

[2014] 14 S.C.R. 279

T. N. GODAVARMAN THIRUMULPAD

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v.

UNION OF INDIA & ORS.

(I.A. Nos. 2143 with 2283, 3088, 3461, 3479, 3693 in 2143,  
827, 1122, 1337, 1473 and 1620 and 1693 in 1473 and  
3618)

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(Writ Petition (Civil) No. 202 of 1995)

MARCH 12, 2014

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**[A. K.PATNAIK, SURINDER SINGH NIJJAR AND  
FAKKIR MOHAMED IBRAHIM KALIFULLA , JJ.]**

*Environmental Laws:*

*Environment (Protection) Act, 1986: Gudalur and Nilgiri  
forests – Public Interest Litigation – Destruction of tropical  
rain forest resulting in ecological imbalances affecting lives  
and livelihood of the people living in the State of Tamil Nadu  
– Compulsory Afforestation Fund – Release of –IAs by  
different States seeking release of some funds for completing  
the task of compulsory afforestation – Held: Order dated 10<sup>th</sup>  
July 2009 modified – National CAMPA Advisory Council  
(NCAC) directed to finalize and issue guidelines before 1st  
May, 2014 regarding the activities for which the use of the  
CAMPAs funds would not be permissible and the activities for  
which a ceiling on the use of the CAMPAs funds would apply  
– These guidelines to be strictly followed by the State CAMPAs  
– Ad-hoc CAMPAs permitted to release annual amount equal  
to 10% of the principal amount lying to the credit of each  
State/Union Territory, out of the interest receivable by it with  
effect from financial year 2014-2015 onwards – No money  
out of the amounts available with Ad-hoc CAMPAs to be  
transferred or utilized without the leave of the Supreme Court  
– National CAMPAs Advisory Council to file a Status Report*

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A *within a period of three months regarding the monitoring and evaluation of the works being undertaken, by utilizing the funds released by CAMPA – Forest Act, 1927 – Forest (Conservation) Act, 1980 – Tamil Nadu Hill Stations Preservation of Trees Act.*

B        The instant writ petition was filed as a PIL under  
Article 32 of the Constitution of India for and on behalf  
of the people living in and around the Nilgiri Forest on  
the Western Ghats. The petitioner sought to challenge  
the legality of the actions of the State of Tamil Nadu, the  
C Collector, Nilgiris District and the District Forest Officer,  
Gudalur and the Timber Committee in destroying the  
tropical rain forest in the Gudalur and Nilgiri areas in  
violation of the Forest Act, 1927, Forest (Conservation)  
Act, 1980 and Tamil Nadu Hill Stations Preservation of  
D Trees Act and the Environment (Protection) Act, 1986 as  
it has resulted in serious ecological imbalances affecting  
lives and livelihood of the people living in the State of  
Tamil Nadu. The petitioner has alleged that the  
respondents have in collusion with certain vested  
E interests allowed trespassers to encroach and enter  
upon the forest land for the purpose of felling trees and  
conversion of forest land into plantations and well  
organized rackets existed between the forest authorities,  
timber contractors and the local authorities which are  
F facilitating the cutting and removal of trees and timber  
in gross violation of Forest Conservation Act.

The instant Interlocutory Applications were filed  
seeking either general or specific directions in relation  
to various issues concerning the protection and  
G improvement of environment. The Supreme Court has  
been continuously monitoring the enforcement of the  
protected measures directed to be taken by the various  
Central/State authorities on the basis of the  
recommendations made by the relevant expert bodies.

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The Court noticed on 29<sup>th</sup> October, 2002, that the amount collected by various States from the user agencies to whom permissions were granted for using forest land for non forest purposes was not being utilised for such compensatory afforestation. The Court directed that the Ministry of Environment and Forest (MoEF) should formulate a Scheme whereby, whenever any permission is granted for change of user of forest land for non-forest purposes, and one of the conditions of the permission is that, there should be compensatory afforestation, then the responsibility for the same is that of the user-agency and should be required to set apart a sum of money for doing the needful. The CEC examined the issue and recommended that it would be desirable to create a separate fund for Compensatory Afforestation, wherein all the money received from the user-agencies would be deposited and subsequently released directly to the implementing agencies as and when required. The funds received from a particular State would be utilized in the same State. There was a consensus among the States and the Union Territories that such a fund be created. It was also recommended that the funds should not be a part of general revenues of the Union or all the States or of the Consolidated Funds of India. The CEC Report also contemplated the involvement of user-agencies for Compensatory Afforestation. Pursuant thereto, the MoEF issued a notification on 23<sup>rd</sup> April, 2004 constituting a "Compensatory Afforestation Funds Management and Planning Authority (CAMPA)" as an authority under Section 3(3) of the Environment (Protection) Act, 1986. Unfortunately, the said notification only remained on paper and it was not made functional till date by the MoEF. Huge amount of money received from the user-agencies towards the NPV, Compensatory Afforestation etc. were lying with various authorities without any effective control and monitoring as the

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A CAMPA notification was not made operational by the MoEF. Therefore, by order dated 5<sup>th</sup> May, 2006, the Supreme Court accepted a suggestion made by the CEC for constitution of an Ad-hoc body till CAMPA becomes operational. All State Governments/Union Territories  
B were directed to account for and pay the amount collected with effect from 30<sup>th</sup> October, 2002 in conformity with the order dated 29<sup>th</sup> October, 2002 to the said Ad-hoc body (Ad-hoc CAMPA). The suggestions were made by the CEC that all the monies recovered on behalf of  
C the 'CAMPA' and which are presently lying with the various officials of the State Government are transferred to the bank account(s) to be operated by this body; and get audited all the monies received from the user agencies on behalf of the 'CAMPA' and the income earned  
D thereon by the various State Government officials. These suggestions were accepted. In accordance with the directions of the Supreme Court, the money already received as well as the money being received towards the NPV etc. were transferred to the Ad-hoc CAMPA and  
E invested in the fixed deposit with National Banks. On 2<sup>nd</sup> April, 2009, MoEF issued "the guidelines of State Compensatory Afforestation Fund Management and Planning Authority (State CAMPA)". By order dated 10<sup>th</sup> July, 2009, the Supreme Court directed that the guidelines and structure of the State CAMPA as prepared by MoEF  
F may be notified and implemented. The Court also permitted the Ad-hoc CAMPA to release about Rs.1000 crore per year for the next five years, in proportion of 10% of the principal amount pertaining to the respective  
G States/Union Territories, *inter alia*, subject to the condition that the State Accountant General shall carry out, on annual basis, the audit of the expenditure incurred every year out of the State CAMPA funds. It was further directed that an amount upto 5% of the amount  
H released to the State CAMPA, i.e., upto Rs.50 crore per

annum, may also be released and utilized by the National CAMPAs A  
 Advisory Council constituted under the Chairmanship of Ministry of Environment and Forest for  
 monitoring and evaluation and for the implementation of the various schemes as given in the State  
 CAMPAs guidelines. The State CAMPAs were constituted for each State/Union Territory. The Ad-hoc  
 CAMPAs released the funds to each of the State CAMPAs as per the approved Annual Plan of  
 Operation (APO). At present, a total sum of Rs.1000 crore is permitted to be released to the State  
 per year. The State-wise accounts of the principal amounts and cumulative interest is to be  
 maintained by the Ad-hoc CAMPAs. The funds are not permitted to be utilized for any purpose  
 other than those authorized by the Court. The administrative expenses of CAMPAs are incurred  
 by the CEC. With the establishment of the Ad-hoc CAMPAs, huge sums of money have  
 accumulated which can be released to the State CAMPAs for utilization, for protection and  
 for the improvement of the national environment. B C D

The instant IAs were filed by different States seeking release of some funds for completing  
 the task of compulsory afforestation. The CEC also recommended that the Supreme Court  
 may in partial modification of its earlier order dated 10<sup>th</sup> July 2009 consider permitting the  
 Adhoc CAMPAs to annually release from the financial year 2014-15 onwards, out of the  
 interest received/receivable by it, an amount equal to 10% of the principal amount lying  
 to the credit of each of the State/UP at beginning of the year to the respective State  
 CAMPAs subject to certain conditions. E F G

Disposing of the IAs, the Court

HELD: 1. The recommendation of CEC are accepted. The National CAMPAs Advisory Council (NCAC)

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- A will finalize and issue guidelines before 1st May, 2014 regarding the activities for which the use of the CAMPA funds will not be permissible (such as foreign study tours) and the activities for which a ceiling on the use of the CAMPA funds will apply (such as purchase of
- B vehicles and construction of residential / office buildings). These guidelines will be strictly followed by the State CAMPA. The order dated 10th July, 2009 is modified accordingly. The Ad-hoc CAMPA is permitted to release annual amount equal to 10% of the principal
- C amount lying to the credit of each State/Union Territory, out of the interest receivable by it with effect from financial year 2014-2015 onwards. The release of the said funds shall be subjected to certain conditions. It is further directed that no money out of the amounts available with
- D Ad-hoc CAMPA will be transferred or utilized without the leave of this Court. It is further directed that the National CAMPA Advisory Council will file a Status Report within a period of three months regarding the monitoring and evaluation of the works being undertaken, by utilizing
- E the funds released by CAMPA. [Paras 31 to 33][304-F-H; 305-A-D]

*M.C.Mehta v. Kamal Nath & Ors.* 1997 (1) SCC 388 : 1996 (10) Suppl. SCR 12 – referred to.

**Case Law Reference:**

- F 1996 (10) Suppl. SCR 12 referred to Para 16

CIVIL ORIGINAL JURISDICTION: I. A. Nos. 2143 with 2283, 3088, 3461, 3479, 3693 in 2143, 827, 1122, 1337, 1473 AND 1620 and 1693 IN 1473 and 3618 in Writ Petition (Civil)

G No. 202 of 1995.

Under Article 32 of the Constitution of India.

Manjit Singh, AG, Harish N. Salve, Uday U. Lalit, P.S. Patwalia and Anoop G. Choudhari, Sr. Adv. M.K. Subramanian,

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Sp. G. P., A. D. N. Rao, Siddhartha Chowdhury, P. K. Manohar, A  
Keshav Thakur, Saket Sikri, Ms. Ranjeeta Rohatgi, Harris  
Beeran, Ms. C.K. Sucharita, Anil Shrivastava, Riku Sarma,  
Navnit Kumar (For M/s. Corporate Law Group), Gopal Singh,  
Manish Kumar, C.D. Singh, Ms. Sakshi Kakkar, T. Mahipal,  
Ms. Hemantika Wahi, Ms. Preeti Bhardwaj, Tarjit Singh, Vinay B  
Kuhar, Ms. Nupur Choudhary, Kamal Mohan Gupta, Ms. Pragati  
Neekhra, Ashok Mathur, Gopal Prasad, Parikshit P. Angad,  
Ms. Anitha Shenoy (For Mr. V.N. Raghupathy), Ms. Bina  
Madhavan, Naveen Sharma, Ms. Swati B. Sharma, Mishra C  
Saurabh, Sanjay Kharde, Aniruddhya P. Mayee, Kh. Nobin  
Singh, Ranjan Mukherjee, P. V. Yogeswaran, Ranjan  
Mukherjee, Ms. Anil Katiyar, Shibashish Mishra, Kuldip Singh,  
Milind Kumar, For M/s. Arputham, Aruna & Co., B. Balaji, R.  
Rakesh Sharma, Selvin Raja, Ms. Rachna Srivastava, Utkarsh  
Sharma, Amit Kumar Singh, Abhishek Choudhary, Ms. Saumya D  
Chakraborty, Anip Sachthey, Col. R. Balasubramanian, K. V.  
Jagdishvaran, Ms. G. Indira, D.S. Mahra, V.G. Pragasam, S.J.  
Aristotle and Prabu Ramsubramanian, Advs. for the appearing  
parties.

The Judgment of the Court was delivered by E

**SURINDER SINGH NIJJAR, J.** 1. This order will  
dispose of the I. As. noted above.

2. Writ Petition (C) No. 202 of 1995 was filed as a PIL  
under Article 32 of the Constitution of India for and on behalf of F  
the people living in and around the Nilgiri Forest on the Western  
Ghats. The petitioner sought to challenge the legality and the  
validity of the actions of the State of Tamil Nadu, the Collector,  
Nilgiris District and the District Forest Officer, Gudalur and the  
Timber Committee represented through the Collector, Nilgiris G  
(Respondent Nos. 2 to 5 respectively), in destroying the tropical  
rain forest in the Gudalur and Nilgiri areas in violation of the  
Forest Act, 1927, Forest (Conservation) Act, 1980 and Tamil  
Nadu Hill Stations Preservation of Trees Act and the

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A Environment (Protection) Act, 1986. This, according to the petitioner, has resulted in serious ecological imbalances affecting lives and livelihood of the people living in the State of Tamil Nadu.

B 3. The petitioner has highlighted that the respondents have in collusion with certain vested interests allowed trespassers to encroach and enter upon the forest land for the purpose of felling trees and conversion of forest land into plantations. It was pointed out that the encroachers on the forest land have been indiscriminately cutting and removing valuable Rosewood trees, Teak trees and Ayni trees, which are immensely valuable and are found exclusively in the aforesaid forest. It was pointed out that loss of such trees would be permanent and irreparable to the present and future generations to come. The petitioner has clearly pleaded that the value attached to Rosewood and Teak wood has resulted in a *mad rush* by timber contractors in collusion with Government agencies, for making quick profits without any regard to the permanent damage and destruction caused to the rain forest and to the eco-system of the region. The petitioner also pointed out that cutting and removing of trees is not limited only to the mature trees. In their anxiety to make huge profits the entire forest areas are being cleared, by indiscriminate felling of trees. The petitioner also pointed out that the national policy adopted in the year 1952 provided for the protection and preservation of forests. The existence of large areas of land covered under forest is recognized as a valuable segment of the national heritage. The petitioner also pointed out that the protection from exploitation of forests, in particular natural forests, is imperative as such forests once destroyed can not be regenerated to their natural state. The petitioner has pleaded that the destruction of rain forests would adversely affect the environment, eco-system, the plants and animals living within the forests. This would result in such destruction, which would ultimately result in drastic changes in

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the environment and the quality of life of people living in and around the forests. The petitioner also highlighted that although the national policy has provided that 33% of the land mass of India shall be covered with forests, the present extent of the forest covered areas was below 15%. The natural rain forest cover was only around 5%. Such meager forest cover had led to the enactment of the Forest (Conservation) Act, 1980. Statement of objects and reasons of the aforesaid Act is as follows:-

(1) Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

(2) With a view to checking further deforestation, the President promulgated on the 25th October, 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central government necessary for de-reservation of reserved forests and for use of forest-land for non-forest purposes. The Ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.

4. Apart from pointing out the provisions of the aforesaid Act, the petitioner also protested that the population living in the areas mentioned above is being deprived of the right to live in a clean and pollution free environment and, therefore, their fundamental rights protected under Article 21 of the Constitution of India are being violated. The petitioner pointed out that the preservation and protection of forests is recognized as essential for maintaining a clean and pollution free environment. He further pointed out that the rain forests, which are found only in the southern part of the Western Ghats contain several rarest species of plants and animals and also the main

A source of water supply to the rivers flowing from the Ghats. The large scale denuding of the green cover on the Western Ghats has resulted in shortage of water in the rivers and has adversely affected the people living on the water flowing from the rivers.

B 5. This apart, it was pointed out that forests are the main source of livelihood for a large number of people, who live within and around the forests. It was also pointed out that the rain forests are the source of life and the plants and animals contained within it are useful for enhanced quality of life enjoyed by mankind. The bio-diversity of the rain forest, it was emphasized, has to be preserved for the welfare and well being of future generations of mankind. The petitioner was constrained to move this Court in the present writ petition being so perturbed by the large scale destruction of the forests and other natural resources found in the three States namely Tamil Nadu, Karnataka and Kerala. It was lamented that all the protective legislation enacted by Union of India are nothing more than statements in the statute books, in as much as the forest land and its wealth are being plundered everyday. He pointed out that it can no longer be denied that well organized rackets exist between the forests authorities, timber contractors and the local authorities which are facilitating the cutting and removal of trees and timber in gross violation of Forests Conservation Act. The petitioner has given details of the manner in which individuals, contractors and firms were clandestinely permitted to trespass and plunder the forest area for the invaluable Rosewood trees. It was stated that each tree commands a price of Rs.15 to 20 Lakhs in the market. When all the efforts of all the concerned individuals, NGOs and other social activists failed, the petitioners were constrained to knock on the doors of this Court by way of writ petition under Article 32 of the Constitution of India. The prayers made in the aforesaid writ petitions are as under:-

H (a) issue an appropriate writ, order or direction directing

the State of Tamil Nadu to take steps to stop all felling and clearing activities in the forests of Nilgiris District in the State of Tamil Nadu. A

(b) issue an appropriate writ, order or direction directing the respondents 2 to 5 to stop conversion of forest lands to plantation or other purposes. B

(c) issue an appropriate writ, or direction directing respondents 2 to 5 to take steps to remove all unauthorised and illegal occupants of forest land in the Nilgiri District of Tamil Nadu. C

(d) issue an appropriate writ, order direction directing respondent 2 to 5 to stop the transport and removal of timber from the forests in the Nilgiri District.

(e) issue an appropriate writ, order direction to appoint a committee for assessing the damage caused to the forest in the western ghats in the State of Tamil Nadu, Karntaka and Keral and in particular the hills of the Nilgiris mountain. D

(f) Pass such other and further orders. E

6. Understandably disturbed by the horrendous fact situation narrated in the writ petition, this Court issued notice to not only the concerned States but also to other States. Thereafter, the writ petition is pending.

7. In this writ petition, Interlocutory Applications have been filed seeking either general or specific directions in relation to various issues concerning the protection and improvement of environment. The subjects covered by Interlocutory Applications at various stages ranged from protection of existing forest cover; improvement in the forest cover; protection of lakes, rivers and wild life; and protection of flora and fauna and the ecological system of the country. This Court has been continuously monitoring the enforcement of the protected G

A measures directed to be taken by the various Central/State authorities on the basis of the recommendations made by the relevant expert bodies.

8. On 29<sup>th</sup> October, 2002, this Court considered I.A. No. 566, in which this Court had taken suo-moto notice on the Statement of Mr. K.N. Rawal, Additional Solicitor General to the effect that the amount collected by various States from the user agencies to whom permissions were granted for using forest land for non-forest purposes, was not being utilized for such compensatory afforestation. It was pointed out that B moneys paid by user agencies to State Governments for compensatory afforestation were utilized for such afforestation only to the extent of 63% of the funds actually realized by the State Governments. The shortfall even at that time was nearly C Rs. 200 crores. This Court, therefore, recorded that on the D next date, it would consider as to how this shortfall was to be made good. It was directed that the Ministry of Environment and Forest should formulate a Scheme whereby, whenever any permission is granted for change of user of forest land for non-forest purposes, and one of the conditions of the E permission is that, there should be compensatory afforestation, then the responsibility for the same is that of the user-agency and should be required to set apart a sum of money for doing the needful. It was further provided that in such a case, the State Governments concerned will have to provide or make F available land on which forestation can take place. This land may have to be made available either at the expense of the user-agency or of the State Governments, as the State Governments may decide. It was further directed that the G scheme which is framed by the MoEF should be such as to ensure that afforestation takes place as per the permissions which are granted and there should be no shortfall in respect thereto.

9. It was also brought to the notice of this Court on the H basis of the statement placed on record in I.A.Nos.419 and

420 that the funds accumulated for diverting forest area for non-forest purposes, compensatory afforestation, although actually received, had not been appropriately utilized. The CEC examined this question. The report, *inter alia*, provided that there should be a change in the manner in which the funds are released by the State Governments relating to Compensatory Afforestation. The CEC recommended that it would be desirable to create a separate fund for Compensatory Afforestation, wherein all the money received from the user-agencies are to be deposited and subsequently released directly to the implementing agencies as and when required. The funds received from a particular State would be utilized in the same State.

10. There was a consensus among the States and the Union Territories that such a fund be created. It was also recommended that the funds should not be a part of general revenues of the Union or all the States or of the Consolidated Funds of India. The CEC Report also contemplated the involvement of user-agencies for Compensatory Afforestation.

11. The CEC in its report dated 5<sup>th</sup> September, 2002 made eight recommendations which were accepted by the Union of India in an affidavit filed in response to the aforesaid report. The Union of India further stated, in the affidavit, that major institutional reorganization of the present mechanism has to be undertaken. It was proposed that comprehensive rules will be framed which will *inter alia* relate to the procedure and compensation. It was also proposed that there shall be a body for the management of the Compensatory Afforestation Fund (CAF). The suggestion of the Union of India was that CAF would be composed of a Director General of Forest; Special Secretary, who would be the ex-officio Chairman and Inspector General of Forest, who would be the ex-officio Member Secretary. The report of the CEC was accepted and this Court made the following recommendations :-

“(a) The Union of India shall within eight weeks from today

- A frame comprehensive rules with regard to the constitution of a body and management of the Compensatory Afforestation funds in concurrence with the Central Empowered Committee. These rules shall be filed in this Court within eight weeks from today. Necessary
- B notification constituting this body will be issued simultaneously.
- (b) Compensatory Afforestation Funds which have not yet been realised as well as the unspent funds already realised by the States shall be transferred to the said
- C body within six months of its constitution by the respective states and the user-agencies.
- (c) In addition to above, while according transfer under Forest Conservation Act, 1980 for change in user-agency from all non-forest purposes, the user agency shall also
- D pay into the said fund the net value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare of forest land depending upon
- E the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the Ministry of Environment & Forests in consultation with Central Empowered Committee as and when necessary.
- F (d) A 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan Funds, etc. shall be deposited. The
- G rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment & Forests with the concurrence of Central Empowered Committee
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within one month.

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(e) The funds received from the user-agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under Section 18, 26A or 35 of the Wild Life (Protection) Act, 1972, for undertaking activities related to protection of bio-diversity, wildlife, etc., shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States/Union Territories.

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(f) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States/Union Territories or any amount that is yet to be recovered from the use-agency shall also be deposited in this Fund.

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(g) Besides artificial regeneration (plantations), the fund shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner.

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(h) The user agencies especially the large public sector undertaking such as Power Grid Corporation, N.T.P.C., etc. which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the Ministry of Environment & Forests with the concurrence of the Central Empowered Committee.

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(i) Plantations must use local and indigenous species since exotics have long term negative impacts on the environment.

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(j) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilisation of funds.”

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12. Keeping in view the aforesaid representation, the MoEF issued a notification on 23<sup>rd</sup> April, 2004 constituting a “Compensatory Afforestation Funds Management and Planning Authority (CAMPA)” as an authority under Section 3(3) of the Environment (Protection) Act, 1986. This notification provides that there shall be a governing body. Minister of Environment and Forests, Government of India is the Chairman. Apart from the members who are taken from the level of Secretary, MoEF to the level of Inspector General of Forest, the governing body also includes an eminent professional ecologist, not being from the Central and the State Government for a period of 2 years of time, but for two consecutive terms. The notification also provides for an executive body having seven members with Director General of Forests and Special Secretary, MoEF, Government of India as the Chairman. The notification elaborately provides the power and functions of the Governing Body; power and functions of the Executive Body; Management of the Funds; Disbursement of funds; monitoring and evaluation of works. It also provides that every State or the Union Territory shall have a Steering Committee and a Management Committee. It also provides the powers and functions of the State Steering Committee and the State Management Committee. The jurisdiction of the CAMPA is throughout India. Unfortunately, the aforesaid notification has only remained on paper and it has not been made functional till date by the MoEF.

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13. This Court again examined the entire issue in relation to the decline in environment quality due to increasing pollution, loss of vegetation cover and biological diversity, excessive

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concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risk of environmental accidents, and threats to life support system, for the protection of which the Environment (Protection) Act, 1986 had been enacted. A comprehensive judgment was given in I.A.No.826 in I.A.No.566 in W.P. (C) No.202 1995 on 26<sup>th</sup> September, 2005. The Court noticed the statutory provisions contained in the Forest Conservation Act, 1980, Environment (Protection) Act, 1986, and Water Prevention and Control of Pollution Act, 1974. It also noticed that large sums of money which had been payable by user-agencies in cases where approval had been granted for diverting forest land that stipulated for compensatory afforestation were not being used. It is further noticed by this Court that certain rates had been fixed per hectare of forest land depending on the quality and density of the land in question converted for non-forestry use. After detailed examination of the issues related to the payment of Net Present Value (NPV) and Compensatory Afforestation Fund, the Court upheld the constitutional validity of the payment to CAMPA under the notification dated 23<sup>rd</sup> April, 2004. It was held that the payment of NPV is for the protection of environment. It was further held that the natural resources are not the ownership of any one State or individual, public at large is its beneficiary. Therefore, the contention that the amount of NPV shall be made over to the State Government was rejected.

14. The Court also constituted a Committee of Experts (Kanchan Chopra Committee) to formulate a practical methodology for determining NPV payable for various categories of forest and the project which deserves to be exempted from payment of NPV.

15. As noticed earlier, huge amount of money received from the user-agencies towards the NPV, Compensatory Afforestation etc. were lying with various authorities without any effective control and monitoring as the CAMPA notification had not been made operational by the MoEF.

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16. The Court reiterated the ratio of M.C.Mehta Vs. Kamal Nath & Ors.<sup>1</sup> that it is the duty of the State to preserve the natural resources in their pristine purity. The Doctrine of Public Trust was re-enforced. It was emphasized that the Doctrine of Public Trust is founded on the idea that certain common properties such as rivers, seashore, forest and the air were held by the Government trusteeship for the free and unimpeded use of the general public. It was reiterated that our legal system based on English Common Law which includes the Doctrine of Public Trust as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment.

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17. Therefore, this Court recognized the need to take all precautionary measures when forests land are sought to be diverted for non-forestry use, the creation of CAF was approved. In coming to the aforesaid conclusions, the Court took into consideration *intergenerational equity*. The State was required to undertake short term as well as long term measures for the protection of the environment.

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18. As noticed earlier, this Court by order dated 28<sup>th</sup> March, 2008 had fixed the rates at which NPV is payable for the non-forestry uses of forest land falling in different Eco-classes and density sub-classes. The rates vary from Rs.10.43 lakh per hectare to Rs.4.38 lakh per hectare. For the use of forest land falling in the National Parks and Wildlife Sanctuaries, the NPV is payable at 10 times and 5 times respectively of the normal rates of NPV. By order dated 9<sup>th</sup> May, 2008, this Court has exempted the payment of NPV for non-forestry use of forest land (a) upto one hectare for construction of schools, hospitals, village tanks, laying of underground pipe lines and electricity distribution lines upto 22 KV, (b) for relocation of villages from National Parks/Wildlife Sanctuaries, (c) for collection of boulders/silts from river beds,

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<sup>1</sup> 1997 (1) SCC 388

(d) for laying of underground optical fibre cables and (e) for pre-1980 regularization of encroachments and has granted 50% exemption for underground mining projects. A

19. Although huge sums of money had been received from user-agencies but there were no effective checks and balances for its utilization. Therefore, by order dated 5<sup>th</sup> May, 2006, this Court accepted a suggestion made by the CEC submitted in I.A. No.1473 for constitution of an Ad-hoc body till CAMPA becomes operational. All State Governments/Union Territories were directed to account for and pay the amount collected with effect from 30<sup>th</sup> October, 2002 in conformity with the order dated 29<sup>th</sup> October, 2002 to the aforesaid Ad-hoc body (Ad-hoc CAMPA). The following two suggestions made by the CEC were accepted:- B  
C

“(a) ensure that all the monies recovered on behalf of the ‘CAMPA’ and which are presently lying with the various officials of the State Government are transferred to the bank account(s) to be operated by this body. D

(b) get audited all the monies received from the user agencies on behalf of the ‘CAMPA’ and the income earned thereon by the various State Government officials. The auditors may be appointed by the CAG. The audit may also examine whether proper financial procedure has been following in investing the funds.” E

20. The Chief Secretaries of the State Governments/ Administrators of Union Territories were directed to cooperate with the Ad-hoc CAMPA as well as the Comptroller and Auditor General. The Ad-hoc CAMPA under the Chairmanship of the Director General of Forests and Special Secretary, MoEF and has (a) Inspector General of Forest (FC), MoEF (b) representative of Comptroller and Auditor General of India (c) nominee of the Chairman of the CEC as its Members. In accordance with the directions of this Court, the money already received as well as the money being received towards the F  
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- A NPV etc. have been transferred to the Ad-hoc CAMPA and invested in the fixed deposit with National Banks. The money lying with the Ad-hoc CAMPA towards the NPV etc. received from the States (principal amount) and the interest received on the fixed deposit (cumulative interest) has substantially
- B increased over a period of time and is presently about Rs. 30,000 crores.

21. On 2<sup>nd</sup> April, 2009, MoEF has issued "the guidelines of State Compensatory Afforestation Fund Management and Planning Authority (State CAMPA)". These guidelines have

C been prepared on the basis of the discussions held in the meeting of the Chief Secretaries that the objective to assist the States/Union Territories for setting up the requisite mechanism in consonance with the directions issued from time

D to time by this Court. The guidelines are general in nature and can be moulded keeping in view the specific needs of any particular State/Union Territory. The State CAMPA has been set up as an instrument to accelerate activities for preservation of natural forests, management of wildlife, infrastructure development in the sector and other allied works. By order

E dated 10<sup>th</sup> July, 2009 this Court directed that the guidelines and structure of the State CAMPA as prepared by MoEF may be notified and implemented. The Court also permitted the Ad-hoc CAMPA to release about Rs. 1000 crore per year for the next five years, in proportion of 10% of the principal amount

F pertaining to the respective States/Union Territories, *inter alia*, subject to the condition that the State Accountant General shall carry out, on annual basis, the audit of the expenditure incurred every year out of the State CAMPA funds. It was further directed that an amount upto 5% of the amount released to the State

G CAMPA, i.e., upto Rs.50 crore per annum, may also be released and utilized by the National CAMPA Advisory Council constituted under the Chairmanship of Ministry of Environment and Forest for monitoring and evaluation and for the implementation of the various schemes as given in the State

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CAMPA guidelines.

22. The State CAMPA has been constituted for each State/Union Territory. It has a three-tier structure. The Executive Committee functions under the Chairmanship of the Principal Chief Conservator of Forests is responsible for the Annual Plan of Operation (APO) for various works planned to be undertaken during each year. The Steering Committee under the Chairmanship of Chief Secretary is responsible for approving the APO for each year. The Chief Minister is the Chairman of the Governing Body which is responsible for overall guidance and policy issues. The Ad-hoc CAMPA releases the funds to each of the State CAMPAs as per the approved APO. At present, a total sum of Rs.1000 crore is permitted to be released to the State per year. The State-wise accounts of the principal amounts and cumulative interest be maintained by the Ad-hoc CAMPA. The funds are not permitted to be utilized for any purpose other than those authorized by the Court. The administrative expenses of CAMPA are incurred by the CEC.

23. With the establishment of the Ad-hoc CAMPA, huge sums of money have accumulated which can be released to the State CAMPA for utilization, for protection and for the improvement of the national environment. Now the aforesaid applications have been filed by different States seeking release of some funds for completing the task of compulsory afforestation, as directed by this Court from time to time. The relief claimed in all the applications is almost identical. We shall make a reference to the averments made in I.A.No.3618 of 2013 for the purpose of deciding all the applications.

24. I.A. No. 3618 of 2013 in Writ Petition (C) No. 202 of 1995 has been filed by the State of Gujarat with the following prayer:-

"i. To direct the Ad-hoc CAMPA to release minimum of 10% of principal amount deposited by the States/UTs

A with Ad-hoc CAMPA and the total amount accrued as  
interest on such deposits to the respective State/UT's  
including to the State of Gujarat without the ceiling of  
B Rs.1,000 crore, in order to ensure effective and timely  
implementation of Compensatory Afforestation Scheme,  
Wildlife Conservation and other Forest conservation and  
Protection Measures as envisaged in the CAMPA  
guidelines;

ii. Pass any other directions deemed fit by the Hon'ble  
Court."

C Prayers made in other applications are similar, if not  
identical.

25. The aforesaid relief is claimed on the basis that  
the amount available with CAMPA is substantially higher than  
D Rs.1,000/- crores, wherein the annual release from the Ad-  
hoc CAMPA has been restricted to Rs. 1,000/- crores p.a. by  
the orders of this Court. It is further pointed out that only during  
the year 2009-10, 10% of the principal amount, i.e., Rs.24.96  
crores has been released by the Ad-hoc CAMPA to Gujarat  
E State. During subsequent years, i.e., 2010-11 and 2011-12,  
the annual release from ad-hoc CAMPA to Gujarat State had  
come down from 10% to 8% and then to 7%, respectively. For  
the year 2012-13, the amount released is only 6.5% of the  
principal amount. It is also submitted by the learned counsel  
F appearing for the State of Gujarat that at the time when these  
applications were filed in April, 2013, the total funds available  
with the Ad-hoc CAMPA were as follows:-

- a. The Principal amount at the disposal of ad-hoc  
CAMPA is around Rs.28000 crores.
- G b. The accrued interest on it is of the order of over  
Rs.4,000 crores.
- c. The annual accrual of interest on the deposits is of the  
order of Rs. 2200 crores.

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26. Relying on the aforesaid facts and figures, it is submitted by the learned counsel for all the States that the funds released to the State CAMPAs are only a fraction of the interest accruing in the Ad-hoc CAMPA accounts. It is further submitted that the value of the compensatory levies, which have been obtained against the diversion of forest land over a period of many years has eroded substantially. This is added to by the continuous inflationary trends, which has made the task of undertaking Compensatory Afforestation *very cost intensive*. Therefore, it is imperative that the funds are made available to State CAMPAs in a substantial ratio to the amounts collected from the State/Union Territories. To illustrate this dilemma, the applicant has relied on a chart, which is as under:-

(Rs. In Crores)

Year	Amount required as per APO	Amount released to Gujarat State CAMPA	Shortfall
1	2	3	4
2009-10	43.16	24.96	18.20
2010-11	43.78	29.16	14.62
2011-12	55.08	26.30	28.78
2012-13	40.61	32.41	8.20
Total	182.63	112.83	69.80

27. Relying on the aforesaid chart, it is submitted that due to release of insufficient CAMPA funds, all the NPV Projects approved by the Steering Committee could not be started. In the year 2009-10, out of 24 NPV Projects only 4 projects could be implemented. In the year 2011-12, out of 14 NPV Projects only 12 Projects could be implemented. In the year 2012-13, out of 15 NPV Projects only 14 Projects could be implemented. It is pointed out that even in relation to the projects, which have been implemented; all the activities in support of the projects could not be taken up due to want of funds. This has resulted in an overall shortfall in the Forest and

A Wildlife Conservation, which is the prime objective of CAMPA funds. Therefore, several State/Union Territory Governments including State of Gujarat have requested the Ministry of Environment & Forests to increase the annual release from the Ad-hoc CAMPA funds to a minimum 10% of the principal amount available with Ad-hoc CAMPA, without any ceiling of about Rs.1,000/- crores per annum. However, since no response was received from the MoEF, the State of Gujarat and other applicant States/Union Governments were constrained to file the IAs.

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C 28. These applications came up for hearing on 26<sup>th</sup> August, 2013, 20<sup>th</sup> September, 2013 and 4<sup>th</sup> October, 2013. Upon examination of the entire matter, a direction was issued on 9<sup>th</sup> December, 2013 to the Central Empowered Committee (hereinafter referred to as "CEC") to submit its report on the applications and the prayers made by the applicant. CEC has submitted its report dated 6<sup>th</sup> January, 2014.

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E 29. In response to the application filed by the State of Gujarat, this Court by order dated 9<sup>th</sup> December, 2013 had directed the CEC to submit its report.

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G 30. In its report dated 6<sup>th</sup> January, 2014, CEC has recommended that the prayer made in the application ought to be accepted. The relevant extract of the CEC Report is as under:

H "11. The CEC, in the above background, recommends that this Hon'ble Court may in partial modification of its earlier order dated 10<sup>th</sup> July, 2009 consider permitting the Ad-hoc CAMPA to annually release from the financial year 2014-2015 onwards, out of the interest received / receivable by it, an amount equal to 10% of the principle (sic) amount lying to the credit of each of the State / UT at beginning of the year to the respective State CAMPA subject to the following conditions:

- i) the funds will be released by utilizing interest received / being received by the Ad-hoc CAMPA. The principle (sic) amount lying with the Ad-hoc CAMPA will not be released or transferred or utilized; A
- ii) the funds will be released after receipt of the "Annual Plan of Operation" containing details of the afforestation and other works for the conservation; protection and development of the forests and wildlife and approved by the Steering Committee of the respective State CAMPA; B
- iii) the Ad-hoc CAMPA will be at liberty to release the funds to the State CAMPAs in one or more installments after considering the utilization of funds earlier released; C
- iv) the National CAMPA Advisory Council (NCAC) will finalize and issue guidelines before 31st March, 2014 regarding the activities for which the use of the CAMPA funds will not be permissible (such as foreign study tours) and the activities for which a ceiling on the use of the CAMPA funds will apply (such as purchase of vehicles and construction of residential / office buildings). D
- These guidelines will be strictly followed by the State CAMPA; E
- v) the State CAMPAs and the MoEF will expeditiously take necessary follow up action on the observations made in the "Report of the Comptroller and Auditor General of India on Compensatory Afforestation in India". F
- vi) the back log of Compensatory Afforestation, if any, will be tackled on priority basis and for which adequate provision will be made in the Annual Plan of Operation (APO) by the respective State CAMPAs; and G

A           vii) the annual release of funds to the National CAMPA  
Advisory Counsel (NCAC) will continue to be upto Rs.  
50 crore and provided the amounts earlier released  
are found to have been substantial utilized."

B           The aforesaid recommendations have been given by the  
CEC after setting out the background in which the CAMPA  
was set up.

C           31. Mr. Salve learned Amicus Curiae on the basis of  
the record has submitted that on the directions issued by this  
Court about Rs.6000 crores are being received by CAMPA  
annually. This amount represents the total amount collected  
for compensatory afforestation fund (principal amount Rs.3000  
crores annually) and approximately Rs.3000 crores by way of  
interest on fixed deposits annually. This is in addition to the  
D           accumulative principal amount which is already invested in  
fixed deposits. He submits that keeping in view the directions  
issued by this Court from time to time for ensuring afforestation  
it would be appropriate to accept the recommendation of the  
CEC. He submits that the scheme proposed by the CEC will  
E           gradually increase in the release of funds to the State/Union  
Territory over a period of time and on a sustainable basis. The  
learned Amicus Curiae has, however, suggested that certain  
other safeguards ought to be incorporated to ensure efficient  
management of the funds released. Upon consideration of the  
F           entire matter at length, we accept the recommendations made  
by the CEC reproduced above. We, however, modify the  
direction 11(iv) as under:-

G           The National CAMPA Advisory Council (NCAC) will  
finalize and issue guidelines before 1<sup>st</sup> May, 2014  
regarding the activities for which the use of the CAMPA  
funds will not be permissible (such as foreign study tours)  
and the activities for which a ceiling on the use of the  
CAMPA funds will apply (such as purchase of vehicles  
and construction of residential / office buildings).

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These guidelines will be strictly followed by the State CAMPA. A

The same shall be treated as directions of this Court. The order dated 10<sup>th</sup> July, 2009 is modified accordingly.

32. The Ad-hoc CAMPA is permitted to release annual amount equal to 10% of the principal amount lying to the credit of each State/Union Territory, out of the interest receivable by it with effect from financial year 2014-2015 onwards. The release of the aforesaid funds shall be subjected to the conditions enumerated above. B C

33. It is further directed that no money out of the amounts available with Ad-hoc CAMPA will be transferred or utilized without the leave of this Court. It is further directed that the National CAMPAA Advisory Council will file a Status Report within a period of three months regarding the monitoring and evaluation of the works being undertaken, by utilizing the funds released by CAMPA. D

34. The Interlocutory Applications are disposed of with the aforesaid directions. E