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(2001) 5 ALT 315

Andhra Pradesh High Court

Case No: Writ Petition No. 33587 of 1998

Dr. T. Patanjali Sastry, President, Environment Centre	APPELLANT
Vs	
Chairman, Andhra Pradesh Pollution Control Board and Others	RESPONDENT

Date of Decision: July 30, 2001

Acts Referred:
Constitution of India, 1950 â€" Article 14, 19, 21, 249, 250#Environment (Protection) Act, 1986 â€" Section 2, 7, 8#Water (Prevention and Control of Pollution) Act, 1974 â€" Section 2, 25#Wild Birds and Animals Protection Act, 1912 â€" Section 2, 3#Wild Life (Protection) Act, 1972 â€" Section 11, 12, 15, 18, 19

Citation: (2001) 5 ALT 315

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: E. Manohar, for P. Sri Raghu Ram, Prabhakar Sripada, B.V. Krishna Rao and A. Ramanarayana, for the Appellant; S.V. Bhatt, S.C. and A.A.G., for the Respondent

Judgement

S.B. Sinha, C.J.
Ail these Writ Applications involving common questions of fact and law were taken up for hearing together and are being

disposed of by this common Judgment.

2. Though W.P.No. 12497 of 2001 was heard separately, since it is inter-connected to the other petitions involving similar questions of fact and

law, we are inclined to dispose of this Writ Petition also by this common Judgment.

3. Before we deal with the rival contentions, it may be useful to notice the prayers made in the respective writ petitions.

4. W.P.Nos. 23210 of 1999 and 4350 and 4375 of 2000 are filed by Kolleru Fishermen and Agricultural Small Farmers Association, Prathikolla

Lanka, Eluru Mandal, West Godavari District; Dr. Ambedkar Harijan Fisherman Cooperative Society Ltd., Bogapuram village, W.G. Dt. and Dr.

Ambedkar Co-operative Collective Farming Society Ltd., Bogapuram village, respectively seeking the following relief:

To issue a Writ, Order or direction more especially one in the nature of mandamus declaring the notification of the Government in G.O.Ms.No.

120, Environment, Forest, Science and Technology (For.III) Department dated 4-10-1999 published in the A.P. Gazette on 5-10-1999 as illegal,

unconstitutional and violative of Articles 14 and 21 of the Constitution and consequently set aside the same.

5. W.P.No. 33587 of 1998 is filed by one Dr. T. Patanjali Sastry claiming to be the President, Environment Centre, Danavaipeta, Rajahmundry as

Public Interest Litigation for the following relief:

To issue an Order, direction, or a Writ, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not

stopping the discharge of effluents from the industries that have come up in the vicinity of Kolleru lake and in permitting the construction of houses

and roads in the catchment area of the lake and not checking the conversion of hundreds of acres of land into fish ponds etc., besides not checking

the bird hunting by the forest officials as illegal and unlawful and to direct the respondents to take appropriate steps to restore the lake to its pristine

glory as before.

6. W.P.No. 2354 of 2001 is filed by two petitioners, residents of Vadlakutitippa village, Kaikalur Mandal, Krishna District, questioning the action

of the respondents in interfering with the repairing works undertaken to their fish/prawn tanks and prayed for the following relief:

To issue a Writ or order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondents in interfering with

the rights of the petitioners to repair their fish/prawn tanks in the lands to the extent of Ac. 7.00 and Ac. 6.00 situate in S.Nos. 116/1A, 117/1 to 7

etc., of Vadlakutitippa village h/o Penchikalamarru, Kaikalur Mandal, Krishna District as arbitrary, illegal and violative of Articles 14, 19, 21 and

300-A of the Constitution of India.

7. One Sri Yemeni Nagendranath, a former member of State Drainage Board and who claims to have studied the problems of Kolleru Lake in

depth, seeks the following reliefs in W.P.No. 12497 of 2001 in larger interest of preserving the lake.

(a) To remove all encroachments of Kolleru lake bed area upto Plus 5 Contour level in consonance with G.O.Ms.No. 120 dated 5-10-1999;

(b) To direct the respondents to remove all obstructions to free flow of water in Kolleru lake at its normal monsoon level i.e., Plus 7 Contour in

pursuance of the International obligations cast on them as constituents of Federal Republic of India which is the signatory of Ramsar Convention;

(c) To prevent discharge of untreated urban sewage, industrial effluents and residues from fertilizers and pesticides used in aquaculture etc., into

Kolleru lake; and

(d) To remove the obstructions to the natural course of rivulets and other sluices to all roads laid and proposed to be laid in Kolleru lake area.

8. Issues of environmental pollution and encroachment of Kolleru lake situated in West Godavari and Krishna Districts and the ecological impact

on the lake by reason of pollution being caused on account of prawn culture/aquaculture undertaken in the lake-bed area by various agencies and

also letting of industrial/municipal effluents into the lake and the validity of final notification issued by the State u/s 26-A of the Wild Life

(Protection) Act, 1972 declaring Kolleru lake as "Wild Life Sanctuary" arise for consideration in these writ applications.

9. Protection of lakes of national importance from pollution, ecology, encroachment, etc., should be the primary concern of the State. In the

context of rapid globalization and the imminent threat it posed to environment, ecology vis-a-vis the rights of the citizens to have pollution free

environment, the right to water, etc., recognized by the Apex Court under Article 21 of the Constitution of India, the duty of the Government to

protect the lakes has assumed much more importance. It is now well settled principle of law that directive Principles of State Policy under Part IV

of the Constitution are enforceable under Article 21 of the Constitution of India. Under Article 48-A of the Constitution, the State shall endeavour

to protect and improve the environment and to safeguard the forests and wild life of the country. Article 49 of the Constitution casts an obligation

on the State to protect every monument or place of object of artistic or historic interest declared by or under law made by Parliament to be of

national importance, from spoliation, disfigurement, destruction, removal, disposal, export, as the case may be. At the same time, it shall be the

fundamental duty of every citizen of India under Article 51-A(g) of the Constitution of India, to protect and improve the natural environment

including forests, lakes, rivers and wild life, and to have compassion for living creatures.

10. In the light of the above Constitutional provisions and the environmental laws such as Environment Protection Act, 1986, the Water

(Prevention and Control of Pollution) Act, 1974, and the Wild Life (Protection) Act, 1972, the various issues raised in the petitions have to be

examined.

History of Kolleru Lake:

11. Kolleru lake is one of the largest fresh water lakes in the country besides Lokhtak in Manipur and Dal Lake in Kashmir and is the biggest

shallow water lake in Asia spread over 2,330 sq.kms. In the Imperial Gazette it was described as ""Peerless Fishermen''s Paradise and birds

Heaven"". It was formed between the alluvial plains of river Godavari and river Krishna due to natural geological formation covering two mandals in

West Godavari district and seven mandals in Krishna District, without any defined margins and situated nearly 35 kms. away from the coastline.

Ecologically, it is a wetland eco-system. In its mean season, the lake has mean water level of 3 feet above the Mean Sea Level (MSL) popularly

known as Plus 3 contour (contour means one foot of mean water level). The water surface area and consequently the contours of the lake vary

depending upon the seasonal flow of water into the lake. It is one of the largest wet lands in the east coast with a total catchment area of 4763 Sq.

kms. spreading over West Godavari and Krishna districts, it is having initial capacity of 20 TMC of water. In normal monsoon, the lake extends

from Plus 7 contour to Plus 10 contour. At plus 3 contour level it spreads over 70 square miles and at Plus 7 contour level the capacity of the lake

is 30 TMC and Plus 10 contour capacity of the lake is about 54 TMC covering an area of 348 sq. miles. The peak level inflow into the lake would

be of the order of 1,10,000 cusecs.

12. Four rivers namely, Budameru, Ramileru, Tammileru and Erra Kalva and 18 drains and 22 irrigation channels empty out into the lake and the

drain Upputeru is the only outlet to the Sea. 15 minor drains also feed the lake. The catchment area of the lake consists of 3403 sq. kms. of upland

and 1360 sq. kms. of delta area. The other main drains are Chandraiah drain, Polaraju drain, Vatluru drain, Pedapadu drain etc., which are the

feeders of Kolleru lake from the catchment area from West Godavari and Krishna districts. The flow in these drains mainly consists of agricultural

run off, storm water run off, domestic effluents and industrial effluents from large and medium scale industries.

13. There are 122 villages in the lake area out of which 46 are bed villages and 76 are belt villages and several new hamlets have sprung up in the

lake-bed due to encroachment of Government land. In the belt villages, above +5 contour level, cultivation was being done both in the patta lands

as well as in the Government lands in occupation by paying cist. Three lakh people live in these villages. The Government land is to the extent of

90,000 acres out of which 16,488 acres of land was encroached upon. The lake supports a rich bio-diversity and high biomass of fish plankton,

which forms the source of food for birds.

14. Kolleru Lake serves as a migratory sanctuary for 188 species of ecologically endangered birds. It attracts large flocks of birds from Siberia

and from different continents. The lake produces various ecological conditions conducive to attract a wide spectrum of bird life. Each part of the

eco-system including the water, the birds, the fish, prawns etc., play an important role in maintaining the ecological balance of the lake. The birds

depend on the lake for food and the lake water is enriched by their droppings that increase the number of fishes. Several lakhs of water fowl and

marsh birds make the lake their winter home. It is also a natural home for a large variety of flora and fauna providing food habitat for migrating

birds. The lake had an abundant resource of fish with an average production of 7,000 metric tones per year, which is now reduced due to

encroachment and pollution. The birds visit the lake during winter as it offers a good feeding and breeding place. On the basis of recommendations

of Prof. K. Neelakantan of Kerala and on the proposals of the Chief Conservator of Forests, Government in G.O.Ms.No. 1985 F & A dated 11-

9-1963 declared Kolleru lake with a radius of 20 miles as a bird sanctuary. But, this G.O. was never implemented due to various developmental

activities taken up in the area. Large scale agriculture and pisci culture had been taken up in the area, which resulted in the birds abandoning the

lake.

15. Since Upputeru was the only outlet through which the lake is connected to sea, there used to be large-scale floods resulting in heavy damage to

the adjoining lands. On the recommendations made by Mithra Committee in regard thereto, the Government had taken up remedial measures and

now there was marked increase in the discharge capacity of the lake.

16. Initially agriculture was permitted in Kolleru lake bed area on permit system, vide G.O.Ms.No. 1162 dated 20-5-1955. The Government

granted pattas in lake bed and belt villages and upstream area within the lake bed during the year 1977-78. This opened floodgates for

encroachment into the bed areas and with the advent of aquaculture and pisci culture, large scale conversion of land into fish tanks took place.

17. The bed and belt villages of the lake area are largely inhabited by scheduled castes and backward class citizens and most of them survive by

eking their livelihood by fishing. Fishing in the lake is by two methods, one by traditional fishing by the fishermen by going in their boats in the

central area of the lake for which general licences were being granted and the other method is by way of grant of special licences for the lands

which were assigned to them and by this method bunds would be constructed and during the dry season, the water would be bailed out and fish

would be caught.

18. Kolleru Lake is now facing the problem of pollution. Number of industries such as paper mills, sugar factories located in Krishna and West

Godavari Districts are discharging trade effluents into Kolleru lake through number of drains stated supra. The municipal run offs from the major

towns such as Vijayawada, Eluru, Gudiwada is also polluting the lake.

19. In the light of the above Geographical and Geomorphologic history of the lake, we may briefly state the relevant facts in the respective Writ

Petitions.

W.P.No. 23210 of 1999:

20. The petitioner styled as Kolleru Fishermen and Agricultural Small Farmers Association claims that it consists of 111 cooperative societies and

84 individual members representing the entire villages. The members of the societies belong to backward and scheduled castes. It is alleged that

when ban was imposed due to contamination of the water of the lake, Government issued orders in G.O.Ms. No. 118 dated 24-1-1976 for

conversion of 50 cents of land into fish tanks and granted licences for the same. Due to their inaccessible geographical position they had been

mostly victims of gross negligence by both the opportunistic politicians and the corrupt revenue officials. The members who are fishermen by

profession never disturbed the ecology of the lake. The Government had not bestowed its attention to improve the infrastructure of the lake for the

development of the area as a place of scenic beauty attracting the tourists.

21. The pollutants are silting at the lakebed at the rate of one inch per year and the water is not useful for any purpose and this has led to scarcity

of drinking water in many villages.

22. Since Kolleru lake is a fresh water lake, it is not covered by CRZ notification and, therefore, there is no prohibition for undertaking prawn

culture in the lake area. For several years the inhabitants of the bed and belt villages sustained heavy losses on agriculture and they started

converting agricultural lands into fish tanks. There was no statutory prohibition for such conversion. Prawn culture is eco-friendly. When the

revenue authorities interfered with such conversion, the landholders filed number of writ petitions. The ecological imbalance of the lake is not due to

fish tanks, but it was only due to the neglect of the lake by the Government and failure to have a check on the pollution caused by several industries

and the municipal corporations.

23. The grievance of the petitioners is that though notification u/s 18 of the Act was issued, proclamation has not been given in accordance with

law and no individual notices have yet been issued though such directions had been issued by this Court in Rangaraju v. State of A.P. 1998 (2)

ALT 215 The District Collector, West Godavari issued proceedings on 1-6-1999 determining the rights in the sanctuary area and by reason of the

same the persons residing in the area are harassed by the officials and they are finding it difficult to carry on their livelihood. Further, the Collector

also issued proceedings Roc.D6.11717/96 dated 8-8-1999 curtailing the enjoyment of private lands as well as D-Form patta lands and regulating

the issuance of annual licence and by reason of the same construction of fish tanks, pisci culture is prohibited and efforts are being made to cancel

the pattas granted pursuant to G.O.Ms.No. 118 dated 24-1-1976.

24. While things stood thus, the State Government issued a final notification on 5-10-1999 in G.O.Ms.No. 120, Environment, Forest, Science and

Technology (For.III) Department dated 4-10-1999, purported to be in pursuance of the Judgment of this Court in Rangaraju"s case (1 supra),

constituting Kolleru Wild Life Sanctuary u/s 26-A of the Act as specified in the schedule appended thereto with defined boundaries and margins

and marked in the map kept in the Office of the Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad. Though several claims were

made by the members of the petitioner-association, no order was communicated to them regarding their claims. The procedure adopted is contrary

to the provisions of the Act. No scientific survey was conducted while fixing the boundaries of the sanctuary. The earmarking of the boundaries

with plus 5 contour has no legal or factual basis. The D-form pattas granted to the landless poor by reason of G.O.Ms.No. 118 dated 24-1-1976

cannot be cancelled after a period of three decades. Because of the notification, the rights of nearly two lakh people residing within plus 5 contour

and who are basically fishermen are at stake. Preservation of wild life should give way to human preservation. Unless steps are taken to stop

pollution, reviving of wild life is impossible.

25. There was total non-application of mind in issuing the G.O.Ms.No. 120 as mere fishing in the tanks would cause no harm and petitioners have

no objection if some regulatory methods are adopted. The impugned G.O. has taken away the livelihood of several people residing in the area

from decades. The action of the Government depriving the vocational activity to survive their livelihood is violative of their fundamental right to life

guaranteed under Article 21 of the Constitution of India. No compensation has been paid to the affected persons. The fruits of economic

development have not reached the remote places of the area and the people in the area are living in utter poverty. When people in the area were

permitted to convert their land into fish tanks, people from urban areas started putting in investment on the lands and the area has suddenly

assumed importance. The cause for depletion of beauty of the lake is not due to the activity of the local people converting agricultural lands into fish

tanks. The local people should not be deprived of their livelihood.

26. The action of the respondents is also vitiated by mala fides as the G.O. was issued in the wake of several allegations made against the

politicians and officials allowing widespread prawn culture in the area.

W.P.Nos. 4350 and 4375 of 2000:

27. In these two petitions, the lands of the petitioner . societies situated in Bhimadole mandal, had been declared as a sanctuary. The main

contention of the petitioners is that neither notices as required u/s 21 of the Act were issued nor the Collector conducted any enquiry and thus there

was violation of natural justice. The members of the societies are living in the area from times immemorial eking out their livelihood on the traditional

profession of fishing. By the impugned notification, they are rendered homeless and without employment violating their right under Article 21 of the

Constitution.

W.P.No. 33587 of 1998:

28. In this writ petition filed as PIL it is stated that over a period of time industries set up in the catchment area drained effluents into the lake and

siltation has been occurring with alarming rapidity and the pollution has crossed the danger mark even as per the research conducted in 1978 by

Prof.. T. Sivaji of Andhra University. The depletion of the birds visiting the Kolleru Lake due to pollution and bird hunting has a great impact on

ecology and the situation is alarming.

W.P.No. 2354 of 2001:

29. The petitioners in this W.P. converted their land situate in Vadlakutitippa village, Kaikalur Mandal into fish tanks in the year 1989. They

contend that though their lands do not fall in the area notified under the Wild Life Protection Act or in the CRZ and therefore, the authorities have

no power to interfere with the repair works of their fish tanks.

W.P.No. 12497 of 2001:

30. The petitioner is a former member of Drainage Board and claims to have studied the problems of the lake in depth. It is averred that the

Government of India is the signatory to 1971 convention of Ramsar (Iran) wherein it was declared that Kolleru is a wet land eco system of

International importance and any permission of encroachment in the lake would go against the obligations of Government of India as signatory of

the conference on wet land convention. By reason of G.O.Ms.No. 420 the Government prohibited alienation of Government lands upto 500

metres of high tide water mark which was extended to Kolleru and Pulikot lakes through G.O.MS.NO. 625 dated 23-6-90. Out of 40,609 acres

of Government land below plus 5 contour, 8102 acres in West Godavari district and 8695.30 cents in Krishna district are under illegal

encroachments. This also does not reflect the correct figures. Major portion of private land is also converted into pisci culture tanks. As a result of

the unauthorised private as well as Government activities, the free flow of water in the lake is severely hampered. This has resulted in submersion of

delta facility in the upstream area which is in vogue for more than 150 years. The entire drainage system of Krishna and West Godavari Districts

which chooses Kolleru lake as natural route to sea was designed keeping in view the absorption and retention capacity of Kolleru lake. The

recommendations made by Brahmanaiah and S.S. Ray Committees were not implemented. G.O.Ms.No. 120 has not been implemented in its

letter and spirit and there has been large scale digging of fish tanks under the guise of interim orders of this Court.

31. In K. Rangamju v. Government of A.P. (1 supra) a learned Single Judge of this Court has issued several guidelines in the matter including

direction to issue final notification u/s 26-A. But pursuant to the interim orders of this Court in W.P.NO. 5096 of 1998 2,000 acres of land were

converted into fish tanks. About one lakh acres is under unathorised occupation. The encroachers have formed lakes with water spread over areas

ranging from 30 to 400 acres. They have raised bunds upto height of 20 to 25 feet above ground level thereby obstructing the free flow of water

and diminishing the retention capacity of the lake. Due to this there was submergence of upstream mandals of Kaikalur, Mandavalli etc., resulting in

90% crop losses. The total crop loss per annum would be to the tune of 2.5 to 4 lakhs tonnes of food-grains which is of the value of 100 to 150

crores. The Inaction on the part of the Government to preserve the Kolleru lake is violative of the right of the farmers in the upstream Mandal

guaranteed under Article 21 of the Constitution of India. The Government should take immediate remedial steps prohibiting the activities of

aquaculture as well as pisci culture and agriculture below plus 5 contour and removal of obstructions on vent ways in the water course of Kolleru

lake and provide vent ways for all the roads laid by R & B. The respondents are duty bound to ensure free flow of water in Kolleru lake up to Plus

7 contour which is normal monsoon level and the inlets into Kolleru lake so as to preserve the lake. The pollution levels in the lake going up

because of discharge of untreated sewage from 7 municipalities mixed with agriculture run off and aquaculture discharge and the Pollution Board

and Government have not taken any effective measures to contain the pollution.

32. In the counter filed in W.P.No. 23210 of 1999 it was stated that the number of migratory birds, which visited the lake, has diminished due to

pollution and encroachment in the lake. With a view to create good atmosphere in the lake so as to attract rare species of birds, a preliminary

notification was issued in G.O.Ms.No. 76 dated 26-9-1995 declaring the lake as Wild Life Sanctuary. 278 claims were made by various claimants

and by conducting an enquiry u/s 22 of the Act and considering all the objections a final notification was issued in G.O.Ms.No. 120 u/s 26-A of

the Act.

33. It is further stated that the general and special licensing system, which was in vogue prior to the issuance of final notification, has not been

automatically cancelled. The fishermen will have the right to do fishing using mavus nets of size, which do not cause damage to seed but catches

only fish of harvestable. People living in and around the lake have been traditionally encroaching on lake bed for agriculture and aquaculture and

most of the lake bed right upto plus 3 contour has already been converted into fish and prawn tanks.

34. The lake receives surplus water from different drains, streams and rivers and retains the water for about three months and slowly discharges

water into the Bay of Bengal through Uppteru river. Due to bunding up of the lake bed, with a number of fish tanks, this process of natural

drainage of flood water from various rivers, streams and different drains is severely obstructed causing major floods in town like Kaikalur, Akiveed

and Eluru and the surrounding agricultural lands. Therefore, it is very important to preserve the lake in its original shape both for the benefit of the

migratory birds that visit the lake in winter and to avoid floods in nearby villages and towns and as such the contention of the petitioners that

ecology would not be disturbed due to construction of fish tanks is not correct.

35. The Government opened a Wild Life Management team with its headquarters at Eluru on 1-11-1992 to monitor and decide regarding

preservation and improvement of the ecology of the lake. A management plan was also prepared for restricting the encroachments, pollution, and

disturbances of habitat and for improvement of ""flora"" and ""Fauna"". As far back in 1958 the Indian Board of Wild Life recommended to declare

the Kolleru lake as a bird sanctuary. In fact Government of India in G.O.Ms.No. 1996 (F&A) Dept., dated 11-9-1963 in exercise of powers

vested under Sections 2 and 3 of the Wild Birds and Animals Protection Act, 1912 (Central Act No. VIII of 1912) declared a radius of 20 miles

from Kolleru lake as a closed area for the protection of pelican birds.

36. All the industrial units have installed requisite treatment plants and they are regularly monitored by the A.P. Pollution Control Board by

collecting samples every week from various contributing drains and also from the lake and analysis is being carried out for various physio-chemical

parameters, heavy matters and pesticides. The pollution from the sewerage generated from Vijayawada Municipal Corporation is almost negligible

and sewage treatment plants have already been constructed and are in operation. The sewage from other municipal towns is also being regularly

monitored by the Pollution Control Board.

37. In the counter, it is admitted that Kolleru lake is not covered by CRZ and only Upputeru is included in CRZ. It was stated that under the Wild

Life Protection Act, the Collector is the authority to determine the claims and right of persons in regard to the land included in the preliminary

notification.

38. In W.P.No. 9479 of 1990 dated 25-6-1999, this Court clarified that if final notification has been issued as contemplated u/s 26-A of the Act,

even pattedars shall not be allowed to continue with the fishing operations and that it would be open to the authorities to take appropriate steps

after giving notice to the pattedars or assignees when they come to adverse notice by way of carrying on fish culture or shrimp culture within the

lands included in the sanctuary. In W.P.No. 117 of 1997 dated 11-8-1999, this Court further clarified that the directions contained in the judgment

dated 25-6-1999 in W.P.No. 9479 of 1990 did not prevent the Revenue, Irrigation and Forest Officials of the State to take adequate measures as

are available in law to prevent unauthorized drawal of water from any State owned, managed or administered Water sources including irrigation

and drainage channels for the purpose of feeding or servicing any ponds or tanks intended for aquaculture including fish culture. This Court in

Rangarajan"s case (1 supra) directed the D-Form pattadars of the land shall be permitted to exploit the land for the purpose for which the lease

was granted and they shall not use the land other than the purpose for which it was leased to them.

39. It is further stated that proclamation u/s 21 of the Act has been made in accordance with law after considering the claims made by the persons

interested after taking into consideration of all aspects. After the notification entry into sanctuary is restricted and conditional permits u/s 28 have to

be obtained from the concerned authorities. The respective District Collectors after considering all the claims passed orders for evicting

encroachers and cancelling the licences. The village-wise details of the area included in the sanctuary including details of survey numbers are also

made available to the VAO. Though 278 claims were made by claimants, only 40 claimants attended the enquiry and after thorough enquiry and

after considering all the aspects detailed proceedings were issued determining the rights of the claimants.

40. Pursuant to final notification, the Government will take all steps to avoid pollution. In the course of taking steps to avoid pollution only artificial

fishing and prawn culture is prohibited. Genuine fishermen do not suffer since they are permitted to do fishing by traditional methods. Illegal

encroachers are mainly responsible for the large scale digging of fish tanks. Large-scale conversion of agricultural land into fish tanks will adversely

affect the future generations in many ways. The eco-system is being exploited for temporary gains to the detriment of innocent people in and

around the lake. Once these lands are polluted, it is dangerous for animals, birds and human being in course of time.

41. Out of the total lake area of one lakh hectares, only 30.855 hectares is declared as a sancturary. About 2,882 acres of D-Form patta lands

were given to the fishermen cooperative societies, vide G.O.Ms.No. 118 and about 8,000 hectares of land had been illegally occupied which is the

part of the sanctuary and as per the final notification, the encroachment has to be removed.

42. Though no counter is filed in respect of 12487 of 2001, the counter filed in W.P.No. 23210 of 1999 comprehensively deals all the contentions

raised in the said Writ Petition.

43. In the counter filed in W.P.No. 33587 of 1998, it was stated that the Government had already sanctioned Rs. 2 crores for the development of

the sanctuary in a phased manner during the current five-year plan and the Government of India is also providing funds for the socio-economic and

environmental development of Kolleru tract every year through an accepted plan.

44. In the counters filed in W.P.Nos. 4350 and 4375 of 2000, it was stated that all the procedures laid down under the Act have been duly

followed after a thorough enquiry and the land occupied by the petitioners is a Government land situate in the middle of the sanctuary. The

petitioners were issued due notices and acknowledgements thereof, were obtained. People in and around the sanctuary are given a right to do

fishing and to do agriculture in traditional methods without harming the animals and birds. Only sheds on the occupied tank bunds, the electrical

connections disturbing the sanctuary, oil engines disturbing the habitat were asked to be removed as per the provisions of the Act,

45. Mr. E. Manohar learned Senior Counsel appearing on behalf of the petitioners, inter alia, submitted that the notifications issued under Sections

18 and 26-A of the Act are ultra vires. The learned Counsel would contend that before such a notification was issued, the competent authority is

required to apply its mind with regard to the existence of the preconditions therein and in view of the fact that the notifications do not reflect such

application of mind, the same must be held to be a nullity. The learned Counsel would further urge that no basis exists for fixing the Mean Sea

Level at 5 MSL. It was submitted that prior to issuance of the notification u/s 18 of the Act, the appropriate authority did not take recourse to any

exercise for arriving at the conclusions, which was mandatory for the purpose of issuance of the notification. The learned Counsel would contend

that even in the counter-affidavit it has not been stated as regards the existence of a basis for arriving at the said decision. The learned Counsel

would urge that after a notification u/s 18 is issued, an enquiry is required to be made by the Collector, statutory objections are required to be

considered and lands if necessary are required to be acquired and in that view of the matter and in the event if it was held that the requirements as

contemplated u/s 18 had not been complied with, the notification u/s 26-A would necessarily fall.

46. The learned Counsel would urge that Darkashat pattas had been granted for the purpose of facilitating the poorer sections of the people to

earn their livelihood. D-Form pattas had been granted on or about 24-1-1976 and apart from the assignees, the other persons joined hands so as

to form a co-operative society. The learned Counsel would contend that prior to issuance of the notification, it was obligatory on the part of the

District Collector to give the affected party an opportunity of being heard. As regards the ecological imbalance, Mr. Manohar would urge that the

season during which the migratory birds come to lake is only from October to February during which period the fishing activities may not be

allowed.

47. The learned Additional Advocate General, on the other hand, submitted that the matter came up for consideration before a Division Bench of

this Court in Rangarajan''s case (1 supra) as also in W.P.No. 9479 of 1999 disposed of on 25-6-1999 and W.P.No. 117 of 1989 disposed of on

11-8-1999 pursuant whereto the final notification dated 25-9-1999 had been issued. The learned Additional Advocate-General would urge that

having regard to the fact that prior to the issuance of the said directions of this Court in the aforementioned writ applications, the petitioners who

were parties therein did not question the notification issued u/s 18 of the Act, they couldn''t now be permitted to do at this stage. Our attention has

been drawn to the fact that severe damage has been caused to the lake due to the pollution caused from different sources. According to him,

having regard to the ecological development, it is necessary to have a sustainable development. Reliance in this connection has been placed on the

decisions of the Apex Court in Consumer Education and Research Society Vs. Union of India and Others, and Nagar Palika Parishad Vs. State of

U.P. and Others, .

48. Mr. Bhatt, learned Counsel appearing for A. P. Pollution Control Board has drawn our attention to the report of the Pollution Control Board

and submitted that the standards of maintenance of ecology in relation to lakes fixed by the Environment Ministry are required to be implemented

and this Court should issue a direction in this regard.

49. Kolleru lake is situated in the districts of Krishna and West Godavari. So far as Krishna district is concerned it extends to two mandals

covering 28 villages and so far as West Godavari district is concerned, it extends, to 7 mandals covering 50 villages. Out of 90,000 acres of land

belonging to the Government, private people encroached upon an extent of 17,550 acres and 5331 acres had been granted by way of D-Form

pattas.

50. From the materials on record, it stands admitted that Kolleru lake was one of the largest fresh water lakes in the country and is said to be the

biggest shallow water lake in Asia. The total area of the lake at the plus 10 contour is 348 square miles. The survey carried out by the Government

shows that it used to receive drainage water from catchment area of nearly 4767 sq.kms. including from small rivers and several drains. We have

earlier in extenso dealt with the geographical and statistical aspects of the lake and it is not necessary to reiterate the same.

51. It is not in dispute that birds of different kinds namely Jacenas, various storks, Herons, wild species of Ducks and Teals, Darters, Cormorants,

Large variety of passerines (Sparrows), Reptors and Pellicons used to migrate into the like during winter season from different parts of the world.

It is also not in dispute that the lake had been polluted due to discharge of industrial pollutants/municipal pollutants into the lake through various

drains and also on account of prawn culture/pisci culture etc.

52. Before we go into the merits of the matter, we may briefly state about the relevant provisions of the various Acts enacted by the Government

dealing with Environment, Water and Wild Life.

53. The Environment (Protection) Act, 1986 (for short the Environment Act) was enacted as a result of the decision taken at United Nations

Conference on the Human Environment held at Stockholm in June, 1972. The Statement of Objects and Reasons to the Act is as under:

The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive

concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life

support systems. The world community"s resolve to protect and enhance the environmental quality, found expression in the decisions taken at the

United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India participated in the conference and

strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the

Conference, the need for a general legislation further to implement the decisions of the conference have become increasingly evident.

54. Section 2(a), 2(b), 2(c) and 2(e) of the Environment Act are as under:--

2. Definitions:-- In this Act, unless the context otherwise requires,-

(a) ""Environment"" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings,

other living creatures, plants, micro-organism and property;

(b) ""Environmental pollutant"" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to

environment.

(c) ""Environmental pollution"" means the presence in the environment of any environmental pollutant;

(e) ""Hazardous substance"" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is

liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment;

55. Sections 7 and 8 of the Environment Act are as under:--

7. Persons carrying on Industry, operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards:--No

person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in

excess of such standards as may be prescribed.

8. Persons handling hazardous substances to comply with procedural safeguards:- No person shall handle or cause to be handled any hazardous

substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

56. Section 15 of the Act makes contravention of the provisions of the said Act punishable with imprisonment for a term which may extend to five

years or with fine which may extend to one lakh rupees or with both. If the failure or contravention continues beyond a period of one year after the

date of conviction, the offender shall be punishable with imprisonment for a term, which may extend to seven years. The effluents discharged by the

commercial shrimp culture farms are covered by the definition of Environmental pollutant, environmental pollution and hazardous substance.

57. The Water (Prevention and Control of Pollution) Act, 1974 (for short ""the Water Act"") has been enacted to provide for the prevention and

control of water pollution and the maintaining or restoring of wholesomeness of water. The Statement of Objects and Reasons of the Water Act,

inter alia, states as under:--

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of

industries and the increasing tendency to urbanization. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed

to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking

water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country''s

economy.

58. Section 2(j) & (k) of the Water Act are as under:--

2. Definitions:-- In this Act, unless the context otherwise requires,--

(j) ""stream"" includes-(i) river;

(ii) water course (whether flowing or for the time being dry);

(iii) inland water (whether natural or artificial);

(iv) sub-terranean waters;

(v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette,

specify in this behalf;

(k) ""trade effluent"" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry

operation or process, or treatment and disposal system other than domestic sewage.

59. Section 25 of Water Act provides that no person shall, without the previous consent of the State Board establish any industry, operation or

process, or any treatment and disposal system which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.

60. No material has been placed before us to show that the persons who are undertaking aquaculture, shrimp culture etc. have or for that matter

the industries which are discharging its effluents to various drains leading to Kolleru lake have obtained permission from the Pollution Control

Board (PCB). The PCB only says that it is regularly monitoring the industries.

61. Another important enactment is the Wild Life (Protection) act, 1972 (Act. No. 53 of 1972) (for short ""the Wild Life Act""), which has been

enacted to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. This

Act was enacted by Parliament in exercise of its powers under Articles 249 and 250 of the Constitution of India pursuant to resolutions passed by

Houses of Legislatures of all States including Andhra Pradesh. The Act came into force in the State w.e.f. 5-8-1973. It may be useful to note the

statement of objects and reasons of the said Act.

The rapid decline of India"s wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild

animals and birds have already become extinct in this country and others are in the danger of being so. Areas, which were once teeming with wild

life, have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild

Birds and Animals Protection Act, 1912 (Act 8 of 1912) has become completely outmoded. The existing State laws are not only out-dated but

provide punishments, which are not commensurate with the offence, and the financial benefits which accrue from poaching and trade in wild life

produce. Further, such laws mainly relate to control of hunting and do not emphasize the other factors which are also prime reasons for the decline

of India"s wild life, namely, taxidermy and trade in wild life and products derived therefrom.

The Bill seeks to:

(a) Constitute a Wild Life Advisory Board for each State;

(b) Regulate hunting of wild animals and birds;

(c) Lay down the procedure for declaring areas as sanctuaries, National Parks etc.;

(d) Regulate possession, acquisition or transfer of or trade in, wild animals, animal articles and trophies and taxidermy thereof.

(e) Provide for penalties for contravention of the Act.

62. Section 2(1), 2(15), 2(16), 2(17), 2(26) and 2(37) of the Wild Life Act are as under:--

2. Definitions:-- In this Act, unless the context otherwise requires,--

(1) ""animal"" includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs:

(15) ""habitat: includes land, water or vegetation which is the natural home of any wild animal;

(16) ""hunting"", with its grammatical variations and cognate expression, includes,"

(a) capturing, killing, poisoning, snaring and trapping Of any wild animal and every attempt to do so;

(b) driving any wild animal for any of the purposes specified in Sub-clause (a);

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds

or reptiles, or disturbing the eggs or nests of such birds or reptiles.

(17) ""land"" includes canals, creeks and other water channels, reservoirs, rivers, streams and lakes, whether artificial or natural, marshes and wet

lands and also includes boulders and rocks.

(26) ""Sanctuary"" means an area declared, whether u/s 26-A or Section 36, or deemed, under Sub-section (3) of Section 66, to be declared, as a

wild life sanctuary.

(37) ""Wild life"" includes any animals, bees, butterflies, Crustacea, fish and moths, and aquatic or land vegetation, which forms part of any habitat.

63. Section 3 provides for appointment of Director of Wild Life Preservation and other officers. Section 4 deals with appointment of Chief Wild

Life Warden, Wild Life Wardens, Honorary Wild Life Wardens and other Officers. Section 6 deals with constitution of Wild Life Advisory Board

which shall consist of the Minister in charge of forests in the State as Chairman, two members of the State Legislature, Secretary to the State

Government in charge of Forests, the Forest Officer in charge of the State Forest Department, an officer to be nominated by the Director of Wild

Life Preservation, Chief Wild Life Warden etc. as members. Section 8 deals with duties of Wild Life Advisory Board which shall advise the State

Government in the matter of selection of areas to be declared as sanctuaries, National Parks, formulation of the policy for protection and

conservation of the wild life and specified plants etc. Section 9 deals with prohibition of hunting of wild animals as specified in Schedules I, II, III

and IV appended to the Act except as provided under Sections 11 and 12.

64. Chapter IV of the Act deals with sanctuaries and National Parks. Section 18 thereof deals with declaration of sanctuary by a preliminary

notification with defined margins where the Government intends to constitute any area other than an area comprised within any reserve forester the

territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological

significance for the purpose of protecting, propagating or developing wild life or its environment. u/s 19 of the Act the Collector was required to

enquire into and determine the existence, nature and extent of rights of any person in or over the land comprised within the sanctuary and Section

20 prohibits accrual of rights after the declaration u/s 18. Section 21 deals with proclamation by the Collector and u/s 22 the Collector has to

make enquiry after service of the prescribed notices upon the claimants. Sections 24 and 25 deal with acquisition proceedings. u/s 26-A, the State

Government shall make declaration of an area as a Sanctuary. After such declaration, any alteration of the boundaries of sanctuary shall be made

only by a resolution passed by the Legislature of the State. Section 27 deals with the restriction on entry into Sanctuary. Section 29 reads as

follows:

Destruction, etc., in a sanctuary prohibited without a permit: No person shall destroy, exploit or remove any wild life from the sanctuary or destroy

or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with the

permit granted by Chief Wild Life Warden and no such permit shall be granted unless the State Government being satisfied that such destruction,

exploitation or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the

issue of such permit.....

65. Section 51 of the Wild Life Act deals with penalties for contravention of any provisions of the Act or any rule or order made thereunder or for

breach of any of the conditions of any licence or permit granted under the Act.

66. It is not in dispute that the lake is connected to sea with only one outlet namely Upputeru which is at a distance of 63.6 kms. Floods used to

occur regularly in the area causing damages to the crops and property. In the year 1964 the Government constituted a Committee of Engineers

known as Mitra Committee to study the flood and drainage conditions in delta and adjoining upland area. The said Committee had recommended

remedial measures, which include improvements to Upputeru for discharge capacity by widening and deepening the river and-excavation of

straight-cut to sea.

67. For carrying out agricultural operations, pesticides and fertilizers were being used contaminating the lake. Ban thus was imposed at plus 5

contour area. As far back in the year 1958 Government prohibited any type of agricultural activities. However, G.O.Ms.No. 118 dated 24-1-

1976 was issued wherein specific condition was laid down that the lands shall not be utilized for cultivation purpose. Pursuant to or in furtherance

of the said policy decision, D-form pattas were granted to several people. As a result of grant of such pattas, co-operative societies started their

activities by digging ponds in the area for the purpose of prawn, shrimp culture.

68. The parties hereto accept that Kolleru lake used to attract various birds due to vast existence of water available in the area. Most of them were

migratory in nature. However, the State Government had not given its due attention to preserve the ecology of the lake.

69. It further stands admitted that Kolleru lake is highly polluted. The sources of pollution are industrial effluents, municipal drainage and fish tanks.

From the report submitted by the PCB, it is disclosed that the three main drains in Krishna district, namely, Budameru, Chandraiah drain and

Ramileru drain convulge into the lake. The flow of these drains consists of agricultural run off, storm water run off, domestic effluents and industrial

effluents from some of the large and medium scale industries. The major industries which are located in and around the area are (1) M/s KCP

Sugar and Industrial Corporation Ltd. (Sugar Division), Vuyyuru, Krishna district, (2) M/s. KCP Sugar and Industrial Corporation Ltd.,

(Distillery), Vuyyuru, (3) M/s. Sri Hanumath Kali Varaprasad Babu Chemicals Ltd.; Kodurupadu, Bapulapadu Mandal, Krishna district, (4) M/s

Milk Products Factory, Chittinagar, Vijayawada, (5) M/s Sree Hanuman Cooperative Sugars Ltd., Serinarasannapalem, Bapulapadu and (6) M/s.

The West Godavari Co-operative Sugars Ltd., Bhimadole. The analysis report produced by the PCB show a very dismal picture. One of the

reports shows deposits of heavy metals like iron, chromium lead, zinc etc.

70. Another source of pollution is the effluents from Vijayawada Municipal Corporation, Gudivada municipality etc.

71. From the report of the PCB, it appears that M/s KCP Sugar and Industrial Corporation (Sugar Division), Vuyyuru has stopped discharging its

effluents into Chandraiah drain and board is monitoring the industry for compliance of the specified standards issued by the Board. So far as M/s

Sri Hanumath Kali Varaprasad Babu Chemicals Ltd., is concerned, steps have been taken for commissioning of a secondary treatment system

wherefor additional lands are being acquired. The effluents from M/s. Milk Products find its way to Kolleru Lake during rainy season. Allegedly, in

response to the notice issued by the Board, the industry has rectified the aerators and operating the ETP. Sri Hanuman Co-operative Sugars Ltd.,

Serinarasannapalem is discharging the untreated effluents into Narasannapalem under-tunnel drain.

72. The West Godavari Co-operative Sugars Ltd., Bhimadole is having an effluent treatment plant consisting of units - Dissolved air flotation

system, Aeration tank, Settling tank and Sludge drying bed. The analysis report reads as follows:

S.No. Parameter Value

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1. PH 6.6

2. TSS 218.0

3. IDS 544.0

4. BOD at 27C 81.0

5. COD 227.0

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73. In regard" to Municipal Corporation, Vijayawada, it is stated that the Corporation has constructed STP of 6 MGD capacity and at present the

Corporation is utilizing 4.5 MGD capacity only. The Corporation is utilising the treated effluents for on land irrigation (gunia grass) over an area of

113 hectares. During rainy season the excess water from the lands is being discharged into Budameru drain. PCB is monitoring the STP every

month. However, in regard to Gudivada municipality, the report states that the municipality is discharging about 10-lakh gallons/day into

Chandraiah drain without any treatment

74. In regard to concentration in lake surface water, the analysis report states thus:

Parameter Concentration in National lake standards

lake surface water

Dissolved oxygen Less than 3 mg/1 in Western More than 4 mg/1

Zone and around 4.0 Mg/1 in

Eastern zone

PH 7.4-8.2 6-9

Phosphates 2.0 mg/1 0.7 mg/1

BOD 6-8 mg/1 6 mg/1

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75. The pollution Control Board in its report proceeds to state that not only the national lake standards have been violated, even the parameters

fixed by the Environmental Ministry in regard to total harness, total alkalinity and the total coliforms are exceeding the normal limits. Added to it,

are the effluents discharged by the fish tanks in and around Kolleru lake with high concentration of nutrients and the analysis made by the Board

shows that high phosphate levels enhance the eutrophication of the lake which compete with the oxygen demand of edible fish and beneficial flora

thereby deteriorating the lake conditions. It further states:

Each hectare of a fish pond exchanges at least 15,000 M of effluents every month. The pollution load from a hectare of fish pond is tabulated in the

Annexure-II. In the absence of the data pertaining to the extent of fish ponds the actual pollution load from the fishponds is very much high when

compared to the pollution load from the industries and local bodies.

76. The aforesaid report clearly shows that the lake is facing a serious problem of pollution. In fact the petitioner in W.P. No. 23210 of 1999

stated thus:

I submit that Kolleru lake faces yet another catastrophe in the form of pollution. The report of the Government submitted to the Select Committee

of the Legislative Assembly of Andhra Pradesh also contains such reference. It has been categorically stated that one of the problems facing

Kolleru lake is effluents coming from different industrial units located in Krishna and West Godavari districts falling into the lake through different

drains namely Budameru, Ramileru, Tammileru, Chandraiah and Buluruvagu drains. By that time itself, there had been 10 industrial units

particularly, sugar factories and paper mills. The list had been given in the report: It is now an admitted fact that the municipal run offs from the

major towns such as Vijayawada, Eluru and Gudiwada are ultimately leading into Kolleru Lake. The extent of pollution need not be emphasized

from the above facts. In other words, due to the callousness of the Government, the lake had been killed and it has become irretrievably damaged.

The pollutants are settling at the lake bed and this silting is at the rate of nearly one inch per year. As the lake is a shallow water lake, even at this

steady rate, in a period of 12 years, the lake would be silting up to foot and within couple of decades, the lake is going to become extinct. Due to

the pollution, the lake water is not useful for any purpose. This has lead to a serious problem of lack of drinking water to the villages. Further, in

view of the silting of pollutants and prawn culture on large scale in the area, the entire drainage system is facing a total failure to discharge its

primary object of discharging the flood waster into sea in peak monsoon.

77. There cannot, therefore, be any doubt whatsoever that in view of the admitted position and in particular the threat of extinction of lake which,

according to the petitioners, may come into being within a period of 12 years, a serious view of the matter is required to be taken

78. An international convention was held at Ramsar in Iran in February 1971 to preserve and conserve wet lands all over the world, which are of

international importance and, as per the treaty, the Government of India, which is a signatory to the said convention, is required to protect all wet

lands of international importance in the country. Kolleru lake is identified as wet lands of international importance. Encroachment upon the Kolleru

lake bed area and pollution of the lake by reason of effluents drained into various drains leading to Kolleru lake and digging of fish tanks had

restricted the natural hydrological and biological processes and has caused loss of habitat to flock of birds which inhabitant during the winter.

Therefore, a duty was cast not only on the Government of India but also on the State Government to see that Kolleru Lake is preserved and

protected from pollution and encroachment.

79. The discharge of effluents from fish tanks in and around lake contained a very high concentration of nutrients which enhances the eutrophication

of the lake which compete with the oxygen demand of edible fish and beneficial flora, thereby deteriorating the lake conditions. The pollution from

the fish ponds is much higher when compared to the pollution load from industries and local bodies.

80. Declaration of the area as a sanctuary is beneficial to the people of that area in the long run participation. According to Dr. B.V. Seshgagri

Rao, Lecturer, Department of Zoology, DNR College, Bhimavaram who presented a paper on the impact of activities of fishing at Kolleru lake,

fishing is eco-oriented as long as fishes are allowed to grow naturally and fish are grown by traditional methods. Therefore, the contention of the

petitioners-associations that prawn culture by modern methods is eco-friendly has no scientific basis.

81. The question of prohibiting or regulating aquaculture, prawn culture and shrimp culture came up for consideration before the Apex Court in S.

Jagannath Vs. Union of India and others, . Referring to a large number of decisions, it was inter alia directed:

5. The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased

production productivity and return with prior approval of the ""authority"" constituted by this order.

6. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public

purposes shall not be used/converted for construction of shrimp culture ponds.

7. No aquaeulture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 metres of Chilka lake and Pulicat

lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu)

9. Aquaeulture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/ constructed

outside the coastal regulation zone as defined by the CRZ notification and outside 1000 metres of Chilka and Pulicat lakes with the prior approval

of the authority as constituted by this Court. Such industries which are already operating in the said areas shall detain authorisation from the

Authority"" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. We further direct that

any aquaeulture activity including intensive and semi-intensive which has the effect of causing salinity of soil, or the drinking water or wells and/or

by the use of chemical reeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential

health hazard, apart from causing siltation turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be

allowed by the aforesaid Authority.

82. Following the above Judgment, this Court in W.P.No. 2180 and 2001 and batch cases held that the above directions of the Apex Court are

mandatory in nature and are required to be complied with scrupulously.

83. It is trite that ecology has to be maintained at all costs having regard to the provisions contained in Article 48-A as also Article 51-A(g) of the

Constitution of India. Right to have pollution free environment and ecology is now part of fundamental right of a citizen guaranteed under Article 21

of the Constitution of India. With a view to maintain the ecology, the Parliament enacted Water Pollution Control Act and Environment

(Protection) Act. Both the statutes have been enacted with a view to profess the ideologies of maintenance of ecology and ecological balance.

From the admitted facts in the present case, it is clear that the pollution level in Kolleru Lake is alarming.

84. We, therefore, have no alternative but to direct the PCB to see that all such activities leading to the pollution of the Kolleru lake and

disturbance of ecology of the lake must forthwith be stopped and/or regulated strictly in accordance with law. The State must make all endeavours

to bring back Kolleru lake to its pristine glory.

85. We may now examine the validity or otherwise of the notification issued u/s 18 or the Wild Life (Protection) Act in G.O.Ms.No. 76 dated 25-

9-1995 and the final notification issued u/s 26-A of the Act in G.O.Ms.No. 120 dated 4-10-1999.

86. The Government u/s 18 of the Wild Life (Protection) Act (Act No. 53 of 1972) issued preliminary notification in G.O.Ms.No. 76,

Environment, Forest, Science and Technology (Forest-III) Department dated 25-9-1995 declaring the areas specified in the schedule as a Wild

Life Sanctuary called ""The Kolleru Wildlife Sanctuary"" and by reason thereof the Collectors of West Godavari and Krishna Districts issued

notifications on 7-2-1996 and 9-1-1996 in the District Gazette respectively. The preliminary notification issued u/s 18 of the Act and the

consequential action taken by the respective District Collectors prohibiting fish culture or prawn culture came up for consideration before a learned

Single Judge of this Court in Rangaraju case (1 supra) and by order dated 5-3-1998, the learned Single Judge, upon taking into consideration the

provisions of the Act held that unless a notification is issued u/s 26-A no interference with the right of the petitioners therein could be taken

recourse to. it was observed:

The learned Counsel for the petitioners also makes a convincing argument that if pending final notification u/s 26-A, the petitioners are not

permitted to convert the land into fish tanks, it will deprive them of their livelihood, thereby right to life enshrined under Article 21 of the

Constitution of India is violated. Further, the Government cannot deprive the enjoyment of property except in accordance with law. Admittedly,

the notification u/s 18 was issued in 1995 and so far final notification has not been issued although 3 years have elapsed. To keep them away from

the land for all these years, it would be harsh and indirectly denying their livelihood itself. The contention cannot be said to be ill-founded. Once the

process was commenced u/s 18, it is to be completed within a reasonable time. It would not be open for the State that having issued notification

u/s 18, it can prohibit entry or restrain agricultural or fishing operations in patta lands for years together. The learned Government Pleader submits

that they are not opposing the agricultural operations pending notification, but if the petitioners convert the land into fish tanks the entire water gets

polluted and the very purpose of notification will be frustrated. To avoid this contingency the only course that could be adopted by the Court is to

expedite the final notification. The said Writ Petitions were disposed of directing:

(a) that the respondents shall proceed with further action in pursuance of the Notification issued u/s 18 and proclamation u/s 21 of the Act and

pass final notification u/s 26-A declaring the sanctuary with the definite boundaries within a period of 6 months from the date of receipt of copy of

this order;

(b) the petitioners who are pattedars of the land situate within the notified sanctuary area u/s 18 of the Act shall be permitted to continue the fishing

operations. However, they shall not further construct any fish tanks nor make any preparations in that regard, pending issue of final notification.

(c) Such of those petitions who are holding valid and subsisting leases or D-Form patta holders of the land shall be permitted to exploit the land for

the purpose for which the lease was made or patta was granted in their favour only and they shall not use the land other than the purpose for which

the land was leased out to them or D-Form patta was granted, pending final notification.

87. The matter also came up for consideration in two other Writ Petitions in W.P.No. 9479 of 1999 and 117 of 1999 disposed of on 25-6-1999

and 11-8-1999 respectively. Pursuant to the directions of this Court in Rangarajn"s case (1 supra), it was stated in the counter that proclamation

u/s 21 of the Act was issued by the respective District Collectors of the two districts calling for objections. It appears that 278 claims were made

by various claimants. However, only 40 claimants had participated in the enquiry proceedings. It is categorically stated in the counter that after

conducting an enquiry as required u/s 22 of the Act and after considering all the objections, final notification as required u/s 26-A of the Act was

issued in G.O.Ms.No. 120 dated 4-10-1999 which was published in A.P. Gazette on 5-10-1999 determining the rights of the parties in terms of

Section 24 thereof in the following terms:

The existence of nature and extent of rights as determined by District Collector, Krishna, vide proceedings Nos. E6/1236/97 dated 1-9-1998 and

by the District Collector, West Godavari, Eluru in Rc.No. D6/11717/ 96 dated 8-8-1999 are as follows:

(1) Right to do fishing with traditional method using mavus, nets of size (which does not cause damage to seed but catches only fish of harvestable

size) which will be specified separately by the Chief Wild Life Warden of Andhra Pradesh;

(2) No person shall form any tank for aquaculture or for any other purposes.

(3) Wherever Pisciculture was existing in private lands, as on the date of notification, fishing in traditional method shall be permitted, without

causing environment hazard, till the Government acquires such private lands;

(4) Right to do traditional agriculture without using pesticides and chemicals;

(5) Right to use the ordinary boats, without motor for the movement of the people;

(6) Right to way with existing roads connecting main habitations and their maintenances by providing sufficient number of vents for the roads

existing at the time of Notification of Kolleru Wild Life Sanctuary u/s 18 of Wild Life (Protection) Act, 1972 without permitting new roads and

culverts;

(7) Right to maintain existing water courses and drains necessary to avert submersion of agricultural lands surrounding Kolleru lake;

(8) Other rights and conditions as specified Under Sections 27 - 34 and other provisions of the Wild Life (Protection) Act, 1972;

(9) Electricity connection shall be given for domestic use only and not for aquaculture or any activity connected therewith;

(10) The D-Form pattas granted to lease of land allowed in the area in favour of any assignee or lessee as the case may be including three societies

viz., Gangaraju Fishermen Co-operative Society, Srungavarappadu, Sringavarappadu Fishermen Cooperative Society, Sanjaya Gandi Fishermen

Co-operative Society, Srungavarappadu of Krishna District will be cancelled. The claimants are not entitled to any compensation under Wild Life

(Protection) Act, 1972 as they were assigned the lands by the Government on free of land value;

(11) D-Form pattas to the extent of Ac. 2882.00 guntas issued to the individuals as per G.O.Ms.No. 118 Revenue (Q) Dept. dated 24-1-1976 in

West Godavari district wherein they were permitted to construct fish tanks on the said lands are liable to be cancelled and these lands will be

resumed under the provisions of Wild Life (Protection) Act, 1972. These D-Form patta holders are not entitled for any compensation except ex

gratia as provided by the Government;

(12) The annual licences which are being issued by the Fisheries Department for Fishery purpose indicating the areas allotted are to be

discontinued;

(13) Encroachments in conditional patta lands of Siddapuram village of Akiveedu mandal are to be evicted;

(14) The village site poramboke of Siddapuram village" of Akiveedu Mandal measuring Ac. 16.67 cts is hereby excluded from the jurisdiction of

the sanctuary;

(15) Any other encroachment activities, which are not permitted specifically, are liable to be removed/stopped forthwith.

88. From the above, it is evident that the right of the local fishermen to do fishing by traditional method by using ordinary boats without using

motorboats is not taken away, but aquaculture in the form of any tank has been prohibited. Further, wherever pisciculture existed in private lands,

as on the date of notification, fishing in traditional method is permitted without causing environment hazard till the Government acquires such private

lands under the provisions of the Wild Life Protection Act. The right to do traditional agriculture without using pesticides and chemicals is also

permitted. The encroachment activities are directed to be removed forthwith. The final notification has taken sufficient safeguards to protect the

interest of the people who are surviving on traditional methods of fishing.

89. Clause 17 of D-Form Patta reads thus:

If the land is required by the Government for construction of any project or for any other public purpose, compensation will be granted to pattadar

for development of the land only to the extent of Rs. 300/- per family. Whether acquisition of any land is for the public purpose or not will be

decided by the Government or the officer authorized in that behalf and the decision so arrived at by the Government or Officer authorized shall

become final.

90. From the above it is clear that no compensation is required to be given for the acquisition of the land, but only ex gratia amount of Rs. 300/- is

required to be paid to the pattadar for development of the land. Further the Government clarified the position in their letter-dated 25-8-2000

addressed to the Chief Commissioner of Land Administration who in turn issued instructions to the Collectors of West Godavari and Krishna to

evict only encroachers within the sanctuary area. The encroachment referred to in these two letters do not relate to either private lands or D-Form

patta land holders and they are applicable only in respect of eviction of encroachment of Government land within sanctuary area.

91. It is also not in dispute that although Kolleru lake extends over 900 sq. kms. at plus 10 contour level, only 300.8 sq. kms. have been declared

as a sanctuary as a result whereof the rights of the people in and around depending on the lake have been sufficiently protected. There cannot be

any dispute whatsoever that harm is being committed by digging fish tanks and cultivating foreign varieties of fish using DOB, oil cake, poultry

manure, farm yard manure, chemical fertilizers by reason whereof inferior, quality of fish are being produced which are not disease resistant and to

prevent those diseases systematic and contact poisons are being used which are harmful in the long run to human beings when they consume those

fishes. Furthermore, by reason of such notification traditional methods of fishing is not taken away. Therefore, the contention of the petitioners-

associations that the members of the societies are deprived of their livelihood of surviving on traditional methods of fishing has no merit. Further

catching of snails has also been prohibited, as they are natural feed of the birds.

92. We, therefore, are of the opinion that having regard to the larger public interest and in view of the fact that the notification u/s 26-A had been

issued pursuant to the orders of this Court, neither the notification issued u/s 18 nor the notification issued u/s 26-A can be declared as ultra vires.

In any event, the rights of those fishermen who are surviving their livelihood on traditional methods of fishing have not been taken away and the

rights of such fishermen have been duly protected not only by reason of the impugned notification but also in terms of the decision of the Apex

Court in Jagannath''s case (4 supra). Only those who had illegally encroached on to the area for the purposes of carrying on shrimp and prawn

culture in an artificial manner using modern techniques and various harmful manures have been prevented both by reason of the aforementioned

notification as also the decisions of the Apex Court. Under the provisions of the Environment Act, Water Act and the Wild Life Act and the

decisions of the Apex Court, the State Government was under an obligation to see that the environment and the ecology of the sanctuary declared

by it is safeguarded not only for the benefit of larger pubic in general but also to protect the interest of the people living in the Kolleru lake area in

particular. The reports of the PCB clearly show that fish tanks dug for the purpose of prawn culture, aquaculture etc., are polluting the lake and

also the drinking water sources. If large-scale conversion of agricultural lands into fish tanks is not prohibited, it will have an impact on the future

generations. It is also the fundamental duty of every citizen under Article 51-A(g) of the Constitution to protect and improve the lakes of such

national importance for preservation to future generations.

93. When the right of the fishermen to do fishing by traditional methods had not been taken away, the contention that their right to live under Article

21 of the Constitution would prevail over the maintenance of ecology does not merit consideration. The materials placed before us clearly indicate

that there was obstruction to the free flow of water in the lake bed area due to raising of bunds for the purpose of prawn culture thereby the

retention capacity of the lake is diminished and as a result whereof there was submergence of upstream lands in the delta system resulting in huge

losses to the ryots in the upland area. If such encroachments are not removed and flood water is drained out in its natural course from the lake, the

right of the farmers in the upstream mandals to do cultivation would be in jeopardy, consequently, it is their right to live guaranteed under Article 21

of the Constitution of India which is violated. When the vocational activity of the fishermen to survive their livelihood by adopting traditional

methods of fishing is not prohibited by the operation of the impugned notification and in view of the fact that bunding of fish tanks is hampering the

delta system resulting in heavy floods and losses to farmers therein, we do not find any merit in the contention that wild life should give way to

human preservation. A person in terms of Article 21 of the Constitution of India cannot take recourse to or earn his or her livelihood by violating

the provisions of any law.

94. The State Government in their counter-affidavit has categorically stated that after the issuance of notification u/s 18 of the Act all the

requirements as laid down under the Act had been duly complied with and opportunity was afforded to all the claimants before the determination

of their rights.

95. Wet land ecosystem, in our opinion, cannot be allowed to be exploited to the detriment of the people at large for temporary gains". We must

at the cost of repetition remind ourselves that even according to the petitioners the drinking water sources are polluted resulting in water scarcity in

the area as a result of aquaculture/prawn culture activities. The encroachment of the lake bed area has restricted the natural hydrological and

biological processes and has caused loss of habitat to flock of birds, which inhabit during the winter.

96. It may be true that Kolleru lake does not fall within the coastal regulation zone but admittedly a part of it is connected with sea and thus it

cannot be said that the decision of the Apex Court in Jagannath"s case (4 supra) shall have no application whatsoever in the facts and

circumstances of the case. Even otherwise also, in view of the statutory obligations cast on the State Government under the provisions of various

enactments referred to above and in the light of the Judgments of the Supreme Court, the notification issued u/s 26-A of the Act, in our opinion,

does not suffer from any infirmity.

97. In W.P.No. 2354 of 2001 the contention of the petitioner is that respondents are interfering with the repairing works undertaken to their fish

tanks even though their tanks do not fall within the sanctuary area. Since no counter-affidavit has been filed, we do not want to deal with it. It is for

the respondents to examine the same and pass appropriate orders.

98. For the reasons aforesaid, we do not find any merit in W.P.Nos. 23210 of 1999, 4350 and 4375 of 2000 and they are accordingly dismissed.

W.P.No. 2354 of 2001 is disposed of.

99. W.P.Nos. 33587 of 1998 and 12497 of 2001 are allowed with the following directions:

(1) We declare that the notification issued in G.O.Ms.No. 120 dated 4-10-1999 is valid;

(2) The respondents shall forthwith take adequate steps for stoppage and regulation of effluents discharged from the industries and municipalities

into Kolleru lake and strictly adhere to the standards laid down by the Ministry of Environment, Government of India for the purpose of

preservation and maintenance of the lake and ecology in accordance with law and State shall make all endeavours to bring back Kolleru Lake to

its pristine glory;

(3) No Pisci culture/aquaculture/ shrimp culture should be permitted to be undertaken within the Kolleru Lake sanctuary and only traditional

methods of fishing as directed in G.O.Ms.No. 120 dated 4-10-1999 should be permitted. Any person intending to take recourse to aquaculture or

pisci culture or shrimp culture must file requisite applications before the appropriate aquaculture authority provided their lands fell outside the

notification dated 4-10-1999 and the area of sanctuary.

(4) State shall ensure for removal of all encroachments of Kolleru lake bed area in accordance with G.O.Ms.No. 120 dated 4-10-1999.

100. There shall be no order as to costs.