

sought for by the petitioner to which MOEF has agreed shall be implemented in letter and spirit. The implementation wherever it is to be done by the MOEF, should be done forthwith and wherever it is required to be done by any other Ministry or authority or agency, the Nodal Ministry/MOEF shall ensure that it be so implemented. In case of any doubt or dispute, it would be the responsibility of MOEF to satisfy this Court. Further, the Ministry shall also develop a mechanism to ensure that wherever its directions are not implemented, necessary action is taken against those who are responsible for it. If any Inter-Ministerial consultation is required, the lead is to be taken by MOEF to see that such consultation taken place and effective measure are taken.

15. First, the legal principles in brief may be noticed

The legal position regarding applicability of the precautionary principle and polluter pays principle which are part of the concept of sustainable development in our country is now well settled. In Vellore Citizens' Welfare Forum vs. Union of India & Ors. [(1996) 5 SCC 647], a three Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter pays principle have not emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum's case that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) and Ors. [(1996) 5 SCC 718] where, after referring to the principles noticed in Vellore Citizens' Welfare Forum's Case, the same have been explained in more detail with a view to enable the Courts and the Tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State Institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the working group of the International Law Commission in 1996 on "Prevention of Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary legislative, administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed at same pedestal as human rights concerns, both being traced to Article 21 of the Constitution of India. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the Court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by Courts as facets of those fundamental rights and hence enforceable as such (see People's Union for Civil Liberties Vs. Union of India & Anr. [(1997) 3 SCC 433]). The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The rights to information and community