dated 30.04.2013, considering the 2013-14 report of INCOIS. The said order brought on record with a Civil Application No.1291 of 2017 has been placed before us to vehemently submit that the said resolution of the Forest Settlement Officer in Case No.1 of 2013-14 clearly reflects an admission of the respondent about existence of wastewater disposal system since 1963, i.e. before the date of the notification of the declaration of the area into Marine Sanctuary.

81. However, when we have gone through the order of the Forest Settlement Officer dated 30.04.2013, it is noteworthy they that:-

A) The said order is based on two factors:-

(i.) the status quo order passed by this Court;

(ii.) the reports dated 12.08.2006 and 19.10.2006 of INCOIS, which are appended at page Nos. ‘250’ and ‘256’ of the paper-book, noted hereinabove.

B) The said order itself records that any declaration made therein would be subject to the result of the present petition. It is evident that no independent inquiry, whatsoever, has been made by the Forest Settlement Officer nor any opinion has been drawn on the said aspect.

82. With the above material from the record, it was further argued by the learned Senior Counsel for the petitioner that new standards for wastewater / effluent discharge were brought into effect only in the year 2011 and as per the said standard, the petitioner has already laid closed pipelines which will be functional in the month of May 2026 (only). And, throughout since 1962, the petitioner has been discharging the wastewater / effluents as per the consent and direction issued by the GPCB only.

83. Attention of the Court is invited to page No. ‘402’ of the paper-book, which is the Effluent Bioassay test details of the Fisheries Research Station, Junagadh Agricultural University, Port Okha to submit that the results found no harm to the fishes and marine life. It is vehemently argued that from the consent letter of GPCB at page No. ‘463’ of the paper-book (appended with the affidavit of the GPCB) dated 13.04.2004, issued in exercise of power conferred under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 read with Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and authorization under Rule 3(c) and 5(5) of the Hazardous Waste (Management and Handling) Rules, 1989, as amended up to the year 2003 framed under

the Environment Protection Act, 1986, the treated effluent confirming to the standards prescribed therein were permitted to be discharged into the Gulf of Kachchh. The said consent was reviewed with the same conditions vide letter dated 13.04.2006 (at page No. '467' of the paper-book).

84. Referring to paragraph No. '3' of the affidavit of GPCB at page No. '457' of the paper-book, it is vehemently argued that there is an admission of the GPCB that Consolidated Consent and Authorization (CC&A) from the Board granted on 13.04.2004 was extended from time to time.

85. Much emphasis has been laid by the learned Senior Counsel for the petitioner on the fact that the GPCB has granted consent for disposal of the industrial effluent / waste water into the Gulf of Kachchh and the discharge made by the petitioner are confirming to the requirement of the consent orders passed by the GPCB, from time to time.

86. Referring to page No. '172' of the paper-book, the letter dated 21.05.2001 addressed to the Conservator of Forest, Marine National Park, Forest Office, Jamnagar, it was submitted that the petitioner – TCL submitted a project report pertaining to laying off underground submarine pipeline to facilitate disposal of waste water to Gulf of Kachchh (sea) passing through Marine Sanctuary, with the categorical statement therein that the project proposal is in line with MNP guidelines and recommendation of the National Institute of Oceanography (NIO) and GPCB for safe disposal, with the prayer to process the same at the earliest for due approval.

87. The consent orders issued by the GPCB from time to time appended at page Nos. ‘173’ to ‘218’ have been placed before us to vehemently argue that GPCB has granted consent for discharge of effluent with the effluent discharge quantity and the standards / parameters, which had always been found to be within the permissible limits prescribed by GPCB and there has been no adverse action against the petitioner in that regard.

88. Placing the consent order No.2129 at page No. ‘190’ of the paper-book, it is sought to be demonstrated that GPCB had granted permission for discharge of effluent from the industrial plant located from the factory of the petitioner situated at Mithapur at Jamnagar stating providing that the treated waste water confirming to the tolerance limit mentioned therein shall be discharged into the sea. Another consent order No.6059 at page No. ‘194’ of the paper-book has been placed to submit that as per the directions issued therein, the petitioner was permitted to discharge treated effluent confirming to tolerance limit into the Gulf of Kachchh beyond the lowest high tide water level.

89. There is another Consent order No.19536 at page No. ‘183’ of the paper-book, wherein direction was that the effluent confirming to the standards therein shall be discharged into the Gulf of Kachchh beyond the low tide water level.

90. At this stage itself, we may note that the consent order No.29893 at page No. ‘176’ of the paper-book providing for

discharge of effluent into the Gulf of Kachchh beyond low tide water level, states that the industry shall have to carry out an environment impact assessment study of all the projects situated within the premises of the industry and that it shall obtain environment clearance from Ministry of Environment and Forest, New Delhi for their expansion and / or modernization in accordance with the notification No. 60(f) dated 27.01.1994.

91. Much emphasis has been laid by the learned Senior Counsel for the petitioner on a consent order No.6059 at page No. '194' of the paper-book to submit that the petitioner was permitted to discharge treated effluent beyond the lowest high tide water level, which is nothing but the inter-tidal zone, wherein the petitioner has been discharging effluent / treated water since the year 1962.

92. The submission, thus, is that with the grant of interim order by this Court restraining the respondent from interfering with the right of the petitioner to discharge treated industrial effluent in the estimated 40 hectares of land referred to in the letter dated 23.03.1987 of respondent No.3 therein, namely the Conservator of Forest, Marine National Park, Jamnagar, and the repeated consent granted by the GPCB from time to time for discharge of effluent into the Gulf of Kachchh through inter-tidal zone, the petitioner cannot be termed as an encroacher or in anyway can be said to have committed any wrong.

93. By placing two Google maps during the course of arguments, it was vehemently submitted by the learned Senior Counsel for the petitioner that the petitioner has been discharging the treated effluent as per the prescribed norms of the GPCB between the high tide and low tide, i.e. in the inter-tidal zone, shown between two red lines of the said maps since the year 1962 till the notifications dated 02.09.1982 and 26.11.1987 were issued notifying the said area as Marine Park or Marine Sanctuary. Even post 1982, two channels laid between red lines (in the maps) are being used for discharge of treated industrial effluent as per the directions of the GPCB, in the low tides.

94. It is contended that the factory was established in 1939 and the TCL took over the same in the year 1944. The standards for running a Soda Ash factory at the relevant point of time were different, and for the first time, in the year 2011, substantial changes have been brought in the standards for discharge of industrial effluent of such factories.

95. The petitioner has now closed all channels as a closed pipeline has been laid down which will be wholly functional in the month of May itself. The submission, thus, is that in no manner, the petitioner can be said to be guilty of violation of any norms prescribed by the GPCB and the discharge being with the consent orders of the GPCB as early as of the year 1998 (at page No. ‘21’ of the paper-book), no exception can be taken to the manner of discharge of treated industrial effluent in the inter-tidal zone, into the Gulf of Kachchh, by the petitioner.

96. As regards the application at page No. ‘172’ of the paper-book, it is submitted that the permission was refused by the Forest Conservator, Jamnagar only because of the pendency of the writ petition and that on the premise that the Marine Sanctuary had been notified.

97. The submission is that the petitioner has clearly demonstrated that it has always adhered to the norms of disposal of industrial effluent and disposal was at the location permitted by GPCB. The application seeking right of usage under Section 21(b) and Section 22(b) of the Act’ 1972, to use inter-tidal zone within the limits of Marine Sanctuary dated 11.08.2003 has not been dealt by the Collector in the correct perspective.

98. With the above, it was argued that the Collector’s order cannot be sustained in the eye of law and is required to be set aside. No liability can be saddled upon the petitioner on the premise that it has kept on discharging industrial effluents / waste water in the inter-tidal zone, part of the Marine Sanctuary, inasmuch as, such discharge was with the due permission of the GPCB. Even otherwise, the petitioner has now laid closed pipeline for discharging of industrial waste water / industrial effluent / waste water into the deep sea, which would be operational in the month of May’ 2026 itself. And hence, the petitioner proposes to withdraw the present petition or this Court may render the writ petition infructuous as the cause of action for filing the same no more survives.

99. In rebuttal, Mr.Kamal Trivedi, the learned Advocate General appearing for the respondent No.1 State would place the affidavit in reply dated 16.04.2007 of the Deputy Secretary, Forest and Environment Department, Sachivalaya, Gandhinagar. Preliminary objections have been raised therein with regard to the maintainability of the writ petition and while refuting the claim of the petitioner, it was categorically stated that the State Government, through its Agricultural and Forest Department had issued two notifications, both dated 20.07.1982 declaring the area indicated therein as Marine Sanctuary and Marine National Park, under the provisions of Section 18(1) of the Act' 1972. The land in question has been mentioned at serial No. '25' of the Schedule prescribing the limits of areas declared as "Marine Sanctuary", as a "Gulf of area near Okha", admeasuring 4648 hectares with its boundaries.

100. Originally, the petitioner Company was admittedly discharging its liquid trade effluent through its pipeline in the lands bearing survey No.48 of Aram Bharda Village, i.e. trade effluent was carried out from the factory of the petitioner company to pipeline till the boundary of the land of survey No.48, wherein the same was getting settled.

101. As regards the notification dated 20.07.1982, it is categorically stated therein that inspite of a public notice dated 16.09.1982 issued by the Collector, Jamnagar Neither the petitioner nor anyone else lodged any claim and / or objection in this behalf within the specified period of two months that the land in question is a Government land adjoining the land bearing survey No.48.

102. However, over a passage of time, sometime after 1982, when the land bearing Survey No.48 where the petitioner was discharging the industrial effluent through pipeline had filled and there was no further possibility for the deposit of concentrated material thereon, the waste water travelled beyond the land boundaries (bearing survey No.48), into the inter-tidal zone, which is the Government land of Marine Sanctuary admeasuring about 40 hectares. The released industrial effluent further crossed even 40 hectares and spread over in an additional portion of the Government land admeasuring about 60 hectares. Resultantly, the petitioner has encroached upon the total area of 100 hectares by the year 2001, of the Government land, which still continues to increase.

103. The categorical stand of the respondent No.1 State is that the petitioner indiscriminately released the industrial effluent into the inter-tidal zone covering an area much more than 100 hectares of the Government land, notified as Marine Sanctuary.

104. Placing the notice dated 25.03.1987 issued by the Assistant Conservator of Forest, Marine National Park, it is submitted by the learned Advocate General that the content of the said communication reveals that there was exchange between the petitioner company and the Forest Department regarding encroachment in the Marine Sanctuary, area adjoining survey No.48 of Aram Bharda Village.

105. A categorical statement has been made in paragraph No. ‘4.6’ of the affidavit of the State that prior to the year 1982,

the channels were only in the land bearing survey No.48 and not beyond that, and the petitioner company was using its own land bearing Survey No.48 for off-loading of its effluent. However, the said position has changed after the year 1982.

106. On 15.09.1987, the Assistant Conservator of Forest gave last warning to the petitioner company asking it to stop the disposal of industrial refuse and polluted chemicals into the forest land adjoining Survey No.48 of Aram Bharda Village, failing which legal action would be initiated against the petitioner company. Reply thereto dated 18.09.1987 is at page No. '139' of the paper-book, the content of which has been placed before us to submit that the company virtually admitted the fact that the industrial effluent discharged by it travelled beyond Survey No.48. The extract of the said communication, as narrated in paragraph No. '4.7' of the affidavit of the respondent No.1, is to be noted hereinunder:-

> ".....We believe, it must have been an oversight that you had asked us to stop the effluent discharge of our chemical complex passing through your survey number 48. When the discharge of effluent is stopped and it does not have any alternative arrangement, then our total chemical complex has to be shut down. This means, you are virtually asking us to stop the entire chemical complex, which manufactures important basic heavy chemicals like Soda Ash, Caustic Soda, Salt and other important chemicals of national importance, on which large number of industries all over the country depend for their operation, besides a large number of other medium and small consumers."

107. Placing two letters of the petitioner dated 09.04.1987 and 18.09.1987 at page Nos. '128' and '139' of the petition

memo; respectively, it is vehemently submitted by the learned Advocate General that the petitioner company had simply stated therein that there appears to be some confusion with regard to the survey number, in which the petitioner company had been discharging its effluent. It is noteworthy that there is no whisper in the said communications about any right of the petitioner company, claimed in the land in question. .

108. On 24.09.1987, a complaint being Offence No.1 / Dwarka came to be filed against the petitioner company, for illegally discharging the chemical waste in the land adjoining survey No.48, whereafter the petitioner company preferred Special Civil Application No.5465 of 1987 seeking for quashing of the notification dated 20.07.1982 and the interim relief, as noted hereinabove.

109. The submission is that there is an admission on the part of the petitioner company that it has started utilizing the land in question. Further, the encroachment of the company was gradual initially when it started utilizing two plots of inter-tidal zone / land admeasuring 40 hectares (shown in red colour in the map attached to the panchnama) and later, it has increased grown to 60 hectares, shown in lighter colour in the map attached to the panchnama, both wholly illegal and unauthorized.

110. Further, in the year 2003, the amendment came to be introduced in the Wildlife (Protection) Act' 1972, whereby the time frame of 60 days after proclamation of the notification under Section 18, has been relaxed to enable the Collector to

inquire as to the existence of any right mentioned in Section 19 and not claimed under clause (b) of Section 21 of the Act' 1972. The said amendment came into effect during the pendency of the Special Leave Petition before the Apex Court and pursuant thereto, on 08.12.2003, the Apex Court had issued directions that the claim of the petitioner under Section 22(b) of the Act' 1972 shall be determined by the Collector.

111. During the process of disposal of its application, the petitioner company was given opportunity of hearing in respect of its application dated 11.08.2003 claiming continuation of its right of use in and over the area through which;

i. The Brine pipelines are passing;
ii. The effluent channels are passing for discharge of waste water into inter-tidal zone.

112. The Collector, by order dated 10.04.2006, had accepted and affirmed the right of the petitioner company qua the brine pipeline, but the claim as regards discharge of waste water into the land of Marine Sanctuary has been rejected, by adopting due process of law. Referring to the said order, it is submitted that a preliminary report was prepared by the Collector and the same was sent by the Chief Wildlife Warden with the forwarding letter dated 21.10.2004 as required under the provisions of clause (c) of sub-section (2) of Section 24 of the Act' 1972. The Chief Wildlife Warden conveyed his views vide letter dated 06.08.2005, which was duly considered while

passing the order dated 10.04.2006. Subsequent applications filed by the petitioner were also decided with the same reasoning vide two orders dated 12.02.2007 and 14.03.2007.

113. In any case, the petitioner company did not lodge its claim over the land in question under the provision of Section 21 of the Act' 1972. And moreover, in the writ petition of 1987, the petitioner has not claimed existence of any right over the land in question rather, the statement in paragraph No. '3.5 D' of the said writ petition was:-

> "**3.5 D** The petitioners submit that the estimated 40 Hectares of land adjoining Arambhada survey no. 48 referred to in the letters dated 23.3.1987, 13.4.1987, 1.5.1987 and 15.9.1987 is not part of any Marine Sanctuary declared by the State Government under Section 18 of the Act or any National Park in respect of which the State Government has declared its intention under sub-section (1) of section 35 or which has been constituted under sub-section (4) of section 35 of the Act. Neither section 27 nor 32 of the Act has any application to such land. The petitioner has been discharging industrial effluent and waste with the consent of the State Government and in fact as suggested by the former Home Minister of the State Gujarat on and through the said coastal land into the sea. The petitioner has not thereby committed any offence under the Indian Forest Act, 1927 or under the Act.
>
> The industrial effluent discharged by the petitioner in the land in question is not likely to cause injury to or endanger any wild life in the said Marine Sanctuary. The instruction of the Assistant Conservator requiring the petitioner to stop with immediate effect and within three days of the receipt of his letter dated 15.9.1987 discharging of industrial effluent and chemicals of the petitioner's factory in the land in question is contrary to law and liable to be quashed and set aside."

114. In the affidavit of the State, there is a categorical denial to the claim of the petitioner that the system of discharge of waste water into the sea through the various channels constructed over the period of time in the inter-tidal zone is in existence prior to 1982 in an area approximately 200 hectares of land. It is contended that it was always open for the petitioner to obtain necessary permission from the appropriate authority for laying down underground submarine pipeline for discharge of waste water into the sea through the inter-tidal zone, which is now being done as per the contention of the petitioner. The stand of the petitioner in its reply was that it was discharging waste water on the instruction of an Hon'ble Minister, who cannot be termed as competent authority for grant of any such permission under the Act.

115. Reference has been made to the order dated 02.07.2004 of the Apex Court in Writ Petition No.202 of 1995 constituting Central Empowerment Committee, directing that no non-forest activity in any National park or Sanctuary even according to the management plan, is possible without the prior permission of the Apex Court.

116. Referring to the provisions of the Wildlife (Protection) Act' 1972, it was further argued by the learned Advocate General that the said Act envisages recognition of the existing right of any person in or over the land comprised within the limits of the Sanctuary, which can be termed as legal right in any manner. Admittedly, the land adjoining survey No.48 admeasuring 100 hectares does not belong to the petitioner

and the same is a Government land, which has been declared as a Marine Sanctuary vide notification dated 20.07.1982. Any activity in or over the land in question without the requisite permission of the appropriate authority would amount to encroachment and the same does not create any right in favour of the petitioner to take benefit of the provisions of the Act' 1972 on the premise that the petitioner has been using the said land prior to the year 1982.

117. Inviting attention of the Court to the content of rojkam dated 17.08.2001, it was vehemently submitted by the learned Advocate General that the site inspection report clearly established discharge of high levels of clinical, industrial and chemical waste in the area of 100 hectares of sanctuary land, which though was admitted (by the petitioner) over 40 hectares, but was sought to be denied over additional area of 60 hectares marked in red colour on the map, as observed in the form of white silt (crust / slurry), therein.

118. It was submitted that on account of continuous discharge of the industrial effluent into the area, which was part of the Marine Sanctuary notified under the 1982 notification, the entire area has become barren where no marine life can be seen.

119. Mr.G.H. Virk, the learned Advocate appearing for the Gujarat Pollution Control Board (GPCB), adopting to the arguments made by the learned Advocate General, has taken us through the prayers made in the 1987 petition to submit that the interim relief sought therein was pertaining to 40 hectares only of the land in question.

120. Referring to page No. ‘496’ of the paper-book, the letter written by the petitioner company to the Environment Engineer, GPCB, it is submitted that the content of the said reply itself indicates that the petitioner company claimed only that it has been discharging its waste water (trade effluent) since 1963 through channels in the inter-tidal zone, prior to its declaration as Marine Sanctuary on 20.07.1982, under the directions issued by the State Minister and further, under the interim order passed by this Court in the year 1987 in Special Civil Application No.5465 of 1987. The said letter was addressed to GPCB, when the renewal application of the company was rejected vide office letter dated 17.10.2007 on the ground that the industrial unit was not discharging its industrial effluent at a point and the manner recommended by National Institute of Oceanography (NIO) in its study report of August’ 2000 and that it has not obtained Coastal Regulation Zone (CRZ) Clearance. The extract of the said letter containing the statement of the petitioner company with regard to the discharge at page No. ‘497’ of the paper-book is being reproduced hereinunder:-

> “1. TCL has been operating the chemical complex since 1943 much before the enactment of Water act (1974), Water Cess act (1977) Air act (1981), EP act (1986), Hazardous Waste Management and Handling Rules (1989) and CRZ regulations (1991), Forest Conservation act (1980) and Wild Life Protection act (1972)
>
> 2. The company has been discharging its waste water (trade effluent) since 1963 through channels in the Intertidal zone (prior to the area being declared as Marine Sanctuary on 20-07-1982) as directed by the then Hon. Home Minister Gujarat State Govt. Shri

Rasikbhal Parikh. TCL acquired land from private owners and the Govt. to lay the pipelines and created other facilities to carry out this directive with government help.

3. After the enactment of Water Act in 1974 and the formation of the Gujarat Water Pollution Control Board, the company applied for and obtained Consent under the Water act in 1980. The non hazardous nature of the effluent was studied and confirmed by the GPCB and District Public Health Laboratory during a number of site visits and discussions.

4. At the instance of GPCB, NIO studied and confirmed the suitability of the discharge point into the sea in 1982 and follow through studies were carried out by NIO subsequently in 1987 and 1997.

5. After the declaration of the areas in the release location (among others in the Gulf of Kutch) as a Marine Sanctuary in 1982, the Forest Dept visited the site in 1987 and directed TCL to stop discharging the effluent in the Sanctuary. In a writ petition by TCL, an Interim injunction against this has been granted the Hon, Gujarat High Court in Nov 1987 and TCL continues to discharge the effluent in accordance with the injunction as per the norms prescribed by and consent order issued by GPCB. (SCA 5465/87 Annexure 3)

6. TCL continued to obtain consents / authorizations as applicable under the Water act (1980, 1982, 1988, 1999, 2000, 2001 and 2002 valid till 2007) Air act (1985, 1987, 1994, 1995, 1999, 2001, 2002 and 2003 valid till 2007) and Hazardous Waste Management and Handling Rules (1990-1995, 1998 to 2002 valid till 2007) TCL applied for the renewal of this CCA in time in May 2007 for its renewal."

121. Placing the consent orders of the GPCB, as part of the memo of the petition, noted hereinbefore, it was submitted by Mr.Virk that the concept of norms of discharge of industrial effluent / treated waste water has seen substantial change since after 1970. The submission is that in the matter of environment pollution realization of the aberrations came over a period of time. The Consolidated Consent and Authorization (CC&A) was obtained by the petitioner industrial unit from GPCB on 13.04.2004 under the Water (Prevention and Control of Pollution) Act' 1974, Air (Prevention and Control of Pollution) Act' 1981 and the Hazardous Waste (Management and Handling) Rules' 1989.

122. The said letter at page No. '463' (referred hereinbefore) provided that the treated effluent shall be discharged into Gulf of Kachchh. The CC&A was subsequently amended to specify the location of discharge specifying that the "discharge shall be into the Gulf of Kachchh, beyond lowest high tides water level" and later "into the Gulf of Kachchh beyond low tide water level", which could be only into the deep sea. The submission is that the contention of the learned Senior Counsel that the petitioner was permitted to discharge trade effluent into the inter-tidal zone by the GPCB, is a result of misinterpretation of the aforesaid terms of the consent orders. The question is not about the quality of discharge, rather it is the location of discharge, which is relevant in this matter. The renewal application of the petitioner industrial unit, as such, was rejected vide office order dated 17.10.2007. However, the petitioner industry could be able to discharge

the trade effluent into the inter-tidal zone due to the interim order of this Court.

123. Prior to the petitioner approaching this Court in the year 1987, Forest Department officials visited the site and directed the industrial unit to stop discharging effluent through its channels that pass to the sanctuary. However, the petitioner continued to discharge its waste water through open channels into the inter-tidal zone. It is categorically submitted that the industrial unit was granted renewal of CC&A Nos. 2023 and 7544 vide order dated 30.04.2008 for one year with the categorical direction to submit latest report about the legal case and to get final order / permission from the High Court for discharging its effluent at the existing location.

124. The National Institute of Oceanography (NIO) has also carried out waste water disposal studies in Mithapur in the year 1982, April' 1987 and August' 2000. The report of August' 2000 has made several observations regarding the effluent disposal and made several recommendations to the industrial unit.

125. In the affidavit of GPCB dated 18.11.2008, it is categorically stated that the petitioner unit presently is discharging its industrial effluent at a point and manner not recommended by NIO in their study report of August' 2000, as industry was yet to obtain permission from the Department of Forest, Government of Gujarat as per the letter dated 23.10.2007 and that it has not obtained any CRZ clearance so far.

126. The categorical statement in the affidavit with regard to the state of affairs as per the inspection report dated 18.07.2008 of the regional office of GPCB, is that:- "**the industry is discharging additional quantity of R.O. reject water to the tune of Rs.15,541/- M^3 / day (cubicmeter per day) into the sea along with the return cooling water. Thus, the total volume of waste water being discharged in the Gulf of Kachchh at present is higher than the volume of water that was being discharged in 1963.**"

127. It is, then, stated therein that the GPCB will act as per the report of NIO about the impact on marine life, to finalize CTE, NOC and CC&A applications for disposal of the treated effluent at existing location till industrial unit gets permission for laying a pipeline and getting CRZ clearance from the appropriate authority.

128. Considering the above material on record and the stand of the respondents, we may note from the additional affidavit dated 26.03.2026 of the petitioner company filed in furtherance of the order dated 11.03.2026 in the present petition that the petitioner company came up with a proposal to establish a trestle waste pipeline that provided a discharge point of around 3.76 km into the deep sea on the NIO suggested location pending this writ petition and permissions / clearances / NOCs have been procured by the petitioner from various authorities for establishing the closed pipeline and the diffuser based system of discharge. The details of the said affidavit noted in the oral order dated

04.05.2026 indicates that the last NOC / permission / sanction was of forest clearance by the Forest and Environment Department, Government of Gujarat for execution of the Stage – II approval granted by the MOEF&CC dated 13.10.2022. The petitioner was granted consent to establish pipeline by the GPCB on 01.10.2015.

129. There is no sufficient reason why the petitioner company took 15 years to complete the project for compliance of the notification dated 11.06.2011 of the Ministry of Environment and Forest, Government of India, whereby the standards of discharge of waste water for the soda ash factory were revised, prescribing to discharge of treated water water into the deep sea, through closed pipeline and diffuser system.

130. On a query made by the Court, the learned Senior Counsel for the petitioner would submit that the petitioner cannot be blamed for the delay, inasmuch as, all clearances took time at the ends of the respondents – authorities and that the petitioner is now at the stage of completion and operationalization of the system by the end of May' 2026 after satisfactory commissioning trials of the equipment. However, there is an admission that over the period of 43 years (i.e. from 1982 till date), the petitioner has been discharging treated waste water / industrial effluent through open channels, into an area which has been declared as Marine Sanctuary vide Government notifications dated 02.09.1982 and 26.11.1987.

ANALYSIS:-

131. From the abovenoted facts and circumstances of the present case, we find out that:-

I. The present petition in the year 2006 has been filed during the pendency of Special Civil Application No.5465 of 1987, with the relief to challenge the order of the Collector dated 10.04.2006, seeking for recommendation / acceptance of the existence of company's rights to continue to discharge waste water into the sea through the inter-tidal zone in an area of 200 hectares, which according to the petitioner, was in use prior to and after 1982, and has became part of Marine Sanctuary area after July' 1982.

II. In the writ petition of 1987, however, the petitioner sought mandamus restraining the respondents stopping the petitioner from discharging the industrial effluent or waste water from its factory at Mithapur in the estimated area of 40 hectares of land (referred to in the letter dated 23.03.1987 of the Assistant Conservator of Forest, Marine National Park, Junagadh).

III. The challenge in the petition of 1987 was also to the Government notifications dated 02.09.1982 and 26.11.1987 for including the area admeasuring 4684 sq.mtrs as Marine Sanctuary.

IV. The interim order granted in favour of the petitioner on 13.10.1987, thus, was pertaining to the relief No. '7(c)' as extracted hereinbefore, which would cover only the estimated 40 hectares of the land in question.

V. However, after the withdrawal of the said writ petition (of 1987) vide order dated 07.05.2009, on the premise of a statement made by the learned Advocate General that no coercive action shall be taken against the petitioner, the petitioner got an ad-interim relief vide order dated 11.05.2010 to maintain status quo as on date, which is continuing as on date. The status quo order granted on 11.05.2010 in the present petition, which according to the learned Senior Counsel for the petitioner is in continuation of the interim order dated 13.11.1987 (as per relief '7(c) of Special Civil Application No.5465 of 1987), as per our understanding, cannot travel beyond the area of 40 hectares, which was subject matter of Special Civil Application No.5465 of 1987.

VI. From a comparison of the reliefs prayed in the writ petition of 1987 and the present petition filed in 2006, it is evident that the petitioner was initially discharging trade effluent into an area of 40 hectares of the Marine Sanctuary declared in 1982 and later covered more area than even 100 hectares, as recorded in the order dated 10.04.2006 of the Collector and further claimed rights in an area of 200 hectares (prayed herein) on the premise, that it was in the use of the petitioner industrial unit prior to and after 1982.

VII. From a bare reading of the reliefs prayed for in the two writ petitions of 1987 and 2006, it is evident that the petitioner has simply abused the process of law by making

a misstatement before this Court about the area over which it has been discharging industrial waste water since after the year 1982, on the premise of having existing right over the area included in the Marine Sanctuary under the provisions of the Act' 1972.

VIII. It is pertinent to note that though by way of amendment brought in terms of the order dated 29.04.2009, the petitioner has added the reliefs to challenge the notifications dated 20.07.1982 and 26.11.1987, declaring the area in question as Marine Sanctuary. But, no arguments at all have been made by the learned Senior Counsel for the petitioner on the validity of the said notifications.

IX. Suffice it to say that the notification dated 20.07.1982 under the Act' 1972 was issued considering the area in question, along with the other areas, the limits of which are defined in the Schedule annexed thereto, being of adequate ecological, faunal, floral, Geo-morphologic, natural and zoological significance for the purpose of protecting, propagating and developing wildlife and its environments. Under Section 18(1) of the Act' 1972, the Government of Gujarat has declared the said areas in the Gulf of Kachchh falling in Jamnagar Forest Division, Jamnagar Distict, Jamnagar, specified in the Schedule annexed thereto as a Marine Sanctuary in addition to the areas already declared as a Marine Sanctuary vide previous notification dated 12.08.1980. Vide notification dated 26.11.1987, certain corrections have been made in the

notification dated 20.07.1982. However, the fact remains that the area in question admeasuring 4648 sq.mtrs of Gulf of Kachchh near Okha with the boundaries mentioned therein, has been declared as Marine Sanctuary, which is the area subject matter of consideration before us.

X. As there is no argument to challenge the validity of the notification dated 20.07.1982 and the correction notification dated 26.11.1987 issued by the Government of Gujarat, suffice it to say that once the area in question has been declared as Marine Sanctuary, the petitioner has left with no right to discharge industrial effluent into the Marine Sanctuary area on the premise that it had been discharging its effluent prior to the year 1982 or the area in question was in its use prior to the year 1982, without the proper permission of the competent authority.

XI. The only option before the petitioner was to seek permission of the competent authority to lay its pipeline to discharge industrial effluent deep into the sea of the Gulf of Kachchh as per the consent granted by the GPCB, beyond low tide level / high tide level. In any case, the petitioner was not permitted to discharge industrial trade effluent / waste water in the area of Marine Sanctuary covered by the notification dated 20.07.1982 on the premise that it was permitted to discharge trade effluent into the inter-tidal zone by the GPCB.

XII. In the consent orders of the GPCB, the relevant is the location of discharge, which as per our understanding,

cannot be the inter-tidal zone or the area notified as the Marine Sanctuary. Even otherwise, GPCB has no authority to permit the petitioner to discharge industrial waste water into the area declared as the Marine Sanctuary, once it was so notified by the State Government.

XIII. No forest clearance or CRZ clearance was obtained or granted to the petitioner and the petitioner kept on discharging the industrial effluent into the area in question, of Marine Sanctuary by asserting its alleged rights, which have been rejected by the Collector vide order dated 10.04.2006 and the subsequent orders passed on 12.02.2007 and 14.03.2007. under the Act' 1972.

XIV. There is no substance or merits in the arguments of the learned Senior Counsel for the petitioner that the Collector was not authorized to take opinion of the Chief Wildlife Warden before adverting to the application moved by the petitioner on 11.08.2003 under the order of the Apex Court dated 08.11.2003. All the arguments made by the learned Senior Counsel for the petitioner on merits of the order dated 10.04.2006 of rejection of the applications dated 11.08.2003 and 15.09.2003, asserting violation of the procedure prescribed under Sections 19 to 24 of the Act' 1972 are devoid of force.

XV. There is a categorical observation in the order of the Collector that the petitioner had encroached upon the Marine Sanctuary area, which is beyond its land in survey No.48 progressively, and it has no right to discharge

treated effluent or waste water into the area declared as Marine Sanctuary, which cannot be said to suffer from any error or law for the above noted facts, and the manner in which the petitioner has filed two writ petitions of 1987 and 2006 and obtained interim orders from this Court by making misstatement on oath.

XVI. From the Rojkam of the year 2001, it is evident that the area beyond 40 hectares, subject matter of the stay order passed in the writ petition of 1987, was encroached upon by the petitioner by discharging its industrial waste / trade effluent, found in the inspection carried out in the presence of the representatives of the petitioner.

XVII. In the first writ petition of 1987, the petitioner claimed right only over an area of 40 hectares being in use since before and after 1982, whereas in the present petition filed in 2006, the area over which right has been claimed since 1982 has been increased to 200 hectares. It does not stand to reason as to why the petitioner would claim right over a lesser of only 40 hectares in the petition of 1987, when it was having right over a larger area of 200 hectares, prior to and since after 1982.

XVIII. The material on record proves that the petitioner has encroached upon a large area of 100 hectares and more than that, over the period of years after 1982 and 1987, after getting the interim order of this Court. Even otherwise, apart from the bald assertions of the petitioner having its existing right over the Marine Sanctuary area,

nothing substantial could be placed before us, which would establish that the petitioner was having any legal right to discharge industrial effluent or waste water into the Marine Sanctuary area after it was declared as such, in the year 1982.

XIX. The contention of the learned Senior Counsel for the petitioner based on Google Maps and the consent orders of GPCB that the Marine Sanctuary area is, in fact, an inter-tidal zone, wherein the petitioner was permitted to discharge industrial waste and, as such, it had existing right to do so, are devoid of force, inasmuch as, the petitioner company was required to seek clearance from the Forest and Environment Department, to discharge any trade effluent into such an area. The consent orders of GPCB are clear to the extent that the petitioner was required to discharge industrial trade effluent into the deep sea (Gulf of Kachchh) beyond the inter-tidal zone.

XX. The material on record of the present petition clearly indicates that the petitioner has encroached upon the Marine Sanctuary area gradually and continued to discharge the waste water / trade effluent purportedly under the interim order dated 13.10.1987 of this Court in the Special Civil Application No.5465 of 1987 and the order dated 11.05.2010 in the present petition, which has resulted in causing severe damage to the ecological, faunal, floral, Geo-morphologic, natural, zoological and geographical significance of the area declared as Marine Sanctuary for the purpose of protecting, propagating and

developing marine life in the Gulf of Kachchh falling in the Jamnagar Forest Division, Jamnagar District.

XXI. The fact that the petitioner has now laid a closed pipeline with a diffuser based system for discharge of treated waste water into the deep sea pursuant to the notification dated 01.06.2011 of the Ministry of Environment and Forest, will not absolve the petitioner of its responsibility and liability to pay for the environmental damages caused by it to the Marine Sanctuary area, where the petitioner industrial unit is discharging industrial effluent since after 20.07.1982 till date. At the cost of repetition, we may notice here that the closed pipelines laid by the petitioner have not been commissioned so far.

132. In view of the above discussion, the challenge to the notifications dated 20.07.1982 and 26.11.1987 of the State Government notifying the area in question as Marine Sanctuary to protect its ecology, propagating and developing of marine life in exercise of power under Section 18(1) of the Act' 1972 is hereby rejected being without any basis. Further the challenge to the orders of the District Collector dated 10.04.2006, 12.02.2007 and 14.03.2007 are also upturned as the petitioner is found to be a sheer encroacher of the government land of Marine Sanctuary, by discharging industrial waste water into the inter-tidal zone and the sea unlawfully. Rest of the reliefs prayed in the writ petition are in the nature of interim relief and hence, rejected.

133. Further, the petitioner is held liable to pay for the environmental damage to the critically fragile area of the Gulf of Kachchh declared as Marine Sanctuary for the preservation of its ecological and marine life, on the "Polluter Pays Principle".

134. Before proceeding further, we may note that after the arguments have been concluded, a request has been made by the learned Senior Counsel for the petitioner that the petitioner does not want to press the prayers in the present petition and it is willing to contribute a reasonable amount to make good, at its own cost, any adverse impact to Marine Sanctuary area that may have been caused due to its waste water discharge, from the date of inclusion of the area of past discharge into the Marine Sanctuary. This request cannot be accepted for the simple reason that the petitioner seeks indulgence to submit its evidence, in the process of assessment of adverse impact, on the environment, proposed to be conducted by a competent independent agency of the area, which if granted, would amount to giving a baton to the petitioner to further litigate on its right and the extent of damages caused, evident from the record.

135. We may now have a look to the of decisions wherein the "Polluter Pays" principle has been developed by the Apex Court. In a first of such decision in **Indian Council For Enviro-Legal Action v. Union of India, [*(1996) 3 SCC 212],*** a writ petition under Article 32 of the Constitution of India was filed by the environmentalist organization raising woes of the people living in the vicinity of chemical industrial plants in a small village in the State of Rajasthan.

136. The analysis report of the chemical expert team, as considered by the Apex Court in various orders passed by it therein, resulted in returning a finding that the respondents were responsible for the pollution and that they were required to defray the cost of removal and storage of sludge.

137. On the question of liability, the Apex Court therein considered the previous decision in Oleum Gas Leak Case (**M.C. Mehta v. Union of India (Shriram - Oleum Gas), [*(1987) 1 SCC 395*]**, of the Constitution bench to note in paragraph '58' **[Indian Counsel for Enviro-Legal Action (supra)]** as under:-

> "**58.** In *Oleum Gas Leak case* [*M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37] , a Constitution Bench discussed this question at length and held thus: (SCC pp. 420-21, paras 31-32)
>
> "We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of

> substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. … We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands* v. *Fletcher* [(1868) LR 3 HL 330 : (1861-73) All ER Rep 1] .
>
> We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

138. In paragraph '67' therein, the "Polluter Pays" principle has been noticed from an article, namely Historic Pollution — Does the Polluter Pay? by Carolyn Shelbourn — Journal of

Planning and Environmental Law, Aug.1974, to record that the principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which caused the pollution, or produced the goods which cause the pollution. It was observed that under this principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. Paragraph '67' be reproduced as under:-

> **"67.** The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle. [(Historic Pollution — Does the Polluter Pay? by Carolyn Shelbourn — Journal of Planning and Environmental Law, Aug. 1974 issue.)]
>
> "The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially

> polluting activities have never been satisfactorily agreed.
>
> Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme [(1987) OJC 328/1] makes it clear that 'the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the Polluter Pays principle has now been incorporated into the European Community Treaty as part of the new articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles: the need for preventive action; the need for environmental damage to be rectified at source; and that the polluter should pay."
>
> Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit."

139. While answering the question as to the amount required for carrying out necessary remedial measure to repair the damage and to restore the water and soil to the condition, it was directed that an estimate of the cost of remedial measures be made with the notice to the respondents since the respondents commenced their operations.

140. In another judgment of 1996, i.e. **Vellore Citizens' Welfare Forum v. Union of India, [*(1996) 5 SCC 647*]**, rendered a few months after the aforesaid decision, the Apex Court was dealing with the petition filed in public interest under Section 32 of the Constitution of India by Vellore Citizens' Welfare Forum, raising an issue of the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu.

141. Noticing that, at that point of time, Tamil Nadu was the leading exporter of finished leather accounting for approximately 80 per cent of the country's export, it was observed therein that though the leather industry may be of vital importance to the Country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It was, thus, observed that the industries cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.

142. It was observed that the traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. The concept of "Sustainable Development" came to be known for the first time in the Stockholm Declaration of 1972 and, thereafter, in 1987 this concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future", popularly known as "Brundtland Report". In 1991, the World Conservation Union,

United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called “Caring for the Earth” which is a strategy for sustainable living. Finally, in the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history, after deliberations, a blueprint for the survival of the planet was chalked out.

143. Two conventions, one on biological diversity and another on climate change, were signed by 153 nations participating in the RIO Conference. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio, “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. “Sustainable Development” as defined by the Brundtland Report means “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”.

144. The Apex Court in **Vellore Citizens' Welfare Forum (supra)** culled out salient principles of “Sustainable Development” from Brundtland Report and other international documents, to note that “the precautionary principle” and “ the polluter pays principle”, are essential

features of “Sustainable development”. On the “precautionary principles”, in the context of the Municipal Law, it was observed in paragraph ‘11’ therein as under:-

> “**11.** ***
> (*i*) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.
> (*ii*) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
> (*iii*) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.”

145. The “Polluter Pays” principle stated in **Indian Council for Enviro-Legal Action (supra)** has been held to be a sound principle while observing in paragraph ‘12’ as under:-

> “**12.** “The Polluter Pays Principle” has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action* v. *Union of India* [(1996) 3 SCC 212 : JT (1996) 2 SC 196] . The Court observed : (SCC p. 246, para 65)
>
> “… we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.”
>
> The Court ruled that : (SCC p. 246, para 65)
>
> “… once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on”.
>
> Consequently the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to

> remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

146. Further, in paragraphs '13' and '14', it was observed that the constitutional principles in Article 21, which guarantees protection of life and personal liberty and Articles 47, 48A and 51-A(g) of the Constitution, mandate to protect and improve the environment, besides that there are plenty of post-independence legislations on the subject such as the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act), etc. It was, thus, concluded that in view of the above mentioned constitutional and statutory provisions, "the Precautionary Principle" and "the Polluter Pays Principle" are part of the environmental law of the Country. The statement of law in paragraphs '13' and '14' are to be extracted hereinunder:-

> **"13.** The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(*g*) of the Constitution are as under:
>
> "47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health*.—The State shall regard the raising of the level of nutrition and the

standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. *Protection and improvement of environment and safeguarding of forests and wildlife*.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A. (*g*) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are : the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In view of the above-mentioned constitutional and

> statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country."

147. It was further stated in paragraph '16' that "***the constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment....***"

148. Considering the statements of object and reasons to the Environment Act, it was observed therein, in paragraph '20' as under:-

> "**20.** It is thus obvious that the Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by this Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act."

149. The Apex Court has finally concluded that the polluters must not only compensate the affected persons, but also pay the cost for restoring the damaged ecology.

150. In January' 2005, in **Research Foundation for Science v. Union of India, *[(2005) 13 SCC 186]***, the Apex Court came across an alarming situation created by dumping of hazardous wastes, its degeneration and serious and irreversible damage to the environment, flora and fauna, lying in 133 containers at Nhava Shava Port, as noticed by the High Power Committee constituted by the Court.

151. Noticing the precautionary principle, under the RIO Declaration (Principle '15), it was noted therein that there are threats of serious or irreversible damage and lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental degradation. This principle generally describes an approach to the protection of the environment or human health based around precaution even where there is no clear evidence of harm or risk of harm from an activity or substance. It is a part of the principle of "sustainable development". It provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced. Having regard to the said principle and that the import of waste oil containing PCBs (Polychlorinated Byphenyles) of detectable limit has been banned in India, on the "Polluter Pays Principle", it was noted in paragraphs '29', '33' to '36' therein that:-

"29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.

33. The polluter-pays principle was applied in *Indian Council for Enviro-Legal Action* v. *Union of India* [(1996) 3 SCC 212] to fasten liability for defraying the costs of remedial measures. The task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures was placed in this case upon the Central Government. In the present case the approximate expenditure to be incurred for destroying the hazardous waste has been mentioned in the report.

34. In *Vellore Citizens' Welfare Forum* v. *Union of India* [(1996) 5 SCC 647] the precautionary principle and polluter-pays principle were held to be part of the environmental law of the country. It was held that the polluter-pays principle means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of sustainable development.

35. In this very case i.e. *Research Foundation for Science Technology National Resource Policy* v. *Union of India* [(2005) 10 SCC 510 : (2003) 9 Scale 303] while examining the precautionary principle and polluter-pays principle, the legal principles noticed in brief were: (Scale pp. 308-09, para 15)

"*15*. The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well settled. In *Vellore Citizens*' *Welfare Forum* v. *Union of India* [(1996) 5 SCC 647] a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of 'sustainable development', inter alia, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(*g*) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in *Vellore Citizens*' *Welfare Forum case* [(1996) 5 SCC 647] that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu* [(1999) 2 SCC 718] where, after referring to the principles noticed in *Vellore Citizens*' *Welfare Forum case* [(1996) 5 SCC 647] , the same have been explained in more detail with a view to enable the courts and the tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State institutions, transparency and accountability in public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the working group of the International Law Commission in 1996 on 'Prevention of Transboundary Damage from Hazardous Activities' to include the need for the State to take necessary 'legislative, administrative and other actions' to implement the duty of prevention of environmental harm.

> Environmental concerns have been placed at same pedestal as human rights concerns, both being traced to Article 21 of the Constitution of India. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the Court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by courts as facets of those fundamental rights and hence enforceable as such (see *People's Union for Civil Liberties* v. *Union of India* [(1997) 3 SCC 433 : 1997 SCC (Cri) 434]). The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-enshrined principles have been kept in view by us while examining and determining various aspects and facets of the problems in issue and the permissible remedies."
>
> **36.** The aforenoted precautionary principles are fully applicable to the facts and circumstances of the case and we have no manner of doubt that the only appropriate course to protect the environment is to direct the destruction of the consignments by incineration in the terms discussed above and as recommended by the Monitoring Committee."

152. Thus, with the aid of the aforementioned decisions, it was recorded that remediation of the damaged environment is part of the process of sustainable development and that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

153. In **Vellore District Environment Monitoring Committee v. Vellore District, *[2025 SCC OnLine SC 207],*** the Apex Court was dealing with the validity of the order of the High Court of Madras, which was the fallout of the **Vellore Citizens' Welfare Forum (supra)**. As a result of the direction of the Apex Court in Vellore Citizens' Welfare Forum (supra), an authority, namely Loss of Ecology (Prevention and Payment of Compensation) Authority (for short, "LoEA") was constituted by the Government of India vide notification dated 30.09.1996 to assess the loss to the ecology/environment in the affected areas and also to identify the individuals/families who had suffered because of the pollution and determine the compensation payable to them.

154. The said Authority passed an award in 2001 making it clear that liability of the polluting industries to compensate the affected individuals/families would continue beyond 31.12.1998 until the damage caused to the ecology and environment by pollution is reversed. The award was challenged by the aggrieved parties before the High Court of Madras. The writ petition was disposed of facilitating the payment in instalments by the polluters.

155. However, a public interest litigation was filed by the the Vellore District Environment Monitoring Committee in the year 2008 before the High Court of Madras alleging that no scheme has been implemented for the reversal of the damage caused to the ecology and environment and that no compensation has been paid for the period from 31.12.1998. The High Court disposed of the writ petition with the direction

to the authorities to make inquiry as to whether the polluters had complied with the directions as per the award; assessed the damages caused to the ecology since 1999; framed scheme for reversal of damage to ecology and the direction to the Collector to implement the scheme and strictly comply with the scheme framed and the directions of the authority.

156. The LoEA passed an order dated 05.05.2009 assessing the damage caused by the tanning industry to the ecology beyond 1998 in the Vellore District. On a challenge before the High Court, by order dated 08.02.2010, the High Court had quashed the order dated 05.05.2009 of the LoEA, which has led to the filing of the appeal by Vellore District Environment Monitoring Committee, before the Apex Court.

157. The Apex Court, in analysis, has noted three foundational principles, *viz.*; (i) Doctrine of Public Trust, (ii) Principle of Sustainable Development, and (iii) Right to healthy environment, Paragraphs '61' to '64' summarize the said principles as under:-

> **"61.** The Doctrine of Public Trust asserts that vital natural resources such as rivers, seashores, forests, and air are held in trust by the State for the benefit and enjoyment of the public. Rooted in Roman law, which classified these resources as common property (res communis) or unowned (res nullius), and refined by English common law, this doctrine places a fiduciary duty on governments to protect them from privatization or exploitation that compromises public interests. It imposes three key restrictions viz., (a) resources must remain accessible for public use, (b) cannot be sold for private gain, and (c) must be preserved in their natural state. Courts internationally, have extended its scope to protect wetlands, riparian forests, and ecologically fragile

lands, emphasizing the need for environmental preservation in light of modern ecological challenges. This evolving interpretation reflects the doctrine's relevance in maintaining the balance between sustainable development and environmental conservation. In *M.C. Mehta* v. *Kamal Nath*, this court elucidated the doctrine of public trust as follows:

> *"24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bears a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by everyone in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article "Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the public trust doctrine as under:*
>
> *'The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasised. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second,*

while it was understood that in certain common properties — such as the seashore, highways, and running water — "perpetual use was dedicated to the public", it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.'

25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters, and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the public trust doctrine imposes the following restrictions on governmental authority:"Three types of restrictions on governmental authority are often though to be imposed by the public trust : first, 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; second, the property may not be sold, even for a fair cash equivalent; and third property must be maintained in particular types of uses".

62. Further, in *Vedanta Limited* v. *State of Tamil Nadu*, it was observed by this Court as follows:

"25. In addition, the public trust doctrine, recognized in various jurisdictions, including India, establishes that the state holds natural resources in trust for the benefit of the public. It reinforces the idea that the State must act as a steward of the environment, ensuring that the common resources necessary for the well-being of the populace are protected against exploitation or degradation. These principles underscore the importance of balancing economic interests with environmental and public welfare concerns. While the industry has played a role in economic growth, the health and welfare of the residents of the area is a matter of

utmost concern. In the ultimate analysis, the State Government is responsible for preserving and protecting their concerns."

SUSTAINABLE DEVELOPMENT

63. The doctrine of sustainable development was evolved to strike a balance between economic advancement and environmental safeguards. It envisions development that can be sustained by nature/environment. While the advancement of industries and infrastructure is indispensable for fostering employment and generating revenue, such growth cannot come at the cost of irreparable ecological damage. This Court has already extensively considered the concept of sustainable development in the following decisions, the relevant paragraphs of which are reproduced below:

(i) *Vellore Citizens' Welfare Forum* (supra):

"10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in history—deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents, namely, a

Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."

(ii) *Intellectuals Forum* v. *State of A.P.*:

"84. The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development, which sustains from one generation to the next in order to secure "our common future". In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic

stress". It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally."

(iii) *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*

"The concept of "sustainable development" has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) *v.* Union of India *[(2008) 2 SCC 222] and* M.C. Mehta *v.* Union of India *[(2009) 6 SCC 142]."*

(iv) *Vedanta Limited* (supra)

"24. The closure of the industry is undoubtedly not a matter of first choice. The nature of the violations and the repeated nature of the breaches coupled with the severity of the breach of environmental norms would in the ultimate analysis have left neither the statutory authorities nor the High Court with the option to take any other view unless they were to be oblivious of their plain duty. We are conscious of the fact that the unit, as this Court observed in its decision in 2013, has been contributing to the

productive assets of the nation and providing employment and revenue in the area. While these aspects have undoubted relevance, the Court has to be mindful of other well-settled principles including the principles of sustainable development, the polluter pays principle, and the public trust doctrine. The polluter pays principle, a widely accepted norm in international and domestic environmental law, asserts that those who pollute or degrade the environment should bear the costs of mitigation and restoration. This principle serves as a reminder that economic activities should not come at the expense of environmental degradation or the health of the population.

.....

26. As consistently held in numerous decisions of this Court, the unequivocal right to a clean environment is an indispensable entitlement extended to all persons. Air, which is polluted beyond the permissible limit, not only has a detrimental impact on all life forms including humans, but also triggers a cascade of ecological ramifications. The same is true for polluted water, where the pervasive contamination poses a profound threat to the delicate balance of ecosystems. The impact of environmental pollution and degradation is far reaching : it is often not only severe but also persists over the long term. While some adverse effects may be immediately evident, the intensity of other kinds of harm reveals itself over time. Persons who live in surrounding areas may develop diseases which not only result in financial burdens but also impact the quality of life. The development and growth of children in these communities may become stunted, creating a tragic legacy of compromised potential. Basic necessities, such as access to potable water, may not be met, exacerbating the challenges faced by these already vulnerable populations. Undoubtedly, such adverse effects are felt more deeply by marginalised and poor communities, for whom it becomes increasingly difficult to escape the cycle of poverty.

27. This Court is also alive to the concept of intergenerational equity, which suggests that "present

residents of the earth hold the earth in trust for future generations and at the same time the present generation is entitled to reap benefits from it." The planet and its invaluable resources must be conscientiously conserved and responsibly managed for the use and enjoyment of future generations, emphasising the enduring obligation to safeguard the environmental heritage for the well-being of all.

28. It is an undeniable and fundamental truth that all persons have the right to breathe clean air, drink clean water, live a life free from disease and sickness, and for those who till the earth, have access to uncontaminated soil. These rights are not only recognized as essential components of human rights but are also enshrined in various international treaties and agreements, such as the Universal Declaration of Human Rights, the Convention on Biological Diversity, and the Paris Agreement. As such, they must be protected and upheld by governments and institutions worldwide, even as we generate employment and industry. The ultimate aim of all our endeavours is for all people to be able to live 'the good life.' Without these basic rights, increased revenue and employment cease to have any real meaning. It is not merely about economic growth but about ensuring the well-being and dignity of every individual. As we pursue development, we must prioritize the protection of these rights, recognizing that they are essential for sustainable progress. Only by safeguarding these fundamental rights can we truly create a world where everyone has the opportunity to thrive and prosper.

29. We have heard these proceedings for several days and after a careful evaluation of the factual and legal material, we have come to the conclusion that the Special Leave Petitions do not warrant interference under Article 136 of the Constitution."

(v) *M.C. Mehta* v. *Union of India*

"19.....As stated above, in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land

and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the Authorities have not taken into account the macro effect of such wide scale land and environmental degradation caused by absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above Area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. Environment and ecology are national assets. They are subject to inter-generational equity. Time has now come to suspend all mining in the above Area on Sustainable Development Principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India. In fact, these Articles have been extensively discussed in the judgment in M.C. Mehta's case *(supra) which keeps the option of imposing a ban in future open. Mining within the Principle of Sustainable Development comes within the concept of "balancing" whereas mining beyond the Principle of Sustainable Development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of Precautionary Principle."*

RIGHT TO HEALTHY ENVIRONMENT

64. Right to life inherently includes the right to enjoy, pollution free environment, which are essential for the full enjoyment of life. If anything endangers or impairs the quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution to address the pollution of environment which may be detrimental to the quality of life. This court has recognised the concept of 'right to healthy environment' as part of the 'right to life' under Article 21 and thereby has also recognised the 'right to clean drinking water' as a fundamental right. Infact, environmental rights, which encompass a group of collective rights, are now described as "third generation" rights. Therefore, the State, so as to sustain its claim of functioning for the welfare of its citizens, is bound to regulate water supply by safeguarding,

maintaining and restoring the water bodies to protect the right to healthy water and prevent health hazards. This court has also laid down in many cases, that the States shall ensure that the water bodies are free from encroachments and steps must be taken to restore the water bodies. In this context, we may refer to the following judgments and observations made thereunder:

(i) *Subash Kumar* v. *State of Bihar*

> *"7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. ....."*

(ii) *State of Karnataka* v. *State of Andhra Pradesh*

> *"175. Water is a unique gift of nature which has made the planet earth habitable. Life cannot be sustained without water. In the National Water Policy issued by the Government of India in 1987, it was declared that water is a prime natural resource, a basic human need and a precious national asset. Water, like air, is the essence for human survival. The history of water availability and its user is tied up with the history of biologically evolution in all civilizations. It will not be wrong to say that not only the life started in water but rather water is life itself. It is essential for mankind, animals, environment, flora and fauna. There is no denial of the fact that in the ancient times water played an important role in the origin, development and growth of civilization all over the globe. Water is an important factor in the economic development of the countries which ultimately affects the social and human relations between the habitants. Planned development and proper utilization of water resources can serve both as a cause as well as an effect off the prosperity*

of a nation. Water on earth is available in the form of frozen snow, rivers lakes, springs, water ways, water falls and aqueducts, etc."

(iii) *A.P. Pollution Control Board II* v. *Prof. M.V. Naidu*

"*7. Our Supreme Court was one of the first Courts to develop the concept of right to 'healthy environment' as part of the right to "life" under Article 21 of our Constitution. [See* Bandhua Mukti Morcha *v.* Union of India *((1984) 3 SCC 161)]. This principle has now been adopted in various countries today.*

8. In today's emerging jurisprudence, environmental rights which encompass a group of collective rights are described as "third generation" rights. The "first generation" rights are generally political rights such as those found in the International Convention on Civil & Political Rights while "second generation" rights are social and economic rights as found in the International Covenant on Economic, Social and Cultural Rights. "Right to Healthy Environment". (See Vol.25) 2000 Columbia Journal of Environmental Law by John Lee P.283, at pp.293-294 fn.29)."

158. Noticing the pollution caused by the tanneries and further the current status of pollution, on the liability to pay compensation, the abovereferred "Polluter Pays Principle" has been noted in paragraphs '71' to '73' therein, to hold that industries are liable to not only compensate but also bear the costs for restoring the polluted river. It was held that the remedial action would not stop at restoration, but it is a continuous process, to sustain the river, pollution free.

159. On the extent of liability, on the deeming fiction of the polluter pays principle and precautionary principle, it was observed that the idea of the Polluter Pays Principle must be

carefully examined to ensure that it does not result in the emergence of a “right to pollute” for those who are financially capable or willing to pay. It was noted therein that one key question that arises is the extent of liability for the pollution caused, specifically, whether the liability ends once compensation, as determined is paid, or whether it is a continuing liability that persists until the actual pollution is curbed and its effects reversed.

160. It was noted therein that the tanneries have clearly exploited this system, discharging effluents, assuming that payment of compensation grants them the right to pollute. It was, thus, considered to be a broader problem seen across industries in developing countries not only limited to the Vellore Tanneries, where it is often seen as more cost-effective to pay the relatively low compensation than to invest in cleaner technologies that would reduce pollution., inasmuch as, when faced with the choice between the marginal damage cost and the marginal cleaning cost, often they opt for the former, thus perpetuating the cycle of environmental degradation. For illustration, it was noted that:-

a) The case of Kanpur Tanneries; where they have been discharging contaminated water into the river Ganga continuing their harmful practices despite of Court’s orders;

b) Bicchri Industrial Cluster; where the Village continue to suffer from water contamination and scarcity, impacting drinking water availability, livestock

and agricultural needs, inspite of the Court order to pay compensation for remediation, on account of dilatory tactics adopted by the company by filing multiple interlocutory applications;

c) The case of Perunandrai; where the Apex Court directed industries to comply with the ZLD system, but many units continued to violate the norms. They discharge untreated effluents into open places, borewells, wells, and rainwater, leading to high rise in the TDS level, were noted to be the cases highlighting the continued disregard for environmental norms.

161. It was, thus, noted in paragraph '77' therein that when there is a violation in compliance with the environmental laws, be it by engaging in activities directly involved in causing pollution or failure to take steps to curb the pollution and restore the environment or violating any terms of licence granted by any State or Central authority and acts in a manner detrimental to the environment, the effect of which causes or is likely to cause degradation of the environment, then the deeming fiction of polluting the environment becomes applicable and the polluter is not only liable to payment of compensation but also to restore the environment.

162. This precautionary principle, as has been recognized in various judgments noted hereinbefore, reiterated therein in paragraph '77' reads as under:-

> **"77.** When there is a violation in compliance with the environmental laws, be it by engaging in activities directly

involved in causing pollution or failure to take steps to curb the pollution and restore the environment or violating any terms of licence granted by any State or central authority and acts in a manner detrimental to the environment, the effect of which causes or is likely to cause degradation of the environment, then the deeming fiction of polluting the environment becomes applicable and the polluter is not only liable to payment of compensation but also to restore the environment. As we have already seen, there is a persistent duty on the State to ensure that all steps are taken to ensure the protection of the environment. The State, even in the absence of any law, must put in place a mechanism to address the issue of degradation by taking preventive measures. The measures should lean towards protection and preservation rather than facilitation of economic activity by reliance upon lack of scientific details for adverse effects. The State must endeavour through its research wings to identify the industries and activities which impacts or can impact the environment before permitting such activities as there is a possibility that the damage could not only be irreversible but also the effects of such damage could be far more threatening the human race than the commercial benefits arising out of such activity. This precautionary principle, that has been recognized in various judgments as seen above and in Vellore Citizen Welfare Forum's case (Supra) was reiterated by this Court in T.N. Godavarman Thirumulpad, In re v. Union of India, the relevant passage of which reads as under:

"**43.** The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this writ petition itself in an order passed on 9-5-2022 [T.N. Godavarman Thirumulpad v. Union of India, (2022) 9 SCC 306] in connection with another set of applications. In this order, it has been observed and held: (T.N. Godavarman Thirumulpad case [T.N. Godavarman Thirumulpad v. Union of India, (2022) 9 SCC 306], SCC pp. 315-16, paras 16-19)

> "16. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the

needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, courts are required to balance development needs with the protection of the environment and ecology [T.N. Godavarman Thirumulpad (104) v. Union of India, (2008) 2 SCC 222]. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718]. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [Indian Council For Enviro-Legal Action v. Union of India, (1996) 5 SCC 281].

17. In Vellore Citizens' Welfare Forum v. Union of India [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647], this Court held that the “precautionary principle” is an essential feature of the principle of “sustainable development”. It went on to explain the precautionary principle in the following terms : (SCC p. 658, para 11)

> ‘11. … (i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.
>
> (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
>
> (iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is

environmentally benign.'

18. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718].

19. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest [M.C. Mehta v. Union of India, (2004) 12 SCC 118]. This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment."

While dealing with the applications in the present set of proceedings, we shall follow the same principles."

163. The decisions of the NGT on "one who pollutes must pay" are noted in paragraph '78' as under:-

"78. To tackle this issue, the NGT has adopted the above principles in the following cases:

(i) Court on its own motion v. State of HP:

"36. The liability of the polluter is absolute for the harm done to the environment which extends not only to compensate the victims of pollution but is also aimed to meet the cost of restoring environment and also to remove the sludge and other pollutants. [Ref: Indian Council for Enviro-Legal Action v. Union of India supra]. The Supreme

Court held that the person causing pollution by carrying on any hazardous or dangerous activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his commercial or industrial activity. In the light of these principles, it is clear that the persons who are causing pollution in the eco-sensitive areas resulting in environmental hazards must be required to compensate for the damage resulting from their activity. A large number of tourists and vehicles which are using the roads and are carrying on such other activities for their enjoyment, pleasure or commercial benefits must be made to pay on the strength of the 'Polluter Pays' principle. It will be entirely uncalled for and unjustified if the tax payers' money is spent on taking preventive and control measures to protect the environment. One who pollutes must pay. We have already discussed at some length that the high tourist activity, vehicular pollution and deforestation attributable to acts of emission require to be compensated, restored and maintained in a manner that there is minimum damage and degradation of the environment. Such an approach can even be justified with reference to the doctrine of sustainable development."

(ii) Saloni Ailawadi v. Union of India:

"23. We may also observe that 'Precautionary Principle' and 'Sustainable Development' principle are part of Article 21 of the Constitution and Section 20 of the National Green Tribunal Act, 2010. 'Polluter Pays' principle does not mean polluter can pollute and pay for it. It would include environmental cost as well as direct cost to people. Environmental cost is not restricted to those which is immediately tangible but full cost for restoration of environmental degradation. If cheat devices leading to pollution are ignored only on account of absence of a procedural protocol, it will be against the said accepted principles of environmental jurisprudence. Accepted global procedural norm can be accepted unless prohibited in India expressly or impliedly.

24. The law has to encourage honesty and fair dealing in business transactions and certainly business

considerations cannot override environmental protection.…"

164. On the question of determination of compensation, it was noted in paragraph '79' that:-

> **"79.** Now that we've discussed the aspect of liability, let us turn our attention to the determination of compensation for pollution-related damage. As highlighted earlier, polluters bear the absolute liability for the harm they cause to the environment. However, it is well known that quantifying the extent of that damage is never an easy task and is usually quite complex. Unlike tangible property damage, the harm inflicted upon ecosystems—such as the destruction of flora, fauna, aquatic life, and the disruption to micro-organisms—is not easily measurable in monetary terms. Additionally, the impact on local communities, particularly their livelihoods, is difficult to assess. The loss of biodiversity, degradation of natural resources, and long-term socio-economic consequences extend beyond the realm of financial valuation. Therefore, while the liability is clear, the process of determining an equitable compensation amount is fraught with challenges, as it must account for both the tangible and intangible damage inflicted on the environment and the affected communities. However, we can refer to past environmental cases, both Indian and international, to grasp the principles made therein relating to this aspect."

165. Further, taking note of the case laws on the aspect of determining compensation, it was noted therein that the Central Pollution Control Board (CPCB) has laid down a formula for computation of environmental compensation pursuant to the order of the Principal Bench of the NGT dated 31.08.2019 in the matter of *Paryavaran Suraksha Samiti* v. *Union of India* [WP (CIVIL) No. 375/2012]. The said formula laid down in the report of the CPCB dated 15.07.2019 was accepted by the NGT vide order dated 28.08.2019; relevant paragraph paragraph '81' therein reads as under:-

> **"81.** Further, certain guidelines for determining compensation have already been established. It is to be noted that the Principal Bench of the NGT vide order dated 31.08.2018 in the matter of *Paryavaran Suraksha Samiti* v. *Union of India* WP (CIVIL) No. 375/2012 observed that "CPCB may also assess and recover compensation for the damage caused to the environment and the said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months". Accordingly, the CPCB in its report published on July 15, 2019 laid down the formula for computation of environmental compensation. The formula for computing environment compensation was accepted by the NGT *vide* its order dated August 28, 2019 in *Paryavaran Suraksha Samiti* (supra). The said formula is:
>
> EC = PI × N × R × S × LF
>
> Wherein, EC stands for Environmental Compensation in INR, PI stands for Pollution Index of industrial sector, N stands for Number of days the violation took place, R stands for a factor in INR (Rs.) for compensation for the environmental harm caused by the industry, S stands for factor for scale of operation and LF stands for location factor. While the CPCB and State Pollution Control Boards (SPCB) largely appear to be following this formula, the NGT also took various other approaches towards determining environmental compensation. It seems that NGT has primarily adopted two methods for the imposition of environmental compensation : (a) levying 5-10% of the project cost as environmental compensation if it finds the industry to be defaulting; or (b) using a percentage of the annual turnover of the industry as the method for determining environmental compensation.**"**

166. After saying so, the Apex Court has further reflected on the liability of both (Union and the State Government), by stating that while polluters bear absolute liability to compensate for environmental damage, the Governments (both Union and State) share an equally significant responsibility to prevent environmental degradation and

ensure the implementation of effective remedial action. The Central Government is empowered to issue necessary directions under Sections 3 and 5 of the Environment (Protection) Act' 1986 and, as such, the Central Government, with the assistance of the State Government, RPCB or any other agency or authority, authorized, empowered or constituted by it, if so required, is entrusted with determining the amount required for remedial measures, ensuring its recovery, and overseeing their execution.

167. The observations in paragraph '41' in **Indian Council for Enviro-Legal Action (supra)** was noted therein to emphasise on strict enforceability of the environmental laws like Water Act, 1974, and Environment Protection Act, 1986. It was emphasised that the role of the State is not restricted to initial verification but also extends to continuous inspection and to ensure compliance of all laws and orders. The States could enforce the compliances of all the laws and the orders even during renewal of any licences. While the "Polluters Pay Principle" focuses on directly penalizing offenders, its effectiveness is inherently tied to the vigilance and enforcement mechanisms of the Government and regulatory bodies, and thus, in situations where authorities fail to regulate polluters adequately, the resultant environmental degradation underscores a shared responsibility.

168. While saying so, the Apex Court discussed on the 'Government Pays Principle' and noticed examples from the countries like South Africa, and Chile, where a shift towards Government compensation for environmental harm caused by

private injurers could be seen. It was also noted therein that NGT has already adopted similar approach by ordering the Governments to compensate victims and recover cost from the polluters. It was observed that by holding the Governments accountable, the approach ensures a dual-layered system of responsibility, fostering more stringent oversight and proactive environmental governance.

169. In the facts of the said case, noticing that the activities of the Vellore Tanneries have degraded vital ecosystem, polluted water bodies and reduced the groundwater availability, severely impacting the livelihoods of farmers, fishermen, and local communities, it was observed that the Court has the duty to foster a more comprehensive, balanced, and sustainable approach to curb the water pollution. The principles ensure compliance but also encourage long-term strategies for environmental protection, public health, and sustainable development. It was, thus, held that until the damage caused by the tanneries to the ecology is reversed, the polluters have a continuing duty to pay compensation and further that it is the bounden duty of both the Central and State Governments and local authorities to protect and preserve natural resources and maintain a healthy and clean environment.

170. In the result;

i. The State Government was directed therein to pay the compensation amount to all the affected families/individuals, if not already paid, in terms of the award of LoEA and recover the compensation amount from

the polluters, if not already recovered, by initiating proceedings under the Revenue Recovery Act or through any other means permissible by law.

ii. The further direction was issued to constitute a committee for the purpose of conducting an Audit to identify, maintain and create a clean and healthy environment in Vellore District.

iii. While aligning the tasks given to the Committee, it was directed that the committee shall ensure its implementation until the damage caused to the ecology is reversed.

171. In a recent decision reported in **Delhi Pollution Control Committee v. Lodhi Property Co. Ltd., [*(2026) 2 SCC 670*]**, the Apex Court has noted its previous decision in **M.C. Mehta (supra)** and also the above referred decisions, to record that Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology besides payment of damages to those who have suffered loss on account of the act of the offender. Liability for environmental damage includes both a compensatory aspect and a restorative or remedial aspect.

172. It is held that the application of the *Polluter Pays* principle not only includes payment for restoring the damaged environment, taking remedial action to deal with the damage and compensating for the direct harm caused, but

also for avoiding pollution. Bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. It was also noted from the statement of law in **Research Foundation for Science (supra)** that "Polluter Pays Principle" also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case. Further, the Court has clarified therein that actual degradation of the environment is not a necessary condition for the application of "Polluter Pays Principle", as long as the offending activities have the potential of degrading the environment.

173. The decision in **T.N. Godavarman Thirumulpad, In re, *[(2025) 2 SCC 641]***, has been noted therein where the Apex Court while considering the issue of illegal construction in Corbet Tiger Reserve, drew the distinction between the actions against the persons violating the law and measures for restoration of the environment damage, as noted in paragraph '32' as under:-

> **"32.** More recently, in *T.N. Godavarman Thirumulpad, In re* [*T.N. Godavarman Thirumulpad, In re*, (2025) 2 SCC 641] , this Court while considering the issue of illegal construction in the Corbett Tiger Reserve drew the distinction between action against persons violating the law and measures for restoration of the environmental damage. The Court held: (SCC pp. 728-29, paras 173 & 175)
>
> "*173*. … However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures

that are localised to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.

***

175. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage."

(emphasis supplied)

174. The legal position summarized by the Apex Court, on a review of precedents on the subject, in paragraph '33' ('33.1' to '33.3') is reproduced as under:-

"33. ...

33.1. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an *ex ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

33.2. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under Chapters VII and VI of the Water and Air Acts, respectively.

> **33.3.** Indian environmental law has assimilated [*Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212; *Vellore Citizens*' *Welfare Forum* v. *Union of India*, (1996) 5 SCC 647] the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws. ["**20. *Tribunal to apply certain principles***.—The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."] The invocation of this principle is triggered in the situations [Loveleen Bhullar, "The Polluter Pays Principle: Scope and Limits or Judicial Decisions" in Shibani Ghosh (ed.), *Indian Environmental Law* (Orient Black Swan 2019).] ; (*i*) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage; (*ii*) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage; and also (*iii*) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached."

175. From the decisions of the Apex Court ranging from 1996 to 2026 (for about three decades), applying the Doctrine of Public Trust vital to the natural resources that they must be preserved in their natural state, the evolving interpretation to the Doctrine in maintaining the balance between the 'Sustainable Development' and 'environmental conservation', it may be noted that while the doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes, the State must act as a 'steward' of the environment, ensuring that the common resources necessary for the well-being of the populace are protected against exploitation or degradation. These

principles underscore the importance of balancing economic interests with environmental and public welfare concerns. While the industry has played a role in economic growth, the State is responsible for balancing economic interest with environmental and public heath concerns. The doctrine of Sustainable Development was evolved to strike a balance between economic advancement and environmental safeguards. The Right to life inherently includes the right to enjoy, pollution free environment, which are essential for the full enjoyment of life.

176. The State is mandated under Article 48 of the Constitution to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two Articles aligning the duties of the citizens of India, shall equally be applicable to the industries set up by them.

177. The Doctrine of Public Trust (as noted hereinbefore) primarily rests on the principle that the State holds natural resources in trust for the benefit of the public. The concept of “Sustainable Development”, covers the development that meets the needs of the persons without compromising the ability of the future generations to meet their own needs. In the modern emerging jurisprudence, environmental rights, which encompasses the group of collective rights, are described as “third generation rights”.

178. The concept of ‘Inter-Generational Equity” suggests that “present residents of the earth hold the earth in trust for future generations and at the same time the present generation is entitled to reap benefits from it.” The planet and its invaluable resources must be consciously conserved and responsibly managed for the use and enjoyment of future generations, emphasizing the enduring obligation to safeguard the environmental heritage for the well-being of all. As we pursue development, it is our duty to prioritize the protection of its rights, as they are fundamental human rights and recognizing them are essential for sustainable progress.

179. The State must ensure that the water bodies are free from encroachment and steps must be taken to restore the water bodies, as water is a unique gift of nature, which has made the planet Earth habitable. Adherence to the principle of “Sustainable Development” is a constitutional requirement.

180. The “Precautionary Principles” and the “Polluter Pays Principle” have been accepted as part of the environmental law of the Country, and thus, are the law of the land.

181. The “Precautionary Principle” is an essential feature of “Sustainable Development”, which not only requires the State Government and Statutory Authority to prevent the causes of environmental degradation but also requires the industry and commercial community to take all measures to avoid it or to choose the least environmentally harmful activity. They should not only aim at economic interest, but are constitutionally mandated to protect the environment for the sake of living creatures on the Earth.

182. It is, thus, the duty of an industry not only to ensure adherence to the norms of the statutory enactments aimed at curbing environment pollution, but also assess any concern or risk potential, as a result of its activities. The Apex Court in the **M.C.Mehta (supra)** has held that in case of a doubt, protection of environment would have precedence over the economic interest. The "Precautionary Principle", thus, requires anticipatory action to be taken to prevent harm on a pre-assessment of potential risk and even on a reasonable suspicion.

183. The liability of the polluter is absolute for the harm done to the environment, which extends not only to compensate for the damage already caused, but is also aimed to meet the cost of restoring the environment. The "onus of proof" is on the actor, i.e. the industry etc, to show that their action is environmentally benign.

184. The polluter is liable to make good the loss caused to any other person by his activity, irrespective of the fact whether he took responsible care while carrying on his commercial or industrial activity. Environmental cost is not restricted to those which is immediately tangible but includes full cost for restoration of environmental degradation. The liability is clear even when quantifying the extent of damage is not easily measurable in monitoring terms. The loss of biodiversity, degradation of natural resources and long term socio-economic consequences extends beyond the realm of financial evaluation. The liability for environmental damage includes both the compensatory aspect and the restorative or remedial aspect.

185. Mr.G. H. Virk, the learned counsel for the GPCB has supplied the copy of the report of the CPCB published of July 15’ 2019 in compliance of the order of the Principal Bench of the NGT in **Paryavaran Suraksha Samiti (supra)** dated 31.08.2018, which has been approved by the NGT in its order dated 28.08.2019, as noted by the Apex Court in **Vellore District Environment Monitoring Committee (supra)**.

186. In the instant case, as noted hereinabove, the petitioner industrial unit kept on discharging trade effluent / industrial waste water in an Ecologically Sensitive Zone (CRZ), under the guise of the interim order of this Court passed in the year 1987 in a writ petition, which though was covering 40 hectares but was withdrawn later in the year 2009. Even after the revised standard of the discharge of waste water for the Soda Ash factory were notified vide notification dated 01.06.2011, by the Ministry of Environment and Forest, the petitioner – TATA Chemicals continued with the illegal discharge and took 15 years to lay deep sea closed pipelines with the diffuser base system of discharge.

187. The defense taken by the petitioner unit before us is they were permitted to discharge industrial waste water in the area in question, which is inter-tidal zone, by the GPCB, which has been emphatically refuted by the GPCB in its affidavit filed in the year 2008. The State has also taken a categorical stand that the petitioner is an encroacher and the Collector has already rejected the application of the petitioner for conferment of any such right under the Act’ 1972 as early

as on 10.04.2006. The petitioner, however, succeeded in continuing with the discharge of industrial effluent in an eco-sensitive zone on the government land, without any permission of the competent authority, which has caused substantial damage to the ecology of the fragile area and, thus, has converted the 'Marine Sanctuary' area into a 'Black Desert', as submitted by the learned Advocate General appearing for the State.

188. In view of the above, we reach at an irresistible conclusion that the petitioner company (TCL) cannot be permitted to take benefit of the continuation of illegal discharge under the guise of the interim order of this Court and that it is liable to pay compensation on "Polluter Pays Principle" not only for the environmental damage already caused, but also for restoration of the area until the damages caused to the ecology is reversed.

189. We may note, at this juncture, that when the matter has surfaced on the Board of the Court from the cutoff in the Wednesday Weekly Board prepared for "Targetted Old matters" and was placed before the Division Bench in the month of March' 2026, the petitioner came out to submit on an affidavit dated 26.03.2026 to state that it has completed the requirement to adhere to the norms of the discharge of waste water from Soda Ash Factory as per the notification dated 11.06.2011 of the Central Ministry. There is, however, no answer to the delay in adhering to the norms prescribed in the year 2011. There is no explanation as to why the

petitioner would not take precautionary measures to ensure that the fragile ecology of the area is not disturbed at the first hand. There is no explanation as to why the petitioner would insist on continuing discharge at the first hand, when it knew that the area is an eco-sensitive zone and its activities would cause a long-term damage to the environment. There is no explanation for continued illegal encroachment of the area by release of industrial trade effluent, which was declared as “Marine Sanctuary” in the year 1982, by the notification of the State Government.

190. Consequently, for the environmental damage caused to the fragile ecology of the area and converting the area of Marine Sanctuary into the ‘Black Desert’, as a result of illegal act of the petitioner, the petitioner is held liable to pay damages caused to the environment on “Polluter Pays” principle. For the long-term damage caused to the environment by the petitioner, by acting irresponsibly in violation of its fundamental constitutional duty to preserve natural resources and every living creature, the petitioner is held absolutely liable to pay compensation and continuing damages for restoration. We clarify that the petitioner company has a continuing duty to pay compensation until the damage caused by it to the fragile ecology of the area (Marine Sanctuary) concerned is reversed and the area of Marine Sanctuary becomes pollution free.

191. Simultaneously, it is bounden duty of the State Board (GPCB) and the local authorities (of the State) to prevent any

further damage by the petitioner industry, immediately. Stringent action including the direction for closure of the industry till the closed pipeline with the diffuser base system of the discharge of waste water of the Soda Ash Factory as per the norms under the notification of the Central Government dated 11.06.2011 is made operational so as to ensure preventing any further damage to the fragile environment of the area in question.

192. We, thus, direct the GPCB to get an assessment of the damages caused to the fragile ecology of the area in question by engaging experts and then, determine compensation payable by the petitioner industry in accordance with the aforesaid guidelines of the CPCB, after supplying the copy of the expert report for assessment of environmental damage to the petitioner. In the process of determination / computation of compensation after supply of the copy of the expert report, the procedure incorporating basic principles of natural justice shall be followed by the GPCB, before serving final computation notice upon the petitioner calling it to pay.

193. The entire exercise of assessment of damages and, thereafter, determination of compensation shall be completed within a period of three (3) months from today.

194. However, stringent measures to curb the continuance of pollution by the industrial operations shall be taken immediately and the compliance report shall be submitted before the Court within a period of three weeks' from today

along with the personal affidavit of the Regional Officer, GPCB as also the Collector of the District.

195. The matter be posted on ***17.06.2026***.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

FURTHER ORDER

After the judgment / order was delivered in the open Court, Mr.Mihir Thakore, the learned Senior Counsel assisted by Mr.Rohan Lavkumar and Mr.Siddhant Gujarathi, the learned counsels for the petitioner would pray for stay of the operation of this order, for which we do not find any justification for the reasoning given hereinabove. The request for stay of the present order is hereby turned down.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER