Essar Oil Ltd vs Halar Utkarsh Samiti & Ors on 19 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1834, 2004 (2) SCC 392, 2004 AIR SCW 573, (2004) 2 JT 210 (SC), 2004 (1) SLT 603, (2004) 15 ALLINDCAS 356 (SC), 2004 (1) UJ (SC) 689, 2004 (1) ACE 443, 2004 (2) JT 210, 2004 (1) SCALE 584, (2004) 2 GUJ LR 1027, (2004) 2 GUJ LH 408, (2004) 15 INDLD 351, (2004) 1 SUPREME 787, (2004) 1 SCALE 584, (2004) 2 GCD 1558 (SC), (2004) 2 RECCIVR 132

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Bench: Ruma Pal, B.N. Srikrishna

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           CASE NO.:
Appeal (civil)  352-353 of 2004

PETITIONER:
ESSAR OIL LTD.

RESPONDENT:
HALAR UTKARSH SAMITI & ORS.

DATE OF JUDGMENT: 19/01/2004

BENCH:
RUMA PAL &  B.N. SRIKRISHNA.

JUDGMENT:
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J U D G M E N T [Arising out of SLP (C) Nos.9454-9455 of 2001] WITH Civil Appeal Nos. 354-357, 362-364 Arising Out of SLP (C) Nos.10008-10011, 17691-17693, 17694-17696, 22137 OF 2001, SLP (C) No._____ @ CC No.5083 AND T.C. (C) No.39 of 2001 RUMA PAL, J.

SLP (C) Nos.10008-10011, 17691-17694, 17695-17696 AND SLP (C) No._____ @ CC No.5083 of 2001.

Delay condoned. Leave granted.

The Jamnagar Marine National Park and Sanctuary lie along the lower lip of the Gulf of Katchch in the State of Gujarat covering reserve forests and territorial waters. Essar Oil Ltd., Bharat Oman Refineries Ltd. (BORL) and Gujarat Positra Port Co. Ltd., seek to lay pipelines to pump crude oil from a single buoy mooring in the Gulf across a portion of the Marine National Park and Marine Sanctuary to their oil refineries in Jamnagar District. On the basis of separate public interest litigation petitions filed by Halar Utkarsh Samity and Jansangharsh Manch the High Court, by the impugned judgment, has held that BORL may lay its pipelines but the others may not and has

restrained the State Government from granting any more authorizations and permissions for laying down any pipeline in any part of the sanctuary or national park. BORL was allowed to lay its pipelines by the High Court, since permission to do so had already been granted to it by the State government and since no such permission had, according to the High Court, been granted to Essar Oil, its application together with all pending applications were to be decided in accordance with what had been decided by the Court. This decision of the High Court has given rise to a series of Special Leave Petitions, which are:

1. SLP (C) Nos.9454-9455 of 2001 ESSAR OIL LTD. v. HALAR UTKARSH SAMITI & ORS.

2. SLP (C) Nos.10008-11 of 2001 ESSAR OIL LTD. v. JANSANGHARSH MANCH & ORS.

3. SLP (C) Nos.17691-93 of 2001 BHARAT OMAN REFINERIES LTD. v. HALAR UTKARSH SAMITI & ORS.

4. SLP (C) Nos.17694-96 of 2001 STATE OF GUJARAT & ANR. v. HALAR UTKARSH SAMITI & ORS.

M/s GUJARAT POSITRA PORT CO. LTD. v.

HALAR UTKARSH SAMITI JAMNAGAR & ORS..

6. SLP (C) No._____@ CC No.5083 of 2001 HALAR UTKARSH SAMITI & ANR. v. STATE OF GUJARAT & ORS.

Leave is granted in all these matters. In addition there is a transfer petition relating to a writ petition filed by Halar Utkarsh Samity challenging three specific orders passed by the State Government in connection with the grant of permission to BORL. The writ petition is transferred to this Court and is disposed of by us.

The legal issue in all the matters is the same. There are additional issues of fact relating to the grant of permission to Essar Oil Ltd., Gujarat Positra Pvt. Ltd., and BORL. We propose to take up the appeals relating to Essar Oil first, both for the determination of the common legal issue and the particular factual controversy in its case.

The questions involved in these appeals are - Can pipelines carrying crude oil be permitted to go through the Marine National Park and Sanctuary and if so, has Essar Oil Ltd., (referred to hereafter as the appellant) in fact been so permitted?

The answer to the first question depends on an interpretation of the provisions of three statutes namely, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. Chronologically, the Wild Life (Protection) Act, 1972 (referred

to hereafter as the WPA) is the earliest statute. It defines 'wildlife' in Section 2(37) as including:

> "any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which form part of any habitat";
>
> Section 18 empowers the State Government to notify its intention to constitute any area other than an area comprised within any reserve forest or 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. The Collector has been empowered to entertain and determine claims in respect of or over the notified area under Sections 21 to 24. After all claims in response to the Section 18 notification are disposed of, the State Government is required under Section 26A to issue a notification specifying the limits of the areas which shall be comprised within the sanctuary, after which the area shall be a sanctuary on and from such date as may be specified in the notification. Under sub-section (3) of Section 26A, "no alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of a State". It is not in dispute that the prescribed procedure has been followed and defined areas along the Gulf have been declared a sanctuary in accordance with the provisions of the WPA nor is it in dispute that the limits declared under Section 26A have not been altered under Section 26-A(3). Once an area has been declared as a sanctuary, entry into the area is restricted and regulated under Sections 27 and 28 and subject to permission being granted by the Chief Wild Life Warden who has, under Section 33, to control, manage and maintain all sanctuaries. The Chief Wild Life Warden is appointed under Section 4 of the Act and sub-section (2) of Section 4 provides that "in the performance of his duties and exercise of his powers by or under this Act, the Chief Wild Life Warden shall be subject to such general or special directions, as the State Government may, from time to time, give."

The procedure for declaring an area as a National Park is substantially similar to the procedure relating to sanctuaries and has been provided for in Section 35. It is nobody's case that the procedure has not been complied with by the State Government declaring the Jamnagar National Park as a National Park.

What we are really concerned with is Section 29 of the WPA and its interpretation. This can be said to be the core issue in all the appeals. Section 29 reads:

> "29. Destruction, etc., in a sanctuary prohibited without permit.-No person shall destroy, exploit or remove any wild life from a 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 a permit granted by the 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.

Explanation.- For the purposes of this Section, grazing or movement of live-stock permitted under clause (d) of section 33 shall not be deemed to be an act prohibited under this section."

The corresponding provision relating to National Parks is Section 35 sub-section (6).

The next Statute which is of relevance is the Forest (Conservation) Act, 1980 (described as FCA subsequently). The Act is a brief one consisting of five Sections. The relevant Section is Section 2 which inter alia provides that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing inter alia "that any forest land or any portion thereof may be used for any non- forest purpose". Rule 4 of the Forest (Conservation) Rules, 1981 provides for the procedure required to be followed by the State Government or other authority for seeking the prior approval. Rule 4(1) requires the proposal to be in the prescribed form and sub-rule (2) provides that the proposal should be addressed to the Secretary, Ministry of Environment and Forests, Government of India. The form requires several particulars, some of the relevant ones being:

1. Project details;

2. Location of the project/scheme;

3. Item-wise break-up of the total land required for the project/scheme alongwith its existing land use;

4. Details of forest land involved;

5. Details of compensatory afforestation scheme;

6. Cost-benefit analysis;

7. Whether clearance from environmental angle is required;

8. Detailed opinion of the Chief Conservator of Forests/Head of the Forest Department concerned.

The Central Government may, under Rule 6, after referring the matter to a Committee if the area involved is more than 20 hectares, and holding such enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same.

The next Statute to be considered is the Environment (Protection) Act, 1986 (referred to as EPA). This Act was passed as a measure to implement the decisions taken at the United Nations

conference on the Human Environment held in Stockholm in June, 1972 to which India was a party. The conference passed a resolution known as the Stockholm Declaration, which is dilated upon later by us. At this stage it is sufficient to note that the EPA reflects, in large measure, the Stockholm Declaration. According to the Statement of Objects and Reasons in the EPA, because of a multiplicity of regulatory agencies, there was need for an authority which could assume the lead role for study, planning, implementing long-term requirements of environment safety and to give directions for and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment. Under Section 24, the provisions of the EPA and the Rules or orders made thereunder have been given overriding effect over any other enactment.

On 19th February, 1991, the Central Government under the provisions of Section 3(1), (2)(v) of EPA Act read with Rule 5 of the Environment (Protection) Rules, 1986 declared coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action in the landward side upto 500 metres from the High Tide Lines (HTL) and the land between the Low Tide Lines (LTL) and the HTL as Coastal Regulation Zone (CRZ) with effect from the date of the notification. Certain restrictions were placed on the setting up and expansion of industries, operations or processes etc. in the CRZ. Amongst the prohibited activities within the CRZ were:

> "2(xi) construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification;
>
> 2(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea facilities for carrying sea water for cooling purposes, oil gas and similar pipelines and facilities essential for activities permitted under this Notification;"

Annexure-I referred to in paragraph 2(xi) quoted above refers in turn to four categories of CRZs described in paragraph 6(1) of the Annexure. What is material for our purpose is Category-I (CRZ-I):

> "(i) Areas that are ecologically sensitive and important such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas, close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty, historical heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.
>
> (ii) Area between the Low Tide Line and the High Tide Line."

Paragraph 6(2) states that the development or construction activities in different categories of CRZ areas shall be regulated by the concerned authorities at the State/Union Territory level, in accordance with the following norms:

"CRZ-I No new construction shall be permitted within 500 metres of the High Tide Lines. No construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line." (Emphasis added) This notification was subsequently amended on 12th April, 2001 by the Central Government by issuing a fresh notification of that date being notification S.O. 329(E). Under the heading CRZ-I, the following paragraph was substituted:

"No new construction shall be permitted in CRZ-I except (a) Projects relating to Department of Atomic Energy and (b) Pipelines, conveying systems including transmission lines and (c) facilities that are essential for activities permissible under CRZ-I. Between the LTL and the HTL, activities are specified under paragraph 2 (xii) may be permitted. In addition, between LTL and HTL in areas which are not ecologically sensitive and important, the following may be permitted: (a) Exploration and extraction of Natural Gas (b) activities as specified under proviso of sub-paragraph (ii) of paragraph 2, and (c) Construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water, supply, drainage, sewerage which are required for traditional inhabitants of the Sunderbans Bio-sphere reserve area, West Bengal, on a case to case basis, by the West Bengal State coastal zone Management authority."

The permits to be granted by the Central Government under the FCA and under EPA are independent of each other and of the permission which the State Government is required to give under Sections 29 and 35 of the WPA. Clearance under each of the three statutes is essential before any activity otherwise prohibited under those Acts may be proceeded with. In these appeals there is no challenge to the grant of permission to the appellant under the FCA and the EPA by the Central Government. The challenge by the respondent/writ petitioners before the High Court which was accepted, rested on an interpretation of Sections 29 and 35 of the WPA. Construing Section 29, the High Court held that the marine sanctuary and marine national park were not to be utilized for any purpose other than the purposes prescribed under the Wild Life (Protection) Act and except in accordance with Sections 26-A (3), 30 and Section 35(6) thereof. The High Court said that "the Government could arrive at the satisfaction that it is necessary to grant such permission for destruction of wildlife, as otherwise in case such permission for destruction, exploitation or removal is not granted the same would adversely affect the improvement and better management of the wildlife". The word "necessary" was construed to mean indispensable, needful or essential. It was held that unless the Government was satisfied "beyond reasonable doubt" that the laying of the pipeline was indispensable for the better management of the wildlife, no permission could be granted under Section 29. The High Court found that it could not be said that the laying of crude oil pipeline was necessary or indispensable for the purpose of improvement and better management of the wildlife. The reports given by the Institute of Oceanography and NEERI were held not to be binding on the Court. It was further held that neither of the expert bodies had reported that the laying of the crude pipeline in the sanctuary area was necessary for the better health, improvement and management of the wildlife therein. The High Court was also of the view that it was not open to the Executive to interfere with the power of the Legislature under Section 26A(3) by granting permission to lay pipelines thus "directly or indirectly" affecting the alteration of the boundaries of

the sanctuary. Summing up, the High Court's view was that the State Government can accord permission under Section 29 of the Wild Life (Protection) Act only if it is necessary for improvement and better management of wild life and since the laying of pipeline through the sanctuary was not for the improvement and better management of the wild life no permit could be granted under Section 29.

The appellant's contention is that Section 29 requires the satisfaction of the State Government as a pre-requisite for a grant of permit by the Chief Conservator only in respect of the destruction, exploitation or removal of any wildlife from a sanctuary and not in respect of the destruction or damage of the habitat of any wild animal or deprivation of any wildlife of its habitat within such sanctuary. Even in respect of the first class of cases, according to the appellant, the State Government could grant a permit if in the facts of a given case, the damage or destruction to the wildlife would result in the improvement and better management of wildlife.

According to the State Government, which has supported the appellant, the High Court had misconstrued Section 29 of the WPA to restrain the State Government from granting any more permits for laying down any pipelines in any part of the Sanctuary or the National Park. According to the State Government, if Section 29 envisaged a total prohibition of any development in an ecologically sensitive area then the legislation would have simply said in clear words "no permission would ever be granted" but when the Section itself stipulates that permission can be granted subject to certain conditions, the State Government has a right to grant such permission subject to forming the requisite satisfaction. According to the State Government, research has shown that "subsequent to the laying of pipelines in connection with the project of GSFC that even after laying of the pipeline with attendant care, the area which was earlier devoid of marine life, living coral and mangroves has improved in marine biota, with regeneration of coral".

BORL has criticised the decision of the High Court on the additional ground that the Division Bench had ignored an earlier decision of the same High Court relating to Reliance Petroleum Limited as well as the decision of the High Court on litigation filed by the Samiti against BORL. The earlier decisions had construed S. 29 of the WPA as contended by the appellant and this Court had rejected the Special Leave Petitions against those decisions.

The Halar Utkarsh Samiti, one of the initiators of the public interest litigation in respect of the laying of the pipelines before the High Court and who is now a respondent before us (referred to hereafter as 'the Samiti') has submitted that the prohibition under Section 29 puts a complete ban on destruction, exploitation, removal of any wildlife from a sanctuary unless sanction is accorded by a permit issued by the Chief Wildlife Warden. The Chief Wildlife Warden does not have an absolute discretion to grant such permits and his power is subject to being authorised by the State Government in this behalf and only if the State Government is satisfied that the destruction, exploitation and removal of the wildlife is necessary for the improvement and better management of the wildlife in that sanctuary. It is also submitted by the Samiti that if permission were granted under Section 29 to the laying of pipelines, this would defeat the mandate of Sections 26-A(3) and 35(5) of the WPA since it would amount to an alteration of the area of the sanctuary or national park which was impermissible except by means of a resolution passed by the State Legislature.

The Jan Sangharsh Manch, the respondent No.1 in one of the appeals and also an initiator of public interest litigation before the Gujarat High Court against BORL (referred to hereinafter as the Manch), has submitted that the Marine Park in Jamnagar was the first of its kind in India and housed diverse eco-systems with a variety of flora and fauna including rare species of both. It was submitted that neither Section 29 nor Section 35(6) admit of a situation where the permitted activity would involve severe damage to the wildlife, forest and marine environment. Examples of such "necessary" destruction etc. of wildlife/forest would be the cutting of trees to prevent the spread of forest fires or an infestation or the culling of animals or weed eradication. It is pointed out that such measures originate from the Chief Wildlife Warden himself and were only for the purpose of enhancing the wildlife and its habitat. Even this power was subject to check by the State Government. It is pointed out that there was a distinction between the provisions of the WPA and the FCA. Whereas under the latter Act a situation could arise when the Central Government would have to balance the conflicting interests of development and ecology and grant permission to use forests for non forest purposes, under the WPA there is no question of any such balancing. No non-forest activity is permitted at all as long as the area continues to be part of a park or sanctuary and until the State Legislature denotifies the affected area in the manner prescribed under Section 26A(3) for sanctuaries and under Section 35(5) for national parks. Our attention was drawn to the provisions of the WPA particularly Sections 35(4) and 35(7) which completely prohibit any non-forest activity within the national park where the prohibition was more stringent than the prohibition in respect of sanctuaries under Section 24(2)(1) and 33(a). Given the nature of the prohibition, it is submitted that it was inconceivable that the laying and maintenance of pipelines could at all be permitted in a national park. The final submission was that unless the prohibition was considered to be absolute with regard to parks, it would lead to the absurd result that permission from the Central Government was necessary to use a forest for non-forest purposes but a State Government's satisfaction would be enough in respect of sanctuaries in national parks where the statutory requirement was more stringent and the ecology more fragile.

As already noted, the High Court held that the appellant could not be allowed to lay its pipeline because, unlike BORL, the permission had not till then been accorded to the appellant by the State Government. We could have allowed these appeals on the simple ground that the High Court should not have decided the issue whether the appellant had in fact been granted permission under the WPA, without issuing any notice to the appellant or giving it any opportunity to be heard. This was the very ground which persuaded this Court to set aside the decision of the Calcutta High Court in Iskcon & Anr. v. Nanigopal Ghosh & others [(2000) 10 SCC 595], a public interest litigation, and remand the matter back to the High Court for redisposal after giving an opportunity of being heard to the affected parties. However, we do not propose to follow the same course of action as the matter has been argued on merits at length, and given the nature of the stakes involved, brooks no further delay.

The pivotal issue, as we have already noticed, is the interpretation of Section 29 of the WPA. In our opinion this must be done keeping in mind the Stockholm Declaration of 1972 which has been described as the "Magna-Carta of our environment". Indeed in the wake of the Stockholm Declaration in 1972, as far as this country is concerned, provisions to protect the environment were incorporated in the Constitution by an amendment in 1976. Article 48A of the Constitution now

provides that the "State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". It is also now one of the fundamental duties of every citizen of the country under Article 51A (g) "to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the 4th principle says "man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive importance in planning for economic developments". These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life". The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasized in Principle 11 which says "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;"

> This, therefore, is the aim - namely to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281, 296 where it was said:
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> "while economic development should not be allowed to take place at the cost of ecology or by causing wide spread environment destruction and violation, at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa but there should be development while taking due care and ensuring the protection of environment".

Section 29 must be construed with this background in mind. The section has been quoted verbatim earlier. Analysed it provides for three prohibitions: (a) destruction, exploitation or removal of any wild life from a sanctuary; (b) destruction or damage to the habitat of any wildlife; and (c) deprivation of any wild animal of its habitat within such sanctuary. Prohibition '(a)' is concerned with wild life and its protection. Wild life, which includes any animal, bees, butterflies, crustacea, fish and moths and aquatic or land vegetation which form part of any habitat under sub-section (37) of Section 2, cannot be destroyed, removed or exploited.

Prohibitions '(b) & (c)' relate to the habitat of 'wild animals', The word "habitat" has been defined in section 2 (15) as including "land, water or vegetation which is the natural home of any wild animal". Therefore while some habitats may fall within the definition of wild life, namely vegetation, habitats which do not consist of vegetation would not. The difference in the definition is of significance and reflects the varying standards of protection afforded under the provisions of the WPA. The protection afforded to wild life is more rigorous, but in no case is the prohibition absolute in the sense that the prohibited activities may not be allowed under any circumstances whatsoever. Thus wild life may be destroyed, exploited or removed from a sanctuary under and in accordance with a permit granted by the Chief Wild Life Warden. Similarly, the habitat of the wild animals within the sanctuary may be destroyed or damaged and a wild animal can be deprived of its habitat within such sanctuary under and in accordance with a permit granted by the Chief Wild Life Warden.

The power of the Chief Wild Life Warden to grant a permit is generally controlled under Section 4(2) which requires him to perform his duties and exercise his powers under the directions of the State Government. But the State Government is itself statutorily restrained from directing the grant of a permit in respect of the destruction, exploitation or removal of wild life from the sanctuary unless it is satisfied that "such destruction, exploitation or removal .... Is necessary for the improvement and better management of wild life therein". The phrase does not, as has been rightly contended by the appellant, relate to prohibitions (b) and (c) The particular satisfaction regarding betterment of wild life is a precondition to be fulfilled only when there is destruction, exploitation or removal of wild life prohibited under (a). Plainly stated - when wild life is to be bettered, its destruction, exploitation or removal may be permitted. The example of 'culling' given by the Manch is apt. To destroy means to deprive of life, kill, wipe out or annihilate . In other words Section 29 bars anyone from completely, irreparably and irreversibly putting an end to wild life or to the habitat in a sanctuary. The word "removal" would have a similar connotation. However "exploitation" or using the wild life for any purpose, although it may not lead to extinction of wild life, or "damage" which may not cause any irreparable injury to the habitat, are forbidden nevertheless. It is necessary to note at this stage, that there is no allegation in the present case that the proposed activity will remove or exploit wild life within the sanctuary or national park.

In view of the plain language of the statute, we are not prepared to accept the submission on behalf of the private respondents that permits allowing activities relating to the habitat and covered by '(b) & (c)' also require the State Government to come to the conclusion that the proposed activities should result in the betterment of wild life before it can be allowed. This is not to say that permits can ever be given indiscriminately. The State must, while directing the grant of a permit in any case, see that the habitat of the wild life is at least sustained and that the damage to the habitat does not

result in the destruction of the wild life. That is the underlying assumption and is the implicit major premise which is contained in the definition of the word "sanctuary" in Section 2(26) and the declaration under Section 18 of the WPA - that it is an area which is of particular ecological, faunal, floral, geomorphological, natural or zoological significance which is demarcated for protecting, propagating or developing wild life.

The next question - is whether it can be stated that the laying of pipelines through a sanctuary necessarily results in the destruction of the wild life. That is - is it an activity falling under prohibition (a)? It would be instructive to compare the legal position with those obtaining in other countries. In England, for example, there is no absolute prohibition on laying pipelines. The laying of pipelines across the continent shelf is regulated under the Oil & Gas (Enterprise) Act, 1982 and the Petroleum and Sub-Marine Pipelines Act, 1975. Authorisation may be given by the State for laying of pipelines subject to the Government being satisfied that the route, design and the capacity of the pipelines do not interfere with the sustainable development of the environment. The authorisation may contain further stipulations which the applicant has to abide by. As far as laying of pipelines across the country is concerned, this is covered by the Pipelines Act, 1962 which provides for transporting materials other than the air, water, steam or water vapour. Apparently "even though there is now a network of oil & gas pipelines nation wide, this legislation seems to have been generally uncontroversial in practice despite the fact that pipelines run through many scenic areas" . The CRZ notifications quoted earlier issued under the EPA in 1991 and 2001 clearly allowed the laying of pipelines across ecologically sensitive areas such as national parks/marine parks and sanctuaries. The laying of pipelines is one of the exceptions to the general bar against any construction in CRZ-1 areas. It cannot therefore be said, as the High Court seems to have held, that the invariable consequence of laying pipelines through ecologically sensitive areas has been the destruction or removal of the wild life. It would ultimately be a question of fact to be determined by experts in each case. We will have the occasion to consider the opinion of the expert bodies on this when we take up the facts of the appellant's case. Suffice it to say at this stage that there is no a priori presumption of destruction of wild life in the laying of pipelines. Cases of oil spills have undoubtedly been ecologically disastrous and have drawn the attention of the world but our attention was not drawn to any instance of leakage resulting from the laying of pipelines. These observations however are not meant and should not be read as a general licence to lay a net work of pipelines across sanctuaries and natural parks. Every application must be dealt with on its own merits keeping in view the need to sustain the environment. Before according its approval to the grant of any permit under Sections 29 or 35, the State Government should consider whether the damage in respect of the proposed activity is reversible or not. If it is irreversible it amounts to destruction and no permission may be granted unless there is positive proof of the betterment of the lot of the wild life. Where activities are covered by '(a)', mitigation of damages would not do. There must be betterment of the wildlife by the proposed activity. Mitigation of damages would be relevant to proposed projects under '(b) and (c)'. For this purpose the State Government must ask for and obtain an environmental impact report from expert bodies. The applicant must also come forward with an environmental management plan which must be cleared by the experts. To prevent possible future damage, the State Government must also be satisfied that the damage which may be caused is not irreversible and the applicant should be prepared and must sufficiently secure the cost of reversing any damage which might be caused. The State Government should also have in place the

necessary infrastructure to maintain periodical surveys and enforce the stipulations subject to which the permit may be granted. In future the State Government should, before granting the approval, also call upon the applicant to publish its proposal so that public, particularly those who are likely to be affected, are made aware of the proposed action through the sanctuary or natural park. This will ensure transparency in the process and at least safeguard against a decision of the State Government based solely upon narrow political objectives. Besides the citizens who have been made responsible to protect the environment have a right to know. There is also a strong link between Article 21 and the right to know particularly where "secret Government decisions may affect health, life and livelihood" . The role of voluntary organisations as protective watch-dogs to see that there is no unrestrained and unregulated development, cannot be over-emphasized. Voluntary organisations may ofcourse be a front for competitive interests but they cannot all be tarred with the same brush. Our jurisprudence is replete with instances where voluntary organisations have championed the cause of conservation and have been responsible for creating an awareness of the necessity to preserve the environment so that the earth as we know it and humanity may survive.

Once the State Government has taken all precautions to ensure that the impact on the environment is transient and minimal, a court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. [See: Shri Sachidanand Pandey v. The State of West Bengal & ors. (AIR 1987 SC 1109, 1114-15)]. Courts cannot be asked to assess the environmental impact of the pipelines on the wild life but can at least oversee that those with established credentials and who have the requisite expertise have been consulted and that their recommendations have been abided by, by the State Government. If it is found that the recommendations have not been so abided by, the mere fact that large economic costs are involved should not deter the Courts from barring and if necessary undoing the development.

This then is the law in the background of which the facts of the appellants case are to be considered in answer to the second question formulated at the outset. Was permission to lay the pipelines in fact granted and if so should it have been granted to the appellant by the State Government under the WPA ?

It is the appellant's case and the records show that it was encouraged by the State Government to set up a major venture at Vadinar in Jamnagar District of Gujarat as a 100% export oriented unit for refining of petroleum products with a capacity of 9 Million Tons per annum at an estimated project cost of Rs.1900 crores in collaboration with M/s Bechtel Inc., USA. By letter dated 11th April, 1990, the then Chief Minister of the State of Gujarat wrote to the Ministry of Planning, Government of India, stating that the project was expected to generate foreign exchange earnings of over Rs.3000 crores within a period of 5 years and that it was expected to be set up in 36 months. It was anticipated by the State Government that the project would "completely change the face of the Vadinar area, which is traditionally a backward area of Gujarat offering direct and indirect employment and will encourage growth of various other ancillary industries in that region". The letter further said that the project had the full support of the Government of Gujarat and it was being accorded highest priority and that the appellant's proposal for setting up the oil refinery should be cleared by the Government of India urgently. The clearance for setting up the oil refinery

was then granted by the Government of India.

In January, 1993, the appellant applied to the Gujarat Pollution Control Board (GPCB) for grant of a No Objection Certificate to establish the refinery for manufacturing several kinds of petroleum products. By letter dated 15th February, 1993, the GPCB stated that it had no objection from the Environmental Pollution potential point of view in the setting up of the refinery project subject to certain environmental pollution control measures to be taken by the appellant. The appellant's proposal regarding the environmental pollution control system was approved by the GPCB on 17th April,1993 and a Site Clearance Certificate was issued on that date.

The appellant also submitted an application to the Conservator of Forests for right of way over 15.49 hectares of forest land for laying submarine crude oil and discharge pipelines for its refinery at Vadinar. Undisputedly the 15.49 hectares of forest land applied for includes 8.79 hectares of the Jamnagar Marine National Park and Sanctuary. Therefore permission under Section 2 of the FCA was required for the entire 15.49 hectares. At the same time, permission of the State Government was required under the WPA for the 8.79 hectares. It is the appellant's case and we have also found that both these permissions were independently granted by the Central Government as far as the 15.49 hectares were concerned under Section 2 of the FCA, and by the State Government under Sections 29 and 33 of the WPA in respect of the 8.79 hectares within the Marine National Park and Sanctuary.

The sequence of events for grant of permission by the Central Government under Section 2 of the FCA was as follows:

> The Conservator of Forests submitted a proposal to the Chief Conservator of Forests (WL) by letter dated 2nd June, 1995 along with an application in the prescribed form seeking prior approval from the Central Government under Section 2 of the FCA, the project profile, a detailed map showing the required facilities, details of flora and fauna, details of vegetation, scheme for compensatory afforestation, certificate regarding suitability of non-forest land for compensatory afforestation, NOC from Gujarat Pollution Control Board and the Site clearance certificate, Ministry of Environment & Forests' (Government of India) letter regarding Environmental Clearance; and a Note on Environmental Management and Conservation. The application with its enclosures together with the recommendation of the State Government that 15.49 hectares of forest land be made available to the appellant, was forwarded to the Central Government by the Central Chief Conservator of Forests on 3rd February, 1997. Upon receipt of the proposal of the State Government, the Central Government constituted a team for joint inspection of the area. The report of the joint inspection report was that the proposed activity of the appellant would not have much ramification from the forestry point of view and the damage would only be temporary in nature in a localized area during the construction phase. On 27th November, 1997, the Ministry of Environment and Forests, Government of India accorded the approval in accordance with Section 2 of the FCA. This approval was subject to fulfillment of twenty conditions, two of which were required to be fulfilled

before formal approval would be issued under Section 2 of the Forest (Conversation) Act, 1980. The two conditions are:

"(i) immediate action should be taken for transfer and mutation of equivalent non-forest land in favour of Forest Department;

(ii) the user agency will transfer the cost of compensatory afforestation (revised as on date to incorporate existing wage structure) over equivalent non-forest land in favour of Forest Department."

The other 18 conditions are to be complied with during the course of execution and working of the project. The State Government's Forest & Environment Department then certified the fulfillment of the two pre-conditions to the Ministry of Environment and Forests, Government of India by its letter dated 8th February, 1999. By letter dated 8th December, 1999, after a "careful consideration of the proposal of the State Government", the Central Government conveyed its approval under Section 2 of the FCA for diversion of 15.49 hectare of forest land for laying pipe line, construction of jetty and off shore facility and widening/extension of bund road/s by the appellant. It was however made clear that the clearance was given subject to grant of permission by the State Government to carry out the proposed activity in the National Park and Sanctuary under the WPA.

The factual run up to the grant of permission under the WPA was as follows :

The aspect of the appellant's application relating to the Marine National Park and Sanctuary included the setting up of a Single Buoy Mooring / Crude Oil Terminal (COT)/Jetty/laying the Pipeline (ROW). For the purpose of its application the appellant sought the expert opinion of the National Institute of Oceanography as to how the project could be completed without damaging the wild life or the ecological system therein.

On 5th September, 1995, the National Institute of Oceanography (NIO) wrote a letter to the appellant in connection with its proposal relating to the site selection for the Single Buoy Mooring, Jetty and routing of submarine pipelines etc. In the letter, NIO suggested that disturbance to the ecology could be kept to a minimum in an environmentally sensitive area such as the Gulf of Kachch by laying the crude oil pipelines in the "intertidal area in the available corridor of IOC". This selection of the site was made by NIO considering various environmentally relevant factors. What is of significance is that the NIO used the word "disturbance" and not "destruction" of the ecology.

By letter dated 8th September, 1995, the Government of Gujarat, Forest & Environment Department wrote to the Ministry of Environment & Forest, Government of India stating that the Forest & Environment Department of Gujarat had agreed, in principle, to allow the appellant's proposal to install SBM/COT/Jetty and connected pipeline in the National Marine Park and Sanctuary area at Vadinar

"on the terms and conditions to be decided in due course by the Government of Gujarat". Copies of the letter were forwarded to the appellant, and the Conservator of Forests and Chief Conservator of Forests (Wild Life).

On 5th August, 1997, the Conservator of Forests, Jamnagar wrote to the Chief Conservator of Forests (Wild Life) who was also the Chief Wild Life Warden, stating that the total forest area proposed for diversion by the appellant was 15.50 hectare out of which 8.79 hectare falls in the Marine National Park and Sanctuary. It was submitted that permission of the Chief Wildlife Warden of the State was required under Sections 29 and 33 of the Wild Life (Protection) Act, 1972 and that it was necessary to obtain such permission prior to the final approval from the Government of India.

On 18th September, 1997, the Conservator of Forests wrote a second letter to the Chief Conservator of Forests (WL)/ Chief Wild Life Warden giving details of the project requirements of the appellant's refinery. The possible pollution implications were also described. As IOC had already been given permission for similar activities in the same area and Kandla Port Trust already had "similar type of facilities" it was recommended to give permission to the appellant. However, before granting permission, the stipulation of 8 pre-conditions were suggested. It was further stated that if the suggested conditions were complied with, the environmental damage to the fragile marine ecosystem would be reduced to a considerable extent and that the project of the appellant "may be granted permission for Right of way to install and establish the required marine and on-shore facilities like laying of pipelines product jetty RoRo/LoLo jetty required for their petroleum refinery".

The Principal Chief Conservator of Forests (WL)/Chief Wild Life Warden forwarded the right of way proposal of the appellant to the State Government substantially reiterating the stand taken by the Conservator of Forests in his letter on 18th September, 1997 and stating in addition that the matter may be examined under the provisions of the WPA and appropriate orders passed subject to the compliance of various conditions including a mitigation plan "to reduce likely effect on wildlife"

and a disaster management plan both of which were to be approved by the State Government. It was also stated that the Government had in 1997 given similar permission to the refinery of M/s Reliance Petroleum Ltd.

On the basis of the letter dated 30th September, 1997 of the Principal Chief Conservator of Forests, on 16th October, 1997 the State Government conveyed its permission under section 29 of the WPA to the appellant's proposal of Right of way through the National Park and Sanctuary subject to the appellant's compliance with various terms and conditions including (a) the conditions as suggested by the Conservator of Forests in his letter dated 18th September, 1997; (b) the measures suggested by NIO; (c) the measures suggested by the Principal Chief Conservator of Forests; (d) any further measures that may be imposed during the construction/operation of the project; (e) the same conditions and environmental

> safeguards which had been imposed on M/s Reliance Industries Ltd. by the Government of India; (f) the conditions prescribed by the Chief Conservator of Forests in connection with the approval under the Forest (Conservation) Act; and (g) any further condition that may be imposed in the interest of the preservation and protection of the flora and fauna of the area. The permission is otherwise in categorical terms. However, in the last paragraph of the letter, it is stated that "since the permission sought for the MNP/Sanctuary area also forms the part of the forest land for which a proposal seeking prior approval under Forest (Conservation) Act, 1980 is under consideration of Government of India, therefore, this permission is subject to the FCA clearance and will get effect after the permission is accorded under FCA from Government of India".

This permission was conveyed to the appellant by the Conservator of Forests under cover of his letter dated 18th October, 1997. The permission was however restricted to the Kandla Port Trust Area. The Kandla Port Trust granted permission to the appellant to install "marine facilities" on 10th October, 1997.

One would have thought that the clearance under the WPA was completed by this. In fact, according to the appellant, they had invested Rs.5,388.41 Crores in setting up the project on 4500 acres of land in Jamnagar District. The labour colonies had been built up for 10000 labourers and other constructions were well under way. It has also claimed that for the purposes of the project the appellant has obtained finances inter alia from IDBI, ICICI, Nationalised Banks, IFCI, LIC and GIC. However on 30th January, 1999 the Chief Conservator of Forests wrote a letter to the State Government stating that the appellant was yet to be granted a "specific order" under sections 29 and 33 of the WPA. The reason for this apparent contrary stance is the developments which had taken place consequent upon public interest litigation initiated against Reliance Petrochem Limited (RPL) also relating to the laying of pipelines across the National Park and Sanctuary. The challenge had been rejected by the Gujarat High Court . While the Special Leave Petition from the decision was pending before this Court, on 30th November, 1998, the Government of Gujarat authorised the Chief Conservator of Forests and Chief Wild Life Warden to issue permission to RPL to lay the pipelines. We have already held that such authorisation of the Chief Wild Life Warden is required only in cases of destruction, exploitation or removal of wild life (i.e. prohibition (a)) after the State Government has formed the requisite satisfaction that such activity is for improvement and better management of wild life. In RPL's case the State Government was satisfied that the laying of the pipelines may result in damage which was temporary and reversible but "in the light of subsequent measures to be taken by the project proponents, will help in improvement and better management of Marine Sanctuary and National Park as well as of the wild life therein". There has been no finding in the appellant's case that the proposed activity would fall under prohibition (a). Assuming it does, the State Government has by the letter dated 16th October, 1997 in substance authorized the grant of permission and the absence of a formal order, as was issued in RPL's case, is an irregularity which will not invalidate the permission already granted. The Chief Wild Life Warden's permission after authorisation would have to be in accordance with the decision of the State Government. The legislative intent of Sections 29 and 35 is that the State Government itself should apply its mind and form the requisite satisfaction. Once the State Government has exercised this power, it is not open

to the Chief Wild Life Warden to decide to the contrary. This is particularly so when, as in this case, the State Government's permission included the suggestions and was based on the recommendation of the Chief Wild Life Warden/Chief Conservator of Forests.

At this stage, litigation in the form of a public interest litigation was initiated by the respondent no.1 alleging illegal construction in the National Park or Sanctuary by the appellant. The State Government filed an affidavit claiming that no permission had in fact been given to the appellant under the WPA for laying a pipeline in the National Park or Sanctuary. Penal action was initiated against the appellant. The writ petition was dismissed on the undertaking by the appellant that it would not carry out construction without clearance under the WPA and the other forest laws.

A Public Interest Litigation was then initiated in connection with the laying of pipelines by BORL. The writ petition was rejected as premature as the Chief Conservator of Forests had not yet granted permission to BORL to lay the pipeline. After such permission was granted to BORL, another writ petition was filed against grant of the permission to BORL. The appellant was not a party to the last two proceedings. The last writ petition was disposed of by the impugned judgment. In the meanwhile, the State Government by letter dated 5th July, 2000 recommended the appellant's case to the Central Government for approval under the CRZ notification. Such approval was granted to the appellant by the Ministry of Environment and Forests, Government of India on 3.11.2000. On 4.11.2000, the appellant wrote to the State Government that since all clearances had been received it should be permitted to set up its project. However, the Conservator of Forests wrote two letters dated 20.11.2000 and 30.11.2000 to the appellant stating that the appellant had not been granted approval under the Wild Life (Protection) Act as had been found by the High Court in the impugned decision. The appellant then filed an application for review of the impugned decision substantially stating the facts we have recorded earlier. The review application was rejected by the High Court on the ground that the grievance was based on "some factual controversy between the appellant and the State of Gujarat" and was beyond the scope of review. The High Court erred in rejecting the application for review. It was an opportunity for the High Court to rectify the error made earlier in deciding against the appellant without hearing it. We are also handicapped by the absence of any discussion by the High Court on the factual controversy in the appellant's case. This has resulted in an unnecessarily arduous exercise and an entirely avoidable delay.

Given the prolonged and in depth scrutiny of the possible damage which could be caused by the laying of the pipelines by the appellant and the stringent conditions imposed to obviate such possible damage, and the opinion of the expert bodies, we see no reason to interfere with the grant of permission under the WPA. On the other hand there has been no study of any recognised expert body that the environmental impact of laying the pipeline would be such as would lead to irreversible damage of the habitat or the destruction of wild life. In the absence of this, the High Court erred in rejecting the reports of the experts who had opined in favour of BORL and the appellant. The interpretation of the provisions of Section 29 and 35 by the High Court was also, apart from being erroneous, contrary to the earlier decision of the High Court i.e. Gujarat Navodaya Mandal v. State (supra). The appellant has accepted the suggestion of NIO and is laying the pipeline along the pipeline installed by IOC. Apart from the IOC, RPL which had applied for laying its pipeline at the same time as the appellant has been granted permission to do so subject to certain

terms and conditions. The same conditions have been imposed on the appellant. There was, in the circumstances, no question of denotifying any area under Section 26A(3). It is clear from the evidence on record that the State Government and the appellant have taken precautions after consulting experts to see that the pipeline route causes minimal and reversible damage to the wild life. The permissions given by the Central Government under the FCA and EPA are on the basis of the laying of the pipeline as proposed. There is no challenge to these permissions. A change in the lay out would set these permissions at naught.

As permission under the WPA had, in substance, been granted by the State letter dated 16th October, 1997 (this is also the stand of the State Government before us) all that can reasonably now be required is a direction to issue formal authorisation by the State Government so as to regularize the de facto permission.

For all these reasons the impugned decision of the High Court must be set aside. But before disposing of the appeals a further fact which took place during the pendency of these matters needs to be noted.

On 11th July, 2001, corals were included in Schedule I of the WPA. Because of the possible impact on the provisions of the CRZ notifications under the EPA as well as on the FCA the State Government sought a clarification from the Central Government whether fresh permission was required under the EPA. By letter dated 12th March, 2003, the Central Government wrote to the State clarifying that the approvals already granted would not be affected by the amendment under the WPA and that the appellant's project could proceed subject to the State Government's surveying the area for determining the density of corals and preparing a management plan which should include relocation of the corals coming in the way of the proposed pipeline. This survey is required to be done through an institution having expertise in the field and the funds for relocation and management of the corals should be borne by the appellant. The appellant has agreed to these conditions. However, the Central Government has also said that "in future the State Government should not consider any fresh proposal to allow laying of pipelines through this area and all other user agencies should be diverted to some other port in Gujarat".

As far as the appellant is concerned however the way is now clear to proceed with the project in accordance with the permissions granted to it under the WPA, FCA and EPA. The State Government will issue the authorization in the requisite format under Sections 29 and 35 within a fortnight. We therefore allow the appeals to the extent stated with no order as to costs.

SLP (C) No.22137 OF 2001.

Leave granted.

In so far as this appeal involves issues of law which have been decided in the above judgment, such issues stand concluded. However, the matter is remanded back to the High Court for determining whether there are, and if so to decide, any outstanding factual controversies in accordance with the observations in our judgment. The appeal is accordingly disposed of with no order as to costs.

TRANSFER CASE (C) No.39 of 2001.

In view of our judgment delivered today in Essar Oil Ltd. v. Halar Utkarsh Samiti & Ors., the transferred case is remanded back to the High Court to decide the Special Civil Application No.4779 of 2001 in accordance with our judgment.