



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07<sup>TH</sup> DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR.SATISH CHANDRA SHARMA,  
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.43414/2019 (GM-RES-PIL)

BETWEEN

A V AMARNATHAN  
ADVOCATE (PARTY IN PERSON)  
S/O T K KARUNAKARAN  
AGED 65 YEARS,  
# 1756, 1<sup>ST</sup> 'B' MAIN  
KIRAN NARAYAN MANSION  
'D' BLOCK, II STAGE RAJAJINAGAR  
BANGALORE-560 010

...PETITIONER

(BY SRI A.V. AMARNATHAN – PETITIONER  
SMT B.V VIDYULATHA – AMICUS CURIAE)

AND

- 1 . STATE OF KARNATAKA  
VIDHANA SOUDHA  
VIDHANA VEEDHI BANGALORE-560001  
(REP BY ITS CHIEF SECRETARY)
- 2 . ISHA FOUNDATION  
VELLIANGIRI FOOTHILLS  
ISHANA VIHAR POST  
COIMBATORE-641 114  
INDIA  
(REP BY ITS GURUJI JAGGI VASUDEV)
3. ISHA OUTREACH  
A REGISTERED CHARITABLE TRUST,

HAVING ITS REGISTERED OFFICE AT  
ISHA YOGA CENTRE,  
VELLIANGIRI FOOTHILLS,  
SEMMEDE POST, COIMBATORE,  
TAMIL NADU,  
REP.BY ITS AUTHORIZED OFFICER

...RESPONDENTS

(BY SRI R. SUBRAMANYA – ADDL.ADVOCATE GENERAL  
A/W SRI VIJAYAKUMAR A PATIL, AGA FOR R1  
SRI.VINAYAKA B, ADVOCATE FOR R2  
SRI UDAYA HOLLA, SENIOR ADVOCATE FOR  
SRI MANMOHAN P N, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT TO STOP COLLECTING RS.42/- PER TREE FOR 253 CRORES PLANT FROM THE GENERAL PUBLIC; DIRECT THE RESPONDENT NO.1 TO LOOK INTO THE PROJECT OF THE RESPONDENT NO.2 REGARDING THE CAUVERY CALLING PROJECT OF THE RESPONDENT NO.2 AND TAKE APPROPRIATE STEPS.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 1.9.2021, THIS DAY, **ACTING CHIEF JUSTICE**, PRONOUNCED THE FOLLOWING:

### **ORDER**

The present petition has been filed as a public interest litigation.

2. The contention of the petitioner is that respondent No.2 - Isha Foundation has advertized to the public at large that respondent No.2/organization is planning to plant trees across the Cauvery river from the originating point of Cauvery River i.e., Talacauvery to Thiruvarur under a

project known as a "Cauvery Calling". It has been stated that respondent No.2 has organized a rally from Talacauvery to Thiruvavur, which is 639.1 kms., in order to collect funds for planting trees. The petitioner's contention is that respondent Nos.2 and 3 are planning to plant 253 crore plants to save Cauvery river and is collecting Rs.42/- per tree from the public at large for planting trees. It has been stated that the total amount comes to Rs.10,626.00 crores and the collection of money on the part of respondent Nos.2 and 3 from public is disturbing.

3. The petitioner has further stated that respondent No.2 is a private organization and the organization claims that they have studied Cauvery river basin and after studying the Cauvery river basin, a Bike rally was organized on 2.9.2019 from Bhagamandala, Kodagu District and a function was also organized on 8.9.2019 at Bengaluru. The respondent No.2 is collecting from general public at the rate of Rs.42/- per tree and such an act on the part of respondent Nos.2 and 3 cannot be permitted to be continued and the State is not doing anything in the matter.

4. The petitioner has raised various grounds before this Court and the first ground raised by the petitioner is that one lady from a village, namely Salu Mara Thimmakka has also planted many trees in the past from her own income and she has not collected any money from the general public. Reference of other person has also been made in the writ petition, namely Jadav Payeng, an environmentalist, who has created a forest in Assam (wrongly mentioned as Rajasthan in Memorandum of Writ Petition) where the water is not available. Reference has also been made to his Holiness Sri Satya Sai Baba and it has been stated that he brought drinking water to Andhra Pradesh from Chennai without claiming any money from general public. The petitioner's contention is that respondent No.2 cannot collect funds from public at large for planting the saplings.

5. The petitioner has raised another ground stating that the Bangalore Advocates Association has conducted tree planting function many times without claiming any money and large number of organizations were involved in planting trees without collecting money from general public. It has been further stated that the reports raised upon studies conducted by respondent No.2 should have been submitted

to the State Government and thereafter, the State Government should have granted necessary permission to carry out plantation on Government land and respondent No.2 cannot be permitted to carry out a project in a Government land.

6. The last ground raised is again in respect of planting of trees project, which is named and styled as "Cauvery Calling" and the contention of the petitioner is that respondent No.2 is implementing the project over the Government land and it is detrimental to the interest of the general public and respondent No.1 – State is duty bound to protect the interest of general public.

7. A prayer has been made in the petition for issuance of a writ of mandamus or any other writ restraining respondent No.2 to collect Rs.42/- towards the cost of tree for planting from general public and a further prayer has been made for issuance of an appropriate writ or order directing respondent No.1 – State to look into the project of respondent No.2 regarding Cauvery Calling.

8. By way of an interim relief, a prayer has been made to restrain respondent No.2 from collecting funds from the general public for Cauvery Calling project.

9. Respondent No.1 – State of Karnataka has filed statement of objections on 10.12.2019 and it has been stated by respondent No.1 that in the State of Karnataka there is already a Government scheme known as “Krishi Aranya Protsaha Yojane” (KAPY), which is meant for Agro-Forestation through out the State of Karnataka. Under the scheme, the farmers are provided with the saplings of their choice at a subsidized price and they are supposed to plant the same in their property at their own cost. After one year, the Government would pay, after due verification, a sum of Rs.10/- during the first year, Rs.15/- for the second year and Rs.20/- in the third year per plant as an incentive. The payments are done after due verification by the authorities every year and the incentive is credited to the bank account of the farmers by fund transfer. The purpose of the entire scheme is to promote Agro-Forestation and to educate the farmers on the importance of the Agro-Forestation for a better environment.

10. It has been further stated by respondent No.1 that the aforesaid scheme was notified by Government Order dated 7.6.2011. The said project of the Government of Karnataka was very successful and vide notification dated 19.6.2017 the incentives have also been enhanced. It has been further stated that in order to popularize the scheme, the Government has made provision for participation of private agencies for the mobilization of the farmers and to educate and enroll them into the scheme and as an incentive to those private agencies to participate effectively, the Government has also made some provision for payment of incentive for the voluntary act of the said agencies and it is not at all a profit making venture of the Government of Karnataka. The Government has taken a categorical stand before this Court by filing an affidavit dated 6.3.2021 stating that the project, namely "Cauvery Calling" is not being implemented on the Government land and it is not a Government project.

11. A reply has been filed by respondent No.2 and it has been stated that respondent No.2 is a non profit spiritual organization. It is involved in propagating yoga and other related subjects. The project of Cauvery Calling is an

extension of Rally of Rivers, which is launched in September 2017. The Cauvery river is the largest contribution of irrigation and drinking water for the State of Karnataka and Tamil Nadu. The river has shrunk by 40% from its historical flows. Further, 87% of the basin's original tree cover has been lost and thus, caused grave public concern. In this background, the movement of Rally for Rivers was launched by Sri.Jaggi Vasudev, who is popularly known as "Sadhguru". The said movement created awareness among the public and Government for revitalization of rivers. The movement was effectively carried out in 16 States by addressing more than 150 public events. The movement and its objects were also brought to the notice of 29 Chief Ministers by holding personal meetings with them. The experts from diverse fields relating to forestry soil, agriculture, governance, finance, corporate and education prepared a draft policy and the recommendations were also submitted to the Government of India. Based upon the discussion of the expert group formed by the Government of India, Government of India has decided to launch major campaign on revitalization of rivers.



12. It has been further stated by respondent No.2 that Cauvery Calling project is an off-spring of Rally for Rivers. It is aimed to facilitate the farmers to plant trees in the Cauvery basin of Tamil Nadu and Karnataka. As per the survey report, river Cauvery, which is a source of life and livelihood for millions of people, is severely depleted and the river is shrinking about 40% from its historical flow and about 87% of the river basin's original tree cover is lost. This crisis is a result of ecological imbalance and the only solution to resolve the crisis is to provide tree cover in the Cauvery basin. In this background, a project report was prepared in the matter over planting trees in private lands by taking the consent of land owners.

13. It has been stated by respondent No.2 that the amount required for maintenance of the plants is being collected from public in consultation with the experts and the amount, which has been determined for maintenance of sapling/tree is Rs.42/- per sapling and is required for following activities;

- 1) Sapling production/sapling programme cost,
- 2) Cost of maintaining, distribution point of sapling,

- 3) Training in agro-forestry and other project management costs,
- 4) Appropriate follow up technical guidance and support to farmers,
- 5) Regional level training to farmer by expert farmer and foresters,
- 6) Creating and maintaining network among agro- forestry farmers and,
- 7) Monitoring over the projects.

14. It has been further stated by respondent No.2 that the Cauvery Calling proposes to plant 25 crores of trees in Cauvery basin in Karnataka and Cauvery Calling is just not a movement of planting trees, but it is a project to engage the farmers to grow trees on their own land. The project of planting 242 crore trees is for 12 years and there is no proposal to work on public land and the entire project intends to facilitate the farmers to plant trees in the private agricultural lands.

15. It has been further stated by respondent No.2 that the movement of revitalization of rivers has been initiated in the public interest and the object is to create awareness among the farmers as well as the public regarding revitalization of rivers. It is stated that respondent No.2 i.e., Isha Foundation is not taking any funds from the State

Government for the project and is trying to raise money from general public. The mode and meaning of utilization of these funds is entrusted to the Board consisting of eminent persons. It has been stated that since the entire movement does not involve the State fund, the writ petition is not maintainable inasmuch as the writ cannot be issued to an entity, which is not a State as defined under Article 12 of the Constitution of India.

16. It has been further stated by respondent No.2 that in order to facilitate planting of trees, donations are being collected and the entire income and expenses of the project is governed by a Board consisting of eminent personalities as 8 members of the Board and their names are detailed as under;

- 1) Justice Arijit Pasayat, Retd., Supreme Court Judge,
- 2) Ms Kiran Mazumdar Shaw, Chairperson of Biocon,
- 3) Mr.Ravisingh, Secretary General and CEO of World Wide Fund for nature,
- 4) Mr.Shashi Shekhar, IAS Retd., Former Secretary, Ministry of Water Resources, Govt. India,
- 5) Mr.Pravesh Sharma, IAS Retd, MD of Small Farmers Agri Business Consortium, Ministry of Agriculture, Govt.of India.
- 6) Mr.B.Muthuraman, Former Vice Chairman of Tata Steel,

- 7) Dr.A.S.Kiran Kumar, Former Chair Person, ISRO,
- 8) Sri Chandrajit Bannerjee, Director General Confederation of Indian Industry (CII).

17. It has been further stated by respondent No.2 that the entire project is aimed to bring river Cauvery back to her glory and to save the eco system of river including the flora, fauna and the soil and ultimately and most importantly, to save the farmers, who are depending upon the river water for their livelihood.

18. Respondent No.2 has further stated that the people of Karnataka have realized the aim and object of the project and have supported the movement. However, certain vested commercial interest, who are interested in commercializing the riverside eco system, have been raising their heads against the project as the project aims at keeping commercial ventures at bay on the riverside. It has been further stated that the donation of Rs.42/- per sapling is collected as respondent No.2 will have to raise 242 crore good quality saplings in the lands of the farmers, who are willing to plant trees in their land. It has been further stated that the petitioner is raising unnecessary hue and cry and has not studied the draft policy recommendations nor the

project itself in detail and a frivolous public interest litigation has been filed before this Court and a prayer has been made for dismissal of the writ petition.

19. An application for impleading was filed in the matter on behalf of Isha Outreach, a registered charitable trust for impleadment under Order I Rule 10(2) r/w Section 150 of Code of Civil Procedure and it was stated before this Court that Cauvery Calling Project is being carried out by Isha Outreach, which is a public charitable trust. The Trust Deed dated 17.2.2009 was placed on also record. It was also brought to the notice of this Court that the main object of the Trust is to safeguard the environment and natural resources, to advance any object of general public utility etc., It has been stated that the Trust is registered with the Income Tax Department as per Section 12AA and Section 80G of the Income Tax Act, 1960 and this Court by an order dated 11.6.2020 has allowed the application for impleadment of Isha Outreach, a charitable trust as respondent No.3.

20. After impleadment, on 24.8.2020 an affidavit was filed on behalf of respondent No.3 – Isha Outreach that a programme was scheduled to air on Discovery Channel on

22.8.2020 at 6.30 pm., IST in respect of Cauvery Calling project. It was further stated in the affidavit that the petitioner appearing in person addressed an e-mail to Discovery Channel stating that Cauvery Calling project is challenged in the present public interest litigation before this Court. In the last paragraph of the affidavit, it has been stated that the petitioner has told the Discovery Channel that airing of the programme on Cauvery Calling in the channel until disposal of the writ petition before this Court will amount to contempt of Court. Hence, in the light of the e-mail sent by the petitioner, the Discovery Channel cancelled the airing of the programme. Thereafter, the Discovery Communication of India after seeking clarifications from respondent Nos.2 and 3 rescheduled the airing of the documentary to the next suitable date.

21. This Court in the light of the conduct of the petitioner after observing all minute details, has passed an order on 15.10.2020, which is reproduced in this order. In the said order, this Court has restrained the petitioner to prosecute the petition as a *pro bono* litigant. This Court has subsequently, passed an order on 3.11.2020 appointing

Smt.B.V.Vidyulatha, learned counsel as amicus curiae to assist the Court.

22. Respondent No.3 has also filed statement of objections and has stated that the petition has been filed by the petitioner on a single premise that respondent No.3 has collected money to plant trees on government/public lands and the same is absolutely false. The Cauvery Calling project is not about planting of trees on Government/public lands. Rather, it is aimed at encouraging farmers to take up agro-forestry on their private agricultural land. It has been stated by respondent No.3 that petitioner's case is based on false premise without there being any supporting material and deserves to be dismissed *in limine*.

23. It has been further stated by respondent No.3 that the present petition is a frivolous petition and the petitioner has not made any study and analysis about the project, but has moved this Court based upon a two page printout of a website by giving his own interpretation. The petition has been filed without studying and understanding the Cauvery Calling project and the petitioner is invoking the writ jurisdiction of this Court and is wasting the valuable and

precious time of this court. The petition is nothing but a publicity interest litigation and an attempt has been made to give negative publicity to the Cauvery Calling project and to disrupt its implementation. It has been further stated that the petition does not qualify with the guidelines issued by the Hon'ble Supreme Court in the case of **State of Uttaranchal v. Balwant Singh Chauhal & Ors.**, reported in (2010) 3 SCC 402 and therefore, as the Cauvery Calling project is a project in larger interest and the public interest litigation is a step towards scuttling a genuine project without there being any foundation, it deserves to be dismissed with exemplary costs.

24. Reliance has been placed upon a judgment delivered in W.P.No.8887/2008 , decided on 2.7.2008 and the contention of respondent No.3 is that earlier also similar petition was dismissed with exemplary cost of Rs.25,000/-. A review petition was filed i.e., RP.No.265/2008 and the same was dismissed vide order dated 8.9.2008. It has been stated by respondent No.3 that the petitioner is a chronic litigant, who is in the habit of filing frivolous petitions.



25. It has been further stated that by an order dated 7.10.2016 another PIL was dismissed i.e., W.P.No.52956/2016 with a cost of Rs.1.00 lakh and a review petition was also preferred i.e., RP.No.477/2016 and the same was also dismissed on 25.11.2016 and the same reflects that the petitioner is in the habit of filing frivolous petitions and therefore, the present petition also deserves to be dismissed with exemplary cost.

26. Respondent No.3 has further stated that it is a Public Charitable Trust. At present Shri T.R.Rathinam, Shri Kumaran Kandasamy, Smt.Manju Sawhney, Smt.Sudha Ragunathan, Shri K.Sekar, Shri V.V.Subba Reddy, Shri L.K.Narayan and Swami Nirakara are the trustees of respondent No.3 - Trust. The object of the Trust inter alia is to safeguard the environment and natural resources, to advance any object of general public utility etc. Copy of the Trust Deed is on record as Annexure R5. As respondent No.3 - Trust is registered with the Income Tax Department, as stated earlier, it is duly authorized to receive public donations. Copies of approval and registration are on record as Annexures R6 and R7.

27. It has been stated by respondent No.3 that respondent No.2 had formulated the proposal for Cauvery Calling project and submitted a detailed project report to the State Government and also created awareness regarding the project. Project Green Hands (PGH) was launched by respondent No.2 in the year 2004 with the objective of promoting tree planting and afforestation with the aim of substantially increasing the green cover in Tamil Nadu State to 33%, which is the stated national aspiration of the Ministry of Environment and Forests, Government of India. Project Green Hands won the Guinness World Record in the year 2006 for planting maximum number of saplings over a period of 3 days by planting 8,52,587 saplings in 27 districts of Tamil Nadu in 6284 locations. Copy of the award is on record as Annexure R8.

28. It has been stated by respondent No.3 that in 2009, with a view to give additional focus and scale to all the ecological and social outreach initiatives, the work related to environment, ecology, tree plantation, rural rejuvenation etc., was continued by the newly formed registered charitable Trust – Isha Outreach. The Cauvery Calling

project is managed and implemented by respondent No.3 including the collection of donations, disbursement of funds, execution of the project etc. Respondent No.3 works primarily in rural India delivering tree planting, ecological, educational and health care initiatives. Consequently, years of sustained efforts in the area of ecology and tree planting has now resulted in the Cauvery Calling project. Respondent No.3 has implemented several projects in the larger public interest and has earned several accolades and appreciation from all over the world and till date respondent No.2 and respondent No.3 through the Project Green Hands have facilitated the planting of more than 38 million trees with the support of more than 2 million citizens in Tamil Nadu. As a part of Project Green Hands, more than 69,000 farmers have been educated and encouraged to voluntarily adopt tree based agriculture and agro-forestry on a part of their agricultural lands. Testimonials of few farmers, who have successfully adopted agro-forestry are also on record as Annexure-R9. For this large on-ground ecological and tree-planting impact, the Government of India conferred India's highest environmental award, the Indira Gandhi Paryavaran Puraskar for 2008 upon respondent No.2 in the year 2010

and copy of the same is on record as Annexure-R10. The copies of news reports of awards received by respondent Nos.2 and 3 for their work related to the environment and ecology are on record as Annexure.R11.

29. It has been stated that respondent No.3 also implemented the Green School Movement with the objective of building both environmental awareness and involvement amongst school children and as a result, more than 2700 schools have been beneficially impacted. Further, respondent No.3 through an initiative called Isha Agro Movement has trained over 5000 farmers in sustainable agricultural practices. Isha Foundation and thereafter Isha Outreach through an initiative called 'Action for Rural Rejuvenation (ARR)' has been involved for years in transforming lives of the rural poor by implementing a range of health, livelihood and community revitalization programs. Key areas of focus of this initiative are, the health camps and mobile health clinics through which tens of thousands of rural poor are being treated every year. Isha Outreach has helped to set up the Velliangiri Uzhavan Farmer Producer Organization (FPO) in 2013, as a resource partner. It has won the best FPO award at the Outlook Agriculture Conclave

in New Delhi in February 2020. Copy of the news report on the same is on record as Annexure R12. Few of the news articles on various projects and initiatives with respect to environment and ecology like massive tree planting drives and related works are on record as Annexure R13.

30. It has been stated by respondent No.3 that upon seeing the alarming rate of depletion of the rivers of our Country, in 2017 the "Rally for Rivers" movement was conceptualized by respondent No.2 and implemented by respondent No.3 with the objective of creating a peoples' movement to create awareness and to help revitalize the rivers, water and soil of our country. A team of Respondent No.2 worked to formulate the "Rally for Rivers Draft Policy Recommendations" which aimed for proactive Government policies and on-ground action so as to revitalize Indian rivers. The said policy recommendation was submitted to the Prime Minister of India for policy formulation and action and on receipt of the same, the Government of India set up an Inter-Ministerial Committee of Government Secretaries and Experts under the aegis of NITI Aayog to evaluate the draft policy in detail. In June 2018, the NITI Aayog went on to issue a programme for Action to all the 29 State

Governments about principles and policies relating to river revitalization. Copy of the advisory is on record as Annexure R14. This effort was recognized by the Ministry of Water Resources and Ganga Rejuvenation, Government of India by conferring "National Water Award 2018" in the category of "Best Educative/Mass Awareness Efforts" to respondent No.3, the same is also on record as Annexure.R15.

31. It has been further stated by respondent No.3 that the Cauvery Calling project is spread across the entire Cauvery river basin districts of both Tamil Nadu and Karnataka. Therefore, the total number of districts that will be covered by the Cauvery Calling project are 27 of which 18 districts are in Tamil Nadu and 9 in Karnataka. Under the scope of this project, there are many components of activity pertaining to implementation of the vision of the project towards revitalization of the soil, water and ecology of the Cauvery basin and river. Cauvery Calling project has various different components, and each of those components independently contribute to the overall task and they are as hereunder;

**Component 1:** In Tamil Nadu, Cauvery Calling will:

- a) be growing/sourcing the required saplings;
- b) also educate and hand-hold the farmers, who receive these saplings.

**Component 2:** In Karnataka, Cauvery Calling will:

- a) be growing/sourcing saplings;
- b) also educate, hand-hold the farmers, who receive these saplings.

**Component 3:** Krushi Aranya Protsaha Yojane (KAPY) is a program of the Forest Department of the Government of Karnataka, whereby farmers are provided seedlings at subsidized rates from the nearest nurseries of the forest Department for planting in their lands. Under the Cauvery Calling project, the respondent is supporting/promoting this scheme by helping with the key task of educating, mobilizing, enrolling and subsequently hand holding the farmers in the Karnataka Cauvery river basin districts. The KAPY scheme calls upon NGO's and private individuals to help to achieve its goal of having 33% of the geographical area under forest and tree cover.

**Component 4:** Given the enormous nature of the task at hand, which cannot be carried out by any one entity alone, the Cauvery Calling project will also seek to secure or catalyze the involvement of other like-minded entities and organizations for the various

aspects of the task at hand of revitalizing the river Cauvery.

Thus, the support that respondent No.3 provides to the KAPY scheme of the Government is only one of the many components of the Cauvery Calling project.

32. It has been further stated by respondent No.3 that the incentive amount given by the State Government to the farmers for plantation of saplings under KAPY will be deposited by the State Government directly to the farmer's bank accounts and it has been categorically stated that respondent No.3 does not act as an intermediary in this transaction between the State Government and the farmer. In fact, respondent No.3 is incurring expenditure for the mobilization and enrolment of farmers from the funds it has received as donation. The aim and object of respondent No.3 is to facilitate planting of an unprecedented 242 crore trees in the Cauvery basin and anyone interested including individuals, Governments, corporate or NGO's can contribute saplings, which will proportionately reduce the number targeted by respondent No.3. Therefore, the allegations made in the writ petition are unfounded and baseless and the petition against the project by arraying respondent No.1 as party is not maintainable.



33. It has been further stated by respondent No.3 that studies have shown that the Cauvery river, which has historically been a lifeline of South India, has declined by an estimated 40% in the last 70 years. The complex issues of water resources in Cauvery include flood and drainage problems, lack of freshwater, salinity intrusion into surface and ground water and over extraction of groundwater. This over exploitation by rapidly increasing population and changes in land use has caused depletion of the river. In 2016, river Cauvery went dry at its source as rainfall fell by 40-70%. A study points out that the evapotranspiration from the vegetation over the Western Ghats accounts for 1/4<sup>th</sup> of the rainfall over peninsular India and that up to 50% of the rainfall during rainfall deficit years is due to the moisture supplied by the Western Ghats. However, between 2015 and 2017 the Western Ghats districts of Shivamogga and Kodagu have lost 189 sq.km. of forests. About 87% of tree cover of the Cauvery river has been removed in the last 50 years. Given the strong link between green cover and volume and duration of the flow of the Cauvery river, the loss of green cover over the region has added to the plight of the river.

34. It has been stated by respondent No.3 that through the Cauvery Calling project it has set itself the ambitious goal of helping revive the Cauvery river. The solution proposed by the Cauvery Calling project is to bring back the green cover in the Cauvery basin districts. In order to do this, the vision of the project is to encourage and facilitate farmers to plant up to 242 crore trees on their own private agricultural lands in the Cauvery river basin districts. This is sought to be done by educating and encouraging farmers in that area to partially adopt the lucrative mode of tree-based agriculture. In order to facilitate this big task, and also to assist the farmers by providing access to quality saplings, respondent No.3 has reached out to like-minded members of the general public, who would want to voluntarily give their contribution to this much-needed task and support farmers.

35. It has been further stated by respondent No.3 that the key underlying principles of Cauvery Calling is based on the fact that a large part of the land in the Cauvery river basin is in the hands of private farmers. Given the same, the project's object is to help farmers to move partially to tree based agriculture, which will in turn have multiple benefits

relating to an increase in farmers' income, raising groundwater levels, improving soil health and soil productivity, and revitalizing the river. The Cauvery Calling project therefore, seeks to reverse some of the massive damages to the Cauvery river basin over the last many decades. The project seeks to establish an economic plan for private farmers with resultant ecological benefits, whereby the river is revived, soil health is restored, water tables are replenished and farmer incomes are boosted. As a Result, the Cauvery Calling project seeks to address in a holistic and all-encompassing manner the triple societal challenge of insufficient livelihood for impoverished farmers, diminishing water resources, and reducing soil fertility and productivity.

36. It has been stated by respondent No.3 that as a part of the Cauvery Calling project, several methods of awareness generation have been employed to inform and educate the general public and the farmer community about the various economic and ecological benefits of tree-based agriculture. Agro-forestry is the basis of the solution being offered by the project to the devastating impact of river depletion, soil degradation and farmer crisis in the Cauvery basin. A motorcycle rally and several informative public

announcements were a part of this awareness building exercise. To raise public awareness about the dire state of Cauvery river and the urgent and immediate action needed to undo it, a motorcycle rally was undertaken by respondent No.3 together with respondent No.2 in September 2019 wherein many farmer and public events were conducted. A massive farmer outreach programme was conducted in August/September 2019, wherein more than 2,70,000 farmers were reached in 7000 villages in both Karnataka and Tamil Nadu and over 19000 farmers in Karnataka and over 1,00,000 farmers in Tamil Nadu expressed their interest to participate in agro-forestry.

37. It has been further stated by respondent No.3 that the project does not involve plantation of trees in Government land. Respondent No.3 has never compelled or forced any person to contribute/donate towards the project. The donations collected from the public are voluntary donations. The large target of encouraging the planting of 242 crore trees over 12 years can only be achieved through active collaboration of all possible stakeholders including individuals, organizations etc., who wish to contribute to this solution. The project is not limited to just the 9 Cauvery

basin districts in Karnataka but also extends to the much larger number of 18 districts in Tamil Nadu.

38. It has been stated by respondent No.3 that as the activities of the KAPY scheme are in line with the overarching vision and object of Cauvery Calling, the project (Cauvery Calling) is supporting and facilitating the activities of Krishi Aranya Protsahan Yojane (KAPY) as just one of its many project components. In so far as this, respondent No.3's involvement with KAPY is concerned, this respondent is educating, mobilizing and enrolling the farmers under KAPY and the incentive amount given by the State Government to the farmers for plantation of saplings under KAPY will be deposited by State Government directly to the farmer's bank accounts and this respondent is not in any way connected to the financial transaction between the government and the farmers under the KAPY scheme and further, this respondent will also hand-hold the farmers when the plantation is being done.

39. It has been stated by respondent No.3 that as part of promoting and encouraging farmers to participate in the KAPY scheme, hundreds of full time and part time

volunteers of respondent No.3 are working in the 9 Cauvery basin districts of Karnataka, where they are educating the farmers on various economic and ecological benefits of agro-forestry through mass contact programmes with successful agro-forestry farmers, technical literature in farmers' language and social media campaigns and an interactive Voice Response System (IVRS) and a farmer helpline (80009-80009), which the farmers can call to express their interest and also to seek further guidance. On February 14, 2020 a farmer's education event was conducted in Mysuru which was attended by over 250 farmers, in which successful Agro-forestry farmers along with the technical experts shared their experience and knowledge with the farmers. Copy of newspaper coverage of the farmer's education event is on record as Annexure.R16. It has been further stated that such programmes were planned for each of the 54 rural taluks in the 9 Cauvery districts of Karnataka, but could not be executed due to the Corona Virus induced lockdown. Despite the challenging situation, since the planting season is underway, Isha volunteers have been reaching out to farmers through phone calls and thousands of farmers are

being encouraged to enroll for the KAPY scheme of the Government of Karnataka.

40. It has been further stated by respondent No.3 that the Cauvery Calling project is being implemented along the full length of the river Cauvery which includes 18 districts in Tamil Nadu besides the 9 districts in Karnataka. In Tamil Nadu over 50 lakh saplings were raised and distributed by Isha Outreach's nurseries for planting in the year 2019-20 because of the impetus provided by the Cauvery Calling awareness campaign carried out since September 2019. District-wise sapling distribution data for Isha's nurseries in Tamil Nadu in the year 2019-20 and 2020-21 till June 22, 2020 is on record as Annexure R17. After that there has been a slowdown due to the lockdown because of the corona virus situation. Cauvery Calling project is raising 40 lakh saplings for facilitating planting in the current rainy season in Tamil Nadu. It has been further contended that respondent No.3 has maintained transparency with regard to the funds that have been collected and the number of trees that have been paid for and the same is updated on the website [www.cauverycalling.org](http://www.cauverycalling.org) and it's accounts are independently

audited by an external auditor and returns are filed with authorities promptly.

41. Lastly, it has been stated by respondent No.3 that the "Cauvery Calling" project and "Rally for Rivers" have received the support and commendations of several organizations such as the United Nations Environment Program (UNEP), the United Nations Convention to Combat Desertification (UNCCD), Global Landscapes Forum (GLF), and International Union for Conservation of Nature (IUCN). The Rally for Rivers initiative is included in the UN Secretary General's 2019 Climate Action Summit's compendium of nature-based solutions. It was also highlighted at the Global Landscapes Forum held at the UN Headquarters in New York City in September 2019 as a "model landscape restoration initiative."

42. Heard the learned counsel Amicus Curiae, learned counsel for respondent Nos.1, 2 and 3 and perused the material on record. The matter is being disposed of with the consent of the parties at orders' stage itself.



43. The petitioner before this Court has filed the present petition alleging that respondent No.3 is a private organization and is planting trees in Government and public land without the approval of the State Government and is seeking to collect Rs.42/- per tree from public at large. The petitioner based upon the aforesaid allegation has sought for issuance of a writ of mandamus to respondent No.2 restraining it to collect Rs.42/- per tree and with a further direction to the State of Karnataka to look into the project, which is named in the style of "Cauvery Calling".

44. The State of Karnataka has filed the objections statement on 10.12.2019 and an affidavit of Sri.Rajkumar Srivastav, Additional Principal Chief Conservator of Forest, Government of Karnataka, dated 6.3.2021. Respondent No.2 has filed statement of objections on 22.10.2019 and respondent No.3 has filed statement of objections on 20.7.2020 and additional statement of objections on 7.9.2020 as well as statement of objections to IA.3/2020 on 1.7.2020.

45. Respondent No.2 has filed its objections on 22.10.2019, wherein it has been stated that it had prepared

a project report in August 2019 titled "Cauvery Calling" for planting trees in the Cauvery basin. The project proposal of respondent No.2 was not accepted by the State Government, which is evident from the statement of objections filed by the State Government on 12.10.2020 and it is respondent No.3, which took over the project and has been implementing the project, which is also evident from the objections of respondent No.3 dated 20.7.2020.

46. The most important aspect of the case is that the Additional Principal Chief Conservator of Forests, Government of Karnataka, has filed an affidavit dated 6.3.2021 and in the said affidavit, he has categorically stated that the State Government has issued a public notification in the official website clearly stating that the Cauvery Calling project initiated by Isha Foundation/Isha Outreach is not the project of the Government of Karnataka and public notices have been published in several newspapers as well in this regard. Respondent No.3 has also published the same statement on its website, which is also evident from the memo filed by respondent No.3 dated 19.2.2021.

47. Respondent No.3 is a public charitable trust duly registered. It is also registered with the Income Tax Department under Section 12AA and 80G of the Income Tax Act, 1960 and it is duly authorized to raise donations from public at large and has been regularly filing income tax return and audited reports before the Income Tax Department. The project Cauvery Calling is being implemented by respondent No.3. Respondent No.3 as well as respondent No.2 have facilitated planting of more than 38 million trees with the support of more than 2 million citizens of Tamil Nadu. In an outreach programme called Project Green Hands, more than 69,000 farmers have been educated and encouraged, who have voluntarily adopted tree based agricultural and agro-forestry on part of their agricultural lands. The testimony of farmers are also on record, who have adopted agro-forestry.

48. Respondent Nos.2 and 3 have undertaken the massive tree planting exercise and the Government of India has awarded the highest environmental award viz., Indira Gandhi Paryavaran Puraskar for 2008, which was given to respondent No.2 in the year 2010. The list of the awards received by respondent Nos.2 and 3 for their contribution in

the work related to environment and ecology, is a very lengthy list and the awards are countless.

49. River Cauvery has been the lifeline of South India and there has been decline in the water of river Cauvery by 40% in the last 70 years. The drying up of the rivers in the country is well known to us and the drying of river Cauvery has brought large number of problems to the farmers and the citizens, like, flooding, drainage problems, lack of water, salinity intrusion into ground water as well as over extraction of ground water.

50. The scientific studies carried out by the experts establish that evapotranspiration from vegetation over Western Ghats accounts for 1/4<sup>th</sup> of the rainfall over peninsular India and up to 50% of the rainfall during rainfall deficit years is due to the moisture supplied by the Western Ghat Districts of Shivamogga and Kodagu and these Districts have lost 189 sq.km., of forest cover. About 87% of the tree cover of Cauvery river has been removed from the last 50 years and keeping in view the plight of farmers and other factors, the project Cauvery Calling was conceived and is being implemented.

51. The project is a voluntary initiative and the project receives funds from voluntary donations from the public at large. The project has received donations as on 1.2.2020 to the tune of Rs.82.50 crores as reflected from the record produced before this Court. It is not the case where the Government money is being paid to respondent No.2 or respondent No.3 to implement the project and it is purely based upon the voluntary donations received by the project from general public.

52. The Cauvery Calling is being implemented along the full length of river Cauvery, which includes 18 districts of Tamil Nadu and 9 districts of Karnataka. Over 50 lakh samplings were raised and distributed by the nurseries of respondent No.3 for planting them during the year 2019-2020. The details of plantation done by respondent No.3 are also on record. The nurseries have been set up in Tamil Nadu and Karnataka for giving saplings to the farmers for planting them over their own lands.

53. The facts on record also makes it very clear that a workforce of 120 volunteers fully dedicated towards the project in question is working day and night and they have a

helpline supported backend software system known as Integrated Voice Response to support and address the queries of thousands of farmers. The volunteers, who are working with respondent No.3 are highly qualified professionals and they are the true foot soldiers, who are working to preserve the environment in the Country. They have dedicated their entire youth for the project by leaving the luxurious city life and are residing in villages and are working with farmers.

54. The entire project is a voluntary project. It does not receive Government donation nor Government or public lands are utilized. The project is certainly in public interest and in the interest of ecology and environment as well as in the interest of nation. Much hue and cry was raised before this Court by making a false statement that respondent No.3 is planting trees over the Government land or public land. However, the documents on record make it very clear that respondent No.3 is not planting trees over the Government land or public land, but is only facilitating the farmers to plant voluntarily on their own private owned farm land by educating, encouraging and incentivizing the farmers.

55. The amount received from the public is accounted fully. The overall governance of the project is handled by the "Rally for Rivers Board" consisting of eminent personalities from all walks of life. The names of the persons who are in the advisory board are detailed as under;

- 1) Justice Arijit Pasayat, Retd., Supreme Court Judge,
- 2) Ms Kiran Mazumdar Shaw, Chairperson of biocon,
- 3) Mr.Ravi Singh, Secretary General and CEO of World Wide Fund for nature,
- 4) Mr.Shashi Shekhar, IAS Retd., Former Secretary, Ministry of Water Resources, Govt. India,
- 5) Mr.Pravesh Sharma, IAS Retd, MD of Small Farmers Agri Business Consortium, Ministry of Agriculture, Govt.of India.
- 6) Mr.B.Muthuraman, Former Vice Chairman of Tata Steel,
- 7) Dr.A.S.Kiran Kumar, Former Chair Person, ISRO,

56. The petitioner before this Court in order to gain cheap publicity started obstructing in the noble object of respondent No.3, went to the extent of sending an e-mail to the Discovery Channel as a programme was to be displayed on Discovery Channel and in those circumstances, this Court by an order dated 15.10.2020 has restrained the petitioner to prosecute the present petition as a *pro bono* litigant. The order dated 15.10.2020 is reproduced as under;

"Heard the petitioner appearing in person.

2. On 24th August 2020, an affidavit was filed on behalf of the third respondent stating that a programme was scheduled to be aired on Discovery Channel on 22nd August 2020 at 6.30 p.m. Indian Standard Time in respect of Cauvery Calling Project. The advertisement of the programme published is annexed as Annexure-R18. It is pointed out by the said affidavit that the petitioner appearing in person addressed an e-mail to Discovery Channel stating that Cauvery Calling Project is challenged in the present Public Interest Litigation filed by him. He has stated that the airing of any programme on Cauvery Calling will amount to contempt of Court. In last paragraph of the e-mail, he has reiterated that airing of the programme of Cauvery Calling on the channel until disposal of writ petition before the Hon'ble High Court will amount to contempt of Court. It is further stated in the affidavit filed by the third respondent that in view of the said e-mail at Annexure-19, the Discovery Channel cancelled the airing of the programme. Reliance is placed on Annexure-R20 addressed by the Discovery Channel, which records that the averments made in the legal notice may entail grave consequences for Discovery Communication of India and therefore, they want to satisfy themselves about the legality and veracity of the notice lest Discovery Communication of India will be unwittingly found to be violation of law of the land, including running the risk of being in contempt of Court. Therefore, it is stated that the channel was constrained to reschedule the airing of the documentary to the next available suitable date. The advertisement of the programme at Annexure-18 does not indicate the channel was to deal with any controversy which is involved in this writ petition and all that the advertisement says is that a programme under the title - "Cauvery Calling: A Race to Save a River" will be aired on 22nd August 2020 at 6.30 p.m. Indian Standard Time.

3. The petitioner appearing in person cannot decide whether airing of such a programme will amount to contempt of Court. If according to him, the activity of airing of a programme is most objectionable or illegal, he could have adopted an appropriate remedy and he could have moved this Court. Instead of adopting an appropriate remedy, he issued an e-mail, in which at two places, he reiterated that airing of such a



programme will amount to contempt of Court. The petitioner who claims to be a pro bono litigant, is not expected to act in this fashion by virtually threatening the Discovery Channel with contempt.

4. We gave an opportunity to the petitioner to explain this conduct. Accordingly, the petitioner has filed an affidavit on 5th September 2020. In paragraph-6, the petitioner reiterated that airing of any matter of touching the 'Cauvery Calling' amounts to contempt of Court. In paragraph-7, he reiterated the same. Therefore, by passing a specific order on 8th September 2020, we specifically directed the petitioner to file an affidavit stating whether he wants to justify the threat given by the Television channel that telecasting or airing the programme will amount to contempt of Court. Instead of showing remorse, the petitioner has filed an affidavit dated 12th October 2020 in which he claimed that he did not give any threat to the Television channel but informed the Television channel that airing of the programme may attract the contempt of Court. Perusal of the e-mail addressed by the petitioner to the said channel will show that at two places, he has stated that airing of the programme on Cauvery Calling Project will amount to contempt of Court. We disapprove this conduct on the part of the petitioner who is claiming to be a pro bono litigant.

5. He relies upon the judgment and order dated 4th April 2014 in WP.No.33082/2004. The said judgment and order will have no application as it is basically deals with the investigation in a criminal case. This decision has, therefore, no application to the facts of the case.

6. On one hand, the petitioner is prosecuting the present PIL in this Court and on the other hand, he objected a Media House airing of a programme by threatening the Media House with contempt. We expected the petitioner to show remorse and therefore, even after he justified his action by filing an affidavit dated 5th September 2020, we gave him an opportunity to explain his conduct. However, he has again justified what he has done.

7. We may also note that in the affidavit of 5th September 2020, the petitioner sought action under the contempt of Court Act against the channel.

8. Therefore, we cannot allow the petitioner to prosecute this petition as a pro bono litigant.

9. The orders passed by this Court from time to time will show that issue raised by the petitioner will have to be gone into. Therefore, this petition will have to be treated as a suo moto writ petition (PIL).

Ordered accordingly.

List the petition on 3rd November 2020 under the caption of Orders to enable the Court to appoint a member of the Bar as Amicus Curiae to assist the Court."

57. The matter was argued by Amicus Curiae and this Court wanted to know whether it is a project funded by the State Government or it is a project of the State Government or not.

58. The order passed by this Court dated 9.12.2020 is also reproduced as under;

"Heard the learned counsel appointed as Amicus Curiae. We have heard the learned Additional Government Advocate for the first respondent, the learned counsel appearing for the second respondent and the learned Senior Counsel appearing for the third respondent. We have also heard the learned counsel for the applicant.

2. Considering the inconsistent stand taken by the State Government in the two statement of objections which are on record, this petition needs final hearing. Accordingly, we issue rule nisi.

3. The learned Additional Government Advocate waives service for the first respondent.

4. Learned Advocates respectively representing the second and third respondents waives service.

5. As far as prayer for interim relief is concerned, it is sought against the second and third respondents apart from the State Government. Prima facie, there may be a legal difficulty in considering the prayer for grant of interim relief against the second and third respondents as they may not be a 'State' within the meaning of Article 12 of the Constitution of India. However, the issue is whether the second and third respondents are collecting money from the people by projecting that Cauvery Calling Project is the project of the State Government. In fact, on the last date, we had suggested to the learned Additional Government Advocate after pointing out the inconsistent stand in the statement of objections, to issue a clarification on the question whether the Cauvery Calling Project is the project of the State Government and whether the State Government has any involvement in the said project. Notwithstanding the grant of time, the State Government has not come out with any such clarification.

6. It is necessary to make a reference to the statement of objections filed by the State Government on 10th December 2019. It is accepted that the second respondent had prepared a detailed project report for the programme called Cauvery Calling which was submitted to the State Government in the first week of April, 2019, on which, there were several rounds of discussions held. Though it is stated that after discussion and consideration, the Government proposed to the Department of Forest to take up the project with an assurance that separate budget will be allocated for the existing scheme of Krishi Aranya Protsaha Yojane (KAPY). In further part of paragraph-4 of the Statement of Objections, reliance is placed on an order of the State Government at Annexure-R2 which deals only with KAPY. There is a clear statement, which reads thus:

"The proposal of the second respondent was thus accepted the responsibility taken by the second respondent is only limited to mobilization of farmers ....."

7. It is further stated that the second respondent is having no other interest in the entire project. However, the second respondent has filed a memo in this Court stating that Cauvery Calling is not a project of the second respondent and the project of

Cauvery Calling is entirely looked after and managed by the third respondent. Thus, in the statement of objections, the State Government has specifically stated that the proposal of the second respondent, which was admittedly of Cauvery Calling project was accepted. The statement also proceeds on the footing that the project is of the second respondent, which stand is inconsistent with the stand taken by the second respondent.

8. The second statement of objections by the State Government on 12th August 2020 is filed six months after the memo was filed by the second respondent. In paragraph-4 of the said statement of objections, it is now contended that the draft detailed project report submitted by the second respondent has not been accepted by the State Government. The stand runs contrary to the stand taken in the first statement of objections. It is pertinent to note that in paragraph-6, it is tried to be contended that the statement is made in paragraph-4 of the earlier statement of objections regarding acceptance of the proposal of the second respondent is in respect of the proposal of the Forest Department. Further, it is stated that responsibility of the second respondent is limited to mobilising, motivating and enrolling the farmers under the existing scheme. Though the second respondent, six months prior to filing of the second statement of objections by the State Government, had taken a stand that it is not involved in any such project and infact in the memo, it is stated that the second respondent is engaged in propogation of Yoga, Meditation etc. But the State Government wants to say that the second respondent is involved in existing project. It is, therefore, all the more necessary that the State Government must make its stand very clear by filing an affidavit and by making a clear statement on the question whether the State Government has any connection with the project of Cauvery Calling and whether the second and third respondents are involved in project of the State Government. If they are involved in any project, the State Government must file necessary document in support. If such a clear statements on oath would have been made long back, the entire issue could have come to an end.

We, therefore, grant one more opportunity to the State Government to come clean on this issue, so that, there is a clarity on the question whether the State Government has any connection in the project of Cauvery Calling.

We grant time to the State Government to file such statement on oath, if any, till 30th January 2021.

List the petition under the caption of 'Orders' on 2nd February 2021 to consider the affidavit which may be filed by the State Government, if any.

59. The State Government has filed a detailed affidavit, which is also on record and the same makes it very clear that it is not a project of the State Government. The Affidavit filed on behalf of the State Government dated 6.3.2021 is reproduced as under;

"AFFIDAVIT

I, Rajkumar Srivastav S/o. Sri Krishnamurari Srivastav, aged about 56 years, presently working as Additional Principal Chief Conservator of Forest, NBM, Aranya Bhavan, Malleshwaram, Bengaluru, do hereby solemnly affirm and state as follows:-

1. I am the Additional Principal Chief Conservator of Forest, NBM, Aranya Bhavan, Malleshwaram, Bengaluru and I know the facts of the case as borne by records.
2. I submit that the Government has issued a Public Notification in the Official website clearly stating that "Cauvery Calling" project initiated by Isha Foundation/Isha Outreach is not a project of the Government of Karnataka. Copy of the Public Notification downloaded from the official website is produced herewith. At the same time, the

Public Notice has been issued in Indian Express New Paper (on 25.02.2021), Vijaya Vani News Paper (on 25.02.2021), Vijaya Karnataka News Paper (on 25.02.2021). Copies of the same are produced herewith.

3. I submit that the proposal was initiated at the behest of Isha Foundation as could be seen from Annexure-R3 filed along with the additional statement of objections dated 12.08.2020. In that context, we have stated that the proposal was accepted insofar as assisting in effectively implementing the KAPY project initiated by the Government is by the 2<sup>nd</sup> Respondent.

It is therefore prayed that this Hon'ble Court may be accept the submissions, in the interest of justice and equity."

60. Thus, it is clear from the record that Cauvery Calling project is not the project of the State Government. The entire project is aimed to bring the river Cauvery back to her glory and to save the eco system of river including the flora, fauna and the soil and ultimately and most importantly to save the farmers, who are depending upon the river water for their livelihood.

61. Forests cover about 30% of the world's land area but their disappearance is alarming. We are destroying the forest cover. Trees play an important role in our life. They absorb the carbon-dioxide that we exhale. They also absorb

heat-trapping greenhouse gases. Forests are home to million of species and are essential for life and civilization. Forests provide us food, shelter, medicine and other life essential things.

62. Afforestation means conversion of bare or uncultivated land into forest. It means process of sowing seeds or planting trees in an area that does not have trees to create a forest. It is certainly an essential tool to deal with global warming. Afforestation has got various advantages. It is a natural supply of forest products. It prevents soil erosion. It stabilizes the climate. It helps in reversing the process of global warming and climate change. It helps us to provide a better quality of air. It helps in protecting watershed and also plays major role in creating new watersheds. It helps in preservation of wildlife. It provides employment and helps in economic upliftment of people. It provides raw material to humans without destroying the nature.

63. India has lost a very high percentage of forest covering. Even during Covid-19 pandemic the rate of losing

forest cover is alarming. The global trend is also worrying and we are losing the forest cover at an alarming rate.

64. This Court is of the considered opinion that afforestation has become very necessary keeping in view the present scenario and in fact, such activities require appreciation rather than putting spokes in carrying out the projects like Cauvery Calling. However, with vested interest, the petitioner has filed the present public interest litigation and the petitioner in the present case is a chronic litigant and though being a lawyer, is in a habit of filing writ petitions. Cost has been imposed upon him on number of occasions and for obvious reasons such frivolous petitions are filed before this Court.

65. Much has been argued on the issue of planting trees on Government land and over public land. This Court during the course of the arguments has asked a pin pointed question to the learned Government Advocate to bring it to the notice of this Court any statutory provision of law, which restrains an individual/citizen of India to plant a tree on a Government land. However, no such law has been brought to the notice of this Court by the State Government. Planting



trees on a barren Government land is not a crime though respondent No.3 is not planting a single tree on a Government land. In case, such a view is taken that planting tree on a Government land is prohibited, it will create a havoc and large number of plantations which are going on in the Country over Government land by NGO's without any motive will come to a standstill.

66. However, in the present case, the categorical stand of the State Government is that the project Cauvery Calling is not their project, the planting of saplings is not being done on Government land or public land. Hence, the question of interference by this Court in a noble project like Cauvery Calling does not arise.

67. The Hon'ble Supreme Court in the case of **Association for Protection of Democratic Rights and Anr., v. State of West Bengal and ors.**, reported in (2021) 5 SCC 466, was dealing with the issue of felling of trees, sustainable development as well as other factors as a road over bridge was being constructed by the West Bengal and felling of trees were taking place. A high level committee was constituted in the matter and the Hon'ble Supreme Court

has shown its concern over the climate change. The Hon'ble Supreme Court in paragraphs 4 and 5 has held as under;

**"4.** One of the moot questions often involved wherever there is need to fell trees to develop a project is how just and fair compensation can be calculated for felling of trees by any authority or organisation which proposes such felling. We have no doubt that such compensation should be calculated and paid as a part of the project cost of the project which necessitates the felling of trees and such compensation must be utilised in an expert manner to create a better environment and, most importantly, increase afforestation. It is, therefore, imperative to make a realistic assessment of the economic value of a tree, which may be permitted to fell, with reference to its value to environment and its longevity, with regard to factors such as production of oxygen and carbon sequestration, soil conservation, protection of flora/fauna, its role in habitat and ecosystem integrity and any other ecologically relevant factor, distinct from timber/wood.

**5.** We note that the issue assumes significance from the perspective of climate change as a growing national and international concern. The pivotal policy document in India on climate change is the National Action Plan on Climate Change ("NAPCC") formulated by the Union Government in 2008, which recognizes that the country is committed to increasing tree cover from 23% to 33%. Under the Paris Agreement, India has committed itself to Nationally Determined Contributions in 2015, wherein one of the stated objectives is to create an additional carbon sink of 2.5 to 3 billion tonnes of CO<sub>2</sub> equivalent through additional forest and tree cover by 2030."

68. The Hon'ble Supreme Court has shown grave concern in the matter of felling of trees and in the present case, the petitioner is having serious concern about afforestation. In fact, no prudent person will file such a public interest litigation to restrain a body/person from

planting trees on their own private land. The petition filed by the petitioner is a frivolous writ petition and deserves to be dismissed with exemplary cost.

69. The Hon'ble Supreme Court in the case of **H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee**, reported in (2021) 4 SCC 309, while examining the correctness of the NGT decision in the issue pertaining to construction of a bus stand complex at McLeod Ganj in Himachal Pradesh in contravention of the Forest (Conservation) Act, 1980, has dealt with the concept of environmental rule of law and the role of Courts in ensuring environmental protection. Paragraphs 48 and 49 of the aforesaid judgment reads as under;

"48. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest

on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focussing on the structural norms which guide institutional decision making, rule of law frameworks recognise the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognises that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

**49.** The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding

of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, State and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance — of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we

conserve, protect and regenerate the environment today."

70. In the aforesaid case, the Hon'ble Supreme Court has gone to the extent in holding that the future of the human existence depends on how we conserve, protect and regenerate the environment today and the Cauvery Calling has been conceptualized to regenerate the environment by planting trees and the efforts of respondent No.3 deserves to be appreciated.

71. The Hon'ble Supreme Court in the case of **Hospitality Association of Mudumalai v. in Defence of Environment and Animals**, reported in (2020) 10 SCC 589, in paragraph 39 has held as under;

"39. Furthermore, since the impugned decision [*In Defence of Environment & Animals v. State of T.N.*, WP No. 10098 of 2008, order dated 7-4-2011 (Mad)] of the High Court, the Ministry of Environment, Forest and Climate Change vide its Notification S.O. 4498(E) dated 13-12-2019 has declared the entire area in question and adjoining areas around the Mudumalai Tiger Reserve as an eco-sensitive zone. Under this Notification, the State Government of Tamil Nadu has been expressly directed to regulate land use generally, as well commercial establishment of hotels/resorts specifically, in the eco-sensitive zone so established. As was held by this Court in *M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India* [*M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715] the "precautionary principle" has been accepted as a part of the law of our land. Articles 21, 47, 48-A and 51-A(g) of the Constitution give a clear mandate to the State to

protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for living creatures. The precautionary principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In this light, we have no hesitation in holding that in order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the State Government to limit commercial activity in the areas falling within the elephant corridor."

72. In the aforesaid case also the Hon'ble Supreme Court has held that the Constitution of India has given a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the Country and it is the duty of every citizen to protect and improve the natural environment including forests and wildlife and the initiation of respondent No.3 is certainly a step forward in the aforesaid direction.

73. The Hon'ble Supreme Court in the case of **T.N.Godavarman Thirumulpad (87) v. Union of India**, reported in (2006) 1 SCC 1, had dealt with the question pertaining to conservation, preservation and protection of forests and ecology. The Apex Court has made the following

observation in paragraphs 3, 71, 72, 74, 80, 83, 84, 85, 86, 87, 88 and 89;

**"3.** Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In the ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long-lasting. Such development would be counterproductive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use.

**71.** The basic objectives leading to the laying down of the National Forest Policy, 1988 may also be noted and also the need and requirement for its enforcement. This policy was framed on realising that the 1952 Forest Policy for the management of State forest in the country had not halted the depletion of forests. It was, therefore, considered necessary to evolve a fresh policy for the future to lay down new strategies of forest conservation which had become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration and enhancement of the natural environment. The principal aim of the Forest Policy is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

**72.** The Forest Policy has a statutory flavour. The non-fulfilment of the aforesaid principle aim would be violative of Articles 14 and 21 of the Constitution. The basic objectives of the Forest Policy, 1988 are:



2.1. The basic objectives that should govern the National Forest Policy are the following:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes and reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.
- Checking the extension of sand dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximum substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

2.2. The principal aim of the Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human,

animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

**74.** The strategy under the Forest Policy is to have a minimum of one-third of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain two-thirds of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile ecosystem. Clause 4.3 lays down the aspects of management of State forests. It would be instructive to reproduce hereunder certain parts of the policy with a view to have clarity in the aim to be achieved:

4.3.1. Schemes and projects which interfere with forests that clothe steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forest, particularly in areas like Arunachal Pradesh, Kerala, Andaman and Nicobar Islands should be totally safeguarded.

4.3.2. No forest should be permitted to be worked without the Government having approved the management plan, which should be in a prescribed format and in keeping with the National Forest Policy. The Central Government should issue necessary guidelines to the State Government in this regard and monitor compliance.

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4.4.1. Forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the need for conservation of trees and forests. Projects which involve such diversion should at least provide in

their investment budget, funds for regeneration/compensatory afforestation.

4.4.2. Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and revegetate the area in accordance with established forestry practice. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

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4.6. Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following—

- one of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- development of forest villages on a par with revenue villages;
- family-oriented schemes for improving the status of the tribal beneficiaries; and
- undertaking integrated area development programmes to meet the needs of the tribal economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.

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4.8.1. Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. There should be no regularisation of existing encroachments.

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4.9. The main considerations governing the establishment of forest-based industries and supply of raw material to them should be as follows:

— As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.

— No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of the local population should not be sacrificed for this purpose.

— Forest-based industries must not only provide employment to local people on a priority but also involve them fully in raising trees and raw material.

— Natural forests serve as gene pool resources and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.

— Farmers, particularly small and marginal farmers would be encouraged to grow, on marginal/degraded lands available with them, wood species required for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by the Forest Department/corporations on degraded forests, not earmarked for natural regeneration.

— The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalised.

— The above considerations will, however, be subject to the current policy relating to land ceiling and land laws.

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4.16. The objective of this revised policy cannot be achieved without the investment of financial and other resources on a substantial scale. Such investment is indeed fully justified considering the contribution of forests in maintaining essential ecological processes and life support systems and in preserving genetic diversity. Forest should not be looked upon as a source of revenue. Forests are a renewable natural resource. They are a national asset to be protected and enhanced for the well-being of the people and the nation."

**80.** The State of Forest Report 1995 published by the Forest Survey of India when compared with the State of Forest Report 1997 also shows that there has been considerable depletion of forest cover. It also shows the limited regeneration. A comparison of the two reveals that total forest cover of the country decreased from 6,38,879 sq km to 6,33,397 sq km, thus showing a net loss of 5482 sq km. Further it reveals that there has been a net decrease of 17,777 sq km of dense forest cover of the country while open forests and mangroves have increased by 12,001 sq km and 294 sq km respectively. The redeeming feature, however, is an improvement which can be seen from the State of Forest Report 2001. Learned amicus curiae submits that improvement is a result of strict vigil on account of various orders passed by this Court from time to time. It cannot be doubted that it is necessary to continue the efforts for regeneration of forests.

**83.** Reference may also be made to Report of the Planning Commission (Chapter IX) relating to forest environments in the Tenth Five-Year Plan (2002-2007) which has taken note of the fact that sustainability is not an option but imperative since without it environmental deterioration and economic decline will be feeding each other leading to poverty, pollution, poor health, political upheaval and unrest. Environment cuts

across all sectors of development. The rapid increase in greenhouse gases in the atmosphere, land degradation, deteriorating conditions of fragile ecosystems, deforestation, loss of biodiversity and environmental pollution have become subjects of serious global concern. The overall impact of these phenomena is likely to result in depletion of ozone layer, change of climate, rise in sea level, loss of natural resources, reduction in their productivity ultimately leading to an ecological crisis affecting livelihood options for development and overall deterioration in quality of life.

**84.** From the above report, it follows that the deterioration and consequently preservation of ecosystems cannot be area-or State-specific and that utmost attention is required to be accorded to conservation of natural resources and for improvement of the status of our environment. The report notices the need to tackle the environmental degradation in a holistic manner in order to ensure both economic and environmental sustainability. Forests play an important role in environmental and economic sustainability. It takes note of the forests being consistently and seriously undervalued in economic and social terms. It recognises that the economic value of the ecosystem services of the forests is vast though it is extremely difficult to quantify. It takes note of the fact that generally much of the land-use decision that presently drives forest change takes relatively little account of these values. The country's forest resource is under tremendous pressure. Note has been taken of the fact that India's biological diversity is reflected in the heterogeneity of its forest cover. It is one of the twelve "megadiversity" countries of the world. India is also at the meeting zone of three major zones of three major biogeographic realms, namely, the Indo-Malayan (the richest in the world), the Eurasian and Afro-tropical. India also has the two richest biodiversity areas, one in the North-East and the other in the Western Ghats. The biological diversity is being conserved through a network of biosphere reserves, national parks and sanctuaries, however, the challenges for conservation emanate from population pressures, adverse impacts of industrialisation and intensifying threat from illegal trade.

**85.** The importance of conserving and managing existing natural forests and forest soils, which are very

large stores of carbon, has been emphasised as it will significantly reduce greenhouse gas emissions. To develop and protect forests, a scientific management is necessary so as to enhance productivity, density and health. Forestry projects have to lay emphasis on management and rejuvenation of natural forests. The fragile ecosystems should be properly managed in order to safeguard the livelihood of millions of people.

**86.** The national development agenda must recognise the necessity of protecting the long-term ecological security. The problem area is the growing population, high degree of mechanisation and steep rise in energy use which has led to activities that directly or indirectly affect the sustainability of the environment.

**87.** It is recognised that the sustainable use of biodiversity is fundamental to ecological sustainability. The loss of biodiversity stems from destruction of the habitat, extension of agriculture, filling up of wetlands, conversion of rich biodiversity sites for human settlement and industrial development, destruction of coastal areas and uncontrolled commercial exploitation. It is thus evident that the preservation of ecosystems, biodiversity and environment whether examined on common-law principle or statutory principle or constitutional principle, eyeing from any angle, it is clearly a national issue to be tackled at the national level. All initiatives are required to be seriously pursued.

**88.** Dealing with intergenerational justice, it has been rightly observed that posterity shall not be treated like dirt. In an article published in 2003 *Columbia Journal of Environmental Law* (28 Colum. J. Envtl. L. 185), the author says that the way in which a society cares or does not care for its dirt — its land — reflects the degree to which it cares or does not care for its own long-term future.

**89.** We may also briefly refer to the public trust doctrine and its applicability to the matters under consideration. The public trust doctrine looks beyond the need of the present generation and also suggests that certain resources are invested with a special nature. It would be instructive to make a note of a story given in by Timothy Patrick Brady in *Boston College Environmental Affairs Law Review*, Spring 1990 under the title: "*But most of it belongs to those yet to be born*". The story

relates to digging of a well at the time of drought. When a Frenchman told villagers of a prudent African solution of digging a well, many villagers agreed but others argued that it will bring people from other villages and they would bring their cattle and that would increase the pressure on the already precious water. The Frenchman told the villagers that why not explain to them that the well is only for your own village and they can dig their own. It was then said that "water is not only ours, but is a gift of nature from God and must be shared". Ultimately, they concluded that it was wiser not to dig the well at all. The moral of the story is that we are trustees of natural resources which belong to all including the future generation as well. The public trust doctrine has to be used to protect the right of this as also the future generation."

74. In the aforesaid case, the Hon'ble Supreme Court has stressed upon the relationship of mankind with forest, the symbolic relationship of tribal people and the forest and the necessity of preserving the forest.

75. The Hon'ble Supreme Court in the case of **Research Foundation for Science Technology National Resource Policy v. Union of India**, reported in (2005) 10 SCC 510, while expounding the legal principles applicable on arresting the irreversible damage arising from dumping of hazardous waste, in paragraph 16 has held as under;

**"16.** 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 and 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 on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution. 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."

76. In the light of the aforesaid judgment, the loss caused to the environment can only be made good by planting new trees and in the present case, saplings have been planted by educating the land owners and they are planting the saplings on private land only. The State is not financing the project and therefore, this Court fails to understand as to what purpose the PIL is going to serve and for what aim and object has been filed by the petitioner.

77. The Hon'ble Supreme Court has again dealt with the preservation of ecology and the principles of sustainable development in the case of **N.D.Jayal v. Union of India**, reported in (2004) 9 SCC 362 and has held that the purpose

of Environment (Protection) Act, 1986, is to provide protection and improvement of the environment and the same can only be achieved only by strict compliance with its directions, meaning thereby, the sustainable development is one of the goal of Environment (Protection) Act, 1986 and the land can be protected only by providing more green cover as has been done in the present case.

78. The Hon'ble Supreme Court in the case of **T.N.Godavarman Thirumulpad v. Union of India**, reported in (2002) 10 SCC 606, was examining the issue of mining activities and its effect on flora, fauna in and around the Kudremukh National Park, a part of Western Ghat and paragraphs 26, 29 and 42 of the aforesaid judgment read as under;

**"26.** The tragedy of the predicament of the civilized man is that

"Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee."

There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so

alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. In his foreword to *International Wildlife Law*, M.R.M. Prince Philip, the Duke of Edinburgh said:

"Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that.... As usual with all legal systems, the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented.... Regrettably progress in this direction is proving disastrously slow." (See *International Wildlife Law* by Simon Lyster, Cambridge, Grotius Publications Ltd., 1985 Edn.)

**29.** To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The world is under an impenetrable cloud. In view of enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in their exercise to find out means to protect the world. Every individual in the society has a duty to protect nature. People worship the objects of nature. The trees, water, land and animals had gained important positions in the ancient times. As *Manu VIII*, p. 282 says, different punishments were prescribed for causing injuries to plants. Kautilya went a step further and fixed the punishment on the basis of importance of the part of the tree. (See *Kautilya III, XIX, 197.*)

**42.** The Union Government framed the National Forest Policy in 1988. Though the basic objectives are very laudable, it is sad to note that it has virtually been confined to the papers containing it, and not much has been done to translate them into reality. Nevertheless, it reflects the anxiety of the Union Government to protect and preserve natural forests with a vast variety of flora and fauna, representing biological diversity and genetic resources of the country."

79. The Hon'ble Supreme Court in the aforesaid case has held that the National Forest Policy framed by the Union

Government in the year 1988 has not been translated into reality and respondent No.3 is one such Trust, which is implementing the National Forest Policy by promoting afforestation.

80. The Hon'ble Supreme Court in the case of **Rural Litigation and Entitlement Kendra v. State of U.P.**, reported in 1986 Supp SCC 517, has again dealt with protection of environment and has appreciated the steps taken by Rural Litigation and Environment Kendra in taking a step for protection of environment.

81. The Hon'ble Supreme Court again in the case of **Rural Litigation and Entitlement Kendra v. State of U.P.**, reported in 1989 Supp (1) SCC 504 in paragraphs 24, 25 and 26 has held as under;

**24.** It is time to turn to the contention relating to forests. Air and water are the most indispensable gifts of Nature for preservation of life. Abundant sunshine together with adequate rain keeps Nature's generating force at work. Human habitations all through the ages have thrived on river banks and in close proximity of water sources. Forests have natural growth of herbs which provide cure for diseases. Our ancestors knew that trees were friends of mankind and forests were necessary for human existence and civilization to thrive. It is these forests that provided shelter for the "rishis" and accommodated the ancient "gurukulas". They too provided food and sport for our forefathers living in the State of Nature. That is why there is copious reference

to forests in the Vedas and the ancient literature of ours. In ancient times trees were worshipped as gods and prayers for upkeep of forests were offered to the Divine. In the Atharva Veda (5.30.6) it has been said:

Man's paradise is on earth;

This living world is the beloved place of all;

It has the blessings of Nature's bounties;

Live in a lovely spirit.

**25.** In due course civilization developed and men came to live away from forests. Yet the human community depended heavily upon the forests which caused rains and provided timber, fruits, herbs and sports. With sufficient sunshine and water there was luxuriant growth of forests in the tropical and semi-tropical zones all over the globe. Then came the age of science and outburst of human population. Man required more of space for living as also for cultivation as well as more of timber. In that pursuit the forests were cleared and exploitation was arbitrary and excessive; the deep forests were depleted; consequently rainfall got reduced; soil erosion took place. The earth crust was washed away and places like Cherapunji in Assam which used to receive an average annual rainfall of 500 inches suffered occasional drought.

**26.** Scientists came to realise that forests play a vital role in maintaining the balance of the ecological system. They came to know that forests preserve the soil and heavy humus acts as a porous reservoir for retaining water and gradually releasing it in a sustained flow. The trees in the forests draw water from the bowels of the earth and release the same into the atmosphere by the process of transpiration and the same is received back by way of rain as a result of condensation of clouds formed out of the atmospheric moisture. Forests thus help the cycle to be completed. Trees are responsible to purify the air by releasing oxygen into the atmosphere through the process of photosynthesis. It has, therefore, been rightly said that there is a balance on earth between air, water, soil and plant. Forests hold up the mountains, cushion the rains and they discipline the rivers and control the floods. They sustain the springs; they break the winds; they foster the bulks; they keep

the air cool and clean. Forests also prevent erosion by wind and water and preserve the carpet of the soil."

82. In the aforesaid case, the Hon'ble Supreme Court has dealt with the necessity of forests and the disaster which is taking place on account of the loss of forest cover and therefore, the only remedy available to save the mankind and the planet earth is afforestation, which is being done by respondent No.3 and the efforts of respondent No.3 certainly requires appreciation. Therefore, we must place on record our appreciation for the steps taken by respondent No. – Isha Outreach in the matter of afforestation.

83. In the considered opinion of this Court, the petition deserves to be dismissed. The past conduct of the petitioner reveals that costs has been imposed upon the petitioner for filing frivolous PILs and the present case is also a fit case for imposition of costs, however, we are refraining ourselves from imposing cost as at a later stage during the pendency of the petition, on account of the conduct of the petitioner, the petition has been converted into a *suo motu* PIL.

Resultantly, the writ petition is dismissed.

No order as to costs.

Pending applications, if any, stand disposed of.

SD/-  
ACTING CHIEF JUSTICE

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