

CORRECTED COPY

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

**APPLICATION NO. 237 (THC)/2013
(CWPIIL No.15 of 2010)**

In the matter of:

Court on its own Motion

.....

Petitioner

Versus

1. State of Himachal Pradesh
through Addl. Chief Secretary(Forests),
Govt. of Himachal Pradesh,
Shimla
 2. Himachal Pradesh State Environment and
Pollution Control Board
through its Member Secretary,
Kings Hotel,
Shimla
 3. The Deputy Commissioner of Kullu,
District Kullu (HP)
 4. The Principal Secretary(Forests),
Government of Himachal Pradesh,
Shimla.
 5. HIM URJA,
through its Chief Executive Officer,
Shimla
 6. National Environmental Engineering
Research Institute, Mumbai Zonal Centre,
Dr. Annie Besant Road,
Near Worli Flyover,
MUMBAI
- Respondents

**APPLICATION NO.238 (THC)/2013
(CWP No.5087 of 2011)**

In the matter of :

1. Durga Dutt, S/o late Shri Alam Chand,
R/o Village Sanag, P.O. Bahang, Tehsil Manali,
Distt. Kullu (HP)

2. Harinder Dutt Sharma
S/o Shri Bhawani Dutt Sharma,
R/o Village Sanag, P.O. Bahang, Tehsil Manali,
Distt. Kullu (HP)
 3. Rajender Kumar S/o Shri Bui Lal,
R/o Village Ghoshal, P.O. Bahang,
Tehsil Manali,
Distt. Kullu (HP)
 4. Rajesh S/o Shri Hiral Lal,
C/o Dev Thakur,
Village Shanag, P.O. Bahang, Tehsil Manali,
Distt Kullu (HP)
 5. Hari Singh S/o Shri Jagdish,
R/o Village Ghoshal, P.O. Bahang,
Tehsil Manali,
Distt. Kullu (HP)
 6. Hem Raj S/o Shri Megh Chand,
R/o Village Shanag, P.O. Bahang,
Tehsil Manali,
Distt. Kullu (HP)
 7. Sher Singh, S/o Shri Karam Chand
R/o Village Goshal, P.O. Bahang,
Tehsil Manali,
Distt. Kullu (HP)
 8. Krishan Chand, S/o Shri Karam Chand,
R/o Village & P.O. Aleo,
Tehsil Manali,
Distt. Kullu (HP)
 9. Shyam Lal, S/o Shri Ishwar Dass,
R/o Village Shanag, P.O. Bahang,
Tehsil Manali,
Distt. Kullu (HP)
 10. Ghanshyam Thakur, S/o Shri Gupt Ram,
R/o Village & P.O. Burua,
Tehsil Manali,
Distt. Kullu (HP)
 11. Bablu, S/o Shri Satpal,
R/o Village & P.O. Bahang,
Tehsil Manali,
Distt. Kullu (HP)
- Petitioners

Versus

1. State of Himachal Pradesh through Principal Secretary (Transport), to the Government of Himachal Pradesh, Shimla – 171 002.
2. Principal Secretary (Tourism), Government of Himachal Pradesh, Shimla – 171 002.
3. District Magistrate Kullu, Distt. Kullu (HP)
4. Sub Divisional Magistrate, Manali, Tehsil Manali, Distt. Kullu (HP) Respondents

**APPLICATION NO.239 (THC)/2013
(CWP No.5088 of 2011)**

In the matter of :

Sher Singh,
S/o Shri Megh Nath,
Village Ghoshal, P.O. Bahang, Tehsil Manali,
Distt. Kullu (HP) Petitioner

Versus

1. State of Himachal Pradesh
Through the Chief Secretary to Government,
Shimla-171001
2. B.M. Nanta, IAS,
District Magistrate,
Kullu (H.P.)
3. The Sub-Divisional Magistrate,
Manali (H.P.)
4. The Superintendent of Police,
Kullu (H.P.) Respondents

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Ms. Parul Negi, Dy. AG and

Mr. Vivek Singh Attri, Dy. AG for the State of HP

Counsel for Respondents :

Mr. Sandeep Sharma, Advocate for Respondent No.2.

Mr. Tara Singh Chauhan , Advocates for Respondent No.3

Mr. Shivank Singh Panta, Advocate for Respondent No. 7.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Dated : February 6, 2014

JUSTICE SWATANTER KUMAR (CHAIRPERSON):

The State of Himachal Pradesh is mostly mountainous nestling in western Himalayas, neighbouring Tibet and China in the east, Jammu and Kashmir in the north and north-west, Punjab, Haryana and Uttarakhand in the south. It has a geographical area of 55,673 square kilometres with a population of 6.1 million and is located at altitudes ranging from 350 to 7000 meters (1050 feet to 21,000 ft.). The forests of Himachal Pradesh constitute about 2/3rd of the State's geographical area; are storehouse of rich biodiversity, vital in preserving the fragile and sensitive Himalayan ecosystem and are the primary source of livelihood of the residents. The recorded forest area is 36,986 sq.km. as per the Forest Survey of India report for the year 2011, which is 66.43% of the total geographical area and the forest cover spreads over 14,679 sq.km.

2. One of the most significant gifts of nature to mankind in the wide Himalayan range is Rohtang Pass at a height of 13,500 feet above the sea level. The satellite spots of major tourist destination at Manali in the north-western Himalayas are mostly spread in snow (environment) and include Rohtang Pass, Marhi, Kothi, Salang Nala apart from other spots.

3. This tourist spot is termed as the 'Crown Jewel' of Himachal Pradesh. It attracts a large number of tourists. Heavy tourism, besides being a boon to the economy of Himachal Pradesh, is also the cause for adverse impacts on ecology and environment of the State. Diverse and devastating impacts are attributable to unregulated and heavy tourism, overcrowding, misuse of natural resources, construction of buildings and infrastructure, littering of waste and other activities associated with tourism. The characteristics of these tourism spots are unique and are very vulnerable i.e. their ecology and environment can be subjected to rapid degradation because of the above activities. The negative impacts of tourism can only be managed effectively if they have been identified, measured and evaluated. These effects could be direct or indirect. Direct impacts are caused by presence of tourists and indirect impacts are by infrastructure created and services required in connection with tourism activities. The tourist spots to the north of Manali township have an influx of around 11 lakh visitors annually. These

sites have a crucial and strategic role in governing the ecology as well as the atmospheric conditions influencing the local environment and economy of the area. The major ecological components are the cleanliness condition, amount and quality of water in the streams, land's proneness to erosion, physical load bearing capacity of the land surface and the state of flora and fauna etc. While the atmospheric components are ambient air quality status, diurnal and seasonal fluctuations in the atmosphere, rainfall and snowfall conditions ultimately, in a collective form, influence the atmosphere as well as the agriculture and water resources based activities throughout this valley. As per the report of the Expert Committee constituted by the High Court of Himachal Pradesh, vide order dated 12th October, 2010, nearly 10,000 persons visit this tourist spot and nearly 3600 (75% taxis) go to the Rohtang Pass per day in the months of May and June, every year, which number is continuously increasing. The available amenities and facilities for tourists within the township are becoming insufficient and thus, the carrying capacity of these amenities and facilities have virtually crossed its physical and ecological limits. Over-construction, increased vehicular traffic and associated air pollution and its impact on snow caps owing to unregulated tourism remain the notable impacts. As per the available data, the highest construction rate was recorded during 1980-85 at 2850 per cent followed by 161.1 per cent during 1990-95. It has also been reported that nearly

87.3 per cent of the total vehicles plying on Rohtang Pass belong to tourists. Remaining small percentage of vehicles going to Lahaul Valley consists of goods vehicles transporting eatables and other essential materials. It needs to be noticed that the only entrance to Lahaul Valley is the Rohtang Pass. Such natural picnic spots being connected by roads in the Himalayan region lead to these areas being over-pressurized. The ambient air quality, due to high number of vehicles on the top of these mountains, also gets polluted and traffic congestion adds to it. The two snow points in the Himalaya, Rohtang Pass (3938 m) in the north-western Himalaya and the famous Hindu shrine-Badrinath (3133 m) in the central Himalaya are the headwater regions which can be approached directly by road. The snow cover is a source of recreation for the visitors. However, as an adverse impact of heavy tourism, there has been a considerable fall in the amount of snowfall received by the region. It is reported that snow recorded at Kaylong (3064 m.) in Lahaul & Spiti district in the north-western Himalaya, which is ahead of Rohtang, is reduced by 357 per cent, i.e. from 685 cm in 1990 to 150 cm in 2000. The Parbati Glacier in the Kullu Valley of Himachal Pradesh has been receding at the rate of 52 metres per year based on a study from 1990 to 2001. Based on another study conducted by the Indian Institute of Technology, Kanpur, Black Carbon, mostly produced by burning of agricultural waste and vehicles, is being seen as the major causative factor for rapid

melting of glacier in the Himalayan region. Black Carbon is primarily unburnt fuel that travels from warmer to colder areas through air, settles on glaciers and makes them melt and is believed to be the biggest contributor to global warming after Carbon Dioxide.

4. The study suggests that 40% of the glacial retreat could be attributed to Black Carbon impact and hence Black Carbon emission reduction can lead to near term impact on warming and thus reduce glacier melting. As per the latest reports available, as a country, India emits 534 kilotons of Black Carbon annually with major contributions from domestic usage, burning of crop residues, sugar industry, dung cake burning, vehicles, brick kilns, steel industry and power plants. Dust and Black Carbon from forest fire also accelerate melting of snow and glaciers in the Himalayas. This is because black colour absorbs all colours of light. The light absorbed by the black material interacts with atoms and molecules and converts the light energy into heat energy. This heat energy accelerates melting of glaciers. The increasing congestion in the form of mass tourism in and around Rohtang Pass affects the topographic fragility and ecological delicacy of this area. It affects the ambient air pollution levels in and around that area. The Total Suspended Particulate (TSP) Matter below 100 μ in size, particulate matter (PM₁₀) below 10 μ in size, particulate matter (PM_{2.5}) below 2.5 μ in size, Black Carbon

(about 0.5 μ in size) monitored at Kothi village, on the way to Rohtang Pass for the period 2010-2012 suggests that highest ever TSP was observed to be 388.0 $\mu\text{g m}^{-3}$ on June 6, 2010 followed by 382.8 $\mu\text{g m}^{-3}$ on July 8, 2009 which indicates that during certain time, TSP level remains above permissible limit. This could be either due to high influx of vehicles or outside transported aerosols. The monthly maximum average value of TSP at Kothi was 138.4 $\mu\text{g m}^{-3}$ in May 2011 indicating above permissible limit in the month again which coincides with tourist influx period. The highest ever value recorded for PM_{10} was 62.4 $\mu\text{g m}^{-3}$ in May 2011 indicating that it is within permissible limit. While analyzing ionic components, anions like Cl^- (24%) were observed to be maximum followed by SO_4^{2-} (20%) and NO_3^- (18%) indicating their source to be of non-marine origin or local source. But among cations, Na^+ (22%) was highest followed by Ca^+ (6%) and K^+ (5%) indicating mainly their crustal source. Among transitional metals, Zn^{2+} stood to be at top in PM_{10} followed by Cu^{+2} , Cd^{+2} and Co^{+2} indicating again local source through mainly forest fires, biomass burning, and fossil fuel.

5. The monthly mean maximum concentration of $\text{PM}_{2.5}$ at Kothi was 40.4 $\mu\text{g m}^{-3}$ in March 2009 indicating a predominance of finer size particles due to anthropogenic activities mainly. As far as its monthly mean concentration is concerned during January 2009 - December 2012, its value was again low i.e. 22.5 $\mu\text{g m}^{-3}$.

6. Around 70% of cargo in our country is transported on national highways. Over-loaded trucks are a perennial menace on the transport infrastructure. Even though Indian Government has issued a blanket ban on over-loading on vehicles on highways across the country, but still the ground reality is that majority of the trucks are over-loaded. Research has indicated that increase in the gross weight, at which a vehicle operates, will increase its fuel consumption. Much less obvious is the precise relationship between payload and fuel economy. Higher emissions from vehicular traffic directly increase the damage to environment, particularly to glaciers at high altitudes. So far, the authorities have not specified the standards for fuel consumption for trucks and heavy duty vehicles. Other countries like Japan have already introduced a system for standardisation of fuel consumption for heavy duty vehicles. The US, Europe and China have contemplated the implementation of laws and standards for fuel consumption for trucks. Heavy vehicular traffic and particularly over-loaded heavy duty vehicles cause serious pollution, resulting in adverse impact on ecological and environmental zones.

7. Considerable increase in vehicular traffic in Himachal Pradesh, particularly, in this part, has resulted in blackening/browning of snow cover in mountains, especially emissions of unburnt hydrocarbon and carbon soot. The air pollution problem has aggravated in the recent years due to

tremendous increase in the number of trucks and other vehicles for tourists and local population, being plied on these routes. Another serious impact of increased vehicular traffic in these areas is on the wild animals living along the traffic routes. These include walking or running away from vehicles. Many wild animals including birds show “high response” to vehicles. Increase in number of vehicles coincides with decrease in walking activity and vice versa. The vehicles are interfering with the animal activity and their mobility in particular. In some sections, even survival of the animals is affected. Curiosity on the part of tourists to approach the animals too closely is another additional factor interfering with their other activities such as searching for prey, mating and seeking cover. Vehicular noise may disturb many animals in their routine activities including breeding behaviour, which may affect the sustenance of ecosystem

8. Based upon a study conducted by the Indian Institute of Forest Management, Bhopal, the economic value of the ecosystem services provided by forests of Himachal Pradesh is Rs.106664 crores per annum in terms of direct and indirect value. Therefore, degradation of forests in Himachal Pradesh is a worrisome factor in the highly sensitive ecological zones in the State. Forest Survey of India reports show shrinkage of dense forests across the Himalayas including Himachal Pradesh. While reasons for the same are many and inter-

linked, an underlying cause seems to be the debilitating decline in moisture regimes in the hills. Himalayas are one of the youngest mountainous regions of the world. Its ecosystem is most fragile, sensitive and susceptible. The catchment areas of most of the rivers originating in Himalayas lie in Himachal Pradesh. *Inter alia*, the causes having a direct impact on Himachal Pradesh's environment are deforestation, uncontrolled and unsustainable grazing, soil erosion, siltation of dams and reservoirs, industrial and human wastes, forest fires and other effects of climate change.

9. Kullu district forms a transitional zone between the lesser and the greater Himalayas and is characterized by high NW-SE trending ridges and deep river valleys, a number of which in their upper reaches bear imprints of glacial activity in the near past. The altitude varies between 950 metres and 6,000 metres. The National Highway-21 closely aligned along the Beas River, is the most affected stretch where slopes tend to give way following human disturbance and heavy monsoon rains. Furthermore human activities have perceptibly influenced the general environment of the area.

10. The area of Gulaba, Kothi and Tunol in Manali was once a dense forest with *deodar*, *kail* and *chir* trees standing tall. This not only provided a forest area but also protected the environment of the zone. Deforestation of the area has caused serious environmental degradation which has further been

seriously affected by the vehicular traffic and human interference. The trees in the hilly areas not only provide environmental protection but are also essential for maintaining the capacity to bind the soil in the hills. Thus, indiscriminate deforestation results in landslides and soil erosion as well as causes ecological obstructions in human living.

RIGHT TO WHOLESOME AND DECENT ENVIRONMENT

11. The citizens of the country have a fundamental right to a wholesome, clean and decent environment. The Constitution of India, in terms of Article 48A, mandates that the State is under a Constitutional obligation to protect and improve the environment and to safeguard the forest and wild life in the country. By 42nd Amendment to the Constitution, the Parliament, with an object of sensitizing the citizens of their duty, incorporated Article 51A in the Constitution, inter alia, requiring a citizen to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have a compassion for living creatures. The legislative intent and spirit under Articles 48A and 51A(g) of the Constitution find their place in the definition of 'environment' under the Environment (Protection) Act, 1986 (for short the 'Act of 1986'). The legislature enacted various laws like the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and the

Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 and the Biological Diversity Act, 2002 and other legislations with the primary object of giving wide dimensions to the laws relating to protection and improvement of environment. It is true that Part III of the Constitution relating to Fundamental Rights does not specifically devote any Article to the Environment or protection thereof *per se*. However, with the development of law and pronouncement of judgments by the Supreme Court of India, Article 21 of the Constitution has been expanded to take within its ambit the right to a clean and decent environment.

12. The risk of potential harm to the environment and human health resulting from development should be considered by somewhat tilting the balance in favour of the environment and in the larger public interest. According to “a reasonable person’s test”, life, public health and ecology have priority over unemployment and loss of revenue. Development and protection of environment are not enemies. Right to a clean and decent environment has been held to be a fundamental right, coupled with an obligation on the part of the State and the citizens.

13. The legal history of our country shows that Supreme Court entered into one of its most creative periods during 1980 onwards. It specifically expanded the fundamental right enshrined in Part III of the Constitution. In the process, the

boundaries of fundamental right to life and personal liberty guaranteed under Article 21 were expanded to include environmental protection. The Supreme Court strengthened Article 21 in two ways. First it required laws affecting personal liberty to also pass the tests of Article 14 and Article 19 of the Constitution, thereby ensuring that the procedure depriving a person of his or her personal liberty be reasonable, fair and just. Second, the court recognized several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to a wholesome environment. (*“Environmental Law and Policy in India”* 2nd Edition, by Shyam Divan & Armin Rosencranz, Oxford University Press). This principle was initially explained by the Supreme Court in *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh* (AIR 1988 SC 2187). Even at the stage of interim order, the Supreme Court articulated the fundamental right to a healthful environment. In *Virender Gaur v. State of Haryana* [1995 (2) SCC 577], explaining upon this concept, the Supreme Court observed as under:

“Article 21 protects the right to life as a fundamental right. Enjoyment of life... including [the right to live] with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution, etc. should be

regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. ... [T]here is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.”

14. The Supreme Court then took the view that the factors governing the quality of life have been included in the expression “life” contained in Article 21 by reason of creative interpretation of the said provision by the Court. It said that Article 21 does not only refer to the necessity to comply with procedural requirements, but also substantive rights of a citizen. It aims at preventive measures as well as payment of compensation in case human rights of a citizen are violated. The provisions of law were to be susceptible or vulnerable to challenge even on the ground of unreasonableness. To examine the legislative impact of environmental laws, it would be necessary to ascertain the object which the legislature seeks to achieve and the intent of the legislature. Where the statute *ex facie* points out degradation of the environment and change of user envisaged by the Constitution, e.g. existing open space to be used for commercial purposes, it may be necessary to invoke the ‘precautionary principle’ and ensure protection of environment. (*“Environmental and Pollution Laws in India”*, 2nd Edition, 2010 by Justice T.S. Doabia, Volume I, LexisNexis Butterworths Wadhwa Nagpur).

15. The Courts have consistently taken the view that right to life includes the right to a decent environment. The right to a clean environment is a guaranteed fundamental right. The Courts could even impose exemplary damages against the polluter. Proper and healthy environment enables people to enjoy a quality of life which is the essence of the right guaranteed under Article 21. The right to have congenial environment for human existence is the right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Though Government has power to give directions, that power should be used only to effectuate and further the goals of the approved scheme, zonal plans, etc. If without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards, it is not possible to carry on development activity applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources, power projects, etc. including the need to improve the employment opportunities and the generation of revenue. So a balance has to be struck. (*Durga Das Basu's "Shorter Constitution of India"*, 14th edition, LexisNexis Butterworths Wadhwa Nagpur).

SIGNIFICANT ASPECTS OF IMPORTANCE OF DEVELOPMENT AND PROTECTION OF ENVIRONMENT

16. The significance of environmental protection and the dimensions of the right to a clean and decent environment has been the subject matter of various judicial decisions by the Supreme Court of India. Causing environmental degradation and disturbing the ecology may even result in impinging upon the protected fundamental rights of the citizens. The State has to, therefore, ensure to provide clean and decent environment and ensure that its wholesomeness is maintained. In the case of *Court on its own motion v. Union of India* JT 2012 Vol. 12 SC 503, the Supreme Court had the occasion to discuss these aspects in some elaboration whereupon the Court held as under:

“9. The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment. The ambit of Article 21 of the Constitution has been expanded by judicial pronouncements consistently. The judgments have accepted such right and placed a clear obligation on the part of the State to ensure meaningful fulfillment of such right. Article 21 of the Constitution, with the development of law has attained wide dimensions, which are in the larger public interest. Furthermore, Article 19(1)(d) gives a citizen the right to move freely throughout the territory of India. This right, of course, like any other right is not absolute in terms or free of restrictions. This right, of course, like any other fundamental



freedom is neither absolute in terms nor is free from restrictions. Article 19(5) subjects this right to imposition of reasonable restrictions which the State by law may enact. Such restriction has to be in the interest of general public or for the protection of interest of any Scheduled Tribe besides being reasonable and within its legislative competence. Article 25 deals with the Right to Freedom of Religion, subject to public order, morality, health and other provisions stated in Part III. All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. of course, again this right is subject to reasonable restrictions within the ambit of Article 25(2) of the Constitution. In light of these three Articles, now we have to examine which rights of the citizens are being violated and what is the scope of the present proceedings before the court and what directions, if any, the court can issue within the four corners of law. It has undoubtedly and indisputably come on record that the rights of *yatris* to the holy shrine enshrined under Article 21 of the Constitution of India, are being violated. There is admittedly lack of basic amenities and healthcare. The walking tracks are not only deficient but are also not safe for the pedestrians. The management and arrangements for the *yatris* at the glacier and near the Holy Shrine are, to say the least, pathetic. Keeping in mind the number of *yatris* who come to pay their homage at the Holy Shrine every year, the management suffers from basic infirmity, discrepancies, inefficiency and ill-planning. The Government of India, State of Jammu and Kashmir and the Shrine Board are under a constitutional obligation to provide free movement, protection and health care facilities along with basic amenities and proper tracks to be used by the *yatris*.

10. Now, we may examine the dimensions of the rights protected under Article 21 of the Constitution of India. The socio-economic



justice for people is the very spirit of the preamble of our Constitution. 'Interest of general public' is a comprehensive expression comprising several issues which affect public welfare, public convenience, public order, health, morality, safety etc., all intended to achieve the socio-economic justice for people. In the case of *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42, this Court while noticing Article 1 of the Universal Declaration of Human Rights, 1948 (for short 'UDHR') asserted that human sensitivity and moral responsibility of every State is that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Court also observed "the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality."

11. Not only this, there is still a greater obligation upon the Centre, State and the Shrine Board in terms of Article 48A of the Constitution where it is required to protect and improve the environment. Article 25(2) of the UDHR ensures right to standard of adequate living for health and well-being of an individual including housing and medical care and the right to security in the event of sickness, disability etc. The expression 'life' enshrined in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. The expanded



connotation of life would mean the tradition and cultural heritage of the persons concerned. In the case of *Consumer Education & Research Centre* (supra), the Court discussing the case of *C.E.S.C. Ltd. v. Subhash Chandra Bose* (1992) 1 SCC 441) stated with approval that in that case the Court had considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held the right to social justice as a fundamental right. The Court further stated that the facilities for medical care and health to prevent sickness, ensure stable manpower for economic development and generate devotion to duty and dedication to give the workers' best performance, physically as well as mentally. The Court particularly, while referring to the workmen made reference to Articles 21, 39(e), 41, 43 and 48-A of the Constitution of India to substantiate that social security, just and humane conditions of work and leisure to workmen are part of his meaningful right to life.

12. Security to citizens by the State is also a very sensitive issue. The State has to draw a careful balance between providing security, without violating fundamental human dignity. In the case of *In Re: Ramlila Maidan Incident* (2012) 5 SCC 1, the Court observed "the primary task of the State is to provide security to all citizens without violating human dignity. Powers conferred upon the statutory authorities have to be, perforce, admitted. Nonetheless, the very essence of constitutionalism is also that no organ of the State may arrogate to itself powers beyond what is specified in the Constitution."

13. In *Bhim Singh v. Union of India* (2010) 5 SCC 538, while referring to the obligations of the State and its functions, the Court held:

53. ..it is also settled by this Court that in interpreting the Constitution, due regard has to be given to the Directive Principles which has been recorded as the soul of the

Constitution in the context of India being the welfare State. It is the function of the State to secure to its citizens "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship" and to ensure "equality of status and of opportunity" and "the dignity of the individuals" and the "unity of the nation". This is what the Preamble of our Constitution says and that is what which is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of the State Policy.

14. Where it is the bounden duty of the State to protect the above rights of the citizen in discharge of its constitutional obligation in the larger public interest, there the law also casts a duty upon the State to ensure due protection to the forests and environment of the country. Forests in India are an important part of the environment. They constitute a national asset. We may, at this stage, refer to the concept of inter-generational equity, which has been treated to be an integral part of Article 21 of the Constitution of India. The Courts have applied this doctrine of sustainable development and precautionary principle to the cases where development is necessary, but certainly not at the cost of environment. The Courts are expected to drive a balance between the two. In other words, the onerous duty lies upon the State to ensure protection of environment and forests on the one hand as well as to undertake necessary development with due regard to the fundamental rights and values.

15. From the analysis of the above, it is clear that the appropriate balance between different activities of the State is the very foundation of the socio-economic security and proper enjoyment of the right to life.

16. In the present case, as already noticed, there is hardly any dispute. In fact, all the parties are *ad idem* on the issue that much is

required to be done before the State can claim that it has discharged its constitutional obligation in the larger public interest. In fact, the report of the SHPC has accepted the existence of lack of facilities, non-availability of proper health care, need for proper management, providing of proper passage/walking tracks and finally the basic amenities. The report proceeds on the basis that much is required to be done by the State and the Shrine Board. The State and the Shrine Board under the umbrella of the Union of India has to act in *tandem*, with great cooperation, coordination and objectivity so as to ensure protection of rights on the one hand and discharge of its obligations on the other.”

17. The fundamental right to a clean environment and its implications were also considered by a Bench of the Tribunal in a recent judgment in the case of *M/s Sterlite Industries Ltd. v. Tamil Nadu Pollution Control Board* (2013 Vol.I All India NGT Reporter page 368) where the Tribunal, upon deliberation, held as under:

“113. Article 21 of the Constitution of India which provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Right to decent environment, as envisaged under Article 21 of the Constitution of India also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry. Right to clean environment is a guaranteed fundamental right. Various courts, particularly the superior courts in India are vested with wide powers, especially in terms of Articles 32 and 226 of the Constitution of India to deal with issues relating to the fundamental rights of the persons. The courts, in fact, can even impose exemplary damages against the polluter. Proper and healthy environment enables people to

enjoy a quality life which is the essence of the right guaranteed under Article 21. The State and the citizens are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wild life and to have compassion for living creatures. Right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. The power to issue directions and other powers should be exercised by the State to effectuate and further the goals of approved scheme, zonal plans, etc. The hazards to health and environment of not only the persons residing in illegal colonisations but of the entire town as well as the provisions and schemes of the relevant Acts have to be taken into consideration. The most vital necessities, namely air, water and soil having regard to the right to life under Article 21 cannot be permitted to be misused or polluted so as to reduce the quality of life of others. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue. It is often said that development and protection of environment are not enemies but are two sides of the same coin. If without degrading the environment or by minimising the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. Courts have exercised the power of imposing exemplary damages against the pollutants in order to protect the environment and to restore the damage done to the environment as well. In fact, even the disturbance in the environment by undesirable sound of various kinds, amounts to noise pollution. It is a shadowy public enemy whose growing public menace has increased in the

modern age of industrialisation and technological advancement. Noise has become one of the major pollutants and has serious effects on human health. Consistent judicial opinion in India has recognised the right to live in freedom from noise pollution as a fundamental right also, protected under Article 21 of the Constitution. If anybody increases the volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed under Article 21. Courts have even held that Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed under Article 21 of the Constitution. Thus, the right of an individual to healthy and clean environment including air, water, soil and noise-free environment is of paramount consideration and it is impermissible to cause environmental pollution and particularly in violation of the prescribed standards. Since the different facets of environment are relatable to life and human rights and concern a person's liberty, it is necessary that resources are utilised in a planned manner. Wherever industrialisation has an impact on utilisation of essential resources like air, water and soil and results in irreversible damage to environment, then it may be impermissible to utilise these resources in that fashion. In the recent times, there has been accelerated degradation of the environment, primarily on account of lack of effective enforcement of laws and non-compliance with the statutory norms. Concentrated industrialisation in some pockets has been the other reason for enhanced damage to the environment. It emerges from the desire of the people to operate from the areas where the industry presently exists. [References: *Subhash Kumar v. State of Bihar* (1991) 1 SCC 598; *Virendra Gaur v. State of Haryana* (1995) 2 SCC 577; *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (1999) 2 SCC 718; *M.C. Mehta v. Kamal Nath* (2000) 6 SCC 213; *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664; *Hinch Lal Tiwari v. Kamla Devi* (2001) 6 SCC 496; *T.N. Godavarman Thirumulpad v. Union of*

India (2002) 10 SCC 606; *M.C. Mehta v. Union of India* (2004) 6 SCC 588; *M.C. Mehta v. Union of India* (2004) 12 SCC 118; *In Re: Noise Pollution* (2005) 5 SC 733; *Milkmen Colony Vikas Samiti v. State of Rajasthan* (2007) 2 SCC 413].”

18. The authors of Environmental Law and Policy in India afore-noticed have observed that Indian environmental statutes chiefly employ a system of licensing and criminal sanctions to preserve natural resources and regulate their use. Civil compensation recovered through private citizens’ suits plays a peripheral role in the overall regulatory strategy. The environmental techniques have been strengthened with the passage of time. Referring to the fundamental norms, the author notices that the Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. “The issues of environment must and shall receive the highest attention of the Supreme Court” was the approach adopted by the apex Court. The Supreme Court adopted and applied a range of principles to guide the development of environment and jurisprudence and noticeably amongst these fundamental norms, *inter alia*, were the following:

(1) Every person enjoys the right to a wholesome environment, which is a facet of the right to life guaranteed under Article 21 of the Constitution of India. [*Subhash Kumar v. State of Bihar* (supra)]

(2) Enforcement agencies are under an obligation to strictly enforce environmental laws.[*Indian Council for Enviro-Legal Action v. Union of India* 1996 (5) SCC 281]

(3) Government agencies may not plead non-availability of funds, inadequacy of staff or other insufficiencies to justify the non-performance of their obligations under environmental laws.[*Dr. B. L. Wadehra v. Union of India* AIR 1996 SC 2969]

(4) The 'polluter pays' principle which is a part of the basic environmental law of the land requires that a polluter bear the remedial or clean up costs as well as the amount payable to compensate the victims of pollution.[*Indian Council for Enviro-Legal Action v. Union of India* supra]

(5) The 'precautionary principle' requires government authorities to anticipate, prevent and attack the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally benign.[*Vellore Citizens' Welfare Forum v. Union of India* AIR 1996 SC 2715]

(6) Government development agencies charged with decision making ought to give due regard to ecological factors including (a) the environmental policy of the Central and state government (b) the sustainable development and utilization of natural resources; and (c) the obligation of the present generation to preserve natural resource and pass on to future generations an environment as intact as the one we inherited from the previous generation.[*State of Himachal Pradesh v. Ganesh Wood Products* AIR 1996 SC 149]

(7) Stringent action ought to be taken against contumacious defaulters and persons who carry on industrial or development activity for profit without regard to the object of the law. [*Indian Council for Enviro-Legal Action v. Union of India* supra]

(8) The power conferred under an environmental statute may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law.[*Bangalore Medical Trust v. B.S. Muddappa* AIR 1991 SC 1902]

(9) The state is the trustee of all natural resources which are by nature meant for public

use and enjoyment. The public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. These resources cannot be converted into private ownership. [*M.C. Mehta v. Kamal Nath* 1997 (1) SCC 388]

19. If one analyses the above principles *esemplastic* in their correct perspective, what emerges from sustainable development is that environmental protection cannot be prescind from the balanced approach. Development may be permitted but with enforcement of appropriate environmental conditions and safeguards. The Polluter Pays principle, the Precautionary Principle and the Principle of Proportionality could be applied as facets of the said balanced approach. Irretrievable damage to the environment is not acceptable. The legislative intent behind the Act of 1986 evidently demonstrates this principle. It is a general legislation for environmental protection, as there were uncovered gaps in areas of major environmental aspects and hazards in the existing laws. The Act contains regulatory, prohibitory and punitive provisions and are aimed at preservation of environment.

DISCUSSION ON POLLUTANT-CONTENTS AND REMEDIES:

20. It is indisputable that the glacier of Rohtang Pass is facing serious pollution issues and with the passage of time, is being degraded environmentally, ecologically and aesthetically. The time has come when not only the State Government, the authorities concerned but even the citizens must realize their

responsibility towards restoring the degraded environment of one of the most beautiful zones of the country as well as preventing further damage.

21. There are various factors which are responsible for degradation of environment and ecology in this eco-sensitive area. Vehicular emission is one of the major contributors to pollution. The impacts of vehicular pollution would seriously affect the ambient air quality due to the emission of high carbon content, Black Carbon, nitrogen oxide (NOx) and Suspended Particulate Matter (SPM). All these are polluting the clean and healthy air in that area. Vehicular pollution also adversely affects the glacier, effects of which are evident in blackening of snow, melting of glacier and other ecological disturbances in the glacier. The diesel, commercial and transport vehicles, which are over-loaded and even other vehicles – public and private – including two-wheelers which go to the glacier or pass through the glacier *en route* to further destinations, are damaging the glacier.

22. At present, Bharat Stage-III norms are applicable in Himachal Pradesh whereas BS-IV norms have been implemented in 20 cities in the country. Introduction of more stringent norms in that area, thus, would be desirable. The vehicular traffic has to be restricted as well as regulated. BS-IV compliant fuel should be provided. Preferably, CNG or electrical vehicles should be used for tourism purposes, at

least at the initial stage. Only these vehicles should be plying on those roads and more particularly the vehicles going to the glacier for tourism or commercial purposes should be subjected to regular pollution checks. There should be free flow of traffic and over-loading of vehicles should be prohibited. The vehicles which are unworthy of plying on such terrain, should not be permitted to ply, particularly the vehicles which are more than 10 years' old. Regulated tourism for source point control of dust and BC emission should be done. Roads for vehicular traffic should be maintained in a good condition to achieve the desired results of curbing vehicular pollution.

23. If proper steps in this direction are taken by all the authorities concerned, certainly environmental and ecological damage to this eco-sensitive area can be prevented to a large extent. Thus, with this object in mind, we proceed to pass the following directions, particularly in relation to vehicular pollution:

- (i) At the entry point to the climb, near Vashishta, there shall be common check posts/barriers to be provided by the authorities concerned, more particularly, by the Department of Tourism, the Border Roads Organisation (for short the 'BRO'), the Police, the Pollution Control Board and the Directorate of Weights and Measures of the State

Government of Himachal Pradesh. The State Government shall also introduce and install computerized weigh-in-motion systems to check over-loading of the vehicles.

(ii) The officials posted at the barriers shall ensure that the vehicles which are permitted and are plying on this route, particularly, public and private transport, trucks and even the other private vehicles, including two wheelers, adhere to the prescribed norms of emission. The vehicles which are violating or are not in conformity with the prescribed standards should not be permitted to cross the barrier. In other words, there should be regular pollution check of vehicles plying on that route.

(iii) Irrespective of the fact that the vehicles are in possession of PUC, still at the barrier, they shall be subjected to random pollution checks. If any vehicle is not adhering to the prescribed emission norms, it shall not be permitted to ply on that road. This will equally apply to Government and private vehicles.

(iv) No heavy vehicle – public or private - more particularly trucks will be permitted to cross the barrier to ply on that road if such vehicles or trucks exceed the prescribed permissible load. In

other words, no over-loaded vehicle would be permitted to ply on that road, as recorded by the weigh-in-motion systems.

- (v) CNG or electricity operated buses or other vehicles of any kind, which would provide incentive to tourism are permitted to ply from Vashishta onwards. The Government, particularly, the Department of Tourism, shall ensure that only CNG or electric operated buses, including shuttle or deluxe service for a short distance are permitted to ply from Vashishta to Rohtang Pass. No other vehicle – public or private or Government, including two wheelers – shall be permitted to ply between Vashishta and Rohtang Pass for tourism purposes.

The Government of Himachal Pradesh may operate CNG/electric vehicles itself or may outsource the same but directly under its control and supervision in the public or public-private sector by following the procedure in accordance with rules.

- (vi) The petrol driven vehicles plying in Manali and other surrounding areas of Rohtang Pass should have catalytic convertors in all types of vehicles. Preferably even the diesel driven vehicles should

be provided with soot collector system to reduce carbon soot pollution. This could be checked at the time of issuing of PUC.

(vii) The Supreme Court of India, in the case of *M.C. Mehta v. Union of India* [(1998) 6 SCC 63] had directed that the vehicles which are more than 15 years old should not be permitted to ply on the roads of Delhi. This was aimed at preventing and controlling alarming air pollution levels in Delhi. Likewise, the terrain from Manali to Rohtang Pass and onwards is a very difficult high altitude terrain and the old vehicles are bound to cause more pollution there. This area, is at a high altitude, eco-sensitive and pollution-prone one, thus, there has to be more stringent standards and restrictions in that area. Thus, we direct that the vehicles which are more than 10 years' old and plying on this route, shall be phased out and should not be permitted to operate or ply on the route to Rohtang Pass from Vashishta.

(viii) The State Government of Himachal Pradesh is further hereby directed to take appropriate steps in accordance with law to introduce BS-IV norms, as have already been adopted and implemented in more than 20 cities in India.

(ix) The Government of Himachal Pradesh should explore the possibility of providing ropeway from Vashishta to Rohtang Pass. Such ropeway is bound to go a long way in preventing and controlling the vehicular pollution. Such decisions should be taken by the State expeditiously.

24. For complete and effective implementation of the above directions, it is necessary for the NGT to issue further ancillary directions:

a. The public transport, army vehicles, Government vehicles, which have to cross Rohtang Pass and *en route* to their destination ahead of Rohtang Pass will be issued permits by the Deputy Commissioner/SDM/Director of Transport/Commanding Officer for grant of permission to such vehicles to pass through Rohtang Pass. Issuance of such permit will not entitle these vehicles to station at Rohtang Pass glacier. Even the individuals who are living across Rohtang Pass would also be issued such permits. The vehicles which are granted such permits shall be BS-III and shall be

compliant of the prescribed pollution standards.

b. The vehicles which are carrying goods to Marhi, shall also be issued permits for Vashishta upto Marhi and return. The vehicles which are transporting goods will not be permitted to Rohtang Pass.

c. It will be appropriate to restrict the use of snow scooters at Rohtang Pass in the interest of environment and ecology. We do agree with the orders of the High Court dated 23rd May, 2013 wherein it had directed that snow scooters which are less than four years' old should be permitted to be used for the purpose of tourism, recreation, etc. at Rohtang Pass. The scooter should be battery-operated. This direction shall be strictly adhered to.

25. These steps should be taken at the earliest and in any case not beyond three months from the date of passing of this order.

CLEANLINESS AND PUBLIC AMENITIES:

26. Providing of public amenities and absolute cleanliness at Rohtang Pass and even *en route* is absolutely essential in the

interest of environment. Cleanliness and hygiene are the essence of environment. To provide a clean and decent environment every authority concerned must ensure absolute cleanliness and the tourists have to cultivate the habit of neither littering nor spoiling the beauty and environment of the glacier by throwing plastics and other wastes or remnants of eatables on the glacier. Thus, it is imperative for the Tribunal to issue directions even in this regard, which are as follows:-

- (i) Carrying and/or use of any kind of plastic bags, packaging material of food or other items at Rohtang Pass is strictly prohibited. Littering of any kind in, around and also *en route* Rohtang Pass is also strictly prohibited.
- (ii) The Government of Himachal Pradesh may develop a small market at Marhi, which will be entirely eco-friendly and would not be a permanent structure. This small market shall provide eatables, medicines or such other goods of necessities of day-to-day life for the tourists. However, they shall maintain different containers for collection of wastes in the market itself. It shall be the obligation of the Government, the persons running the market and the citizenry to

ensure that they do not indulge in littering of any material in and around the market.

(iii) The Government shall also provide eco-friendly toilets at Marhi. Collection of municipal solid wastes and other wastes shall be the responsibility of the State Government and it shall be ensured that these places and the toilets so provided are kept clean and hygienic. The wastes so collected shall be taken to the nearest Municipal Solid Waste (for short the 'MSW') plant and/or the prescribed dumping ground. The Government shall ensure and provide due incentives for implementation of waste prevention strategies like use of products that minimize wastes and are non-toxic; composting or anaerobically digesting biodegradable wastes; reuse of material on site or collection of suitable material for offsite recycling; efficient recycling upon proper sorting out of materials and providing proper bins.

(iv) There shall be public toilets provided at Rohtang Pass which should be eco-friendly, the cleanliness of which is to be strictly maintained. These public toilets should be the ones which are removable during non-tourism season. Urinating

in open space should be prohibited. The entire glacier must be kept clean in all respects while ensuring complete hygiene.

- (v) To ensure hygiene, cleanliness and natural beauty of the glacier, it is essential that no commercial activity of any kind is permitted at Rohtang Pass Glacier. Thus, we direct that no commercial activity of any kind would be carried on in, around and en route to Rohtang Pass without any exception.

FORERSTS, DEFORESTATION, THEIR IMPACT ON ENVIRONMENT AND REMEDIES:

27. As already noticed, forests of Himachal Pradesh constitute about 2/3rd of the State's geographical area and are the storehouse of rich bio-diversity, vital in preserving the fragile Himalayan eco-system and is a primary livelihood source for rural population. The recorded forest area of 66.43% of the total geographical area is the indicator of the forestry in the State of Himachal Pradesh. Himalayas are one of the youngest mountainous regions of the world where the land mass has not yet found its final form, its eco-system is most fragile, sensitive and susceptible.

28. The area of Gulaba, Marhi and Kothi, once a dense forest, is presently nothing but an area of bald mountains. It has lost its natural beauty and ecology, which is adversely

affecting the environment. Forests play a significant role in controlling pollution. Trees help to clean the air borne pollutants such as ozone, NO₂, SO₂, CO, CO₂ and small particulate matter particularly less than 10 microns in size. Variety of reasons have led to extinguishment or considerable reduction of forests. Deforestation, uncontrolled and unsustainable grazing, soil erosion, discharge of industrial and human wastes, effects of climate change on forests in Himalayas, excessive tourism, forest fires and human conflict are *inter alia* the primary factors, which, with the passage of time, have reduced the forest cover in qualitative as well as quantitative terms. It is the absolute need of the hour that sincere efforts should be made to restore and maintain the forest areas in the larger interest of environment and public benefit. The solution lies in the urgent need to ensure that tourism industry in the State is environmentally benign and the benefits of decentralization are equally distributed, particularly to rural and local households. High density of traffic in the forest area should be controlled. There is a dire need for carrying out reforestation activity rapidly and at a massive scale. Taking adequate and effective measures for prevention and control of forest fires is also another need of the hour. Prevention of deforestation along all slopes, promotion of appropriate cover of trees, shrubs, bushes and grass would further help to prevent soil erosion. Preservation

of natural eco-system would also help in enhancing and maintaining the forest cover.

29. Deforestation seriously affects local and regional climates. Forests absorb more of the sun's radiation. Deforestation in the tropics increases surface temperatures, because grasslands are better reflectors of the sun's energy. Research has demonstrated that replacement of tropical forests with grassland increases local air and soil temperature, decreases evapotranspiration and decreases precipitation. The warming from a reduction in evapotranspiration more than compensates for the cooling from the increased albedo. Temperature decreases because of evapotranspiration, which is a cooling process, is reduced by deforestation. Evapotranspiration is reduced, in part because less radiant energy is absorbed (more is reflected), in part because atmospheric turbulence (surface roughness) is greater above a forest than above a grassland and hence can evaporate water more rapidly from forests, and in part because the roots of trees generally penetrate to deeper layers of soil than the roots of pastures, and hence have access to more water. If less water is available, the vegetation will respond by closing stomata and thereby increasing the resistance to evapotranspiration and increasing temperatures. Preservation of forested land helps reduce local and regional environmental variability. The greatest effect that forest management could

have on atmospheric carbon dioxide would be through the elimination of fossil fuels. Gross emissions from burning would be approximately balanced by accumulations in forests producing fuel for the future. Management would have to be sustainable.

30. Having heard the learned counsel appearing for the parties on this important facet of the present case, we issue the following directions:

- (i) The State Government and all authorities concerned shall take immediate and effective measures for reforestation of the area of Kothi, Gulaba and Marhi. Reforestation shall be taken up as a top priority project and all possible efforts would be made for commencing and completing the plantation in this area.
- (ii) As a first step in this direction, the State Government agencies should identify areas that can be brought under reforestation, using latest available remote sensing data coupled with ground verification by the Forest Department. (This exercise should be completed in the first three months).
- (iii) Such species may be used for afforestation as the forest authorities in the State of Himachal Pradesh consider appropriate but it is

recommended that upto 1000-metre height, coniferous species of *chil*, and broad-leaved species of *siris*, *tun*, *behul*, *shisham*, *ritha*, *tut*, *behera*, etc. should be planted. At a height of 1000 to 2000 metres, coniferous species of *kail*, *deodar*, *chil*, and broad-leaved species of poplar, willow, *ohi*, *robinia*, *drek*, *toon*, *behmi*, *chulli*, Walnut, *khirik* and oak while at a height ranging from 2000 to 3000 metres, coniferous species of deodar, kail, fir, spruce, taxus and broad-leaved species of Maple, Ash, *bhojpatra*, oak, horse chestnut, alder, *robinia*, poplar, *walnut* may be planted.

- (iv) It is difficult to do plantation at a height of 2000 metres and above. The seedlings at this height are exposed to several biotic pressures of cattle, tourists and villagers, who trample the young saplings. Therefore, it is required that all the plantations must use fairly tall seedlings which have been grown and looked after in nurseries at appropriate height at least for a period of two to three years, having similar climatic conditions such that they could adjust or adapt to the harsh climatic conditions. Considering the harsh climatic conditions at higher elevations, it is necessary to provide

appropriately designed canopy cover to the saplings in the first two to three years whereafter they should be planted at the defined region by providing due care and protection, while being appropriately maintained and looked after at least for a period of ten years.

(v) Keeping in view the ecological and geological fragility of the area, it is directed that all forestry programmes must be preceded by soil and moisture conservation works including bio-engineering measures in steep hills. A number of plants, particularly *chil* and *kail* have thick mat of needles on forest floor which make the forests vulnerable to frequent fire hazards. Thus, the Government should take all precautionary measures and provide a scientific scheme for forecasting, controlling and preventing the forest fires.

(vi) The State Government shall provide due regulatory mechanism in this regard without any further delay and shall notify and implement the same in all parts.

(vii) The plantation programme must include at least 50% broad leaved species, as stated above. Joint forest management programme should be promoted by involving the local villagers by

planting high conservation value medicinal plants like *atish*, *kutki*, *kuth*, etc.

(viii) Preparing and declaring a working plan by the Government is the *sine qua non* of scientific forestry and so shall it be prepared and declared.

31. Global warming has a direct impact on environment and ecology of any zone. Global warming, a succession of hot summers through the 1980s seemed to bear out the conservationist's warning that the earth's climate was warming up. This global warming, if it is indeed the case, is a consequence of the large quantities of carbon dioxide released into the atmosphere by industries, power stations and motor vehicles. The earth's temperature will rise, the polar caps will melt, raising sea levels and causing catastrophic flooding in low-lying areas and large areas of productive land will become desert. This global warming – heat – has affected various countries in the world. The glaciers on the Mount Blanc were melting causing slush; the impact of what keeps on happening in the solar atmosphere and the sun directly affects our planet, hence, there is a need to tackle global warming. Environmentalists present a grim picture of the effects of global warming with the mean temperature of the earth increased by about 1.6 degree celcius. This is a declaration made at a Conference of Parties to the Framework Convention on Climatic Changes. Global warming represents the increase

in the average temperature of earth's near-surface air and oceans. (Ref: "*Environmental and Pollution Laws in India*", 2nd Edition, supra)

32. According to a statistical report from the World Meteorological Organisation, global temperature has registered an increase of more than 0.6° celcius in the past 100 years. In the near future, contamination of underground and surface fresh water supplies is likely near coastal areas (Ref: *Law Relating to Environmental Pollution & Protection*, 5th Edition, Vol.I, by Dr. N. Maheshwara Swamy).

33. Global warming has its impacts in other parts of the world, as in the Indian sub-continent. It is likely to affect the glaciers. There will be early and untimely melting of ice resulting in various environmental issues. Rohtang Pass being one of the eco-sensitive and fragile areas of the glacier, is likely to get affected more than other areas. Thus, there is a need for evolving schemes and mechanism to take greater care of the glacier in the interest of environmental and ecological balance.

34. The other relevant principle is the 'Polluter Pays' principle which can be applied to prevent as well as control further environmental damage in the area. The 'Polluter Pays' principle is one which is aimed at ensuring that the costs of environmental damage caused by the polluting activities are

borne in full by the person responsible for such pollution. It is said that this principle means that the polluter should pay for the administration of the pollution control system and for the consequences of the pollution, for example, compensation and clean up. Under this principle, the Government alone cannot be held responsible for preventing and controlling the environmental pollution. If this fiscal incident in its entirety is shifted to the Government, then it would amount to unduly burdening the common tax payer, for none of his fault, for taking anti-pollution, preventive and remedial measures. The actual polluter, thus must be held liable for the damage done. This doctrine has been accepted in larger parts of the world as the fundamental principle on environmental matters and has been one of the underlying principles for action programme on the environment.

35. In the case of *M.C. Mehta v. Kamal Nath* supra, the Supreme Court, while reiterating the *Vellore Citizens' Welfare Forum v. Union of India* case supra, held that "one who pollutes the environment must pay to reverse the damage caused by his acts". (Ref: *Environmental Laws in India: Contribution of the Supreme Court*, by A.K. Tiwari, Deep & Deep Publications Pvt. Ltd.).

36. The liability of the polluter is absolute for the harm done to the environment which extends not only to compensate the victims of pollution but is also aimed to meet

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

DIRECTIONS:

37. The directions that we have recorded supra are essential and are required to be obeyed by all concerned in the interest of sustainable development and protection of the ecological and eco-sensitive area of Rohtang Pass. It is a settled proposition of law that the Courts can issue directions or guidelines for implementation, particularly in cases where there is absence of specific legislation on the subject. In this regard, we may refer to the judgment of the Supreme Court in the case of *Shri Amar Nath Shrine* supra. There are a number of cases on the subject, which are reproduced below:

“24. The next question that arises is as to what directions generally and particularly in the cases of the present kind, the Court is competent to issue.

25. In the case of *M.C. Mehta v. Union of India* (1987) 1 SCC 395), the Court, while discussing the ambit and scope of Article 32 of the Constitution, held as under:

We have already had occasion to consider the ambit and coverage of Article 32 in the *Bandhua Mukti Morcha v. Union of India* and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power

to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha case*. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately

using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32.

26. In the case of *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, this Court held as under:

Each such incident results in violation of the fundamental rights of "Gender Equality" and the "Right to Life and Liberty". It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) "*to practise any profession or to carry out any occupation, trade or business*". Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A *writ of mandamus* in such a situation, if it is to be effective, needs to be accompanied by directions for prevention, as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

15. In *Nilabati Behera v. State of Orissa* a provision in the ICCPR was referred to support the view taken that "an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right", as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

27. In the case of *Vineet Narain v. Union of India* (1998) 1 SCC 226), the Court held as under:

There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is in the discharge of

this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf.

28. In the case of *University of Kerala v. Council of Principals of Colleges, Kerala and Ors.* ((2010) 1 SCC 353), this Court held as under:

32. It may be noted that this Court has on several occasions issued directions, directives in respect of those situations which are not covered by any law. The decision in *Vishaka v. State of Rajasthan* is one such instance wherein a three-Judge Bench of this Court gave several directions to prevent sexual harassment of women at the workplace. Taking into account the "absence of enacted law" to provide for effective enforcement of the right of gender equality and guarantee against sexual harassment, Verma, C.J.

held that guidelines and norms given by the Court will hold the field until legislation was enacted for the purpose. It was clarified that this Court was acting under Article 32 of the Constitution and the directions "would be treated as the law declared by the Court under Article 141 of the Constitution". (para 16)

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33. Similarly, the Supreme Court issued directions regarding the procedure and the necessary precautions to be followed in the adoption of Indian children by foreign adoptive parents. While there was no law to regulate inter-country adoptions, Bhagwati, J., (as His Lordship then was) in *Laxmi Kant Pandey v. Union of India*, formulated an entire scheme for regulating inter-country and intra-country adoptions. This is an example of the judiciary filling up the void by giving directions which are still holding the field.”

38. This Tribunal must issue directions which would be in consonance with the Constitutional mandate contained under Articles 21, 48-A and 51-A(g) and are the very essence of the Act of 1986. The State Government has neither formulated nor issued any specific guidelines – statutory or otherwise – on prevention and control of environmental degradation and damage in relation to the glacier of Rohtang Pass valley. In addition to the specific directions issued by us supra, we would also issue the following general directions:

- (i) We were informed by the State Government that it had created ‘Green Tax Fund’ in order to ensure proper development for protecting the

environment in all its spheres. The persons who are travelling by public or private vehicles to the glacier of Rohtang Pass must pay a very reasonable sum of money as contribution on the principle of 'Polluter Pays'. Thus, we direct that every truck, bus and vehicle of any kind which passes through the route ahead of Vashishta and Rohtang Pass shall be liable to pay a sum of Rs.100/- for heavy vehicles and Rs.50/- for light vehicles. The passengers travelling through the CNG or electric buses to Rohtang Pass as tourists shall be liable to pay a sum of Rs.20/- per head, which shall form part of the ticket for the bus.

- (ii) The funds so collected shall be kept by the State Government under the existing head of Green Tax Fund. The amounts so collected shall be used exclusively for development of this area i.e. from Vashishta to Rohtang Pass and five kilometers ahead of Rohtang Pass. This amount should also be used for prevention and control of pollution, development of ecologically-friendly market at Marhi, for restoring the vegetative cover and afforestation. The funds shall not be used for any other purpose whatsoever.

- (iii) The operational vehicles like those of BRO/Army would be exempted from paying the Green Tax.
- (iv) The GREF i.e BRO is hereby directed to ensure that the road remains in a very good motorable condition round the year.
- (v) The State Government, particularly the Department of Tourism, shall immediately take steps for collection and disposal of MSW on the entire route from Vashishta to Rohtang Pass.
- (vi) To start with, the State Government shall provide all requisite funds for commencement and progress of the various projects that are to be commenced by it under these directions. These funds shall be provided on top priority basis.
- (vii) The State Government and all its authorities, municipalities and all private organizations are directed to fully co-operate, co-ordinate and ensure that these directions are complied with, without default or demur.
- (viii) We hereby constitute a Monitoring Committee consisting of Secretary (Environment), State Govt. of Himachal Pradesh; Conservator of Forests concerned of Kullu Division; Director (Tourism), Govt. of Himachal Pradesh; Environmental Engineer, Himachal Pradesh Pollution Control Board; and an eminent

environmentalist from G.B. Pant Institute of Himalayan Environment and Development, Kosi-Katarmal, Almora.

This Committee shall tour the area of Rohtang Pass and *en route* and ensure that the directions contained in this order are carried out in true spirit and substance. If any department, person or authority is found to be erring in such matter, then it shall bring the same to the notice of the Tribunal for appropriate action.

(ix) The above Monitoring Committee shall submit quarterly reports to the NGT, clearly stating non-compliances with the directions, if any, the persons responsible for such default(s) and also suggestions, if any, as it may consider appropriate in order to make further improvements and catalyze the prevention and control of pollution in that area more effectively.

(x) The State Government of Himachal Pradesh has already taken a definite stand and made a statement that it shall follow the 'Madhya Pradesh Model' for prevention and control of forest fires. Thus, we direct that an extra effort should be made by the State Government of Himachal Pradesh, for ensuring prevention and

control of forest fires, particularly in the Himalayan region, as they are the direct source of deposition of Black Carbon and suspended particulate matter on the glacier.

(xi) The authorities concerned of the State Government of Himachal Pradesh including the Departments of Forest and Agriculture would ensure that no remnants of crops in agricultural fields are burnt, as this also results in deposits of Black Carbon and suspended particulate matter on the glacier.

(xii) G.B. Pant Institute of Himalayan Environment and Development, Kosi-Katarmal, Almora, after expiry of six months from the date of passing of this order, shall conduct a study of the glacier of Rohtang Pass in all respects and submit a report to the Tribunal immediately thereafter. The report, *inter alia*, shall deal with cleanliness, deposits of Black Carbon and suspended particulate matter, ambient air quality, progress in reforestation in the stated area and collection and disposal of municipal solid waste at, around and *en route* Marhi. The report shall specifically deal with comparative analysis of vehicular pollution, pre and post this order.

(xiii) Preferably, no horses shall be permitted at Rohtang Pass. However, if the authorities and the committee concerned are of the view that horses should be permitted at Rohtang Pass in the interest of healthy tourism, then the authorities and the committee shall ensure that all the horsemen permitted to ply their horses at Rohtang Pass are permit holders. These permits will be issued by the representative of the committee concerned and the Deputy Commissioner, Kullu. The conditions of the permit should clearly state that horse dung be instantaneously removed/lifted and stored appropriately in the bins specifically provided for that purpose. Cleaning of horse dung, MSW and such other waste shall be the responsibility of the staff appointed at Rohtang Pass. In the event of default, the permit issued to such horsemen shall be liable to be cancelled in accordance with law.

39. In view of the above discussion and the specific and general directions contained in this judgment, let Civil Writ Petition Nos. 5087/2011, 5088/2011 and PIL No. 15/2010 now be listed for final disposal.

40. We make it clear that, in this order, we are not dealing with the rights of the persons engaged in commercial activity at Marhi and *en route*. We are also not dealing with the land rights claimed by the persons in the main Writ Petition at this stage.

41. A copy of this order be sent immediately to the Chief Secretary, the Secretary (Tourism), the Secretary (Environment) and the Secretary (Forests) of the State Government of Himachal Pradesh for compliance. It may also be sent to the BRO and the Commander-in-Chief, Western Command of the Army, Chandi Mandir, for compliance.

42. We must place on record our appreciation for the assistance rendered by the learned counsel appearing for the parties, particularly the Advocate General of Himachal Pradesh, who had assured the Tribunal that the Government was very keen to protect the environment and ecology of this eco-sensitive area and was quite willing to take various effective steps in that direction.

43. We grant liberty to all the parties or even to the persons not being a party to this case to move the Tribunal for any clarification or variation of the directions contained in this order.

44. However, there shall be no order as to costs.

**Hon'ble Mr. Justice Swatanter Kumar
Chairperson**



**Hon'ble Mr. Justice U.D. Salvi
Judicial Member**

सत्यमेव जयते

**Hon'ble Dr. D.K. Agrawal
Expert Member**

**Hon'ble Mr. Bikram Singh Sajwan
Expert Member**

New Delhi
February 6, 2014

NGT