INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION A

v.

UNION OF INDIA AND ORS.

APRIL 18, 1996

[KULDIP SINGH, S. SAGHIR AHMAD AND B.N. KIRPAL, JJ.] B

Environmental Protection Act/Rules, 1986 :

S.5(3)—Notification dated 19.2.91—Coastal Regulation Zones—Prohibiting certain activities therein—Implementation of the Notification—Not following guidelines—Notice to coastal States and Union Territories—Management Plans submitted by some States and not others—No challenge made to the main notification—Continued infringement of the law and tolerance of such violations of law not only renders legal provisions nugatory—Such tolerance by Enforcement authorities also encourages lawlessness and it cannot be tolerated in a civilized society—Vohra Committee Report in this regard discussed—Central Government's power under paragraph 7 sub-paragraph (1) item (i)—Held arbitrary uncanalized, unguided—Hence quashed—Implementation of the Notification—Duty of Central Government, State Governments and Union Territories—Directions given. C D E

CIVIL APPELLATE JURISDICTION : Writ Petition (C) No. 664 of 1993.

Under Article 32 of the Constitution of India.

Ms. Seema Midha for K.R. Rajesekaran for the Petitioner. F

Ms. H. Wahi, P.K. Manohar, S.K. Sinha, R.K. Mehta, K.L. Teneja, C.V.S. Rao, S.K. Mehta, A.S. Bhasme, Ms. M. Karanjawala, V. Krishnamurthy, Vineet Kr., K. Ram Kumar, A. Mariarputham, R. Sasiprabhu, P.N. Puri K.H. Nobin Singh, Ms. Indu Malhotra, Ms. Meenakshi Arora, Sanjay Parikh, Anip Sachthey, H.K. Puri S.K. Bhat, Ms. Ruby Ahuja for the Respondents. G

The following Order of the Court was delivered :

Concern for the protection of ecology and for preventing irreversible H

A ecological damage of the coastal areas of the country has led to the filing of the present petition under Article 32 of the Constitution of India as a public interest litigation.

The main grievance in this petition is that a Notification dated 19.2.1991 declaring coastal stretches as Coastal Regulation Zones B (hereinafter referred to as 'the Regulation Zones') which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. There is also a challenge to the validity of the Notification dated 18.8. 1994 whereby the first Notification dated 19.2.1991 has been amended, resulting in further C relaxations of the provisions of 1991 Notification and such relaxation, it is alleged, will help in defeating the intent of the main Notification itself.

The petitioner is a registered voluntary organisation working for the cause of environment protection in India. India has a coast line running D into 6000 K.Ms. which has abundance of natural endowments, geographic attractions and natural beauty. According to the petitioner, these coastal areas are highly complex and have dynamic eco-systems, sensitive to development pressures. The stresses and pressure of high population growth non-restrained development, lack of adequate infrastructure facilities for the resident population are stated to be some of the factors E responsible for the decline in environmental quality in these areas. The development short activities in the coastal areas are stated to caused-term and long-term physical, chemical and biological changes that will and has caused damage to flora and fauna, public health and environment. It is further alleged that as a consequence of indiscriminate industrialisation F and urbanisation, without the requisite pollution control systems, the coastal waters are highly polluted.

It is futher the case of the petitioner that some of the costal areas contained extensive ground-water resources and sometimes mineral resources, while in other areas, there are iron ore, oil and gas resources G and mangrove-forests. As a result of the impact of tidal waves and cyclones, mangrove-forests are being increasingly destroyed, while some of the major fishing areas in some of the coastal areas of the country are undergoing serious damage consequent to ecologically unsound development. Over-exploitation of ground-water in the coastal areas in places like Madras and H Vishakapatnam is stated to have resulted in growing intrusion of salt water

from the sea to inland areas and fresh water acquifers previously used for drinking, agriculture and horticulture are getting highly damaged. Unplanned urbanisation and industrialisation in the coastal belts is stated to be causing fast disappearance of fertile agricultural lands, fruit gardens and energy plantation like casurina trees, that serve as wind brakers and protect inland habitations from the cyclonic damages.

With a view to protect the ecological balance in the coastal areas, the then Prime Minister is stated to have written a letter in November, 1981 to the Chief Ministers of coastal States in which she stated as under :

> "The degradation and misutilization of beaches in the coastal States is worrying as the beaches have aesthetic and enviromental value as well as other values. They have to be kept clear of all activities at least upto 500 metres from the water at the maximum high tide. If the area is vulnerable to erosion, suitable trees and plants have to be planted on the beaches without marring their beauty. Beaches must be kept free from all kinds of artificial development. Pollution from industrial and town wastes must also be avoided totally.

Working groups were set-up by the Ministry of Environmental and Forests in 1982 to prepare environmental guidelines for development of beaches and coastal areas. In July, 1983 environmental guidelines for beaches were promulgated which, inter alia, stated :

> "The traditional use of sea water as a dump site from our land-derived wastes have increased the pollution loads of sea and reduced its development potentials including the economic support it provides to people living nearby. Degradation and misutilization of beaches are affecting the aesthetic and environmental loss. These could be avoided through prudent coastal development and management based on assessment of ecological values and potential damages from coastal developments."

These guidelines further stated that "adverse direct impact" of development activities was possible within 500 metres from the high water mark or beyond two kilometres from it. The example which was given was that the sand dunes and vegetation, clearing, high density construction etc. along the coast could alter the ecological system of the area.

A The environment guidelines for the development of beaches, inter alia, required the State Governments to prepare a status report on the obtaining situation of the coastal areas, as a pre-requisite to environmental management of the area. Such a status report was required to be followed by a master plan identifying the areas required for conservation, preservation and development and other activities. A master plan so prepared B would ensure a scientific assessment and development of the coastline and this would ultimately ensure the preservation and enforcement of the coastal eco-system.

The Ministry of Environment and Forests undertook an exercise with C regard to the protection and development of the coastal areas. It invited objections against the declaration of the coastal stretches as Regulation Zones and imposing restrictions on industries, operation and processes in the Regulations Zones.

After considering all the objections, the Central Government issued D a Notification dated 19.2.1991 (hereinafter referred to as 'the main Notification') in exercise of the powers conferred on it by clause (d) of sub-rule 3 of Rule 5 of the Environmental Protection Rules, 1986. By this Notification, it declared the coastal streches of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the E landward side) upto 500 metres from the High Tide Line (hereinafter referred to as 'HTL') and the land between Low Tide Line (hereinafter referred to as 'LTL') and HTL as Regulation Zones. With regard to this area, it imposed, with effect from the date of the said Notification, various restrictions on the setting up and expansion of industries, operation or processes etc. in the said Regulation Zones. It was clarified that for the F purposes of the main Notification, HTL was defined as the line upto which the highest high tide reaches at spring times.

The salient features of the main Notification are that a number of activities were declared as prohibited in the Regulation Zones, which are G as follows :

> "(i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities;

H (ii) manufacture or handling or storage or disposal of hazardous

substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests No. S.O. 594 (E) dated 28.7.1989, S.O. 966 (E) dated 27.11.1989 and GSR 1037 (E) dated 5.12.1989; A

(iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying permitted areas); B

(iv) setting up and expansion of units mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974 except for storm water drains; C

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements. Schemes shall be implemented by the concerned authorities for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this Notification; D

(vi) dumping of city or town wastes for the purposes of landfilling or otherwise; the existing practice, if any, shall be phased out within a reasonable time not exceeding three years from the date of this Notification; E

(vii) dumping of ash or any wastes from thermal power stations;

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of water-ways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge; F

(ix) mining of sands, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas; G

(x) harvesting or drawal of ground water and construction of mechanisms therefore, within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary H

A wells for drinking, horticulture, agriculture and fisheries;

(xi) construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification;

(xii) any construction activity between the Low Tide Line and High
B Tide Line except facilities for carrying treated effluents and wastes water discharges into the sea, facilitties for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and

C (xiii) dressing or altering of sand dunes, hills, natural features including landscape changes 50 per cent of the plot size and the total height of construction shall not exceed 9 metres."

Secondly, the main Notification provided for regulation or permissible activities. Further more, the coastal States and Union Territory Ad-
D ministrations were required to prepare, within one year from the date of the main Notification, Coastal Zone Management Plans (hereinafter referred to as 'the Management Plans') identifying and clarifying the Regulation Zones areas within their respective territtories in accordance with the guidelines contained in the main Notification and those plans were
E required to be approved with or without modification, by the Central Government, Ministry of Environment and Forests. The main Notification also stipulated that within the framework of the approved Management Plans, all developments and activities within the Regulation Zones, except the prohibited activities and those which required environment clearance from Ministry of Environment and Forests, Government of India, were to
F be regulated by the State Government, Union Territory Administration or the local Authority, as the case may be, in accordance with the guidelines contained in Annexures I and II of the main Notification.

Anticipating that it will take time till the Management Plans are
G prepared and approved, the main Notification provided that till the approval of the Management Plans, "all development and activities within CRZ shall not violate the provisions of this Notification". The State Governments and Union Territory Administrations were required to ensure adherance to the provisions of the main Notification and it was provided that any violation thereof, shall be subject to the provisions of the
H Environment Protection Act, 1986 (hereinafter referred to as 'the Act').

It was also provided in clause 4 of the main Notification that the Ministry of Environment and Forests and the State Government or Union Territory, and such, other authorities at the State or Union Territory levels, as may be designated for the purpose, shall be responsible for the monitoring and enforcement of the main Notification within their respective jurisdictions.

As already noticed there are two Annexures namely; Annexure I and Annexure II to the main Notification. While Annexure I contains the Coastal Area Classification and Development Regulations which are for general application, Annexure II is the specific provision which contains the guidelines for development of beach resorts/hotels in the designated areas of CRZ III for temporary occupation of tourists/visitors with prior approval of the Ministry of Environment and Forests.

Annexure I consists of clause 6(1) which relates to the classification of coastal regulation zone. The norms for regulation activities in the said zones are provided by clause 6(2) for regulating development activities. The Coastal stretches within 500 meters of HTL of the landward side are classified under clause 6(1) into four categories, which are as under :

(a) Category I (CRZ-I) includes the areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries etc., areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as have been declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time. In addition thereto, CRZ-I also contains the area between the LTL and the HTL.

(b) Category II (CRZ-II) contains the areas that have already been developed upto or close to the shore line. This is the area which is within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.

(c) Category III (CAZ-III) is the areas which was originally undisturbed and includes those areas which do not belong either to category I or Category II. CRZ-III includes coastal zone in the

A rural areas (developed and undeveloped) and also areas within the municipal limits or in other legally designated urban areas which are not substantially built up.

(d) Category IV (CRZ-IV) contains the coastal stretches in the Andaman & Nicobar Lakshadweep and small islands except those B designated as CRZ-I, CRZ-II or CRZ-III.

Clause 6(2) of Annexure I provides for norms for regulation of activities in CRZ I, II, III and IV. With regard to CRZ I, the norms for regulation of activities do not permit new construction within 500 metres C of the HTL. Further more, practically, no construction activity is allowed between the LTL and HTL. The norms for regulation of activities in CRZ II relate to construction or reconstruction of the buildings within the said zone.

With regard to CRZ III, the norms for regulation of activities, inter D alia, provides that the area upto 200 metres from the HTL is to be earmarked as 'No Development Zone'. The only exception is that there can be repairs of existing authorised structures but, the permissible activity in this zone is for its use as agriculture, horticulture, gardens, pastures etc. The norms further provide for development of vacant plots between 200 E and 500 metres of HTL in designated areas of CRZ III with prior approval of Ministry of Environment and Forests for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure II.

In CRZ IV also, detailed norms for regulation of activities are F provided in the said clause 6(2) of Annexure I.

As already noticed. Annexure II contains the guidelines for development of beach resorts/hotels in the designated area of CRZ III for temporary occupation of tourists/visitors. The vacant area beyond 200 metres in the landward side, even if it is within 500 metres of the HTL can be G used, after obtaining permission for construction of beach resorts for tourists/visitors. There was no provision for allowing any fresh construction within 200 metres of the HTL or within the LTL and HTL. Clause 7(1) of the main Notification which comes under Annexure II contains various conditions which have to be fulfilled before approval can be granted by the H Ministry of Environment and Forests for the construction of beach

resorts/hotels in the designated area of CRZ III.

In the background of the aforesaid facts, we will now deal with the main contentions raised, namely; the non-implementation of the main Notification and the validity of the Notification dated 18.8.1994 (hereinafter referred to as 'the 1994 Notification').

RE : NON IMPLEMENTATION OF THE MAIN NOTIFICATION

It is the case of the petitioner that with a view to protect the ecological balance in the coastal areas, the aforesaid Notification was issued by the Central Government which contained various provisions for regulation development in the coastal areas. It was contended that there had been a blatant violation of this Notification and industries were illegally being set-up, thereby causing serious damage to the environment and ecology of the area. It was also submitted that the Ministry of Environment and Forests except for issuing the main Notification, had taken no steps to follow up its own directions contained in the main Notification. The main prayer in the Writ Petition was that this Court should issue appropriate writ, order or direction to the respondent so as to enforce the main Notification.

In the Writ Petition, specific allegations were also contained to the effect that Ministry of Environment and Forests, Government of India had issued another Notification dated 20.6.1991 under clause (5) of sub-section (2) of Section 3 of the Act declaring Dahanu Taluka, District Thane, Maharashtra as an ecologically fragile area.

The main Notification was issued so as to ensure that the development activities are consistent with the enviromental guidelines for beaches and coastal areas and to impose restrictions on the setting up of industries which have deterimental effect on the coastal environment. This Notification also required the Government of Maharashtra to prepare a master plan or regional plan for the Dahanu Taluka based on the existing land use of Dahanu within a period of one year from the Notification and to get the said plan approved by the Ministry of Environment and Forests. The master plan and the regional plan was to demarcate all the existing green areas, orchards, tribal area and other environmentally sensitive areas in the said Dahanu Taluka. Industries which were suing chemicals above the limits/quantities prescribed by the Act or by Rules were to be considered

A hazardous industries. The hazardous waste was required to be disposed of in the identified areas after taking precautionary measures. This Notification also required the Government of Maharashtra to constitute a monitoring committee to ensure the compliance or conditions mentioned in the Notification in which local representatives may be included. According to the petitioner, the Maharashtra Government has not implemented the B directions contained in the said Notification and has permitted development activities which have resulted in new polluting industries being established in the coastal area, thereby seriously endangering the ecology. The industries which are operating in Dahanu are stated to be balloon manufacturing units, buffing and chromium plating units and chemical units. There C has been a failure to make the master plan or the regional place for the said Dahanu Taluka and indiscriminate licences have been issued and consent given to new industries by the State Government and the predominately agricultural area is slowly being converted into an industrial area in complete disregard of environmental laws, guidelines and notifications. There are other instances stated to be in the Writ Petition with D relation to the Dahanu Taluka but, for the view we are taking, it is not necessary to deal with the same in any great length.

Notices were issued by this Court on 3.10.1994 to the respondents including the coastal States, namely, Maharashtra, Kerala, Karnataka, Orissa, West Bengal, Tamil Nadu, Andhra Pradesh and the Union Territory of E Pondicherry. On 12.12.1994, while granting time to the respondents to file their counter-affidavits, this Court directed that "the respondent states shall not permit the setting up of any industry or the construction of any type on the area at least upto 500 metres from the sea water at the maximum F high tide". Notice was also directed to issue to the State of Goa, the Union Territory of Daman and Diu and the islands of Andaman & Nicobar and Lakshdweep, which were added as respondents. The aforesaid interim order dated 12.12.1994 was slightly modified by this Court by its order dated 9.3.1995 in the following terms :

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> "We modify our order dated December 12, 1994 and direct that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the Notification dated 19.2.1991 issued by the Ministry of Environment and Forests, Government of India under clause (d) of Sub Rule (3) of H Rule 5 of the Environment (Protection) Rules, 1986 shall be

meticulously followed by all the concerned States. The activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Area Classification and Development Regulations contained in Annexure I to the abovesaid Notification shall also be strictly followed by the respondent-States."

According to class 3(i) of the main Notification, the coastal States and Union Territory Administrations were required to prepare the Management Plans within one year from the date of the main Notification. This was essential for the implementation of the said Notification. The lack of commitment on the part of these States and Administrations, towards the protection and regulation of the coastal stretches, is evident from their inaction in complying with the aforesaid statutory directive requiring the preparation of Management Plans within the specified period. In view of the fact that there had been a non-compliance with this provision, this Court on 3.4.1995 directed all the coastal States and Union Territory Administrations to frame their plans within a further period of six weeks thereof.

A status report was filed in court by the Union of India which shows non-compliance of clause 3(i) by practically everyone concerned. While some of the States and Union Territory Administrations submitted their plans, though belatedly, except in the case of Pondicherry, none of the other plans were approved by the Central Government. It appears that some modifications were suggested and those States and Union Territories had to resubmit their plans. Direction will have to be issued to these States and Union Territories to resubmit their plans and the Central Government will also be required to approve the re-submitted plans within a specified time. The State of Orissa had only partly complied with this Court's order dated 3.4.1995 inasmuch as the plans submitted by it were only for a small part of a coast. The State of West Bengal only submitted a preliminary concept while States of Andhra Pradesh, Gujarat, Karnataka and Kerala did not care to submitted any plans at all. Therefore, these six States namely, Orissa, West Bengal, Andhra Pradesh, Gujarat, Karnataka and Kerala have to be answerable for non-compliance with the directions issued by this Court on 3.4.1995.

A Affidavits which have been filed by the respondent clearly show that all the provisions of the main Notification have not been complied with. Explanations for the delay in preparation of the Management Plans and their approval have been offered, but they are far from satisfactory. If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, per- B haps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection, either directly or indirectly. The plethora of such enactment has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over C the years. Enactment of a law, relating to protection of environment, usually provides for what activity can or cannot be done by people. If the people were to voluntarily respect such a law, and abide by it, then it would result in law being able to achieve the object for which it was enacted. Where however, there is a conflict between the provision of law and D personal interest, then it often happens that self-discipline and respect for law disappear.

Enactment of a law, but tolerating its infringement, is worse than not enacting law all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the E violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the Enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for law abiding but is meant to be obeyed by all for whom it has F been enacted. A law is usually enacted because the Legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that the Parliament enacted the Anti-Pollution Laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and Notification issued thereunder contain provisions which G prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. H Otherwise, infringement of law, which is actively or passively condoned for

personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse affect of which will have to be borne by the future generations.

The present case also shows that having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly, violated with impunity. The coastal States and Union Territory Administrations were required to prepare Management Plans within a period of one year from the date of the Notification but this was not done. The Central Government was to approve the plans which were to be prepared but it did not appear to have reminded any of the coastal States or the Union Territory Administrations that the plans had not been received by it. Clause 4 of the main Notification required the Central Government and the State Governments as well as Union Territory Administrations to monitor and enforce the provisions of the main Notification, but no effective steps appear to have been taken and this is what led to the filing of the present writ petition.

There is no challenge to the validity of main Notification. Counsel for all the parties are agreed that the main Notification is valid and has to be enforced. Instances have been given by the petitioner as well as some of the intervenors where in different States, infringement of the main Notification is taking place but no action has been taken by the authorities concerned. The courts are ill-equipped and it is not their function to see day to day enforcement of law. This is an executive function which it is bound to discharge. A public interest litigation like the present, would not have been necessary if the authorities, as well as the people concerned, had voluntarily obeyed and/or complied with the main Notification or if the authorities who were entrusted with the responsibility, had enforced the main Notification. It is only the failure of enforcement of this Notification which has led to the filing of the present petition. The effort of this Court while dealing with public interest litigation relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of law. As such the Court has to pass orders and give directions for the protection of the fundamental rights of the people.

A Passing of appropriate orders requiring the implementation of the law cannot be regarded as the Court having usurped the functions of the Legislature or the Executive. The orders are passed and directions are issued by the Court in discharge of its judicial function namely; to see that if there is a complaint by a petitioner regarding the infringement of any Constitutional or other legal right, as a result of any wrong action or B inaction on the part of the State, then such wrong should not be permitted to continue. It is by keeping the aforesaid principles in mind that one has to consider as to what directions should be issued to ensure, in the best possible manner, that the provision of the main Notification which has been issued for preserving the coastal areas are not infringed.

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VALIDITY OF NOTIFICATION OF 1994

The Notification dated 18.8.1994 made six amendments in the main Notification. These amendments were made after the receipt of the report D of a Committee, headed by Mr. B.B. Vohra, which had been set up by the Central Government. The validity of amended Notification was also challenged in I.A. 19/1995 which was filed by three environment protection groups, namely, the Goa Foundation, Nirmal Vishwa and Indian Heritage Society (Goa Chapter). In the said application, the applicants gave a table E containing, the main points of the main Notification, the recommendations made by the Vohra Committee and the amendments made by amended Notification of 1994. The said particular are as follow :

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	"Main CRZ Notification dated 19.2.1991 issues for relaxation	Vohra Committee recommendations	Amending Notification dated 18.8.94.
1.	200 metres from HTL is no-development zone	Relaxation allowed rocky and hilly areas; no limit specified	Blanket relaxation for all areas upto HIL if Central Government so desires.
2.	No-development zone for river, creeks and backwaters 100 metres	Clarification demanded about limits; no relaxation suggested.	No-development zone relaxed to 50 metres.

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3.	No levelling or digging of sand dunes or sand	Allows destruction of sand dunes	No destruction of sand dunes allowed. However, goal posts, net posts, lamp posts allowed.
4	No-development zone area cannot be used for FSI calculations.	Recommends no-development zone area be permitted for FSI calculations	Relevant section not amended but explanation added as an afterthought in the Notification permitting no-development zone area to be included for FSI calculations.
5.	No basements allowed area not to be included in FSI	Basements permitted	Basements allowed.
6.	No fencing permitted within 200 metre zone from HTL	Only green fencing permitted, no barbed wire fencing allowed.	Allows green and barbed wire fencing."

Contending that the 1994 Notification will adversly affect the environment and would lead to unscientific and unsustainable development and ecological destruction, an application was filed by the petitioner being I.A. 16/1995, inter alia, praying for the quashing of the said Notification.

A reply was filed by the Union of India justifying the amendments and giving reasons for the issuance of 1994 Notification.

While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such Notification are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing wide spread environment destruction and violation; at the same time, the necessity to

A preserve ecology and environment should not hamper economic and other developments. Both development and evironment 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. This is sought to be achieved by
B issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.

C The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. That such a study had taken place is evident from the bare perusal of Notification itself which shows how coastal areas have been classified into different zones and the activities which are
D prohibited or permitted to be carried out in certain areas with a view to preserve and maintain the ecological balance.

According to the Union of India, while implementing the main Notification, certain practical difficulties were faced by the concerned authorities. There was a need for having sustainable development of
E tourism in coastal areas and that amendments were effected after giving due consideration to all relevant issues pertaining to environment protection and balancing of the same with the requirement of development. It has been specifically averred that a Committee headed by Mr. B.B. Vohra was set-up by the Government in response to the need for examining the
F issues relating to development of tourism and hotel industry in coastal areas and to regulate the same keeping in view the requirements of sustainable development and the fragile coastal ecology. According to the Union of India, the committee also included three environmentalist Members who had expressed their views and that the Government had accepted the recommendations of the Vohra Committee with slight modifications.
G According to it, there has been no blanket relaxation in any area as alleged and adequate environmental safeguards have been provided in the 1994 Notification.

In this background, we now deal with each of these six amendments
H separately :

(i) According to the main Notification, distance of 200 metres from the HTL was no-development zone (hereinafter referred to as 'NDZ'). The representation of the Hotel and Tourism Industry was that the existing 200 metres depth of NDZ constituted a serious handicap in the said industry competing with the beach hotels of other countries where there were no such restrictions. It was represented that reduction of the NDZ would not be ecologically harmful and there was no convincing scientific reason for fixing 200 metres as the appropriate width for the NDZ. It was also stated before the Committee that according to its projection, the Hotel Industry in India would at the most require only about 20-30 K.Ms. of coastline for the construction of sea-side resorts over the next 15 year or so. If this requirement was viewed in the context of the fact that the total coastline of the country was over 6,000 K.Ms. in length, the industry represented that relaxation with regard to this limited area would not pose any big threat to the country's ecology.

The Vohra Committee in its recommendations observed that certain Members of the Committee had felt that a blanket provision of 200 metres in the case of sandy beaches would lead to difficulties and there should be provision for relaxation to be made in suitable cases, but the consensus that emerged was that the present regulations should not be disturbed. The Committee, however, recommended that relaxations in 200 metres rule may be made in a case to case basis with regard to such stretches of the coastline which were rocky or hilly, but the relaxations should be made after carrying out necessary impact assessment studies. Further more, this relaxation should be made by the Ministry of Environment & Forests and not by the State Governments concerned.

In the 1994 Notification, there is a clear departure from the recommendations of the Vohra Committee. The Notification now provides that for reasons to be recorded, the Central Government may permit any construction within the said 200 metres NDZ subject to such conditions and restrictions as it may deem fit.

In the written submissions filed by the Union of India in this Court on 29.9.1995, this amendment has been sought to be justified and explained by it in the following words :

> "As regards the developmental activities upto the High Tide Line, the Central Government may for reasons recorded in writing

A permit construction in any particular case taking into account the geographical features and other relevant aspects.

This is necessary as providing of 200 metres of no development zone all along was not possible in the coastal line in an uniform way on account of wide variations in geographical features, existing B human settlements and developmental activities requiring fore shore facilities etc."

The relaxation with regard to NDZ was sought by the Hotel and Tourism Industry and they desired concession only with regard to 20-30 K.Ms. of C coastline. By the amended Notification, power had been given to the Central Government to make such relaxation with regard to any part of the 6,000 K.Ms long coastline of India. The Central Government has, thus, retained the absolute power or relaxation of the entire 6.000 K.Ms. long coastline and this, in effect, may lead to the causing of serious ecological damage as the said provision gives unbridled power and does not contain D any guidelines as to how or when the power is to be exercised. The said provision is capable of abuse. The Central Government also did not confine the relaxation to the extent as specified by the Vohra Committee. No satisfactory reason has been given by the Union of India as to why it departed from the opinion of the Expert Committee and that too in such E a manner that the concession which has now been given is far in excess of what was demanded by the Hotel and Tourism Industry.

We, accordingly, hold that the newly added proviso in Annexure II in paragraph 7 in sub-paragraph (1) (item i) which gives the Central Government arbitrary, uncanalized and unguided power, the exercise of F which may result in serious ecological degradation and may make the NDZ ineffective is *ultra vires* and is hereby quashed. No suitable reason has been given which can persuade us to hold that the enactment of such a proviso was necessary, in the larger public interest, and the exercise of power under the said proviso will not result in large scale ecological degradation and G violation of Article 21 of the citizens living in those areas.

(ii) The NDZ for rivers, creeks and backwaters which was 100 metres from HTL has, by the amended Notification, been relaxed to 50 metres. As already seen the main Notification does not apply to all the rivers. It applies only to tidal rivers which are part of coastal environment. It was H contended that the reduction from 100 metres to 50 metres was arbitrary

and was not made on any basis. It was also contended that the Vohra Committee had made no proposal for relaxation along the rivers but it merely asked for a clarification of the limits to which the control would apply since in some areas tidal ingress could go upto 50 K.Ms. from the coastline. A

Justifying this amendment, it was contended by the Union of India that in case of creeks, rivers or back waters, it is not possible to have a uniform basis for demarcating NDZ. The zone shall be regulated based upon each individual case. It is no doubt true that there can be no uniform basis for demarcating NDZ and it will depend upon the requirements by each concerned State Authority in their own Management Plans but no reason has been given why in relation to tidal rivers, there has been a reduction of the ban on construction from 100 metres to 50 metres. Even the Vohra Committee which had been set-up to look into the demands of Hotel and Tourism Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason. It was submitted, at the time of arguments by the Additional Solicitor General that construction has already taken place, along such rivers, creeks etc. at a distance of 50 metres and more, but no such explanation has been given in the reply affidavit. Even if this be so such reduction will permit new construction to take place and this reduction cannot be regarded as a protection only to the existing structures. In the absence of a categorical statement being made in an affidavit that such reduction will not be harmful or result in serious ecological imbalance, we are unable to conclude that the said amendment has been made in the larger public interest and is valid. This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason as is, therefore, held to be illegal. B C D E F G

(iii) The main Notification had provided that there would be no levelling for sand dunes or sand extraction. The Vohra Committee however allowed extraction of sand. This recommendation has not been accepted H

A but the amended notification allowed the installation of goal posts or lamp posts. Justifying this amendment, it was contended by the Union India that installing such goal posts or lamp post will not result in flattening of sand dunes and will also not have any other undesirable affect with regard to the said sand dunes. No permanent structure for sport facilities is permitted. We do not see any illegality having been committed by allowing the B goal posts, net posts and lamp posts to be erected. In fact the erection of these would facilitate or lead to more enjoyment of the beaches. Therefore, the challenge to this amendment fails.

(iv) By the amended Notification, the NDZ is now to be included for C FSI calculations. Justifying this amendment, it was submitted by the Union of India that an explanation had been added to the effect that although no construction is allowed in NDZ, for the purpose of calculation of FSI the area of entire plot including portions which falls within NDZ shall be taken into account. This modification has been brought in because the area in NDZ will in any case be left vacant and although this land may belong to D a private owner, he has to keep it vacant. To compensate for this, he is allowed to construct a building of such FSI as permissible after taking into account the area which falls in NDZ. This, it was submitted, is based upon fair and equitable conditions and as such this would have no effect on the ecological balance in the coastal area.

E

In view of the aforesaid reasons given by the Union of India and also keeping in view the fact that a similar recommendation had also been made by the Vohra Committee we agree with the principle that some compensation is to be allowed to the private owner whose land falls in the NDZ, F but at the same time haphazard and congested construction-a pollutant in itself-cannot be permitted in any area of the city. We, therefore, modify the amendment and direct that a private owner of land in NDZ shall be entitled to take into account half of such land for the purpose of permissible FSI in respect of the construction undertaken by him outside the NDZ.

G

(v) With regard to the amendment which allows construction of the basements, it was contended that the deep foundations and structure could interfere in the coastal areas where there is an intermixture of salt and sweet aquifers. According to the Union of India, this amendment has been H made on the recommendation of the Vohra Committee. It was, however,

stated that the basements shall be allowed subject to the condition that the other authorities such as State Ground Water Boards will permit such construction and will issue no-objection certificate after confirming that the basement will not hamper free flow of ground water in that area. It is, therefore, obvious that there will not be any adverse affect to the ecological balance in the area if basements are allowed to be constructed subject to the satisfaction of the concerned authorities that the same will not hamper free flow of ground water.

(vi) The main Notification, had not permitted fencing within 200 metres zone from HTL. By the amended Notification, green and barbed wire fencing within the said zone has been permitted. Challenging this amendment, it was contended that the effect of such fencing would be to prevent the public from using the beaches. Justifying this amendment, the Union of India had stated that the Vohra Committee had permitted green fencing. By the amended Notification barbed fencing, in addition to green fencing, has also been allowed. The reason for this is that green and barbed fencing has been allowed so that private owners are in a position to stop encroachment of their properties. Further more, in the interest of security also, a private owner would like to have some kind of boundary so that his property is safe. The implication, therefore, clearly is that it is not as if public beaches will be encroached or fenced. The fencing is being allowed only of the privately owned property in order to protect the same. We, however, direct that fencing should not be raised in such a manner so as to prevent access of the public to public beaches. In other words, the right of way enjoyed by the general public to those areas which they are free to enjoy, should in not way be closed, hampered or cutrailed. The amendment as made, does not, in our opinion, call for any interference.

GENERAL CONCLUSION :

With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with regard to the mandatory provisions of law, some public spirited

A persons have been initiating public interest litigations. The legal position relating to the exercise of Jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental fights of the citizens, is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental related B issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the Courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and C recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

D

As far as this Court is concerned, being concious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to E ensure that there can be protection of environment along with development, it becomes necessary for the Court dealing with such issues to know about the local conditions. Such conditions in different parts of the Country are supposed to be better known to the High Courts. The High Courts would be in a better position to acertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate F to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have G ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws H and spreading of pollution or degradation of ecology.

There is likelihood that there will be instances of infringement of the main Notification and also of the Management Plans, as and when framed, taking place in different parts of the country. In our opinion, instead of agitating these questions before this Court, now that the general principles have been laid down and are well- established, it will be more appropriate that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. We are sure and we expect that each High Court will deal with such issues urgently. Environmental law has now become a specialised field. In the decision which was taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992 in which India had also participated, the States had been called upon to develop national laws regarding liability and compensation for the victims for pollution and other environmental damages.

There is 6,000 K.Ms. long coastline of India. It is the responsibility of the coastal States and Union Territories in which these stretches exist to see that both the Notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government. If the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of said plans by virtue of the provisions of main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management Plans are submitted and approved at the earliest.

There has been a complete laxity in the implementation of the Act and other related Statutes. Under the said Act, the Central Government has essentially been entrusted with the responsibility to enforce and implement the Act. Section 23 of the Act, however, enables the Central Government, by Notification in the Official Gazettee, to delegate such of its powers and functions to the State Governments or Authorities. Thus, the implementation of the provisions of the Act has now essentially become the functions of the State Governments. In an effort to control pollution, State Pollution Boards have also been established but the extent of its effectiveness is yet to be demonstrated. The Environment (Protection) Act, as framed, and Section 5 of the Act in particular, gives the Government extensive powers to issue directions to any person, officer or Authority

A which they are bound to comply. The directions as issued have necessarily to be in accordance with the provisions of law and to give protection to environment.

As far as the implementation of the main Notification is concerned, the Vohra Committee has stated in its report that many members of the
B Committee expressed great concern that sufficient attention was not being paid to the enforcement of regulations. It also noted that "in the absence of anything like adequate machinery to implement the Regulations, a great deal of unauthorised development is taking place on most beaches which it will be difficult if not impossible to remove in the future". The Committee
C also recommended that the problems relating to the implementation of the regulations should be given high priority by the Ministry, if these are not to become a mockery.

With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any
D single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to
E help and assist in the implementation of the laws relating to protection of environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them.

F

DIRECTIONS

(1) Keeping in view the aforesaid observations in mind, we would direct that if any question arise with regard to the enforcement or im-
G plementation or infringement of main Notification as amended by the Notification of 1994, the same should be raised before and dealt with by the respective High Courts. In the present case, there were allegations of infringement having been taking place by allowing the setting-up of industries in Dahanu Taluka in Maharashtra in violation of the provisions of main Notification and which industries are stated to be causing pollution.
H Similarly, there were allegations of non-compliance with the provisions of

law by a unit manufacturing Alcohol in Pondicherry; which regard to Goa also allegations have been made. As we have already observed, it will be more appropriate if the allegations so made are dealt with by the respective High Courts, for they would be in a better position to know about and appreciate the local conditions which are prevailing and the extent of environmental damage which is being caused. We, accordingly, direct that the contentions raised in the Petition regarding infringement of the main Notification and of the Notification dated 20.6.1991 relating to Dahanu Taluka should be dealt with by the Bombay High Court. The High Court may issue such directions as it may deem fit and proper in order to ensure that the said Notifications are effectively implemented complied with. A copy of the Writ Petition along with a copy of the Judgment should be sent to the High Court by Registry for appropriate orders. As regard I.A. No. 17-18 of 1995 is concerned relating to alcohol manufacturing unit at Pondicherry the said application is transferred to the Madras High Court for disposal in accordance with law.

(2) Any allegation with regard to the infringement of any of the Notifications dated 19.2.1991, 20.6.1991 & 18.8.1994 be filed in the High Courts having territorial jurisdictions over the areas in respect of which the allegations are made. As far this Court is concerned, this matter stands concluded except to examine the reports which are to be filed by all the States with regard to the approval of the Managements Plans, or any classification which may be sought.

(3) Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play in so far as it relates to controlling of pollution for the purpose of ensuring effective implementation of the Notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

(4) The States which have not filed the Management Plans with the Central Government are directed to file the complete plans by 30.6.1996. The Central Government shall finalise and approve the said plans, with or without modifications within three months thereafter. It is possible that the plans as submitted by the respective State Governments and Union Territories may not be acceptable to the Ministry of Environment and Forests.

A Returning the said plans for modifications and then re-submission of the same may become an unnecessary time consuming and, perhaps, a futile exercise. In order to ensure that these plans are finalised at the very earliest, we direct that the plans as submitted will be examined by the Central Government who will inform the State Government or the Union Territory concerned with regard to any shortcomings or modifications B which the Ministry of Environment and Forests may suggest. If necessary, a discussion amongst the representatives of the State Government and the Ministry of Environment and Forests should take place and thereafter the plans should be finalised by the Ministry of Environment, if necessary, by carrying out such modifications as may be required. The decisions by the C Ministry of Environment and Forests in this regard shall be final and binding.

A report with regard to the submission and the finalisation of the plans should be filed in this Court and the case will be listed for noting compliance in September, 1996.

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(5) Pending finalisation of the plans, the interim order passed by this Court on 12.12.1994 and 9.3.1995 shall continue to operate.

(6) Four States, namely Andhra Pradesh, Gujarat, Karnataka and Kerala have not yet submitted their Management Plans to the Central E Government. There is thus a clear non-compliance with the direction issued by this Court on 12.12.1994 and 9.3.1995. We issue notices to the Chief Secretaries of these States to explain and show cause why futher appropriate action be not taken for this non-compliance. The notices are to be returnable after six weeks.

F G.N. Still pending.