
**BEFORE THE HON'BLE
SUPREME COURT OF INDIA**

**Original Writ Jurisdiction
PUBLIC INTEREST LITIGATION**

W.P. (CIVIL) NO. _____ OF 2014

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

SWADESHI SURAKSHA SAMITIPETITIONER

v.

UNION OF INDIA AND ANR. RESPONDENTS

UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION
JUSTICES OF THE SUPREME COURT OF INDIA

MEMORANDUM ON BEHALF OF THE PETITIONER

TABLE OF CONTENTS

Table of Contents.....2

List of Abbreviations.....4

Index of Authorities.....6

Statement of Jurisdiction.....8

Statement of Facts.....13

Questions Presented.....15

Summary of Pleadings.....16

Pleadings.....17

1. WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA MAINTAINABLE17

1.1. The petition has been filed in public interest and therefore maintainable as public interest litigation.....17

1.2. Alternative remedy not a bar.....18

1.3. The jurisdiction of the SC under Art. 32 of the Constitution extends to violation of the rights alleged in the present matter.....18

1.3.1. *Violation of rights of tribal people*.....18

1.3.2. *Violation of rights of people living around the forests of Swadeshi*.....18

2. WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW.....19

2.1. Arbitrary and capricious acts of the State are annulled by the provisions of Art. 14.....19

| | |
|---|----|
| 2.2. The Policy of mining in the forests of Swadeshi is arbitrary and capricious and hence violates of Art. 14 and Art. 21..... | 20 |
| 2.2.1. <i>Violative of Art. 14</i> | 20 |
| 2.2.2. <i>Violative of Art. 21</i> | 20 |
| 3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECT..... | 21 |
| 3.1. Violation of Constitutional protection and safeguards..... | 21 |
| 3.1.1. <i>Violation of Art. 19</i> | 21 |
| 3.1.2. <i>Violation of Art. 21</i> | 23 |
| 3.1.3. <i>Livelihood of indigenous people</i> | 24 |
| 3.1.4. <i>Deforestation and its effect on livelihood</i> | 25 |
| 3.2. The forced assimilation of indigenous people violates constitutional provisions of India and international conventions & treaties..... | 26 |
| 3.2.1. <i>Forced assimilation is a violation of Art. 29(1), 48A and 51A</i> | 26 |
| 3.2.2. <i>Violation of Scheduled Tribe and Forest Dwellers Act</i> | 27 |
| 3.2.3. <i>Violation of Right to Environment</i> | 28 |
| 4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID..... | 31 |
| 4.1. Environmental clearance invalid based on procedural violations..... | 31 |
| 4.1.1. <i>Public Hearing</i> | 32 |
| 4.1.2. <i>Time Lapse</i> | 33 |
| 4.2. Violation of Mines and Minerals (Development and Regulation) Act, 1957..... | 33 |
| 4.3 Environment Clearance when validated..... | 34 |
| 4.3.1. <i>Violation of test of reasonableness</i> | 35 |
| 4.3.2. <i>Violation of various provisions of directive principles read with fundamental rights</i> | 35 |
| Prayer..... | 37 |

LIST OF ABBREVIATIONS

| | |
|-----------|---|
| ¶ | Para |
| ¶¶ | Paras |
| AIR | All India Reporter |
| Art. | Article |
| Ano. | Another |
| Ass. | Assam |
| AP | Andhra Pradesh |
| APLJ | Andhra Pradesh Law Journal |
| Corp. | Corporation |
| Cr.LJ | Criminal Law Journal |
| HP | Himachal Pradesh |
| ILO | International Labour Organization |
| ICODHR | International Convention on Declaration of Human Rights |
| ICSCR- OP | Optional Protocol of the Covenant on Economic, Social and Cultural Rights |
| ICCR | Indian Council for Cultural Relations |
| J. | Justice |
| Ltd. | Limited |
| MMDR | Mines and Minerals (development and Regulation) Act |
| Mad. LJ | Madras Law Journal |
| Ors. | Others |
| RUC | RUSTAM URANIUM CORPORATION PRIVATE LIMITED |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SCR | Supreme Court Reporter |
| Supl. | Supplementary |

List of Abbreviations

| | |
|-------|--|
| Supp. | Supplementary |
| STFDA | Scheduled Tribes and Forest Dwellers Act |
| UOI | Union Of India |
| UN | United Nations |
| Vol. | Volume |
| V. | Versus |

INDEX OF AUTHORITIES

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3. THE ENVIRONMENTAL RULES, 1986.
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5. SCHEDULED TRIBES AND TRADITIONAL FOREST DWELLERS ACT, 2006.
6. MINES AND MINERALS ACT,
7. LAND ACQUISITION ACT, 1894
8. INDIAN FOREST ACT, 1927
9. NATIONAL GREEN TRIBUNAL ACT, 2010
10. PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT OF 2001
11. PUBLIC LIABILITY INSURANCE ACT, 1991
12. WATER (PREVENTION AND CONTROL OF POLLUTION), 1974
13. WILD LIFE (PROTECTION) AMENDMENT ACT, 2002
14. WILDLIFE PROTECTION ACT OF 1972
15. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

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1. *A.K. Gopalan v. State of Madras*, (1950) SCR 88 (259, 302).....21
2. *A.P. State Fishermen Association v. District Collector*, 2010 (2) ALD 300.....25
3. *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121.....18
4. *Andhra Pradesh Pollution Control Board –II v. Prof. MV Nayudu*, (2001) 2 SCC 62... 18
5. *Ashok Kumar Tripathi v. Union of India and others*, W.P. No. 2262/99.....25
6. *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1948) 1 KB 223.....19
7. *Avinder Singh v. State of Punjab*, 1979 AIR 321.....20
8. *Banawasi Seva Ashram v. State of U.P.*, AIR 1987 SC 374.....20
9. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.....35

| | |
|--|----|
| 10. <i>Binny Ltd. v. Sadasivan</i> , AIR 2005 SC 320 ¶ 11..... | 17 |
| 11. <i>Charan Lal Sahu v. Union of India</i> , AIR 1990 SC 1480, ¶ 35..... | 17 |
| 12. <i>Consumer Education & Research Centre v. Union of India</i> , AIR 1995 SC 922..... | 36 |
| 13. <i>Cooverjee B. Bharucha v. Excise Commissioner</i> , AIR 1954 SC 220..... | 23 |
| 14. <i>Dalmia Cement Bharat Ltd. v. UOI</i> , (1996) 10 SCC 104..... | 25 |
| 15. <i>Dyson v. A.G.</i> (1911) 1 KB 410 (423-24) (CA)..... | 30 |
| 16. <i>Francovich and Boniface v. Italy</i> (1991) ECR I-5357..... | 30 |
| 17. <i>Goa Foundation and Others v. State of Goa and Others</i> , 2001 (3) Bom CR 813..... | 35 |
| 18. <i>Harbansal Sahnia V. Indian Oil Corporation Ltd.</i> AIR 2003 SC 2120..... | 18 |
| 19. <i>Indian Council for Enviro Legal Action c. Union of India</i> , (1996) 5 SCC 281..... | 17 |
| 20. <i>Indian Council for Enviro Legal Actionv. Union of India</i> , (1996) 5 SCC 281..... | 20 |
| 21. <i>Indian Council For Enviro Legal Action v. Union of India</i> , (2011) 8 SCC 161 ¶ 20. | 28 |
| 22. <i>Ishwar Prasad v. N.R. Sen</i> , 1952 Cal. 273..... | 22 |
| 23. <i>Jagdevsingh sidhanti V. Pratap Singh Daulta</i> , AIR 1965 SC 183 para 188..... | 18 |
| 24. <i>K.K. Kouchunni V. State of Madras</i> , AIR 1959 SC 725..... | 18 |
| 25. <i>Kalyaneswari v. Union of India</i> , (2011) 3 SCC 287..... | 36 |
| 26. <i>Karjan Jalasay Yojana Assargrasth SahkarAne Sangarsh Samiti v. State of Gujarat</i> , (1986) Supp 1 SCC 350..... | 20 |
| 27. <i>KarjanJalasayYojanaAssargrasthSahkarSamiti v. State of Gujarat</i> , (1986)Supp1 SCC 350..... | 30 |
| 28. <i>Kinkri Devi v. State Of Himachal Pradesh</i> , AIR 1988 HP 4..... | 36 |
| 29. <i>Kirloskar Bros. v. ESI Corpn.</i> , AIR 1996 SC 3261..... | 36 |
| 30. <i>Loknath v. State of Orissa</i> , 1952 Orissa 42..... | 23 |
| 31. <i>M.C. Mehta v. Union of India</i> (1997) 2 SCC 411..... | 28 |
| 32. <i>M.C. Mehta v. Union of India</i> , (1998) 9 SCC 589..... | 28 |
| 33. <i>M.C. Mehta v. Union of India</i> , (2004) 12 SCC 118..... | 20 |
| 34. <i>M.C.Mehta vs. Union of India</i> , A.I.R. 2004 S.C. 4016..... | 36 |
| 35. <i>Maganbhai v. Union of India</i> , AIR 1969 SC 783..... | 17 |
| 36. <i>D.A.V College v. State of Punjab</i> , AIR 1971 SC 1731..... | 17 |
| 37. <i>Maneka Gandhi v. Union of India</i> , (1978) 1 SCC 248..... | 18 |
| 38. <i>Maneka Gandhi V. Union of India</i> , AIR 1978 SC 597..... | 23 |

| | |
|---|----|
| 39. <i>Munn v. Illinois</i> , (1876) 94 US 113..... | 23 |
| 40. <i>Narmada Bachao Andolan v. Union of India</i> , (2000) 10 SCC 664..... | 28 |
| 41. <i>Narmada BachaoAndolan v. Union of India</i> , (2000) 10 SCC 664..... | 20 |
| 42. <i>Olga Tellis v. Bombay Municipal Corp</i> , AIR 1986 SC 180..... | 18 |
| 43. <i>Orissa Mining Corporation Ltd. v Ministry of Environment and Forests</i> , 2013 STPL(Web) 323 SC..... | 25 |
| 44. <i>Kalpavriksh v Union of India</i> Application, No. 116 (THC) of 2013..... | 32 |
| 45. <i>P.G. Gupta v. State of Gujrat</i> , 1995 (Supp-2) SCC 182..... | 22 |
| 46. <i>People's Union for Democratic Rights, Kerala v. Union of India</i> , AIR 1982 SC 1473 at p 1487..... | 25 |
| 47. <i>PG Gupta v. State of Gujarat</i> , (1995) 2 SCC 182..... | 18 |
| 48. <i>Roop Chand v. State of Punjab</i> , AIR 1963 SC 1503..... | 17 |
| 49. <i>Rural Litigation and Entitlement Kendra v. State of U.P</i> , 1989 Supp (1) SCC 504..... | 25 |
| 50. <i>Samatha v. State of Andhra Pradesh</i> , AIR 1997 SC 3297..... | 25 |
| 51. <i>Selam Mavatta Ezhupulli Malaivazh Makkal Nalachangam v. State of T.N.</i> ; WAP No. 376 of 2008 | 21 |
| 52. <i>Shantistar Builders v. Narayan Khimala Totame</i> , (1990) 1 SCC 520..... | 18 |
| 53. <i>Sodansingh v New Delhi Municipal Committee</i> , AIR 1989 SC 1988..... | 18 |
| 54. <i>State of Bombay V. United motors Ltd.</i> AIR 1953 SC 252..... | 18 |
| 55. <i>State Of Kerala v. Peoples' Union for Civil Liberties, Kerala State</i> , Civil Appeal Nos. 104-105 Of 2001 | 24 |
| 56. <i>Subash Kumar v. State of Bihar</i> , AIR1991SC 420..... | 25 |
| 57. <i>Subhash Kumar v. State of Bihar</i> , AIR 1991 SC 420, 424..... | 28 |
| 58. <i>Sukhdev and Orsv. Bhagatram and Ors</i> , AIR 1975 SC 1331..... | 17 |
| 59. <i>T. Damodhar Rao v. S.O. Municipal Corpn, Hyderabad</i> , AIR 1987 AP 171..... | 20 |
| 60. <i>T.N.Godavarman Thirumulkpad v. Union of India</i> , 1997 (7) SCC 440..... | 27 |
| 61. <i>Vishaka v. State of Rajasthan</i> , (1997) 6 SCC 241 at 249..... | 25 |
| 62. <i>Waman Rao v. Union of India</i> [1981] 2 SCR1..... | 25 |

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STATEMENT OF JURISDICTION

THE PETITIONER HUMBLY SUBMITS TO THE JURISDICTION OF THIS HONOURABLE COURT UNDER ART 32 OF THE CONSTITUTION. THE PETITIONER HAS APPROACHED THIS HONOURABLE COURT IN APPREHENSION OF THE VIOLATION OF RIGHTS THAT INEVITABLY OCCUR SHOULD THE IMPLEMENTATION OF THE POLICY OF THE GOVERNMENT NOT BE STOPPED. THEREFORE, THE PETITIONER MAINTAINS THAT THE JURISDICTION OF ART 32 OF THE CONSTITUTION, WHICH PROTECTS THE CITIZENS OF INDIA FROM ANY VIOLATION OF THEIR FUNDAMENTAL RIGHTS, IS APPLICABLE IN THE PRESENT CASE.

STATEMENT OF FACTS

1. The Territory of INDIA is largely an industrial economy with about 40% of the population involved in agricultural Activities. INDIA is rich in atomic resources, especially Uranium that are abundantly found in the mineralized zone of 'HITHRO', declared as a 'Scheduled Area' under Panchayat (Extension of Scheduled Areas) Act, 1996', which has a total cover area of 25 sq. km. in the 'Reserve Forest' of SWADESHI, an area of 125 sq. km, which was rich in atomic resources and is home to the Indigenous tribal people 400 to 450 in number, in the STATE OF REALKHAND who derived their means of livelihood from the by carrying out activities such as apiculture, gathering of herbs, flowers and fruits and collection of gum dust and other produce. The commercial exploitation of Swadeshi was not permitted as they were considered as a sacred place by the indigenous tribes. India took pride in the rare natural biodiversity in the forests of Swadeshi.
2. INDIA incurred an electricity-crisis as on 12th January 2012 that led to a situation of reduced supply of electricity for major areas of the Industry. The result of this was that several industries had to be closed down, temporarily, and several workers were either laid off, and/or retrenched in accordance with law. On 26th May 2012, The industries approached the SUPREME COURT OF INDIA to quash the order of lay-offs and also to direct the GOVERNMENT OF INDIA to provide for a remedy to the power crisis, that has affected their Right to Livelihood, guaranteed under the Constitution of INDIA. The Court passed an order that directed the GoI to initiate action so as to resolve the electricity crisis.
3. The GoI, on 20th August 2012, in light of the Report submitted by the Department of Atomic Energy on 11th July 2012 leased an area of 45 sq. km, inclusive of the Scheduled Area-SWADESHI, for a period of fifty years, to URANIUM CORPORATION OF INDIA LIMITED a fully owned entity of the DoAE, India. In the months of August-September 2012, there was a protest that was undertaken by the Indigenous communities alleging that the said mining activity would hinder their livelihood and peaceful existence in the forests of SWADESHI. SWADESHI SURAKSHA SAMITI a Non-Governmental Organisation, protested that Uranium mill tailings retain about 85% of the original radioactivity of the ore, and it is very difficult to minimise releases of radioactive decay products such as Radium and Radon as well as heavy metals, given the developing economy of India.

4. On 16th December 2012, UCIL gave a Tender Notification, to sub-lease the process of extraction of minerals from the ores of SWADESHI, whereby RUC, the highest bidder, was granted the lease on January 30th 2013. As per the agreement between the UCIL and RUC, the Extracted Minerals are to be owned by the UCIL, and the land is leased to RUC for a period of 30 Years, commencing from the date of grant of 'Environmental Clearance', by the 'Ministry of Environment and Forests, for the process of extraction.
5. The RUC applied for an Environmental Clearance after due compliance with the necessary Rules and Regulations in this regard, on 13th July 2013. The Gram Panchayats, living in and around the vicinity of SWADESHI, were consulted in a Public Hearing on 17th August 2013, in respect of the Environmental Clearance. The Public Hearing of the tribal community, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest and the property rights of the same, vested with the Government.
6. On 1st June 2014, A Conditional Environmental Clearance was granted for a period of 30 years. On 5th July 2014, RUC managed to get a Forest Clearance for carrying out the mining activities in Swadeshi.
7. The tribal communities were not in favour of the Project, they agitated on grounds that they were to be displaced of the lands that were their homes and were also sacred to them. SSS, espoused the cause of the tribal communities, alleging that the rights of the tribal communities would be affected by mining activity and alleged that the Environmental Clearance was not in consonance with the objects of the Environment (Protection) Act, 1986 and the Forest Conservation Act, 1980, and thereon filed a Writ Petition under Article 32 of the Constitution of India, on 14th July 2014.

QUESTIONS PRESENTED

1. WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA MAINTAINABLE

- 1.1. The petition has been filed in public interest and therefore maintainable as public interest litigation
- 1.2. Alternative remedies not a bar
- 1.3. The jurisdiction of the SC under Art. 32 of the Constitution extends to violation of the rights alleged in the present matter

2. WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW

- 2.1. Arbitrary and capricious acts of the State are annulled by Art. 14
- 2.2. The Policy of mining in the forests of Swadeshi is arbitrary and capricious and hence violates of Art. 14 and Art. 21

3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS

- 3.1. Violation of Constitutional protection and safeguards
- 3.2. The forced assimilation of indigenous people violates constitutional provisions of India and international conventions & treaties

4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID

- 4.1. Environmental clearance invalid based on procedural violations
- 4.2. Violation of Mines and Minerals (Development and Regulation) Act, 1957
- 4.3. Environment Clearance when validated

SUMMARY OF PLEADINGS

1. WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA MAINTAINABLE

The petitioner most humbly submits that the petition filed under Art. 32 of the Constitution is maintainable as a Public Interest Litigation, which has been filed with the apprehension of violation of Fundamental Rights enshrined under Part III of the Constitution. The procedural flaws which depict the improper implementation of the policy decision of the Government by the company which falls under the ambit of other authorities under Art. 12 of the Constitution. Thus, the petition is maintainable.

2. WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW.

The petitioner contends that the implementation of the policy decision of the Government is found to be arbitrary, thus violative of Art. 14 and Art. 21. Rule of law has also been violated by the improper implementation of the policy decision of the Government. This execution is not based on sound reason hence has delivered results that shows the colourable exercise of power.

3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS

It is humbly submitted before the Hon'ble Court that, Article 19 and Article 21 of the Constitution have been violated on account of arbitrary action of state, thus, resulting in violation of Article 14 as well. Right to Reside, Right to Livelihood and Right to Shelter have been violated on the account of deforestation. It is further submitted that Right to Culture has also been violated since; the indigenous people will be subjected to forced assimilation and isolation.

4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID

It is humbly submitted that the RESPONDENT herein has not granted the environmental clearance in accordance with the Environment Impact Assessment Notification, thereby violating various provisions of the Forest Conservation Act, 1980, Environment Protection Act, 1986 and Environment Protection Rules, 1986. It is submitted that the environmental clearance when validated causes damage to the environment, resulting in a disturbance to the livelihood of the tribal community, causing health hazards to the tribes which in turn infringes various fundamental rights of the tribal community along with other provisions of the Constitution.

PLEADINGS

1. WHETHER THE WRIT PETITION FILED UNDER ART. 32 OF THE CONSTITUTION OF INDIA IS MAINTAINABLE.

The present petition is maintainable under Article 32 of the Constitution¹, since it falls within the ambit of “other authorities” as enshrined under Art.12 of the Constitution. There will be violation of Fundamental Rights if the project is taken on floors.

Public Function is one which “seeks to achieve some collective benefit for the public or a section of the public”². Any institutions engaged in performing public functions are, by virtue of the functions performed, can be termed as government agencies³. Further under the well-established doctrine of *Parens Patriae*, it is the obligation of the State to protect and take into custody the rights and the privileges of its citizens for discharging its obligations⁴.

Thus, in this present case, mining activity taken up by Rustam Uranium Corporation Private Limited (hereinafter RUC) is both public function and governmental function. If RUC is a private party, a PIL can be instituted against a private party under Art.32 of the Constitution,⁵ if the State is made a co-party in the petition.

1.1. The petition has been filed in public interest and therefore maintainable as Public Interest Litigation

To invoke the writ jurisdiction of the SC is not necessary that the fundamental right must have been actually infringed- a threat to the same would be sufficient.⁶ Applying the doctrine of ‘reasonable apprehension’, this Hon’ble Court may interfere directly in the said case. The most fundamental right of an individual is his right to life; if an administrative decision may put his life at risk, the basis for the decision surely calls for the most anxious scrutiny according to the principle of ‘anxious scrutiny’⁷. Thus the petition filed before this apex court is maintainable.

¹ Constitution of India, *Parimateriato* Constitution of India (Herein after referred as Constitution)

² *Binny Ltd. And Anr. v. Sadasivan and Ors.* AIR 2005 SC 320 ¶ 11.

³ *Sukhdev and Ors. v. Bhagatram and Ors.* AIR 1975 SC 1331

⁴ *Charan Lal Sahuv. Union of India*, AIR 1990 SC 1480, ¶ 35.

⁵ *Indian Council For Enviro Legal Action v. Union of India*, (2011) 8 SCC 161 ¶ 20.

⁶ *Roop Chand v. State of Punjab*, AIR 1963 SC 1503; *Maganbhai V. Union of India* AIR 1969 SC 783; *D.A.V College v. State of Punjab* AIR 1971 SC 1731

⁷ *Bugdaycay* [1987] AC 514, where Lord Bridge said at 531E-G

1.2. Alternative Remedy Not A Bar

Where there is well-founded allegation that fundamental right has been infringed alternative remedy is no bar for entertaining writ petition and granting relief.⁸ The mere existence of an adequate alternative legal remedy cannot be *per se* be a good and sufficient ground for throwing out a petition under Art. 32 if the existence of a fundamental right and a breach, actual or threatened, of such right and is alleged is *prima facie* established on the petition⁹.

In spite of availability of the alternative remedy, the court may exercise its writ jurisdiction in at least petitions where the petitioner seeks enforcement of any of the fundamental rights¹⁰. Thus, the petitioner humbly submits that writ petition is maintainable as existence of alternative remedy is not a bar.

1.3. The jurisdiction of the SC under Art. 32 of the Constitution extends to violation of the rights alleged in the present matter

1.3.1. Violation of the right of the tribal people

The fundamental right to equality¹¹ enshrined under Art. 14 of the Constitution have been violated because of the steps taken for the implementation of the project.

The fundamental right to reside in any part of the country¹² and to practice any profession or to carry on any occupation, trade or business¹³ enshrined under Art. 19 will be violated because of the implementation of the project. The fundamental right to shelter¹⁴ and livelihood¹⁵ enshrined under Art. 21 of the Constitution will be violated on the account of arbitrary action of the State.

The fundamental right to protect the interest of the minorities¹⁶ enshrined under Art. 29(1) will be violated again by the action of the state.

1.3.2. Violation of rights of people living around the forests of Swadeshi

Also, there will be violation of right to Healthy Environment¹⁷ as guaranteed under Article 21 of the Constitution since the state and RUC are responsible for pollution among other things. Thus,

⁸*State of Bombay V. United motors Ltd.* AIR 1953 SC 252

⁹*K.K. Kouchunni V. State of Madras* AIR 1959 SC 725

¹⁰*HarbansalSahnia V. Indian Oil Corporation Ltd.* AIR 2003 SC 2120

¹¹*Maneka Gandhi V. Union of India* AIR 1978 SC 597

¹²*DhanBahadurGotri V. State of assam* AIR 1953 Ass 61

¹³*Sodansingh V. New Delhi municipal committee* AIR 1989 SC 1988

¹⁴*Shantistar Builders v. Narayan KhimalaTotame*, (1990) 1 SCC 520, *PG Gupta v. State of Gujarat*, (1995) 2 SCC 182; *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121.

¹⁵*Olga Tellis v. Bombay Municipal Corp*, AIR 1986 SC 180.

¹⁶*Jagdevsinghsidhanti v. Pratap Singh Daulta*, AIR 1965 SC 183 para 188

¹⁷*Andhra Pradesh Pollution Control Board –II v. Prof. MV Nayudu*, (2001) 2 SCC 62.

it is humbly submitted that the present PIL is maintainable against Union of India and Rustam Uranium Corporation Pvt. Ltd.

2. WHETHER THE IMPLEMENTATION OF THE POLICY DECISION OF THE GOVERNMENT VIOLATES ART. 14, ART. 21 AND RULE OF LAW.

The petitioner contends that the implementation of policy decision of the Government has rendered to be arbitrary, hence violative of right to equality enshrined under Art. 14, right to life enshrined under Art. 21 and Rule of Law.

2.1. Arbitrary and capricious acts of State are annulled by the provisions of art 14

The petitioner submits that the jurisdiction of Art 14 extends to the prevention of arbitrary and unreasonable actions of the State, which are “antithetical”¹⁸ to the rule of equality. The principles of Indian Law have thrown open the gates of Executive action to Judicial Scrutiny.

The Rule of Law and the Rule of Reason or Reasonableness

The petitioner submits that the term Rule of Law, derived from the French term, *la principe de legalite*, is the foundation of the concept of a State that revolves around the law, and not around men.¹⁹ As Lord Coke observed in *Rooke’s Case*²⁰, acts which under the guise of discretion can only be described as colourable exercise of power. The essence of judgments with development of the Common Law is that exercise of discretion should be coupled with equity and grounded in sound reason.²¹ The petitioner submits that the word reasonableness has been used in a biased manner which is contradicting the Rule of Reason.

The Wednesbury Test of Unreasonableness

An unlawful decision is one to which no reasonable authority could have come. This is the underlying principle of the famous *Wednesbury case*²², wherein Lord Greene MR expounded the duty of an authority to consider facts that they are bound to consider. Thus, the petitioner humbly

¹⁸See *Id.*

¹⁹ I.P.MASSEY, *ADMINISTRATIVE LAW*, EASTERN BOOK COMPANY 25 (7thed, 2008).

²⁰(1598) 5 Co. Rep. 99b

“Proceedings ought to be limited and bound by the Rule of Reason, and Law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences and not to do according to their wills and private affections, for as one saith, *talis discretio discretionem confundit*”²⁰.”

²¹ H.W.R.WADE & C.F.FORSYTH, *ADMINISTRATIVE LAW*, OXFORD PUBLICATIONS, 293 - 294 (10thed, 2009)

²²*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223 “It is true that discretion must be exercised reasonably. This includes, for instance, that a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider.”

submits that when there are alternative source of energy such as the solar energy, geo thermal energy, wind energy, biomass energy etc. are present, these sources must be considered²³.

2.2.The policy of mining in the forests of Swadeshi is arbitrary and capricious and hence violates of Art. 14 and Art. 21

2.2.1.Violative of Art. 14

The petitioner submits that it is not unknown for a Governmental Agency to exaggerate the benefits and underplay the deficiencies while making policy decision. In *Avinder Singh v. State of Punjab*²⁴ it was held that arbitrariness must be excluded from the law, for if power is arbitrary, it is potential inequality, and Art 14 is fatally allergic to inequality of the law.²⁵ The petitioner submits that matters of national importance cannot be implemented negligently as has been done by the Government in the present matter. Hence, violative of Art. 14

2.2.2.Violative of Art. 21

In a plethora of cases²⁶, the Supreme Court has held the inalienability of the Right to Environment from the Right to Life is envisaged by Art 21. It has even held that protection of the environment will have precedence over the economic interests of the Country.²⁷ The easiest way to deprive a person of his Right to Life would be to deprive him of his means of livelihood.²⁸

In *Banawasi Seva Ashram v. State of U.P.*²⁹, the Supreme Court held that the rights of forest dwellers take precedence over even an important public purpose³⁰. The intent of the Legislature

²³What are Alternative Energy Sources?, <http://www.conserve-energy-future.com/AlternativeEnergySources.php>

²⁴ AIR 1979 SC 321

²⁵ ARVIND P DATAR, *Commentary on the Constitution of India*, WADHWA NAGPUR, (2nded: 2007)

²⁶*T. Damodhar Rao v. S.O. Municipal Corpn, Hyderabad*, AIR 1987 AP 171; *Indian Council for Enviro Legal Action c. Union of India*, (1996) 5 SCC 281; *Vellore Citizens Welfare Forum's case supra*,; *M.C. Mehta v. Union of India* (1997) 2 SCC 411; *M.C. Mehta v. Union of India*, (1998) 9 SCC 589; *Narmada BachaoAndolan v. Union of India*, (2000) 10 SCC 664.

²⁷*M.C. Mehta v. Union of India*, (2004) 12 SCC 118

²⁸*Olga Tellis&Ors v, Bombay Municipal Corpn.*, 1985 SCR Supl. (2) 51

“The sweep of the right to life conferred by Art 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.”

²⁹ AIR 1987 SC 374

³⁰*KarjanJalasayYojanaAssargrasthSahkarAneSangarshSamiti v. State of Gujarat*, (1986) Supp 1 SCC 350

regarding rights of Tribal dwellers has been clearly established through various legislations³¹. The rights of Tribal dwellers have established through International Conventions³² as well as by the Supreme Court through various cases.³³ The petitioner submits that tribal lives are centered on the forests in which they dwell and to relocate them robs them of their livelihoods.

3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECT?

The petitioner humbly submits that the mining project and the policy decisions of the government regarding the matter are violative of the fundamental rights, constitutional protection and constitutional safeguards enshrined in the Constitution.

3.1. Violation of Constitutional protection and safeguards

3.1.1. Violation of Article 19

The rights of the indigenous tribal communities to settle, reside and to own property³⁴ anywhere in the country, and in particular the forests of SWADESHI, as guaranteed under Article 19(1)(e) of the Constitution has been violated, since; there will be encroachment in the forest on account of deforestation.³⁵ The Scheduled Tribes (vide Art.342) are a backward class of people who are liable to be imposed upon by shrewd and designing persons. Hence there are various provisions disabling them from alienating even their own properties except under certain special conditions. In their own interest and benefit, laws may be made restraining the ordinary rights of citizens to go or to settle in particular areas or to acquire property in them.³⁶ Thus it is a rude shock to find the Government and the Hon'ble Court to be complicit in an act that not only infringes upon the fundamental rights of the innocent civilians but also restrains the movement of the latter in forests which deprives of them of their rights to peacefully coexist with the nature, of which they are an integral part.

“We appreciate the anxiety of the state Government to take possession of the acquired land. We are also aware that the land has been acquired for an important public purpose. But, at the same time, we cannot overlook the human problem arising out of large number of tribal and other persons belonging to weaker section on account of acquisition of land.”

³¹The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996

³²ILO Convention on Indigenous and Tribal Peoples, 1989

³³*Selam Mavatta Ezhupulli Malaivazh Makkal Nalachangam v. State of T.N.*; WAP No. 376 of 2008

³⁴Art. 17, UDHR as well as in art.6, ICESCR.

³⁵¶ 4, Moot proposition.

³⁶*A.K. Gopalan v. State of Madras*, (1950) SCR 88 (259, 302)

The act of the Government, of curtailing the movement of the forest dwellers thus violates their fundamental right to livelihood (vide Art. 21), in the present case. The right to residence and settlement is a fundamental right under Art. 19(1) (e) and is a facet meaningful right to life under Art. 21. When the State, as in this instance, has undertaken as its economic policy planned development of this country, allotment of houses to weaker sections of the society, the same has to be recognised as its part. The very nature of the act of the Government and its policies are such that the permanent settlement right of the indigenous tribal communities, though subjective, will be violated because of the gross negligence on part of the former to comply with its own policies and the legislations of the Parliament. The Preamble, Art. 19(1) (e) read along with Arts. 38, 39 and 46 make the life meaningful and liveable in equal status with the dignity of the person. It is, therefore, imperative on the part of the state to provide permanent housing accommodation to the indigenous tribal population or to sustain the privileges provided in any undertaken projects within economic means.³⁷ It should also take in mind that the rights of indigenous tribal communities in regard to movement is intertwined with their right to profession as well the right to livelihood, as foraging the forest is their only source meet their needs.

In *Ajab Singh v. State of Punjab*³⁸ Bhandari, J., expressed the view that the right to practise any profession or to carry on any occupation, trade or business becomes meaningless if it did not include the right to stay in place suitable for such profession. The right guaranteed by Art. 19(1) (d) and (e) are subject to the restraints imposed by clause (5) of the Article, which states that reasonable restrictions in the exercise of any rights conferred by the said sub-clauses in the interest of the general public.³⁹ Such restraints when placed on the innocent indigenous people would be the toughest litmus test on them for survival. It should be taken into mind that use of the term “*in the interest of the general public*”, a wide enough term to cover serious and aggravated forms of general disorders, does not mean the interest of the whole public of India⁴⁰ but rather the interest of a particular class of people. Thus the content usage and declaration that the absurd policies of government are in the interest of the general public does not sell well.

The right to work, which includes the right of everyone to the opportunity to gain his living by

³⁷*P.G. Gupta v. State of Gujarat*, 1995 (Supp-2) SCC 182

³⁸*Ajaib Singh v. State of Punjab*, 1952 Punj. 309 (F.B.)

³⁹Nothing in [sub-clauses (d) & (e)] of the said clause shall affect the opinion of operation of any existing law in so far as it imposes, or to prevent the State from making any law imposing, in the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribes.

⁴⁰*Ishwar Prasad v. N.R. Sen*, 1952 Cal. 273

work which he freely chooses or accepts, as accepted internationally, is to be granted so as to achieve the full realization of the right.⁴¹ The guarantee under Art.19(1) (g) extends to practise any profession, or to carry on any occupation, trade or business. Thus it should be noted that the profession of the indigenous people, and their livelihood which depends on such activities, which is inclined towards the forest for every necessity, would be put to absurdity and irrelevance under this policy of the government. This Article represents basic values of a civilized society and elevated the said values to the state of Fundamental Rights.⁴² The expressions “reasonable” and “interests of the general public” are both elastic terms and a discussion of the full import of these expressions necessarily involves a discussion of the political, social and economic problems of the present day.⁴³ In order to determine the reasonable of restrictions imposed regard must be had to the nature of the business and the conditions prevailing in the business⁴⁴; it puts the matter to a stalemate as the restrictions imposed on the Tribes are so unattributable to the public interest and also the restrictions imposed strikes at the heart of their belief system as well as their profession.

3.1.2. Violation of Article 21

The Article 21 of the Constitution envisages the right to livelihood as a fundamental right.⁴⁵ The Supreme Court has referred to the classic judgement of Field J.⁴⁶ on the of the word; wherein he stated that by the term 'life' as used means something more than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. Also ICCPR⁴⁷, UDHR⁴⁸ and ICESCR⁴⁹ recognizes right to life and adequate standard of living. Further in order to establish violation of Article 21, the act should be subjected to the equality test of Article 14 and test of reasonableness under Article 19.⁵⁰ Article 14 strikes at arbitrariness because it negates equality⁵¹ and permeates the entire fabric of Rule of Law.⁵² Therefore, every action of the State must be guided by reason for public good and not by whim, caprice, and abuse

⁴¹Art. 6, International Covenant on Economic, Social and Cultural Rights, 1966.

⁴²*Menaka Gandhi v. Union of India*, (1978) 1 SCC 248

⁴³*Loknath v. State*, 1952 Orissa 42

⁴⁴*Cooverjee B. Bharucha v. Exercise Commissioner*, 1954 S.C. 220

⁴⁵Art. 21:- Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to the procedure established by law.

⁴⁶*Munn v. Illinois*, (1876) 94 US 113

⁴⁷Article 6, ICCPR.

⁴⁸Article 3, UDHR.

⁴⁹Article 11, ICESCR.

⁵⁰*Maneka Gandhi v. Union of India*.AIR 1978 SC 597.

⁵¹*Suresh Chandra Sharma v. Chairman*, AIR 2005 SC 2021.

⁵²*Bachan Singh v. State of Punjab*, AIR 1982 SC 1325.

of power.⁵³

Our Constitution makers were fully aware to the need for providing specific safeguards to Scheduled Tribes in India. They knew it well that humanness of society is determined by the degree of protection it provides to its weaker, handicapped and less gifted members. Whereas in a jungle everybody fends for himself and devil takes the hindmost, in a civilized society reasonable constraints are placed on the ambitions and acquisitiveness of its more aggressive members and special safeguards provided to its weaker and more vulnerable sections. These considerations are basic to any scheme of social justice and their neglect will brutalize any human society.⁵⁴ Unless adventitious aids are given to the under privileged people like the Scheduled Tribes, it would be impossible to suggest that they have equal opportunities with the more advanced people. This is the reason and the justification for the demand of social justice that the under-privileged citizens of the country should be given a preferential treatment in order to give them an opportunity with the more advanced sections of the community.⁵⁵

3.1.3.Livelihood of Indigenous People.

The term “indigenous people” is not recognized in India as given in the Convention on Indigenous people and they have in no way been guaranteed with any special status, per se, unless recognized under the constitution as Scheduled Caste or Scheduled Tribe. Therefore, all tribal are considered to be indigenous, but all indigenous people are not considered as tribal.⁵⁶ To be safeguarded under Art. 244(1) of the Constitution as Scheduled Caste and Scheduled Tribe, the President has to recognize the indigenous people as Scheduled Tribe. It is to be taken that they are scheduled tribes by the virtue of them being in the Scheduled area. Thus, their rights have also been construed to be safeguarded under Art. 244(1) and the provisions of the Fifth Schedule of the Constitution. Therefore, in the present case, the indigenous tribal communities are to be considered on the same footing as Scheduled Tribes.

The source of livelihood for forest dwellers⁵⁷ for generations has been forests and forest lands⁵⁸ and so they are considered inseparable. However, with the advent of civilization they were

⁵³*Haryana Development Authority v. Dropadi Devi*, (2005) 9 SCC 514; *Dolly Chandra v. Chairman Jee*, (2005) 9 SCC 779.

⁵⁴Quoted in Report of the Backward Classes Commission (First Part, Volumes I to II), 1980, p.21.

⁵⁵Justice K. Subba Rao, *Social Justice and Law*, (1976), p.65.

⁵⁶*State of Kerala V. People Union for Civil liberties*, (2009) 8 SCC 46

⁵⁷Section 2 (o), The Scheduled Tribes and other Traditional Forest Dweller Act, 2006.

⁵⁸Section 2(c), The Scheduled Tribes and other Traditional Forest Dweller Act, 2006.

exploited by outsiders⁵⁹, thus, there was a necessity to protect the inherent rights of indigenous people to empower them to utilise and to exercise control over forest for sustainable development.⁶⁰ Therefore, to protect forest land from deforestation and to encourage forestation⁶¹, State is casted upon a duty to save the fast diminishing forest cover of the country⁶² under the principle of Public Trust Doctrine⁶³, Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA)⁶⁴ and Articles 48A of the Constitution to preserve the Forests which are considered to be a national wealth under Environment Protection Act, 1986.⁶⁵ Thus it should be taken in mind that the precarious nature of the state policies goes against every established sense of reasonableness; depriving the indigenous people there land would not only affect them but also the entire nation.

The Rio Submit, 1992, The Indigenous and Tribal Populations Convention, 1957⁶⁶ and United Nation Declaration on Indigenous people also recognize the rights of indigenous people over the land.⁶⁷ The international conventions are considered important to be read with fundamental rights as they further, enlarge the scope of the same.⁶⁸ This depicts the special relationship between the indigenous people and the forests and their sustenance which solely arises from these forests.

3.1.4. Deforestation and its Effect On Livelihood

As stated above forest dwellers derive their sustenance, shelter, source of livelihood, social and economic status from forests⁶⁹, therefore, for them forests act as potent weapon of, economic empowerment in social democracy.⁷⁰

In the present case, the forests of Swadeshi has been the home and sustenance ground for the tribal communities for centuries. The act of constraining their movement inside the forest and the further aggravated act of being ambiguous about the fundamental right of proper rehabilitation

⁵⁹ M P Jain, The Constitution of India, First Report of the Commissioner For Scheduled Castes and Scheduled Tribes, 3, 11(1952); *Samatha v. State of Andhra Pradesh & Ors.*, AIR 1997 SC 3297.

⁶⁰ *Ashok Kumar Tripathi v. Union of India and others*, W.P. No. 2262/99.

⁶¹ *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504.

⁶² *A.P. State Fishermen Development and Welfare Association v. District Collector and Ors*, 2010 (2) ALD 300.

⁶³ See *Id.*

⁶⁴ Section 4(d) & (m) of PESA.

⁶⁵ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

⁶⁶ Article 11, ILO Convention, 1957.

⁶⁷ *State Of Kerala And Another v. Peoples Union For Civil Liberties, Kerala State Unit And Others*, Civil Appeal Nos. 104-105 Of 2001.

⁶⁸ *Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest*, Writ Petition (Civil) No. 180 OF 2011; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 at 249; *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 at p 1487.

⁶⁹ *Samatha v. State of Andhra Pradesh & Ors*, AIR 1997 SC 3297.

⁷⁰ *Waman Rao v. Union of India* [1981] 2 SCR 1 : *Dalmia Cement Bharat Ltd. v. UOI* (1996) 10 SCC 104.

puts the livelihood of the tribal people in jeopardy. The promotion of economic interests of the Scheduled Tribes is also a notable feature of our Constitution.⁷¹ Thus the act of the government in depriving the Scheduled Tribes of their rights goes against the fabric of the Constitution. Even though no proper resolution was passed by the Gram Sabha⁷², the Government of India and DoEF has gone against established conventions and modalities in their pursuit of voidness. The actual operation of the tribal safeguards is of vital importance than merely peeping through the constitutional provisions. In this context, it has become necessary to lay down personnel policy geared towards the objectives of the development of the tribal people of the society. Therefore, in the fitness of things, the institutional, structural and functional contours of various programmes have to be in conformity not only with the accelerating pace of development but also with the constitutional rights and safeguards.

3.2. Forced Assimilation of indigenous people violates Constitutional provisions of India and international conventions & treaties.

3.2.1. Forced Assimilation Is a Violation of Art 29(1), 48A and 51A

The Constitution of India clearly states that it is the duty of the State to protect and improve the environment and to safeguard the forests and wildlife of the country under Art 48A – Directive principles of State Policy and under Art 51A (g) -Fundamental Duties. The Courts are increasingly relying on the directive principles as complementary to fundamental rights⁷³. The combined reading of Art. 48A and 51A (g) visualizes the collaboration and conjoint effort of the citizen and the state to attain the aspirations and objectives embedded therein.⁷⁴

The phrase used in Art.48A, ‘protect and improve’ implies that government action is to improve quality of environment and not just to preserve the degrading environment. In case of failure to comply with the duties ingrained in Art 48A and 51A (g), it can be enforced in courts by expanding the interpretation of Art.21. In order to attain the constitutional goal of protection and improvement of the environment and protecting people inhabiting the vulnerable areas from the hazardous consequences of the arbitrary exercise of power without due regard to their life, liberty and property, the Court will be left with no alternative but to intervene effectively by

⁷¹See the Constitution of India, Articles 16(4), 23, 24 and 38 to 47.

⁷²¶ 7, Moot proposition.

⁷³2003 Cri LJ (NOC) 277: 2003 (1) Mad LW 262 (273).

⁷⁴(1985) 2 APLJ (HC) 225 (230).

issuing appropriate writs, orders and directions.⁷⁵

Art 29(1) is a right conferred upon those sections of the community which constitute a minority.⁷⁶ It can be inferred from Art 29(1) that if a cultural minority has the right to preserve its language, script and culture and the state shall not impose upon it any other culture which may be local or otherwise.⁷⁷ It also includes the right “to agitate for protection of the language, including political agitation.”⁷⁸ The right conferred by Art 29(1) is absolute in nature and cannot be subjected to reasonable restrictions unlike that of Art.19 (1).⁷⁹ In this particular case the indigenous people will be made to under the pains of forced assimilation; as they will be exposed to the outer world by this project. The PETITIONER, thus, submits that there has been a gross violation of the fundamental right conferred under Art. 29(1), 48 A and 51 A of the Constitution of India.

3.2.2. The Government has violated the Scheduled Tribes and Traditional Dwellers Act

The Scheduled Tribes and Traditional Forest Dwellers Act were enacted to grant legal recognition to the rights of traditional forest dwelling communities. The policy decision of GoI has violated Sections 4(2) (d), 33, 4(2) (e) 34 and 4 (8) of the above mentioned act. The Act also stipulates that it is the duty of a holder of a forest right to ensure the protection of the forest from any destructive practices affecting its cultural and natural heritage.⁸⁰ This too was not adhered to. In T.N.Godavarman Thirumalpad v. Union of India⁸¹, it was held that only a local inhabitant, forest or police officer shall be permitted to enter the reserved forests except in accordance with the permission in writing issued by the Principle Chief Conservator of forests. In furtherance of The Scheduled Tribes and Traditional Forest Dwellers Act, the GoI has not adhered to provisions of United Nations Declaration on the rights of Indigenous People to which it is a signatory. Article 8⁸² prohibits the forced assimilation of indigenous people arising from any state action.

⁷⁵AIR 1988 HP 4; (1988) 1 Sim LC 32 (DB).

⁷⁶*Kerala Education Bill, in re*, AIR 1958 SC 956: 1959 SCR 995.

⁷⁷Durga Das Basu, *Shorter Constitution of India*(14th ed. 2009).

⁷⁸*Jagdev Singh Sidhanthi v. Pratap Singh Daulta*, AIR 1965 SC 183.

⁷⁹See *Id.*

⁸⁰Section 5(c)ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage. (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

⁸¹1997 (7) SCC 440.

⁸²**Article 8:**Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values

The failure of obtaining consent of the indigenous people has led to the violation of another provision⁸³ of the above stated declaration.

3.2.3. *Right to Environment has been violated.*

Article 21 of the Constitution lays down that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Under Art. 21 of the Constitution, people have the right of enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws including even the Government with its policies, as in the present case, a citizen has a right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.⁸⁴ It does not only refer to the necessity to comply with procedural requirements, but also substantive right of citizens.

The Governmental policies in regard to the mining project have no clear indication as to the safety measures taken. It is known well that the mining of uranium causes great danger to the survival of both humans and other living creatures in the area. The failure of the government in assessing the impact can be taken as a mark of its incompetence. In a plethora of cases⁸⁵, the Supreme Court has held the inalienability of the Right to Environment from the Right to Life is envisaged by Art 21. It has even held that protection of the environment will have precedence over the economic interests of the country. In *Subhash Kumar v. State of Bihar*⁸⁶ the court held that the right to life includes the right to enjoy unpolluted air and water. In this case there is a constitutional imperative on the state not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the natural environment.⁸⁷

or ethnic identities;(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;(d) Any form of forced assimilation or integration;

⁸³**Article 10:**Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

⁸⁴*Subhash Kumar v. State of Bihar*, AIR1991SC 420.

⁸⁵*T. Damodhar Rao v. S.O. Municipal Corpn, Hyderabad*, AIR 1987 AP 171:*Indian Council for Enviro Legal Action v. Union of India*, (1996) 5 SCC 281:*Vellore Citizens Welfare Forum's case supra: M.C. Mehta v. Union of India* (1997) 2 SCC 411:*M.C. Mehta v. Union of India*, (1998) 9 SCC 589:*Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

⁸⁶AIR 1991 SC 420, 424.

⁸⁷1995 (2) SCC 577.

Another aspect of right to life-the right to livelihood can potentially check government actions with an environment impact that threaten to dislocate poor people and disrupt their livelihood. The Supreme Court accepted the right to livelihood in the case of *Olga Tellis v. Bombay Municipal Corporation*⁸⁸, though ruled in favour of the respondent; the Supreme Court accepted the claims of the petitioner and ordered them to be relocated. Thereafter, in *Banaswasi Seva Ashram v. State of Uttar Pradesh*⁸⁹, the Hon'ble Supreme Court allowed the acquisition of land only after the indigenous tribal communities were provided with certain facilities. But in the present case, though certain conditions were laid down by the MoEF these conditions are not enough to prevent the dissipation of the tribal people and the nature in the concerned area, as the case at hand deals with Uranium mining. It is to be taken with a pinch of salt that the government, through its policies, will endanger the lives of the innocent tribal people; the subjugation of the tribal communities to the effects of atomic radiation can be compared to the holocaust. Their right to peaceful co-existence with the nature will be endangered but what is most starking is the policy of the government which would slowly kill the innocent tribal people. In this time of hour it is imperative to also find the defects of the planning and implementation of the policy decisions of the government in regard to the mining operations. In U.K. section 30A of the Town and County Planning Act, 1971,⁹⁰ provides that where mineral development is permitted *subject to restoration condition*, imposed under sec. 29, and meaning that, after completion of the operations, the site shall be restored by applying subsoil, and/ or topsoil, after-care conditions are also imposed.⁹¹ The gloomy nature of our practices, when it comes to environmental clearances, is that in most cases such imposition of after-care is not imposed as in this case.⁹² This would not only mean that the mining operations would harm the tribal communities in the present but also in the future as well. This would lead to continued violation of human rights and dignity.

It is the duty of the Court to strike a balance between development and environment. The Principles of sustainable development and administer justice should be applied. Principle 3 of the Rio Declaration 1992 proclaims that the right to development should be fulfilled so as to

⁸⁸AIR 1986 SC 180.

⁸⁹AIR 1987 SC 378.

⁹⁰In the light of the Stevens Committee report, the sections 29 and 30A are to be construed together in case of mining leases.

⁹¹David Hughes, *Environmental Law* (1st ed. 1986).

⁹²See *Id.*

equitably meet developmental and environmental needs. The Supreme Court has noted many a times that development is not antithetical to environment.⁹³ It is well-settled that it is the duty of the government to prevent hazardous and inherently dangerous activities causing health hazards and creating pollution. But it is sad to see that the very same government has come up with a policy that would threaten the very survival of the indigenous people.

The Constitution has to be liberally construed so as to advance the content of the right guaranteed in it. In *Banawasi Seva Ashram v. State of U.P.*⁹⁴, the Supreme Court held that the rights of forest dwellers take precedence over even an important public purpose.⁹⁵ The intent of the Legislature regarding rights of Tribal dwellers has been clearly established through various legislations.⁹⁶ The rights of Tribal dwellers have established through International Conventions⁹⁷ as well as by the Supreme Court through various cases.⁹⁸ The PETITIONER submits that tribal lives are centred on the forests in which they dwell and to relocate them robs them of their livelihoods.

In the celebrated case of *Dyson v. A.G.*,⁹⁹ it was declared that even a bare declaration of intent on behalf of the Administration can be challenged even when the action has not yet appropriated. While the *Francovich case*¹⁰⁰ was a result of the failure implement a directive, in later cases, the ECJ has held that there may be liability for incorrect transposition if the Member State has manifestly disregarded the limits. Thus the PETITIONER submits that the defence of dispicable and unsustainable policy of environment is against the whole of the nation in a long term basis. Even if a treaty is not 'self-executing', courts should prefer interpretation of the statutes that conform to international laws and treaties to which India is a party to those that do not.¹⁰¹

⁹³AIR 1985 SC 652.

⁹⁴AIR 1987 SC 374.

⁹⁵*Karjan Jalasay Yojana Assargrasth Sahkar and Sangarsh Samiti v. State of Gujarat*, (1986) Supp 1 SCC 350 “We appreciate the anxiety of the state Government to take possession of the acquired land. We are also aware that the land has been acquired for an important public purpose. But, at the same time, we cannot overlook the human problem arising out of large number of tribal and other persons belonging to weaker section on account of acquisition of land.”

⁹⁶The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

⁹⁷ILO Convention on Indigenous and Tribal Peoples, 1989.

⁹⁸*Selam Mavatta Ezhupulli Malaivazh Makkal Nalachangam v. State of T.N.*; WAP No. 376 of 2008.

⁹⁹*Dyson v. A.G.* (1911) 1 KB 410 (423-24) (CA).

¹⁰⁰*Francovich and Boniface v. Italy* (1991) ECR I-5357.

¹⁰¹The main general international treaties that embody the rights in the Universal Declaration of Human Rights are the International Covenant on civil and Political Rights and The International Covenant on Economic, Social, and Cultural Rights. Both entered into force in 1976. There are also specific international treaties elaborating certain rights with the UDHR such as the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or

The privilege of the state to trade in obnoxious and substances injurious to health was questioned.¹⁰² The Court held that the state has no right to trade in substances obnoxious or substances injurious to health. It is the duty of the State to protect the human life and improve public health. It cannot claim the privilege.¹⁰³ Thus it is submitted by the PETITIONER that the policies of the government in regards to the development and extraction of uranium in the reserved forests is against the right to decently clean environment bestowed in the Constitution. The fundamental character of the right to life renders narrow approaches to it inadequate nowadays; under the right to life, in its modern and proper sense, not only is protection against arbitrary deprivation of life upheld, but states are under the duty ' to pursue policies which are designated to ensure access to the means of survival'¹⁰⁴ of the people.

4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID

The petitioner humbly submits that the respondent herein has not granted the environmental clearance in accordance with the Environment Impact Assessment Notification 2006¹⁰⁵, which is necessary before every mining operation commences¹⁰⁶, thereby violating various provisions of the Forest Conservation Act, 1980, Environment Protection Act, 1986 and Environment Protection Rules, 1986. This particular petition questions the validity of the environmental clearance, which when validated causes damage to the environment, resulting in a disturbance to the livelihood of the tribal community which in turn infringes various fundamental rights of the tribal community.

4.1. Environmental clearance invalid based on procedural violations

It is submitted that the respondent, which was under a duty to satisfy the requirements listed in the EIA Notification 2006, has committed gross violations of the procedure before granting Environmental Clearance for the mining project in and around the reserved forest areas of Swadeshi. The Hon'ble Supreme Court in the case of *Orissa Mining Corporation Ltd. v Ministry of Environment and Forests*¹⁰⁷ directed the authority to follow various conditions for converting

punishment, which entered into force in 1987.

¹⁰²(1989) 4JT (267).

¹⁰³See *Id.*

¹⁰⁴Ramcharam (op. Cit., note 38), p.179, 181-3.

¹⁰⁵Ministry of Environment and Forests, Government of India, *Gazette of India*, 14.09.2006, <http://envfor.nic.in/legis/eia/so1533.pdf>

¹⁰⁶*M.C.Mehta vs. Union of India*, A.I.R. 2004 S.C. 4016

¹⁰⁷ 2013 STPL(Web) 323 SC

forests for non-forest purposes which includes the compliance of all the Rules and Acts related to environmental clearance. This position was made clear in a decided case¹⁰⁸, where it was held that the Ministry of Environment and Forests being the nodal agency had to follow the 3 step procedure namely Scoping, Public Consultation and the Appraisal, enshrined in the EIA Notification 2006, prior to granting of environmental clearance.¹⁰⁹

4.1.1. Public Hearing

The Environment Impact Assessment Notification 2006 states that the most important pre-requisite to environmental clearance in the mining projects to extract minerals for atomic energy purposes, is the conductance of a public hearing in areas that are likely to be affected by the project, followed by the appraisal procedure which consists of the detailed scrutiny of the application and other documents such as Environmental Assessment submitted along with the application. It also scrutinizes the reports and suggestions of the public hearing that are to be attached with the application made to the Ministry of Environment and Forests for Environmental Clearance. Environmental Impact Assessment Notification 2006 lays down a detail procedure to be followed to conduct a public hearing for an environmental clearance.¹¹⁰

In the present case, the RUC applied for environmental clearance on 13th July 2013 and the public hearing was conducted on 17th August 2013.¹¹¹ It is clear that the public hearing in this case was not prior to the application made for environmental clearance and the application attached no information about the public hearing. Hence, the public hearing conducted here, *per se* is of no value. This procedural violation has indeed resulted in the grant of environmental clearance causing grave injustice and gross violation of Fundamental Rights of the tribes of Swadeshi enshrined in the Indian Constitution.

4.1.2. Time Lapse

It is further submitted by the petitioner that the respondent granted the environmental clearance after the expiry of time period under the EIA Notification 2006. The notification has issued that the clearance should be conveyed to the applicant within completion of 105 days of the date of

¹⁰⁸ *Kalpavriksh v Union of India* Application, No. 116 (THC) of 2013, National Green Tribunal Principal Bench, New Delhi

¹⁰⁹ Sl. No. 7, *Environment Impact Assessment Notification*, <http://envfor.nic.in/legis/eia/so1533.pdf>

¹¹⁰ Appendix IV, *Environment Impact Assessment Notification*, 2006

¹¹¹ ¶ 7 of the Moot Proposition

application attached with concerned documents.¹¹²In the present case, the application was made to the respondent on 13th July 2013. The respondent through the Ministry of Environment and Forests conveyed its approval of environment clearance on 01st June 2014, after nearly 300 days from the date of application and claimed in its approval letter that it had granted environmental clearance in accordance with the Environment Impact Assessment Notification.¹¹³

There was an evident violation of the procedure under the Environmental Impact Assessment Notification due to the long, unreasonable time gap between the application and the clearance. After the expiry of the time period, there ought to have been a fresh impact assessment submitted to the respondent for the environment clearance. The failure to do so would only worsen the condition of the tribal people who are to suffer due to the environmental impacts. It is therefore submitted that the environment clearance granted based on reports submitted close to 300 days prior to the date of clearance without any subsequent assessments post the expiry period, is clearly arbitrary and unreasonable.

4.2. Violation of Mines and Minerals (development and regulation) Act

In addition to various violations of the acts above, it is humbly submitted by the petitioner that the respondent failed to comply with the provisions of the Mines and Minerals (Development and Regulation) Act of 1957. Section 4 states that no person shall undertake any mining operation without complying with the rules and regulation mentioned under this act.¹¹⁴This attracts the attention of the petitioner to Section 6(1)(b)¹¹⁵ of the said act which states that no person shall acquire one or more mining lease beyond the area of ten square kilometers for the purpose of any mining of mineral listed under this act.¹¹⁶ Uranium is listed under the said act

¹¹² ¶ 8 of the *Environment Impact Assessment Notification, 2006*:- 8. Grant or Rejection of Prior Environmental Clearance (EC):(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

¹¹³ Annexure C, Moot Proposition

¹¹⁴ § 4. (1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder]

¹¹⁵ 6. (1) No person shall acquire in respect of any mineral or prescribed group of associated minerals [in a State] – (b) one or more mining leases covering a total area of more than ten square kilometres

¹¹⁶ *Orissa Mining Corporation v Ministry of Environment and Forests*, 2013 STPL(Web) 323 SC.

under the part B of First Schedule. In the present case, the respondent leased an area covering 45 square kilometers including the forests of Swadeshi to the UCIL.¹¹⁷

Secondly, the respondent ought to have complied with the provisions laid down in Section 8(1) of the MMDR Act of 1957 which states that the mining lease should not exceed the period of thirty years. In this case, the land was leased to the UCIL for Uranium mining for a period of 50 years¹¹⁸ thus violating the above mentioned provision.

Further, the petitioner directs the attention of the Hon'ble Court to proviso of Section 4(1)¹¹⁹ which states that the provisions of Section 4(1) would not affect the prospecting operations taken by the Department of Atomic Energy. It is important to note that, in the present case, the activity that is to be conducted is not a prospecting operation, but a mining activity to extract Uranium.¹²⁰ Therefore, there are no exceptions to the provisions of Section 4(1). Environmental clearance thus granted is not in consonance with various provisions of various acts and hence invalid in the eyes of law.

4.3.Environment Clearance when validated

It is submitted that the petitioner would be subject to grave injustice when the arbitrary environmental clearance, which is not in consonance with the Environment Impact Assessment Notification, is validated. The Constitution protects its citizens against any injustice or violation of their rights.¹²¹

4.3.1.Violation of test of reasonableness

Section 2(ii) (iv) of The Forest Conservation Act, 1980 provides that Central Government can allow deforestation for "non-forest purposes" if the government considers it reasonable on the basis of the reports of its committee to cut any forest for a particular purpose, which is done in a

¹¹⁷ Para 4, Moot Proposition

¹¹⁸ See *Id.*

¹¹⁹ Proviso to Section 4(1) of MMDR Act, 1957:-Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, 1 [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central overnment, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956.

¹²⁰ Section 3 of MMDR Act 1957:- In this Act, unless the context otherwise requires: (c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose; (d) "mining operations" means any operations undertaken for the purpose of wining any mineral; (g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations; (h) "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;

¹²¹ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

reasonable manner.¹²²In the present case, there has been a total non-application of mind in granting of environmental clearance without taking into consideration the details of public hearing, which was conducted only after the application was submitted to the respondent. Secondly, the grant of environmental clearance has been conveyed after the expiry of time specified under the Environment Impact Assessment Notification. This is a clear act of arbitrariness by the respondent in granting environmental clearance without any recent environment impact assessments.

The respondent herein has acted unreasonably by neglecting the tribal people. This would grossly impact the lives of the tribal community of Swadeshi and would fail the test of reasonability under Article 19 of the Constitution.¹²³

4.3.2. Violation of various provisions of directive principles read with fundamental rights

It is submitted by the petitioner that the arbitrary and unreasonable validation of grant of environmental clearance would result in damage of environment, life of the tribal people and their health evidently violating various provisions under the Constitution. The provisions under the Directive Principles of State Policy are violated when read with the provisions of Fundamental Rights when the environmental clearance is validated. Article 48-A lays down that the state shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Also, according to the fundamental duties listed in Article 51-A of the Constitution, it is the duty of the state to protect the environment and to have a compassion for living creatures.

The development and the protection of environments are not enemies. If without degrading the environment, the development activity is planned, it is allowed to go ahead.¹²⁴In case of doubt, protection of environment would have precedence over the economic interest.¹²⁵In the present case, there has been a high level of doubt arisen due to the arbitrary grant of environmental clearance without any public hearing reports. The present environment clearance has not taken into consideration any recent reports on the environment assessment impact. This clearly shows that the respondent herein has not taken due care to assess the anticipated damage. In this case, the report submitted by the Department of Atomic Energy mentions that the Uranium mining

¹²²*Goa Foundation and Others v. State of Goa and Others*, 2001 (3) BomCR 813.

¹²³*Samatha v. State of AP & Ors.* AIR 1997 SC 3297; *T.N Godavarman Thirumulkpad v. UOI*, (1997) 2 SCC 267

¹²⁴ Principle 15, Precautionary Principles, Rio Conference of 1992

¹²⁵*M.C.Mehta v Union of India*, AIR 2004 SC 4016

process should be undertaken by the means of Leaching Process and Tailing Dams to safeguard the environment and protect it from any damage.¹²⁶ Ironically, this in itself is an example of environmental damage. The arbitrary and unreasonable environmental clearance granted by negligence on the part of the respondent, neglecting the environmental aspects and the life of tribal people in Swadeshi, is a transparent and a complete violation of the provisions mentioned above.

In order to attain the constitutional goal of protection and improvement of the environment and protecting people inhabiting the vulnerable areas from the hazardous consequences of the arbitrary exercise of power without due regard to their life, liberty and property, the Court should intervene effectively by issuing appropriate writs, orders and directions.¹²⁷

In a plethora of cases¹²⁸, the Hon'ble Supreme Court has given importance to health of the individuals exposed to hazardous substances thereby safeguarding the various Directive Principles under Articles 39(e), 41, 43, 48-A read with Article 21 in order to protect the citizens by guaranteeing a person's right to live a life of meaningful purpose and dignity. Therefore, it is humbly submitted by the petitioners that the environmental clearance granted is not in consonance with the Environmental Impact Assessment Notification and hence invalid. It is also submitted that the arbitrary and unreasonable environment clearance when validated, violates various provisions of the Constitution without safeguarding the life of the tribal people of Swadeshi. The petitioner has thus approached this Hon'ble Court and raised issues that have caused grave injustice to its people.

¹²⁶ Annexure B, Part II, Moot Propostion

¹²⁷ *Kinkri Devi And Anr. vs State Of Himachal Pradesh And Ors.*, AIR 1988 HP 4

¹²⁸ *Consumer Education & Research Centre v. Union of India*, AIR 1995 SC 922; *Kalyaneswari v. Union of India*, (2011) 3 SCC 287; *Kirloskar Bros. v. ESI Corpn.*, AIR 1996 SC 3261

Prayer

Prayer

In the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to:

1. To quash the impugned environmental clearance
2. To issue a prohibitory order restraining respondents in proceeding with the project.

AND/OR

Pass any other order that it deems fit in the interest of Justice, Equity and Good Conscience.

COUNSELS FOR THE PETITIONER

Place:

Date: