Bangalore Medical Trust v. B. S. Muddappa
AIR 1991 Supreme Court 1902 (From: AIR 1990 Karnataka 87)
Civil Appeal No. 2750 of 1991 (arising out of Special Leave Petition (Civil) No. 13940 of 1989), D/-19-7-1991
Dr. T.K. Thommen and R.M. Sahai, JJ.

(A) Constitution of India, Art. 226 - Public interest litigation - Locus standi - Development Scheme - Conversion of Public Park into private nursing home - Petition against by inhabitants of locality - Maintainable.

Bangalore Development Act (12 of 1976), S.19.

Public Park - Conversion into private nursing home - Petition against - Locus standi.

(Per R. M. Sahai - Dr. T.K. Thommen J. agreeing) - The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards free movement both in nature of litigation and approach of the courts.

(Para 36)

(B) Bangalore Development Act (12 of 1976), Ss. 19(4), 2(b) - Amenity - Private nursing home is neither amenity nor can be considered improvement over necessity like public park - Moreover conversion of Public Park into Private nursing home by State Govt. - Illegal.

Constitution of India, Art. 226.

Public Park - Conversion of site into private nursing home by Government - Illegal.

Development Authority - Conversion of Public Park into private nursing home - Not permissible.

Amenity - Private nursing home held not amenity.

Per: R. M. Sahai, J. (Dr. T. K. Thommen, J. - agreeing) - The purpose for which the Act was enacted is spelt out from the preamble itself which provides for establishment of the

Authority for development of the city of Bangalore and areas adjacent thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in this scheme could have been made as provided in sub-section (4) of Section 19 only if it resulted in improvement in any part of the scheme. A private nursing home could neither be considered to be an amenity nor could it be considered improvement over necessity like a public park. The exercise of power in conversion of Public Park into private nursing home therefore was contrary to the purpose for which it is conferred under the statute.

(Paras 46, 32)

The definition of Amenity in S. 2(b) indicates that the convenience or facility should have had public characteristic. Even if it is assumed that the definition of amenity being inclusive it should be given a wider meaning so as to include hospital added in clause 2(bb) as a civic amenity with effect from 1984. A private nursing home unlike a hospital run by Govt. or local authority did not satisfy that characteristic which was necessary in the absence of which it could not be held to be amenity or civic amenity. In any case a private nursing home could not be considered to be an improvement in the scheme and, therefore, the power under Section 19(4) could not have been exercised.

(Paras 48, 22)

The purpose of the Authority taking a decision of converting the site is their knowledge of local conditions and what was better for them. That is why participatory exercise is contemplated. If any alteration in Scheme could be done by the Chairman and the Chief Minister then sub-section (4) of Section 19 is rendered otiose. There is no provision in the Act for alteration in a scheme by converting one site to another, except, of course, if it appeared to be improvement. But even that power vested in the Authority not the Government. In the instant case every order, namely, converting the site from public park to private nursing home and even allotment to Medical Trust for nursing home was passed by the State Government and the BDA Development Authority acting like a true subservient body obeyed faithfully by adopting and confirming the directions. It was complete abdication of power by the BDA. The Legislature entrusted the responsibility to alter and approve the Scheme to the BDA but the BDA in complete breach of faith reposed in it, preferred to take directions issued on command of the Chief Executive of the State. This resulted not only in error of law but much beyond it. The State Government could be concerned or involved with an altered scheme either because of financial considerations or when additional land was to be acquired, an exercise which could not be undertaken by the BDA. A development scheme, therefore, sanctioned and published in the Gazette could not be altered by the Government. The entire proceedings before the State Government suffered from absence of jurisdiction. Even the exercise of power was vitiated and ultra vires. Therefore the orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home to Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it were null, void and without jurisdiction.

(Paras 9, 53, 31, 33)

(C) Bangalore Development Act (12 of 1976), S. 19(4) - Powers of Development Authority - Conversion of Public Park into private nursing home - Non-consideration of medical facilities in the city - Misleading statement by Authority in High Court - Condemned - Per. R.M. Sahai, J.

Constitution of India, Art. 226. (Para 47)

(D) Constitution of India, Art. 226 - Administrative action - Is to be tested on anvil of rule of law and fairness and justice.

Per R. M. Sahai, J - The executive or the administrative authority must not be oblivious that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved.

(Para 47)

(E) Bangalore Development Act (12 of 1976), S. 15(3) - Scope - Alteration of Scheme - S. 15(3) cannot be stretched to entitle Govt. to alter any scheme or convert any site.

Per - R. M. Sahai - J. - In S. 15(1) the Authority is empowered to draw up development scheme with approval of government whereas under sub-section (2) of S. 15 it is entitled to proceed on its own provided it has fund and resources. Sub-section (3) is the power of State Government to direct it to take up any scheme. The main thrust of the sub-section is to keep a vigil on the local body. But it cannot be stretched to entitle the Government to alter any scheme or convert any site or power specifically reserved in the Statute in the Authority. The general power of direction to take up development scheme cannot be construed as superseding specific power conferred and provided for under Section 19(4). The authority under Section 3 functions as a body. The Act does not contemplate individual action. That is participatory exercise of powers by different persons representing different interest. And rightly as it is the local persons who can properly assess the need and necessity for altering a scheme and if any proposal to convert from one use to another was an improvement for residents of locality such an exercise could not be undertaken by the Government. Absence of power apart, such exercise in fraught with danger of being activated by extraneous considerations.

(Para 51)

(F) Bangalore Development Act (12 of 1976), S. 65 - Scope - Powers of Govt. under S. 65 are restricted - Direction by Govt. for conversion of site - Not permissible.

Per R. M. Sahai, J. - An exercise of power which is ultra vires the provisions in the Statute cannot be attempted to be resuscitated on general powers reserved in a Statute for its proper and effective implementation. The Section authorises the Government to issue directions to ensure that the provision of law are obeyed and not to empower it itself to proceed contrary to law. What is not permitted by the Act to be done by the Authority cannot be assumed to be done by State Government to render it legal. An illegality cannot be cured only because it was undertaken by the Government. The Section authorises the Government to issue direction to carry out purposes of the Act. That is the legislative

mandate should be carried out. And not that the provision of law can be disregarded and ignored because what was done was being done by State Government and not the Authority. An illegality or any action contrary to law does not become in accordance with law because it is done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails are law and rule and not the height of the person exercising the power.

(Para 52)

Per Dr. T. K. Thommen, J. - Section 65 empowers the Government to give such directions to the Bangalore Development Authority as are, in its opinion, necessary or expedient for carrying out the purposes of the Act. It is the duty of the BDA, Bangalore Development Authority, to comply with such directions. The BDA is bound by all directions of the Government. The power of the Government under Section 65 is restricted. The object of the directions must be to carry out the object of the Act and not contrary to it. Only such directions as are reasonably necessary or expedient for carrying out the object of the enactment are contemplated by Section 65. If a direction were to be issued by the Government to lease out to private parties areas reserved in the scheme for public parks and playgrounds, such a direction would not have the sanctity of Section 65. Any such diversion of the user of the land would be opposed to the statute as well as the object in constituting the BDA to promote the healthy development of the city and improve the quality of life. Any repository of power be it the Government or the BDA - must act reasonably and rationally and in accordance with law and with due regard to the legislative intent.

(Para 20)

Cases Referred:	**Chronological Paras**
AIR 1990 SC 1277: (1990) 1 SCR 909	16
AIR 1988 SC 1782	24
AIR 1987 Andhra Pradesh 171	28
AIR 1986 SC 180: (1985) 3 SCC 545	24
AIR 1986 SC 847	24
AIR 1982 SC 149	36
ILR (1982) 1 Kant 1	43
AIR 1981 SC 298: 1980 Lab IC 1325	36
AIR 1981 SC 344: 1980 Lab IC 1367	36
AIR 1981 SC 746: (1981) 2 SCR 516:1981 Cri LJ 306	24
AIR 1980 SC 1622: (1981) I SCR 97: 1980 Cri LJ 1075	24
(1980) 447 US 255: 65 Law Ed 2d 106, Agins v. City of Tiburon	26
(1978) 57 Law Ed 2d 631: 438 US 104, Penn Central Transportation Company v. City of New York	25
(1974) 39 Law Ed 2d 797: 416 US 1, Village of Belle Terre v. Bruce Boraas	25, 28
AIR 1963 SC 1295: (1964) 1 SCR 332: 1963 (2) Cri LJ 329	24
(1961) 1 WLR 683: (1961) 2 All ER 145, Halsey v. Esso Petroleum Co. Ltd.	25
(1954) 99 Law Ed 27: 348 US 26, Samuel Berman v. Andrew Parker	27

(1926) 272 US 365: 71 Law Ed 303,
Village of Euclid v. Ambler Realty Company 25, 28

THOMMEN, J.:- Leave granted.

2. I have had the advantage of reading in draft the judgment of my learned Brother Sahai, J. and I am in complete agreement with what he has stated. It is in support of his reasoning and conclusion that I add the following words.

3. A site near the Sankey's Tank in Rajmahal Vilas Extension in the City of Bangalore was reserved as an open space in an improvement scheme adopted under the City of Bangalore Improvement Act, 1945. This Act was repealed by Section 76 of the Bangalore Development Authority Act, 1976 (Karnataka Act No. 12 of 1976) (hereinafter referred to as the "Act") which received the assent of the Governor on 2-3-1976 and is deemed to have come into force on 20-12-1975. By a notification issued under Section 3 of the Act, the Government constituted the Bangalore Development Authority (the "BDA"), thereby attracting Section 76 which, so far as it is material, reads-

> "76. Repeal and Savings -(1) On the issue of the notification under sub-section (1) of Section 3 constituting the Bangalore Development Authority, the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945) shall stand repealed.
>
> (2) & (3) .....
>
> Provided further that anything done or any action taken (including any appointment, notification, rule, regulation, order, scheme or bye-law made or issued, any permission granted) under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act:
>
> Provided also that any reference in any enactment or in any instrument to any provision of the repealed Act shall unless a different intention appears be construed as a reference to the corresponding provision of this Act.
> (4) ..... "
>
> (Emphasis supplied)

Accordingly, the scheme prepared under the repealed enactment is deemed to have been prepared and duly sanctioned by the Government in terms of the Act for the development of Rajmahal Vilas Extension. In the scheme so sanctioned the open space in question has been reserved for a public park.

4. However, pursuant to the orders of the State Government dated 27-5-1976 and 11-6-1976 and by its resolution dated 14-7-1976, the BDA allotted the open space in favour of the appellant, a medical trust, for the purpose of constructing a hospital. This site is stated to be the only available space reserved in the scheme for a public park or playground. This allotment has been challenged by the writ petitioners (respondents in this appeal) who are residents of the locality on the ground that it is contrary to the provisions of the Act and the scheme sanctioned there under, and the legislative intent to protect and

preserve the environment by reserving open space for 'ventilation', recreation and playgrounds and parks for the general public. The writ petitioners, being aggrieved as members of the general public and residents of the locality, have challenged the diversion of the user and allotment of the site to private persons for construction of a hospital.

5. The learned single Judge who heard the writ petition in the first instance found no merit in it and dismissed the same. He held that, a hospital being a civic amenity, the allotment of the site by the BDA in favour of the present appellant for the purpose of constructing a hospital was valid and in accordance with law. On appeal by the respondents (the residents of the locality) the learned Judges of the Division Bench held that, the area having been reserved in the sanctioned scheme for a public park, its diversion from that object and allotment in favour of a private body was not permissible under the Act, even if the object of the allotment was the construction of a hospital. The learned Judges were not impressed by the argument that the proposed hospital being a civic amenity, the Act did not prohibit the abandonment of a public park for a private hospital. Accordingly, allowing the respondents' appeal and without prejudice to a fresh allotment by the BDA of any alternative site in favour of the present appellant, according to law, the writ petition was allowed and the allotment of the site in question was set aside.

6. The appellant's counsel submits that the learned Judges of the Division Bench exceeded their jurisdiction in setting aside an allotment which was purely an administrative action taken by the BDA pursuant to a valid direction issued by the Government in that behalf. He submits that in the absence of any evidence of mala fide, the impugned decision of the BDA was impeccable and not liable to be interfered with in writ jurisdiction. He says that the decision to allot a site for a hospital rather than a park is a matter within the discretion of the BDA. The hospital, he says, is not only an amenity, but also a civic amenity under the Act, as it now stands, and the diversion of the user of the land for that purpose is justified under the Act.

7. The respondents, on the other hand, contend that it was improper to confer largesse on a private party at the expense of the general public. The special consideration extended to the appellant, they say, was not permissible under the Act. To have allotted in favour of the appellant an area reserved for a public park, even if it be for the purpose of constructing a hospital, was to sacrifice the public interest in preserving open spaces for `ventilation', recreation and protection of the environment.

8. The scheme is undoubtedly statutory in character. In view of the repealing provisions contained in Section 76 of the Act, which we have in part set out above, the impugned actions affecting the scheme will be examined with reference to the Act. The validity of neither the Act nor the scheme is doubted. The complaint of the writ petitioners (respondents) is that the scheme has been violated by reason of the impugned orders. The scheme, they point out, is a legitimate exercise of statutory power for the protection of the residents of the locality from the ill effects of urbanisation, and the impugned orders sacrificing open space reserved for a public park is an invalid and colourable exercise of power to suit private interest at the expense of the general public.

9. The Act, as enacted in 1976, has undergone several changes, but the definition of `amenity' in clause (b) of Section 2 remains unchanged. `Amenity' includes various `conveniences such as road, drainage, lighting etc. and such other conveniences as are notified as such by the Government.

10. Section 2 was amended in 1984 by Karnataka Act No. 17 of 1984 to add clause (bb), after clause (b), which distinguished a `civic amenity' from an `amenity'. Certain amenities were specified as civic amenities, such as dispensaries, maternity homes etc. and those amenities which are notified as civic amenities by the Government.

11. By Act 11 of 1988, clause (bb) of Section 2 was, w.e.f. 21-4-1984, substituted by the present clause which defines a civic amenity as, amongst others, a dispensary, a hospital, a pathological laboratory, a maternity home and such other amenity as the Government may by notification, specify. Clauses (b) and (bb) of Section 2 read together show that all those conveniences which are enumerated or notified by the Government under clause (b), are `amenities'; and, all those amenities which are enumerated or notified by the Government under clause (bb), are `civic amenities'.

12. Significantly, a hospital is specifically stated to be a 'civic amenity'. The concept of 'amenity' under clause (b), however, remains unchanged. It is not clear from sub-clause (i) of clause (bb) whether a hospital which is not run by the Government or a civic `Corporation' but, as in the present case, by a private body, would qualify as `civic amenity'. Nor is it clear whether a hospital was either an `amenity' or a `civic amenity' until it was specifically stated to be the latter by the Amendment Act 11 of 1988. The respondents (residents) contend that a hospital did not have the status of an `amenity' and much less a `civic amenity' until Act 11 of 1988 so stated. But perhaps the appellant rightly contends that Act 11 of 1988 was merely clarificatory of what was always the position, and the hospital has always been regarded as an `amenity', if not a `civic amenity'. However, on the facts of this case, it is unnecessary to pursue this point further. Nor is it necessary to consider whether a privately owned and managed hospital, as in the present case, is an `amenity' for the purpose of the Act.

13. The question really is whether an open space reserved for a park or playground for the general public, in accordance with a formally approved and published development scheme in terms of the Act can be allotted to a private person or a body of persons for the purpose of constructing a hospital? Do the members of the public, being residents of the locality, have a right to object to such diversion of the user of the space and deprivation of a park meant for the general public and for the protection of the environment? Are they in law aggrieved by such diversion and allotment? To ascertain these points, we must first look at the relevant provisions of the Act.

14. Chapter III of the Act deals with `development schemes'. The BDA is empowered to draw up detailed schemes for the development of the Bangalore Metropolitan Area. It may, with the previous approval of the Government, undertake from time to time any work for such development and incur expenditure therefore. The Government is also empowered to require the BDA to take up any development scheme or work and execute the same, subject to such terms and conditions as may be specified by the Government

(See Section 15). Section 16 provides that such development schemes must provide for various matters, such as acquisition of land, laying and re-laying of land, construction and reconstruction of buildings, formation and alteration of streets, drainage, water supply and electricity. In 1984 this section was amended by Act 17 of 1984 by inserting clause (d) so as to provide for compulsory reservation of portions of the layout for public parks and play grounds and also for civic amenities. Section 16(1)(d) provides:

> "S.16. Particulars to be provided for in a Development Scheme - Every development scheme under Section 15 (1) shall, within the limits of the area comprised in the scheme, provide for:
>
> (d) the reservation of not less than fifteen per cent of the total area of the layout for public parks and playgrounds and an additional area of not less than ten percent of the total area of the layout for civil amenities."

This provision thus treats `public parks and playgrounds' as a different and separate amenity or convenience from a `civic amenity'. 15% and 10% of the total area of the layout must respectively be reserved for (1) public parks and playgrounds, and, (2) for civic amenities. The extent of the areas reserved for these two objects are thus separately and distinctly stated by the statute. The implication of this conceptual distinction is that land reserved for a public park and playground cannot be utilised for any `civic amenity' including a hospital.

Section 16(2) says:

> S. 16(2) may, within the limits aforesaid, provide for -
>
> (a) .....
>
> (b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;
>
> (c) .....

The need for open space for `better ventilation' of the area is thus emphasised by this provision. One of the main objects of public parks or playgrounds is the promotion of the health of the community by means of `ventilation' and recreation. It is the preservation of the quality of life of the community that is sought to be protected by means of these regulations.

15. Section 17 lays down the procedure to be followed on completion of a development scheme. It deals with, amongst other things, the method of service of notice on affected parties. Section 18 deals with the procedure for sanctioning the scheme. The BDA must submit to the Government the scheme together with the particulars such as plans, estimates, details of land to be acquired etc. and also representations, if any, received from persons affected by the scheme. On consideration of the proposed scheme, the Government is empowered under sub-section (3) of Section 18 to accord its sanction for the scheme.

16. Section 19 says that when necessary sanction is accorded by the Government, it should publish in the Official Gazette a declaration as to the sanction accorded and the land proposed to be acquired for the scheme. Sub-section (4) of Section 19 says:

> "19(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6), forthwith proceed to execute the scheme as altered."

This means that the BDA may, subject to certain restrictions contained in sub-sections (5) and (6), alter the scheme, but such alteration has to be carried out pursuant to a formal decision duly recorded in the manner generally followed by a body corporate. The scheme is a statutory instrument which is administrative legislation involving a great deal of general law-making of universal application, and it is not, therefore, addressed to individual cases of persons and places. Alteration of the scheme must be for the purpose of improvement and better development of the City of Bangalore and adjoining areas and for general application for the benefit of the public at large. Any alteration of the scheme with a view to conferring a benefit on a particular person, and without regard to the general good of the public at large is not an improvement contemplated by the section. See the principle stated in Shri Sitaram Sugar Company Limited v. Union of India, (1990) 1 SCR 909, 937: (AIR 1990 SC 1277 at p. 1292).

17. Section 30 has not been amended, and, so far as it is material, reads:

> "30. Streets on completion to vest in and be maintained by Corporation.
>
> (1) .....
>
> (2) Any open space including such parks and playgrounds as may be notified by the Government reserved for ventilation in any part of the area under the jurisdiction of the Authority as part of any development scheme sanctioned by the Government shall be transferred on completion to the Corporation for maintenance at the expense of the Corporation and shall thereupon vest in the Corporation.
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> (Emphasis supplied)

Sub-section (2) of this section thus refers to open space, including parks and playgrounds, notified by the Government as reserved for 'ventilation'. Sections 31 prohibits transfer by sale or otherwise of sites for the purpose of construction of buildings until all the improvements specified in Section 30, including parks and playgrounds, have been provided for in the estimates. Section 32 prohibits any person from forming any extension or layout for the purpose of construction of buildings without specific sanction of the BDA. Section 33 has empowered the Commissioner of the BDA to order alteration or demolition of buildings constructed otherwise than in conformity with the sanction of the BDA. These provisions have not undergone any material change.

18. Chapter V of the Act deals with property and finance of the BDA. Section 38 reads:

"38. Power of authority to lease, sell or transfer property - Subject to such restrictions, conditions and limitations as may be prescribed, the Authority shall have power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme".

(Emphasis supplied)

This section also has not undergone any material change. It says that, subject to such restrictions, conditions etc., as may be prescribed, the BDA has the power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in it or acquired by it for the formation of `open spaces' or for building purposes or in any other manner for the purpose of any development scheme. This implies that land once appropriated or applied or earmarked by formation of `open spaces' or for building purposes or other development in accordance with a duly sanctioned scheme should not be used for any other purpose unless the scheme itself, which is statutory in character, is formally altered in the manner that the BDA as a body corporate is competent to alter. This section, of course, empowers the BDA to lease or sell or otherwise transfer any property. But that power has to be exercised consistently with the appropriation or application of land for formation of 'open spaces' or for building purposes or any other development scheme sanctioned by the Government. Property reserved for open space in a duly sanctioned scheme cannot be leased or sold away unless the scheme itself is duly altered. Any unauthorized deviation from the duly sanctioned scheme by sacrificing the public interest in the preservation and protection of the environment by means of open space for parks and playgrounds and 'ventilation' will be contrary to the legislative intent, and an abuse of the statutory power vested in the authorities. That this is the true legislative intent is left in no doubt by the subsequent amendment by Act 17 of 1984, inserting Section 38A, which reads:

"38A. Prohibition of the use of area reserved for parks, playgrounds and civic amenities for other purposes - The authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and any disposition so made shall be null and void".

(Emphasis supplied)

This amendment of 1984, which came into force on 17-4-84, is merely clarificatory of what has always been the legislative intent. The new provision clarifies that it shall not be open to the BDA to dispose of any area reserved for public parks and playgrounds and civic amenities. Any such site cannot be diverted to any other purpose. Any action in violation of this provision is null and void.

19. The legislative intent to prevent the diversion of the user of an area reserved for a public park or playground or civic amenity is reaffirmed by the Bangalore Development Authority (Amendment) Act, 1991 (Karnataka Act No. 18 of 1991) which came into force w.e.f. 19. 16-1-1991, and which substituted a new Section 38A in the place of the earlier provision inserted by Act 17 of 1984. Section 2 of the Karnataka Act 18 of 1991 reads:-

"S.2. Substitution of Section 38A - For Section 38A of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976) (hereinafter referred to as the principal Act), the following shall be deemed to have been substituted with effect from the twenty first day of April, 1984, namely : -

`38A. Grant of area reserved for civic amenities etc. : - (1) The Authority shall have the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved.

(2) The Authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and any disposition so made shall be null and void-

Provided that where the allottee commits breach of any of the conditions of allotment, the Authority shall have right to resume such site after affording an opportunity of being heard to such allottee".

This new Section 38A, as clarified in the Statement of Objects and Reasons and in the Explanatory Statement attached to L.A. Bill No. 6 of 1991, removed the prohibition against lease or sale or any other transfer of any area reserved for a civic amenity, provided the transfer is for the same purpose for which the area has been reserved. This means that once an area has been stamped with the character of a particular civic amenity by reservation of that area for such purpose, it cannot be diverted to any other use even when it is transferred to another party. The rationale of this restriction is that the scheme once sanctioned by the Government must operate universally and the areas allocated for particular objects must not be diverted to other objects. This means that a site for a school or hospital or any other civic amenity must remain reserved for that purpose, although the site itself may change hands. This is the purpose of sub-section (1) of S. 38A as now substituted. Sub-section (2) of Section 38A, on the other hand, emphasises the conceptual distinction between `public parks and playgrounds' forming one category of 'space' and 'civic amenities' forming another category of sites. While public parks and playgrounds cannot be parted with by the BDA for transfer to private hands by reason of their statutory dedication to the general public, other areas reserved for civic amenities may be transferred to private parties for the specific purposes for which those areas are reserved. There is no prohibition, as such, against transfer of open spaces reserved for public parks or playgrounds, whether or not for consideration, but the transfer is limited to public authorities and their use is limited to the purposes for which they are reserved under the scheme. The distinction is that while public parks and playgrounds are dedicated to the public at large for common use, and must therefore remain with the State or its instrumentalities, such as the BDA or a Municipal Corporation or any other authority, the civic amenities are not so dedicated, but only reserved for particular or special purposes. This restriction against allotment of public parks and playgrounds is further emphasised by Section 3 of the Karnataka Act 18 of 1991 which reads:-

"S.3. Validation of allotment of civic amenity sites - Notwithstanding anything contained in any law or judgement, decree or order of any Court or other authority, any allotment of civic amenity site by way of sale, lease or otherwise made by the

Authority after the twenty-first day of April, 1984, and before the Seventh day of May, 1988 for the purposes specified in clause (bb) of Section 2 of the principal Act, shall, if such site has been made use of for the purpose for which it is allotted, be deemed to have been validly made and shall have effect for all purposes as if it had been made under the principal Act, as amended by this Act and accordingly:-

(i) all acts or proceedings, or things done or allotment made or action taken by the Authority shall, for all purposes be deemed to be and to have always been done or taken in accordance with law; and

(ii) no suit or other proceedings shall be instituted, maintained or continued in any Court or before any authority for cancellation of such allotment or demolition of buildings constructed on the sites so allotted after obtaining building licences from the Authority or the (local authority concerned or for questioning the validity of any action or) things taken or done under Section 38A of the principal Act, as amended by this Act and no Court shall enforce or recognise any decree or order declaring any such allotment made, action taken or things done under the principal Act, as invalid."

The evil that was sought to be remedied by the validation provision is in regard to allotment of "civic amenity sites", and not public parks or playgrounds (see also the Explanatory Statement attached to the Bill). All these provisions unmistakably point to the legislative intent to preserve a public park or public playground in the hands of the general public, as represented by the BDA or any other public authority, and thus prevent private hands from grabbing them for private ends. It must also be stated here that the validation clause relates to the period between 21-4-1984 and 7-5-1988 which was long after the impugned allotment.

20. Section 65 empowers the Government to give such directions to the BDA as are, in its opinion, necessary or expedient for carrying out the purposes of the Act. It is the duty of the BDA to comply with such directions. It is contended that the BDA is bound by all directions of the Government, irrespective of the nature or purpose of the directions. We do not agree that the power of the Government under Section 65 is unrestricted. The object of the directions must be to carry out the object of the Act and not contrary to it. Only such directions as are reasonably necessary or expedient for carrying out the object of the enactment are contemplated by Section 65. If a direction were to be issued by the Government to lease out to private parties areas reserved in the scheme for public parks and playgrounds, such a direction would not have the sanctity of Section 65. Any such diversion of the user of the land would be opposed to the statute as well as the object in constituting the BDA to promote the healthy development of the city and improve the quality of life. Any repository of power - be it the Government or the BDA - must act reasonably and rationally and in accordance with law and with due regard to the legislative intent.

21. It is contended on behalf of the appellant that Section 38A prohibiting sale or any other disposal of land reserved for “public parks or playground”, and Section 16(1)(d) requiring that 15 per cent of the total area of the layout be reserved for public parks and

playgrounds, and an additional area of not less than ten per cent of the total area of the layout for civic amenities were enacted subsequent to the relevant orders of the Government dated 27-5-1976 and 11-6-1976 and the resolution of the BDA dated 14-7-76 resulting in the allotment of the site in favour of the appellant. Counsel says that at the material time when the Government made these orders and the BDA acted upon them there was no restriction on the diversion of the user of land reserved for a public park or play ground to any other purpose.

22. Significantly, the original scheme, duly sanctioned under the Act, includes a public park and the land in question has been reserved exclusively for that purpose. Although it is open to the BDA to alter the scheme, no alteration has been made in the manner contemplated by Section 19(4). It is, however, true that certain steps had been taken by the Government and the BDA to allot the open space in question to the appellant. My learned brother Sahai, J. has referred to the letter dated 21st April, 1976 addressed by the Chairman of the BDA to the Chief Minister and the endorsement made by the Chief Minister on that letter as well as the Orders of the Government dated 27th May, 1976 and 11th June, 1976 sanctioning conversion of the low level park into a civic amenity site and allotting the same to the appellant. These orders were followed by a resolution adopted by the BDA on 14th July, 1976 reading as follows:-

> "393. Allotment of C. A. Site to Bangalore Medical Trust for construction of Hospital in Rajamahal Vilas Extension.
>
> It was resolved -
>
> 'The Government Order No. HMA 249 MNG 76 Bangalore dated 17-6-1976 regarding allotment of C.A. site situated next to the land allotted to H.K.E. Society in Rajmahal Vilas Extension, Bangalore, in favour of Bangalore Medical Trust for construction of Hospital to read and record with confirmation for further action in the matter".

These documents leave no doubt that the action of the Government and the BDA resulting in the resolution dated 14th July, 1976 have been inspired by individual interests at the costs and to the disadvantage of the general public. Public interest does not appear to have guided the minds of the persons responsible for diverting the use of the open space for allotment to the appellant. Conversion of the open space reserved for a park for the general good of the public into a site for the construction of a privately owned and managed hospital for private gains is not an alteration for improvement of the scheme as contemplated by Section 19, and the impugned orders in that behalf are a flagrant violation of the legislative intent and a colourable exercise of power. In the circumstances, it has to be concluded that no valid decision has been taken to alter the scheme. The scheme provides for a public park and the land in question remains dedicated to the public and reserved for that purpose. It is not disputed that the only available space which can be utilised as a public park or playground and which has been reserved for that purpose is the space under consideration.

23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, `ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the areas adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other uses. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens[1].

25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation[2] .

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[1] See Kharak Singh v. The State of U.P., (1964) 1 SCR 332: (AIR 1963 SC 1295); Municipal Council, Ratlam v. Shri Vardhichand, (1981) 1 SCR 97: (AIR 1980 SC 1622); Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 2 SCR 516 : (AIR 1981 SC 746) Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 : (AIR 1986 SC 180); State of Himachal Pradesh v. Umed Ram Sharma, AIR 1986 SC 847 and Vikram Deo Singh Tomar v. State of Bihar, AIR 1988 SC 1782.

[2] See for e.g. : Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; The Travancore Town and country Planning Act, 1120; The Madras Town Planning Act, 1920; and the Rules framed under these Statutes; Town & Country Planning Act, 1971 (England & Wales); Encyclopaedia Americana, volume 22, page 240; Encyclopaedia of the Social Sciences, Volume XII at page 161; Town Improvement Trusts in India, 1945 by Rai Sahib Om Prakash Aggrawala, p. 35 et. sep; Halsbury's Statutes, Fourth Edition, p. 17 et. seq. and Journal of Planning & Environment Law, 1973 p. 130

26. In Agins v. City of Tiburon, (1980) 447 US 255, the Supreme Court of the United States upheld a zoning ordinance which provided, '..... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as.....pollution,.....destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Count said:-

> ".....The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognized as legitimate.
>
> The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas[3] ....."

27. The statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in Samuel Berman V. Andrew Parker, (1954) 99 Law Ed 27: 348 US 26:-

> ".....They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.
>
> .....The concept of the public welfare is broad and inclusive.....The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the congress and its authorized agencies have made determinations that take into account a wide variety of values...."
>
> (Per Douglas, J.).

28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the Courts. A duly

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et. seq. See also : Penn Central Transportation Company v. City of New York, (1978) 57 Law Ed 2d 631 : 438 US 104; Village of Belle Terre v. Bruce Boraas, (1974) Law Ed 2d 797 : 416 US 1; Village of Euclid v. Ambler Realty Company, (1926) 272 US 365; Halsey v. Esso Petroleum Co. Ltd., (1961) 1 WLR 683.

[3] See comments on this decision by Thomas J. Schoenbaum, Environmental Policy Law - 1985 p. 438 et. seq. See also Summary and Comments, (1980) 10 ELR 10125 et. seq.

approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in Village of Belle Terre v. Bruce Boraas, (1974) 39 Law Ed 2d 797: 416 US 1: -

> ".....The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

See also Village of Euclid v. Ambler Realty Company, (1926) 272 US 365. See the decision of the Andhra Pradesh High Court in T. Damodhar Rao v. The Special Officer, Municipal Corporation of Hyderabad, AIR 1987 Andhra Pradesh 171.

29. The residents of the locality are the persons intimately, vitally and adversely affected by any action of the BDA and the Government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary locus standi.

30. In the circumstances, we are of the view that, apart from the fact that the scheme has not been validly altered by the BDA, it was not open to the Government in terms of Section 65 to give a direction to the BDA to defy the very object of the Act.

31-32. The impugned orders of the Government dated 27-5-1976 and 11-6-1976 and the consequent decision of the BDA dated 14-7-1976 are inconsistent with, and contrary to, the legislative intent to safeguard the health, safety and general welfare of the people of the locality. These orders evidence a colourable exercise of power, and are opposed to the statutory scheme.

33. The impugned orders and the consequent action of the BDA in allotting to private persons areas reserved for public parks and play grounds and permitting construction of buildings for hospital thereon are, in the circumstances, declared to be null and void and of no effect.

R. M. SAHAI, J.:- 34. Public park or private nursing home which serves public interest better, is itself an interesting issue in this appeal directed against order of the Karnataka High Court, apart from it, the conversion of the site from park to hospital was in accordance with law and whether a private hospital was an amenity or civic amenity under the Bangalore Development Authority Act (Act 12 of 1976) (in brief the Act) and in any case could it be considered as an improvement, under Section 19(4) of the Act, if so whether the authorities while doing so acted within the constraints of law.

35. Factual matrix is quite simple and plain. But before narrating it or entering into merits of various issues it is imperative to sort out at the threshold if a private nursing

home with modern facilities and sophisticated instruments is more conducive to the public interest than a park as it was stressed that even if the conversion of the site suffered from any infirmity procedural or substantive the High Court should have refrained from exercising its extraordinary jurisdiction and that also in favour of those residents many of whom did not have their houses around the park and thus could not be placed in the category of persons aggrieved. It was also emphasised that the hospital with research centre and even free service being more important from social angle the inhabitants of the locality could not be said to suffer any injury much less substantial injury.

36. Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers[4] . Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor can they be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.

37. Public Park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of

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[4] S.P.Gupta v. Union of India, (1982) 2SCR 365 : Air 1982 SC 149;
Akhil Bhartiya Soshit Karmachari Sangh v. U.O.I., (1981) 1 SCC 246 : AIR 1981 SC 298;
Fertilizer Corporation Kamgar Union v. U.O.I., AIR 1981 SC 344.

importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentiality a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen percent of the total area of the lay out in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

38. Merits, too, raise issues of far-reaching importance. One of them being the efficacy of exercise of individualised discretion where law or the rules contemplate participatory objective decision or conclusion. Another is the requirement of substantive fairness in dealings by Government or local bodies or public institutions with people of any strata of society uniformly and equally. To begin with the factual setting in which the controversy arose it is undisputed that the City Improvement Board constituted under City of Bangalore Improvement Act, 1945, prepared the development scheme for bringing into existence an extension of the City of Bangalore which came to be known as the Palace Uppar Orchards/Sadashiv Nagar, later came to be known as Raj Mahal Vilas Extension. In this an area facing, the Sankey tank, was earmarked for being developed as a low level park. In 1976 the Improvement Act was repealed and replaced by Act 12 of 1976 which came into force with effect from December, 1975. Section 76 of the Act while repealing Improvement Act by Section 76 saved the scheme by proviso second to subsection (3) of the Section and provided that it shall be deemed to have been done under corresponding provisions of the Act. The Act received the assent in March 1976. And in the same month the Chairman of the Bangalore Development Authority received a communication from the Chief Minister of the State that the Bangalore Medical Trust, the appellant (referred as BMT) was keen to have the plot reserved for park as nursing home. On it the Chairman, without any meeting of any Committee or the Development Authority, wrote a letter to the Chief Minister on 21st April, 1976, the contents of which are extracted below:-

"No. PS. 56/76-77

Encl. One Blue Print.

Respected Sir,

Re: Grant of land to Bangalore Medical Trust for construction of a nursing home.

The Bangalore Medical Trust have applied to your goodself on 30-3-1976 for grant of vacant land situated next to that given to H.K.E. Society, Rajamahal Vilas Extension, on which you have passed orders "Chairman, BDA - A suitable site for the proposed hospital building may be given.

I herewith enclose a blue-print showing the location of the said plot, which they have requested. In the blueprint approved by the erstwhile City Improvement Trust Board, Bangalore, this site is marked as a Low Level Park, which measures approximately 13,485 sq. yds. This is a low level area when compared to the surrounding ground level. The sponsors of Bangalore Medical Trust are very keen to secure this land for their use to construct a nursing home with eminent specialists to cater medical relief to the needy public.

In the first instance, it has to be approved by the Government to convert this low level park as a civic amenity site. Secondly Government has to approve the allotment of the said land to the Bangalore Medical Trust as a Civic Amenity Site. Therefore, I seek your kind orders in the matter, how I should act.

With warm regards,

Yours sincerely
Sd/-"

39. On it the Chief Minister made an endorsement in his own hand which reads as under:-

"This area which was allowed to be kept for laying a park may be converted into C.A. Site. Another similar bit kept for the same purpose has been given away for Education Society some years back. And this remaining area is said to be not suitable for park."

In consequence of the direction by the Chief Minister the Government on 27th May, 1976 converted the site from Public Park to a civic amenity. Copy of the order is extracted below:-

"Subject: Grant of land to Bangalore Medical Trust for construction of a Nursing Home.
.....

ORDER NO. HMA 249 MNG 76 DATED BANGALORE THE 27TH MAY, 1976.

READ: Letter No. PS 56/76-77 dated 21-4-1976 from the Chairman, Bangalore Development Authority, Bangalore.

PREAMBLE:

The Chairman, Bangalore Development Authority has requested for sanction of Government to the conversion of the low level park, next to the land allotted to the

HKE Society, in Rajamahal Vilas Extension as a C.A. Site and to the allotment of the said site to the Bangalore Medical Trust for the construction of a Nursing Home.

ORDER

Sanction is accorded to the conversion of the Low Level Park, situated next to the land allotted to the H.K.E. Society in Rajamahal Vilas Extension, Bangalore as a civic amenity site.

By order and in the name of
the Governor of Karnataka
Sd/-
(S.R. Shankaranarayana Rao)
I/c. Under Secretary to Government
Health & Municipal Admn. Dept."

40. It was followed by another order dated 17th June, 1976, sanctioning the lease to the EMT. The order reads as under:-

"Subject: Allotment of a C.A. Site to Bangalore Medical Trust for Construction of a hospital.

.....

ORDER NO. HMA 249 MNG 76, BANGALORE DATED THE 17TH JUNE, 1976.

READ: 1) Govt. Order No. PLM 13 MNG 64 dated 17th March, 1964.

2) Govt. Order No. HMA 249 MNG 76 Dated 27th May, 1976.
3) Letter No. PS 132/76-77 dated 1st June, 1976 from the Chairman, Bangalore Development Authority, Bangalore.

PREAMBLE:

Sanction was accorded to convert a low level park situated next to the land allotted to H.K.E. Society in Rajamahal Vilas Extension, Bangalore vide Govt. Order read at (ii) above.

Now the Chairman, Bangalore Development Authority requests for lease of the aforesaid Civil Amenity Site to the Bangalore Medical Trust, Bangalore.

ORDER

Sanction is accorded to the lease of Civic Amenity Site situated next to the land allotted to HKE Society in Rajamahal Vilas extension Bangalore to the Bangalore Medical Trust for construction of hospital with conditions of lease as detailed in the Govt. Order No. PLM 18 MNG 64, dated 17th March, 1964.

The trust should strictly adhere to the condition No. 7 of the lease and should complete the building well within 3 years.

By order and in the name of
Governor of Karnataka
Sd/ -
(K. G. Rajanna)
Under Secretary to Government
Health & Municipal Admn. Dept."

41. On 14th July the Bangalore Development Authority (hereinafter referred as BDA) completed the formality by passing the resolution and allotting the site to the BMT. The resolution reads as under:-

> "The Government Order No. HMA 249 MNG 76 Bangalore dated the 17th June, 1976 regarding allotment of C.A. Site situated next to the land allotted to H.K.E. Society in Rajamahal Vilas Extension, Bangalore in favour of Bangalore Medical Trust for construction of hospital be read and recorded with confirmation for further action in the matter."

42. On coming to know of the allotment in 1981, when some construction activity was noticed by the residents, they approached the High Court by way of writ petition on which the learned single Judge framed two issues :-

> (1) Whether the land had become the property of the Corporation and therefore the allotment of land by the BTA in favour of the fourth respondent was illegal and invalid?
>
> (2) Even assuming that the ownership of the land had not been transferred to the Corporation, whether the action of the BDA in allotting the land, originally earmarked for a park, for construction of a nursing home and a hospital, to the fourth respondent is illegal and invalid?

43. Both the issues were answered in the negative. On the first it was held that even though building and street etc. were transferred to the Corporation by the State Govt. by a notification issued under Section 23(1) of the Act no such notification under sub section (2) of Section 23 was issued in respect of open space etc. Therefore the site reserved for public park did not vest in the Corporation and it continued with the BDA which could deal with it. The finding was affirmed by the Division Bench as well. Its correctness was not assailed by the respondents, in this Court. As regards the second question the learned Judge while agreeing with the Division Bench in Holy Saint Education Society v. Venkataramana, ILR (1982) 1 Kant 1, that 'a site reserved for children's playground under the scheme prepared under the City Improvement Act when came to be vested in the Corporation, it was under a duty to retain it as such and it had no authority to divert it for any other use or grant it to a private person or organisation' held that the ratio was not helpful as, 'both under the provisions of the City Improvement Act and the BDA Act, the CIT or the BDA, as the case may be, had the authority to improve the scheme by making alteration in the scheme and in exercise of the said power, the purpose for which any space was reserved, could be changed and after such change is effected the land could be disposed of for the purpose for which it is earmarked after such change'. The Judge held

that since the site reserved for Public Park was converted under order of the Government it was not possible to hold that the land in question was reserved for a park. It was further held, that, ‘since only notification allotting the site was challenged and not the conversion of site from public park to private nursing home and once the scheme was altered and the area reserved for park was converted to be an area reserved for civic amenity the contention of the petitioners that the BDA had allotted the site for a purpose other than to which the land was reserved, had no basis at all for the fact that after alteration brought about by Government under order dated 27th March, 1976, the site in question was only reserved for a civic amenity generally and not for a part specially."

44. Two other subsidiary submissions which in fact are now the principal issues, "that the BDA had no power to alter the scheme, and in any event a site reserved for a civic amenity could not have been allotted for construction of a hospital" also did not find favour as the scheme could be altered under Section 19(4) of the Act and it was done with approval of State Govt. In appeal the Division Bench after examining inclusive definition of civic amenity in Section 2(bb), added in 1984, amended with retrospective effect in 1988 held that a hospital could not be considered to be an amenity in 1976 as, "Public amenity civic or otherwise to be a public convenience for purposes of the BDA Act, the Government has to notify. If it does not specify whatever may otherwise be a public convenience will not be a civic amenity or amenity under clauses (bb) and (b) of Section 2 respectively for purposes of the BD Act". The Bench further held that in allowing the site to the BMT largess was conferred on it in utter violation of law and rules.

45. Did the Division Bench commit any error of law? Was the conversion of site in accordance with law? Were any of the authorities aware or apprised of the provisions under which they could convert a site reserved for Public Park into a nursing home? Did the authorities care to ascertain the provisions of law or rules under which they could act? Was any precaution taken by the Chief Executive of the State to adhere to legislative requirement of altering any scheme? Not in the least. The direction of the Chief Minister, the apex public functionary of the State, was in breach of public trust, more like a person dealing with his private property than discharging his obligation as head of the State administration in accordance with law and rules. The Govt. record depicted even more distressing picture. The role of the administration was highly disappointing. In their noting even a show of awareness of law and fact was missing. This culture of public functionary, adorning highest office in the State of being law to himself and the administration acting on dictate, for whatever reason disturbs the balance of rule of law. What is more shocking is that this happened in 1976 and not even one out of various departments from which the papers were routed through raised any objection. And the statutory body like BDA with impressive members too succumbed under the pressure without, even, a murmur.

46. Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose. The extract of the Chief Minister's order quoted in the letter of Chairman of the BDA leaves no doubt that the end result having been

decided by the highest executive in the State the lower in order of hierarchy only followed with 'ifs' and 'buts' ending finally with resolution of BDA which was more or less a formality. Between 21st April and 14th July, 1976 that is less than ninety days, the machinery in BDA and Government moved so swiftly that the initiation of the proposal, by the appellant a rich trust with 90,000 dollars in foreign deposits, query on it by the Chief Minister of the State, guidance of way out by the Chairman, direction on it by the Chief Minister, orders of Govt. resolution by the BDA and allotment were all completed and the site for public park stood converted into site for private nursing home without any intimation direct or indirect to those who were being deprived of it. Speedy or quick action in public institutions call for appreciation but our democratic system shows exercise of individualised discretion in public matters requiring participatory decision by rules and regulations. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. When the law requires an authority to act or decide, if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality lacks objective and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. The purpose for which the Act was enacted is spelt out from the Preamble itself which provides for establishment of the Authority for development of the city of Bangalore and area adjacent thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in this scheme could have been made as provided in sub-section (4) of Section 19 only if it is resulted in improvement in any part of the scheme. As stated earlier a private Nursing Home could neither be considered to be an amenity nor could it be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute.

47. Was the exercise of discretion under sub-section (4) of Section 19 in violation or in accordance with the norm provided in law? For proper appreciation the sub-section is extracted below:-

> "(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6) forthwith proceed to execute the scheme as altered."

This legislative mandate enables the Authority to alter any scheme. Existence of power is thus clearly provided for. What is the nature of this power and the manner of its exercise? It is obviously statutory in character. The legislature took care to control the exercise of this power by linking it with improvement in the scheme. What is an improvement or when any change in the scheme can be said to be improvement is a matter of discretion

by the authority empowered to exercise the power. In modern State activity discretion with executive and administrative agency is a must for efficient and smooth functioning. But the extent of discretion or constraints on its exercise depends on the rules and regulations under which it is exercised. Sub-section (4) of Section 19 not only defines the scope and lays down the ambit within which the discretion could be exercised but it envisages further the manner in which it could be exercised. Therefore, any action or exercise of discretion to alter the scheme must have been backed by substantive rationality flowing from the Section. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the Statute itself. The authority exercising discretion must not appear to be, impervious to legislative directions. From the extracts of correspondence between the Chairman and the Chief Minister it is apparent that neither of them cared to look into the provisions of law. It was left to the learned Advocate General to defend it, as a matter of law, in the High Court. There is no whisper anywhere if it was ever considered, objectively, by any authority that the nursing home would amount to an improvement. Whether the decision would have been correct or not would have given rise to different consideration. But here it was total absence of any effort to do so. Even in the reply filed on behalf of BDA in the High Court which appears more a legal jugglery than statement of facts bristling with factual inaccuracies there is no mention of it. The extent of misleading averments for purpose of creating erroneous impressions on the Court shall be clear from the statement contained in paragraph 1 of the affidavit relevant portion of which is extracted below:-

> "The fourth respondent had made an application for grant of land for purpose of constructing a Nursing Home. This application was made also to this respondent. Considering the fact that the medical facilities available in Bangalore were meagre and were required to be supplemented by charitable medical institutions, this authority was required to ascertain whether a suitable site could be given for the hospital building of the fourth respondent. Upon scrutiny of the Rajamahal Vilas Extension, as early as in 1976, the area in question which had been marked as a low level park measuring 13485 sq. yards was found suitable to cater to the medical relief to the needy public. However, since the said area had been marked as a low level park, it was necessary to convert the said low level park as civic amenity site. Furthermore, it is essential that the Government had to approve allotment of the site to the fourth respondent as a civic amenity site. There are proceedings before the first respondent in relation to allotment of site to public institutions. Under the recommendations which have been made, it was decided that plots could be allotted to public institutions subject to certain conditions."

It was this statement which resulted in erroneous finding by the learned single Judge to the effect. "Therefore, it is clear that though at the time of preparation of the scheme, formation of a park was considered in the interest of the general public, nothing prevents the BDA from taking the view that the construction of a hospital to provide medical facilities to the general public is necessary and therefore, the area earmarked for park

should be converted into a civic amenity site. It is in exercise of this power, the BDA decided to convert the area reserved for park into a civic amenity site so as to enable its disposal in favour of the fourth respondent for construction of a hospital. Though Section 19(4) does not expressly require the taking of the approval of the Government for such alteration, the approval was necessary as the original scheme in which the area was reserved for a park had been approved by the Government. Therefore, the BDA considered appropriate, and in my opinion rightly, to seek the approval of the Government for making such conversion. The State Government accorded sanction for the conversion. Therefore, the conversion was in accordance with law". The averment in the affidavit of the BDA that an application was made before it could not be substantiated. Nor it could be established that the BDA or any of its committee ever took into consideration that medical facilities were meagre in the city of Bangalore. Such misleading statements call for serious condemnation. No further comment is needed except that the public institutions should be cautious and must not give impression of taking sides. It is destructive of fairness. The then Chairman's letter in 1976 extracted above was forthright whereas the stand of BDA in 1983 appears to be crude effort to support the executive action. No record was produced to substantiate the averments. It was necessary as it was not in harmony with the correspondence extracted earlier. The statement by the counsel for the BDA that the records were not traceable was not satisfactory. The executive or the administrative authority must not be oblivious that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exercise of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if computing interests of members of society is involved. Was this adhered to by any of the authority? Unfortunately not.

48. Much was attempted to be made out of exercise of discretion in converting a site reserved for amenity as a civic amenity. Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a Statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where Statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly. When legislature enacted sub-sec. (4) it unequivocally declared its intention of making any alteration in the scheme by the Authority that is, BDA and not the State Government. It further permitted interference with the scheme sanctioned by it only if appeared to be improvement. The facts, therefore, that were to be found by the Authority were that the conversion of Public Park into private nursing home would be an improvement in the scheme. Neither the Authority nor the State Government undertook any such exercise.

Power of conversion or alteration in scheme was taken for granted. Amenity was defined in Section 2(b) of the Act to include road, street, lighting, drainage, public works and such other conveniences as the Government may, by notification, specify to be an amenity for the purposes of this Act. The Division Bench found that before any other facility could be considered amenity it was necessary for State Government to issue a notification. And since no notification was issued including private nursing home as amenity it could not be deemed to be included in it. That apart the definition indicates that the convenience or facility should have had public characteristic. Even if it is assumed that the definition of amenity being inclusive it should be given a wider meaning so as to include hospital added in clause 2(bb) as a civic amenity with effect from 1984. A private nursing home unlike a hospital run by Govt. or local authority did not satisfy that characteristic which was necessary in the absence of which it could not be held to be amenity or civic amenity. In any case a private nursing home could not be considered to be an improvement in the scheme and, therefore, the power under Section 19(4) could not have been exercised.

49. Manner in which power was exercised fell below even the minimum requirement of taking action on relevant considerations. A scheme could be altered by the Authority as defined under S. 3 of the Act. It is a body corporate under S. 3 consisting of the Chairman and experts on various aspects, namely, a finance member, an engineer, a town planner, an architect, the ex-officio members such as Commissioner of Corporation of the City of Bangalore, officer of the Secretariat and elected members for instance, two persons of the State Legislature, one a woman and other a Scheduled caste and Scheduled tribe member, representative of labour, representative of water-supply, sewerage board, electricity board, State Road Transport Corporation, two elected councillors etc. and the Commissioner. This authority functions through committees and meetings as provided under Sections 8 and 9. There is no Section either in the Act nor was any rule placed to demonstrate that the Chairman alone, as such, could exercise the power of the Authority. There is no whisper nor there do any record to establish that any meeting of the Authority was held regarding alteration of the scheme. In any case the power does not vest in the State Government or the Chief Minister of the State. The exercise of power is further hedged by use of the expression, if 'it appears to the Authority'. In legal terminology it visualises prior consideration and objective decision. And all this must have resulted in conclusion that the alteration would have been improvement. Not even one was followed. The Chairman could not have acted on his own. Yet without calling any meeting of the authority or any committee he sent the letter for converting the site. How did it appear to him that it was necessary is mentioned in the letter dated 21st April, because the Chief Minister desired so. The purpose of the Authority taking such a decision is their knowledge of local conditions and what was better for them. That is why participatory exercise is contemplated. If any alteration in Scheme could be done by the Chairman and the Chief Minister then sub-sec. (4) of S. 19 is rendered otiose. There is no provision in the Act for alteration in a scheme by converting one site to another, except, of course if it appeared to be improvement. But even that power vested in the Authority not the

Government. What should have happened was that the Authority should have applied its mind and must have come to the conclusion that conversion of the site reserved for public park into a private nursing home amounted to an improvement then only it could have exercised by the owner. But what happened in fact was that the application for allotment of the site was accepted first and the procedural requirements were attempted to be gone through later and that too by the State Govt. which was not authorised to do so. Not only that the Authority did not apply its mind and take any decision if there was any necessity to alter the Scheme but even if it is assumed that the State Govt. could have any role to play, the entire exercise instead of proceeding from below, that is, from the BDA to State Government proceeded in reverse direction, that, from the State Government to the BDA. Every order, namely, converting the site from public park to private nursing home and even allotment to BMT was passed by State Government, and the BDA acting like a true subservient body obeyed faithfully by adopting and confirming the directions. It was complete abdication of power by the BDA. The Legislature entrusted the responsibility to alter and approve the Scheme to the BDA but the BDA in complete breach of faith reposed in it, preferred to take directions issued on command of the Chief Executive of the State. This resulted not only in error of law but much beyond it. In fact the only role which the State Government could play in a scheme altered by the BDA is specified in sub-sections (5) and (6) of Section 19 of the Act. The former requires previous sanction of the Govt. if the estimated cost of executing the altered scheme exceeds by a greater sum than five per cent of the cost of executing the scheme as sanctioned. And later if the 'scheme as altered involved the acquisition otherwise than by agreement'. In other words the State Government could be concerned or involved with an altered scheme either because of financial considerations or when additional land was to be acquired, an exercise which could not be undertaken by the BDA. A development scheme, therefore, sanctioned and published in the Gazette could not be altered by the Government.

50. Effort was made to justify the exercise of power under sub-section (3) of Section 15 which reads as under:-

> "(3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems it necessary require the Authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government."

51. In sub-section (1) the Authority is empowered to draw up development scheme with approval of government whereas under sub-section (2) it is entitled to proceed on its own provided it has fund and resources. Sub-section (3) is the power of State Government to direct it to take up any scheme. The main thrust of the sub-section is to keep a vigil on the local body. But it cannot be stretched to entitle the Government to alter any scheme or convert any site or power specifically reserved in the Statute in the Authority. The general power of direction to take up development scheme cannot be construed as superseding specific power conferred and provided for under Section 19(4). The Authority under Section 3 functions as a body. The Act does not contemplate individual

action. That is participatory exercise of powers by different persons representing different interest. And rightly as it is the local persons who can properly assess the need and necessity for altering a scheme and if any proposal to convert from one use to another was an improvement for residents of locality such an exercise could not be undertaken by the Government. Absence of power apart, such exercise is fraught with danger of being activated by extraneous considerations.

52. Section 65 the over-all power reserved in Government to give such directions to the Authority as it considers expedient for carrying out any purpose of the Act was another provision relied to support an order which is otherwise unsupportable. An exercise of power which is ultra vires the provisions in the Statute cannot be attempted to be resuscitated on general powers reserved in a Statute for its proper and effective implementation. The Section authorises the Government to issue directions to ensure that the provisions of law are obeyed and not to empower itself to proceed contrary to law. What is not permitted by the Act to be done by the Authority cannot be assumed to be done by State Government to render it legal. An illegality cannot be cured only because it was undertaken by the Government. The Section authorises the Government to issue directions to carry out purposes of the Act. That is the legislative mandate should be carried out. And not that the provision of law can be disregarded and ignored because what was done was being done by State Government and not the Authority. An illegality or any action contrary to law does not become in accordance with law because it is done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and rule and not the height of the person exercising the power.

53. For these reasons the entire proceedings before the State Government suffered from absence of jurisdiction. Even the exercise of power was vitiated and ultra vires. Therefore the orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home to Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it were null, void and without jurisdiction.

54. Leave granted.

ORDER

55. In the result this appeal fails, for the reasons stated by us in our separate but concurring judgements, and is accordingly dismissed. We further direct that the respondents shall be entitled to their cost throughout.

Appeal dismissed.

Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd.
with
Bombay Environmental Action Group v. State of Maharashtra
(1991) 2 Supreme Court Cases 539
S. Ranganathan, S.C. Agrawal and N.D. Ojha, JJ.

RANGANATHAN, J.- The two petitioners, who are "Environment Protection Groups" objected to the clearance, by the State of Maharashtra and Union of India, of a proposal of the Bombay Sub-urban Electricity Supply Company Limited (hereinafter referred to as "BSES";) for the construction of a thermal power plant over an area of 800 hectares or thereabouts in Dahanu, Maharashtra. They filed writ petition in the Bombay High Court challenging the decision of the Central Government to that effect dated March 30, 1990 adjourning the meeting to enable the Government of India to consider the representations made by the two petitioners. Government of India did this and reaffirmed its decision to clear the project. A detailed affidavit was filed on behalf of the Union on June, 29, 1990. To this was enclosed a memorandum dealing in seriatim with the various objections raised by the petitioners and setting out the government's findings thereon. After considering the same and hearing the counsel at length, the High Court, by a detailed order, dismissed the write petitions by its order dated December 12, 1990. The objectors have thereupon filed these two petitions for leave to appeal before us.

2. The limitations, or more appropriately, the self-imposed restrictions of a court in considering such an issue as this have been set out by the Court in *Rural Litigation & Entitlement Kendra v. Star of U.P. and Sachidanand Pandey v. State of W.B.* The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The court's role is restricted to examine whether the government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.

3. Having regard to the fact that the High Court, after giving a fresh opportunity to the objectors to have their objections considered, has gone into the matter in depth and found nothing wrong with the decision of the government, the scope for any interference by this Court under Article 136 is indeed very narrow. However, as the project involved is a very vital one for the citizens of Bombay and its suburbs and the petitioner claim that the decision of the government was arrived at in disregard of certain guidelines prescribed and the recommendations of an expert committee set up by the Union Government itself, we have looked into the matter in detail. Sri Atul setalvad, Sri Gopal Subramaniam and Sri G.S. Patel who appeared for the objectors and Shri Ashok Desai who appeared for

respondents have taken us through considerable portions of the several paper books filed by them. We have also heard the standing counsel for the State. We have come to the conclusion that there are no grounds to grant leave to appeal from the order passed by the High Court.

4. We may observe that there is no material before us to show that the conditions imposed while granting sanctions are being relaxed without proper advertence to the consequences. So far as the present allegation regarding the FGD plant is concerned however, it is not denied that the company has asked for dispensing with the requirements at this stage. Sri Ashok Desai submits that this has been done on the basis of findings of the World Bank that, having regard to the nature and quality of the coal proposed to be used as could be seen from the analysis made available, the immediate installation of a FGD plant may not be necessary. It has been suggested that the plant could be designed in such a way that it found necessary the FGD plant could be installed at a later date. Shri Ashok Desai also submits that the Environment (Protection) Rules, 1986, which have been promulgated on August 30, 1990, also envisage a policy of increasing the stack height so that contamination by emission of gases at ground level might be minimized. He submits that there is not reason for the petitioners to anticipate any relaxation of this condition if it will be harmful to environmental interests. We do not wish to say anything more at this stage on this issue except to say that the condition regarding an FGD plant has been imposed under the government sanction and this has to be adhered to by the company. Whether it has to be relaxed or not in future will be a matter which has to be tackled when the application is made in this behalf and considered by the Central Government. But, we think, some safeguard should be provided in this regard which we indicate below.

5. For the reasons discussed above, we are satisfied that the clearance to the thermal power station was granted by the Central Government after fully considering all relevant aspects and in particular the aspects of the environmental pollution. Sufficient safeguards against pollution of air, water and environment have been insisted upon in the conditions of grant. However, in order to allay the apprehensions on the part of the petitioners that the company may seek and obtain relaxations or modifications of the condition that may prove detrimental to environment, we direct the condition requiring the installation of a FGD plant should not be relaxed without a full consideration of the consequences and that, if there is any proposal from the company to relax this or any other condition subject to which the plant has been cleared, neither the State Government nor the Union Government should permit such relaxation without giving notice of the proposed changes to the petitioner groups and giving them an opportunity of being heard.

6. Subject to the directions contained in sub-pars (4) and (6) above we agree with the decision of the High Court and dismiss these special leave petitions. We make no order regarding costs.

M. C. Mehta v. State of Tamil Nadu
AIR 1991 Supreme Court 417
Writ Petition (Civil) No. 465 of 1986, D/-31-10-1990
Ranganath Misra C.J. and M. H. Kania, J.

(A) Employment of Children Act (26 of 1938), S.3 - Constitution of India, Art. 32 - Child labour - Match factory - Employment connected with manufacturing process - Not to be given to children - They can however be employed in packing process - Packing must be done in area away from place of manufacture.

Factories Act (63 of 1948), S. 67.

Child labour - Employment in match factory - Restriction on.

(Paras 5, 7)

(B) Constitution of India, Art. 32 - Child labour - Employed in packing process of match factory - Minimum wages - At least 60% of prescribed minimum wage for adult employee doing same job to be given to child in view of special adaptability of child's tender hand to such work.

Minimum Wages Act (11 of 1948), S. 3

Employment of Children Act (26 of 1938), S. 3.

Child labour - Employed for packing process in match factory - Minimum wage.

(Para 7)

(C) Constitution of India, Art. 32 - Child labour - Employed in match factory - Facility for education, general as well as job oriented, and recreation must be given - State Govt. directed to create welfare fund for this purpose.

Employment of Children Act (26 of 1938), S. 3.

(Paras 8, 9)

(D) Constitution of India, Art. 32 - Child labour - Employed in match factory - Facilities for recreation and medical attention - State Govt. directed to ensure provision of additional facilities on this score - Children to be provided basic diet during working period.

Employment of Children Act (26 of 1938), S. 3.

(Para 10)

(E) Constitution of India, Art. 32 - Hazardous employment - Match factory - Employees of - To be compulsorily insured for a sum of Rs. 50,000 - Premium to be paid by employers as a condition of service.

Insurance - Compulsory insurance - Hazardous employment - Match factory.

Hazardous employment - Match factory - Employees to be compulsorily insured.

(Para 11)

ORDER: - This petition under Art. 32 of the Constitution has been brought before this Court by way of a Public Interest Litigation and is connected with the problem of employment of children in Match factories of Sivakasi in Kamaraj District of Tamil Nadu State. On notice the State has filed its return.

2. Sivakasi has been the traditional centre for manufacture of match boxes and fire works for almost the whole country and a part of its output is even exported. From the affidavit of the State it appears that as on December 31, 1985, there were 221 registered match factories in the area employing 27338 workmen of whom 2941 were children. We would have been happy to have updated particulars but for disposal of this case total figure and the proportion between adult workmen and children perhaps may be taken as the foundation.

3. The manufacturing process of matches and fire works is hazardous one. Judicial notice can be taken of the fact that almost every year, notwithstanding improved techniques and special care taken, accidents including fatal cases occur. Working conditions in the match factories are such that they involve health hazards in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect on health is a serious problem. Exposure of tender aged to these hazards requires special attention.

4. It is a fact that the problem has been in existence for over half a century, if not earlier, and no appropriate attention has been focused on it either by the Government or the public. We are, therefore, thankful to Mr. Mehta for having brought this matter before the Court for receiving judicial consideration.

5. We are of the view that employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks or fireworks should not at all be permitted. Art. 39 (f) of the Constitution provides 'that the State should direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.'

6. The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Art. 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years. The provision of Art. 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment.

7. Children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident. We are also of the view and learned counsels on both sides have agreed that minimum wage for child labour should be fixed. We take note of the fact that the tender hands of the young workers are more suited to sorting out the manufactured product and process it for the purposes of packing. We are, therefore, of the opinion that in consideration of their special adaptability at least 60% of the prescribed minimum wage for an adult employee

in the factories doing the same job should be given to them. Our indicating the minimum wage does not stand in the way of prescription of a higher rate if the State is satisfied that a higher rate is viable.

8. It is necessary that special facilities for providing the quality of life of children should be provided. This would require facility for education, scope for recreation as also providing opportunity for socialisation. Facility for general education as also job oriented education should be available and the school time should be so adjusted that employment is not affected.

9. We are happy to notice that the learned counsel for the State of Tamil Nadu has suggested the creation of a Welfare Fund to which the registered match factories can be asked to contribute. Government can decide as to whether contribution should be at a fixed rate per factory or made commensurate to the volume of production. Learned counsel for the State of Tamil Nadu has agreed that the State would be ready to contribute a matching grant to the Fund and even if necessary, a little more funds could be provided so that facilities for education and recreation can be provided for the children working in the factories. We direct that the State of Tamil Nadu shall take appropriate steps in the matter of creating the welfare fund and finalising the method of contribution and collection thereof so that the welfare fund may be set up by 1st January, 1991. The matching contribution by the State can be put into the fund by the end of the financial year 1990-91 so that the consolidated money would be available for implementing welfare scheme.

10. Under the Factories Act there is a statutory requirement for providing facilities for recreation and medical attention. The State of Tamil Nadu is directed to enforce these two aspects so that the basic requirements are attended to. We have been told by learned counsel for the State that mobile medical vans have been provided by UNICEF and are regularly coming to the area. He has told us further that four mobile vans are likely to be provided. The State is directed to take immediate steps to ensure provision of additional facilities on this score. Attention may be given to ensure provision of a basic diet during the working period and medical care with a view to ensuring sound physical growth.

11. We are of the opinion that compulsory insurance scheme should be provided for both adult and children employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu shall ensure that every employee working in these match factories is insured for a sum of Rs. 50,000/- and the Insurance Corporation, if contacted should come forward with a viable group insurance scheme to cover the employees in the match factories of Sivakasi area. The premium for the group insurance policy should be the liability of the employer to meet as a condition of service.

12. Though we are disposing of this petition with these directions we are cognisant of the position that all the problems relating to employment of children are not covered by the present directions. We leave it open either to Mr. Mehta or some other agency to move the Court as and when necessary for further order.

13. We require that there shall be a committee to oversee all our directions and it shall consist of the District Judge of the area, the District Magistrate of Kamaraj district, a public activist operating in the area, a representative of the employees and local labour officer. The State of Tamil Nadu is directed to deposit Rs. 3,000/- in the Registrar of this Court within four weeks for being given to Mr. Mehta for meeting his expenses.

Order accordingly.

M.C. Mehta v. Union of India
AIR 1991 Supreme Court 1132
Writ Petition No. 13029 of 1985, D/-14-11-1990
Ranganath Misra, C.J., M. N. Venkatachaliah and A. M. Ahmadi, JJ.

Motor Vehicles Act (59 of 1988), Ss. 27, 110 - Central Motor Vehicles Rules (1989), Rules 115 (6), 126, 127 - Pollution control - Rules 115 (g), 126, 127 directed to be made operative from 1-4-1991 - Directions given to Delhi Administration for supplying particulars of prosecution launched and suspension of registration of vehicles with classification as to whether vehicle belongs to Central Government or Public Sector etc. - Further suggested that effectiveness of device invented by a Research Institute to reduce pollution content should be tested.

(Paras 3, 4, 5)

ORDER: - We have seen the affidavit of the Ministry of Environment and have heard Mr. M.C. Mehta, petitioner in-person and learned Attorney General for the Union of India. From the affidavit we find that the Ministry of Environment accepts the position that pollution in Delhi is mainly on account of the high rise in the number of vehicles driven by petrol and diesel operating within the Delhi and New Delhi areas. As a measure of control, it has been stated in the affidavit that several prosecutions have been launched. Registration of vehicles found to be defective has been suspended.

2. Learned Attorney-General accepts the position that mere institution of prosecutions or suspension of registration would not be effective measures to meet the menace of pollution caused by the automobiles operating in the area. The affidavit has mentioned about the proposal of a massive program of educating the pliers of automobiles about the care to be taken and attention bestowed in the matter of negating or reducing the polluting factor. Success of this move would depend upon the scale, the frequency and the manner in which this is carried on. It has been further pointed out that some of the relevant Rules which could contribute to making the control effective like R. 115 (6) and Rr. 126 and 127 of the Central Motor Vehicles Rules, 1989, have not yet been brought into force. The Rules relating to controlling of pollution seem to form one comprehensive scheme and bringing some of them into force while leaving others out would not really bring about any effective result. Learned Attorney-General has, therefore, submitted that all these Rules would be noted for being brought into force for specified dates.

3. We are of the view that the heavy vehicles operating in the city being the buses, trucks and defence vehicles constitute the main contributing factor to pollution. It is necessary, therefore, that more of attention is directed against these vehicles. Particulars of the prosecution said to have been undertaken should be made available to the Court so that the Court would be in a position to appreciate the steps taken and to what extent this measure is effective. We, therefore, direct the Delhi Administration to place before the Court a complete list of the prosecution launched against the vehicles for causing pollution by infringement of the various requirements of the law with particular reference to the vehicles, nature of the vehicles, dates of prosecution, the nature of offences for which prosecutions have been launched and the result, if any, of such prosecutions from 1-4-1990. Similarly, particulars of the vehicles registration of which is said to have been suspended must be provided with specific mention of the nature of the vehicle and a brief indication as to why suspension has been directed. Follow up action after suspension must also be indicated, if anything has been done.

4. In supplying the particulars of the two categories, namely, prosecutions and suspension, the classification as to whether the vehicles belong to the Delhi Administration or the Central Government or the public sector undertaking and/or the public transport system should be specified. Rules 115 (6), 126 and 127 should be made operative from 1-4-1991.

5. Mr. Mehta says that the National Environment Engineering Research Institute, Nagpur has brought out a device which would reduce the pollution content and the Ministry of Environment is aware of this fact. We suggest that the Environment Ministry should carry out appropriate experiments with the aid of the same device to find out its effectiveness within two months from today and in case it is found to be effective, steps should be taken to ensure that every vehicle to be manufactured after a particular date—may be from 1st April or 1st July, keeping the particular facts in view, to have that device as an in-built mechanism to reduce pollution. Whether vehicles which have already been operating can also adopt the said device should also be examined and in case that also is found feasible, the Environment Ministry should place the material for consideration of this Court. We direct peremptory compliance of this order. The matter be listed in the 3rd week of January, 1991.

Order accordingly.

M/s. Ajay Constructions v. Kakateeya Nagar Co-operative Housing Society Ltd.
AIR 1991 Andhra Pradesh 294
Writ Appeals Nos. 811 and 1338 of 1989, D/-22-4-1991
Sardar Ali Khan and M. N. Rao, JJ.

A. P. Urban Areas (Development) Act (1975), S. 15 – A. P. Municipalities Act (1965), S. 150 – Building permit – Multi-storeyed construction – Builder should comply

strictly with approved plans for drainage system – Discharge of effluent – Permission by Municipality to connect sewerage pipe line of disputed construction to underground municipal pipe line – Environment Pollution – Violation of permit condition granted by urban development authority – Permission was illegal.

Environment pollution – Discharge of offensive material from premises.

Municipality – Multi-storeyed building – Connection to sewerage line – Permission.

Multi-storeyed construction – Connection of sewerage pipe line – Permission.

Torts – Discharge of effluent from premises.

Pratibha Co-Operative Housing Society Ltd. v. State of Maharashtra
1991 Supreme Court Cases (3) 341
N.M. Kasliwal and M.M. Punchhi, JJ.

KASLIWAL, J. - This petition under Article 136 of the Constitution of India is directed against the order of Bombay High Court dated March 9, 1990.

2. Facts necessary and shorn of details are given as under. Pratibha Co-operative Housing Society Ltd. (hereinafter referred to as 'the Housing Society') made some unauthorised constructions in a 36 storeyed building in a posh and important locality of the city of Bombay. The Bombay Municipal Corporation issued a show cause notice dated August 7, 1984 calling upon the Housing Society to show cause within 7 days as to why the upper eight floors of the building should not be demolished so as to limit the development to the permissible Floor Space Index (FSI). In the notice it was stated that additional FSI to the extent of 2773 Sq. mts. was gained by the Housing Society and that the construction work had already reached 36 floors and that on the basis of the actual area of the building, the upper eight floors were beyond the permissible FSI limit and as such were required to be removed. The Housing Society submitted a reply to the show cause notice by their letter dated August 13, 1984. The administrator of the Bombay Municipal Corporation made an order on September 21, 1984 requiring the Housing Society to demolish 24,000 Sq. *ft*. on the eight upper floors of the building on the basis of 3000 sq. *ft*. on each floor. The Housing Society made a representation but the same was dismissed by the Administrator by order dated October 31, 1984. An appeal submitted by the Housing Society was also dismissed by the State Government on October 7, 1985. The Housing Society then filed a Writ Petition No. 4500 of 1985 in the High Court. A Division bench of the High Court dismissed the writ petition on October 28, 1985. However, the High Court while dismissing the writ petition also observed as under:

> *"It would. however, be fair and just in the circumstances of the case to give a choice to the society to reduce the construction up to permissible limit or whatever other method they can think of. It is of course for the society to come forward with proposal in that behalf. We therefore direct that in case the society comes with any*

such alternative proposal within the four corners of the rules and regulations within one month from today the municipality may consider".

The case of the Housing Society is that in pursuance to the said order it submitted application to the Municipal Corporation giving several alternative proposals on November 21, 1985. It may be noted at this stage that the Housing Society had preferred a Special Leave Petition No. 17351 of 1985 before this Court against the judgement of the High Court dated October 28, 1985 and the said special leave petition was dismissed by this Court on January 17, 1986. Further allegation of the Housing Society was that it submitted another proposal to the Municipal Corporation on February 17, 1986 and thereafter wrote to the Municipal Council on August 14, 1986 to consider their alternative proposals. A similar letter was also written to the Chief Minister of Maharashtra. On August 29, 1986 the Municipal Commissioner fixed up a meeting for hearing the alternative proposals of the Housing Society. It has been alleged that in the said meeting the Housing Society had put forward its case in support of the new proposals and the Municipal Commissioner had thereafter informed the Housing Society that he would consider the said proposals and take decision. However, no decision was taken till the filing of the present special leave petition before this Court. It has been further alleged that on December 27, 1988 the Housing Society wrote a letter to the Municipal Commissioner to consider the alternative proposals mainly of vertical demolition of the building instead of demolishing the eight upper floors. It has been alleged that a meeting took place between the architects of the Housing Society as well as the officers of the Municipal Corporation in January 1989 wherein the officers of the Corporation agreed that instead of demolishing eight upper floors, demolition can be made vertically so as to bring the entire construction within the permissible FSI. It has been further alleged that immediately thereafter the Housing Society was informed that henceforth it should contact the Municipal Commissioner directly and not any officers of the Corporation. It has been further alleged that the Corporation without considering the proposal of the Housing Society entrusted the work of demolition of the upper eight floors of the building to a company. In these circumstances the Housing Society filed Writ Petition No. 3016 of 1989 in the High Court. Learned Single Judge dismissed the writ petition by order dated December 19, 1989 'and the appeal preferred against the said order was dismissed by the Division Bench of the High Court by order dated March 9, 1990.

3. In view of the fact that the main grievance of the Housing Society was that its alternative proposal of demolishing the building vertically instead of eight upper floors was not considered on merits by the Corporation, a serious effort was made by this Court to get the feasibility of such proposal examined by the Corporation. Orders in this regard were passed by this Court on several occasions but ultimately no agreeable solution could fructify. The proposal was got examined at the highest level by the Municipal Corporation and ultimately the Commissioner rejected the proposal on November 13, 1990 and submitted a detailed report in writing for the perusal of this Court. In the above report it has been stated that in pursuance to the order of this Court dated October 22, 1990, the proposals submitted by the Housing Society on October 27, 1990 and October 29, 1990 in suppression of all alternative proposals, to demolish vertically one bedroom and servant quarters on all the floors to bring the building in tune with the FSI was

considered but on the grounds stated in the report the proposal submitted by the Housing Society cannot be approved.

4. In the circumstances mentioned above on the request of learned counsel for both the parties to decide the case on merits, we heard the arguments in detail on April 23, 1991. Therefore, in order to clarify some points we directed the Chief Engineer-cum-Architect and the Municipal Commissioner to remain present on the next date namely, May 1, 1991 and to keep the record of the case also ready for our perusal.

5. We have heard learned counsel for the parties at great length and have thoroughly perused the record. It may be noted that the Housing Society had made illegal constructions in violation of FSI to the extent of more than 24,000 sq. ft. and as such an order for demolition of eight floors was passed by the Administrator, Municipal Council as back as September 21, 1984., The writ petition filed against the said order was dismissed by the High Court on October 28, 1985 and Special leave petition against the said order of the High Court was also dismissed by this Court. The High Court in its order dated October 28, 1985 had granted an indulgence to the Housing Society for submitting an alternative proposal within the four corners of the rules and regulations within one month and the Municipality to consider the same. The proposal was submitted on November 21, 1985 but in the said proposal there was no mention of any vertical demolition of the building. The proposal with regard to the demolition vertically of one bedroom and servant quarters on all the floors was submitted for the first time on December 27, 1988. During the pendency of the special leave petition before this Court, this proposal was not examined by the Municipal Corporation. The Municipal Commissioner submitted a report on November 13, 1990 giving detailed reason for rejecting such proposal. It is well settled that the High Court under Article 226 of the Constitution is not an appellate court on the administrative decision taken by the authorities. It cannot be said that the decision taken by the Municipal Commissioner suffers from any want of jurisdiction or is violative of any law or rules. The proposal submitted by the Housing Society was got examined by the architects and engineers and thereafter the order was passed by the Municipal Commissioner. It cannot be said that the action of the Municipal Corporation is tainted with *mala* fides. It was submitted by the learned counsel for the Corporation that the Corporation has entrusted the matter for investigation by the CBI and suitable action is being processed against the guilty officers of the Corporation with whose connivance these illegal constructions were made by the Housing Society.

6. It is an admitted position that six floors have been completely demolished and a part of seventh floor has also been demolished. It was pointed out by Mr. K.K. Singhvi, learned counsel for the Corporation that the tendency of raising unlawful constructions by the builders in violation of the rules and regulations of the Corporation Was rampant in the city of Bombay and the Municipal Corporation with its limited sources was finding it difficult to curb such activities. We are also of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and

residents of multi-storeyed buildings. The violation of FSI in the present case was not a minor one but was an extent of more than 34,000 sq. ft. Such unlawful construction was made by the Housing Society in clear and flagrant violation and disregard of FSI and the order for demolition of eight floors had attained finality right up to this Court. The order for demolition of eight floors has been substantially carried out and we find no justification to interfere in the order passed by the High Court as well as in the order passed by the Municipal Commissioner dated November 13, 1990.

7. In the result we find no force in the petition and the same is dismissed with no order as to costs. Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and by-laws are made by the Corporations or development authorities taking in view the large public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits.

Subash Kumar v. State of Bihar
AIR 1991 Supreme Court 420
Writ Petition (Civil) No. 381 of 1988, D/-9-1-91
K. N. Singh and N. D. Ojha, JJ.

Constitution of India, Arts. 32, 21 – Public interest litigation under Art. 32 – Can be filed for ensuring enjoyment of pollution free water and air which is included in right to live under Art. 21 – Recourse to proceeding, however, can be by person genuinely interested in protecting society – Same cannot be invoked by person or group of persons for vindication of his grudge or enmity for or enforcing personal interest.

Pollution – Prevention – Public interest litigation – Maintainability.

SINGH, J.:-

1. We heard the arguments in detail on 13-12-1990 and dismissed the petition with costs amounting to Rs. 5,000/- with the direction that the reasons shall be delivered later on. We are, accordingly, delivering our reasons.

2. This petition is under Art. 32 of the Constitution by Subhash Kumar for the issue of a writ or direction directing the Director of Collieries, West Bokaro Collieries at Ghatotand, District Hazaribagh in the State of Bihar and the Tata Iron & Steel Co. Ltd. to stop forthwith discharge of slurry/sludge from its washeries at Ghatotand in the District of Hazaribagh into Bokaro river. This petition is by way of public interest litigation for preventing the pollution of the Bokaro river water from the sludge/ slurry discharged from the washeries of the Tata Iron & Steel Co. Ltd. The petitioner has alleged that the Parliament has enacted the Water (Prevention and Control of Pollution) Act, 1978 (hereinafter referred to as the 'Act') providing for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the

establishment of Board for the prevention and control of water pollution. Under the provisions of the Act the State Pollution Control Board constituted to carry out functions prescribed under S. 17 of the Act which among other things provide that the Board shall inspect sewage or trade effluents and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data set up for the treatment of water and to lay down standards to be complied with by the persons while causing discharge of sewage or sludge. Section 24 of the Act provides that no person shall knowingly cause or permit any poisonous, noxious or polluting matter to enter into any stream or well which may lead to a substantial aggravation of pollution. The petitioner has asserted that Tata Iron and Steel Co., respondent No. 5 carries on mining operation in coal mines/washeries in the town of Jamshedpur. These Coal Mines and Collieries are known as West Bokaro Collieries and the Collieries has two Coal Washeries where the coal after its extraction from the mines is brought and broken into graded pieces and thereafter it is processed for the purpose of reducing its ash contents. A chemical process is carried out which is known as 'froth floatation process'. Under this process the graded coal is mixed with diesel oil, pine oil and many other chemical ingredients and thereafter it is washed with the lacs of gallons of water. The end water is washed coal with reduced quantity of ash content fit for high graded metallurgical process for the purposes of manufacture of steel. In the process of washing large quantity of water is discharged through pipes which carry the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water, small particles of coal are carried away to the pond where the coal particles settle down on the surface of the pond, and the same is collected after the pond is de-watered. The coal particles which are carried away by the water is called the slurry which is ash free, it contains fine quality of coal which is used as fuel.

3. The petitioner has alleged that the surplus waste in the form of sludge/ slurry is discharged as an effluent from the washeries into the Bokaro river which gets deposited in the bed of the river and it also gets settled on land including the petitioner's land bearing Plot No. 170. He has further alleged that the sludge or slurry which gets deposited on the agricultural land is absorbed by the land leaving on the top a fine carboniferous product or film on the soil, which adversely affects the fertility of the land. The petitioner has further alleged that the effluent in the shape of slurry is flown into the Bokaro river which is carried out by the river water to the distant places polluting the river water as a result of which the river water is not fit for drinking purposes nor is it fit for irrigation purposes. The continuous discharge of slurry in heavy quantity by the Tata Iron & Steel Co. from its washeries posing risks to the health of people living in the surrounding areas and as a result of such discharge the problem of pure drinking water has become acute. The petitioner has asserted that in spite of several representations, the State of Bihar and State Pollution Control Board have failed to take any action against the Company instead they have permitted the pollution of the river water. He has further averted that the State of Bihar instead of taking any action against the Company has been granting leases on payment of royalty to various persons for the collection of slurry. He has, accordingly, claimed relief for issue of direction directing the respondents which include the State of Bihar, the Bihar Pollution Control Board, Union of India and Tata Iron & Steel Co., to take immediate steps prohibiting the pollution of the Bokaro river

water from the discharge of slurry into the Bokaro river and to take further action under provisions of the Act against the Tata Iron & Steel Co.

4. The respondents have contested the petition and counter-affidavits have been filed on behalf of the respondents Nos. 2, 4 and 5 - State of Bihar, State Pollution Board, Directors of Collieries and Tata Iron & Steel Co. Ltd. In the counter-affidavits filed on behalf of the respondents, the petitioners main allegation that the sludge/slurry is being discharged into the river Bokaro causing pollution to the water and the land and that the Bihar State Pollution Board has not taken steps to prevent the same is denied. In the counter affidavit filed on behalf of the Bihar State Pollution Board it is asserted that the Tata Iron & Steel Co. operates open case and underground mining. The Company in accordance to Ss. 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 applied for sanction from the Board to discharge their effluent from their outlets. The Board before granting sanction analysed their effluent which was being watched constantly and monitored to see that the discharge .does not affect the water quality of the Bokaro river adversely. In order to prevent the pollution the Board issued direction to the Director of the Collieries to take effective steps for improving the quality of the effluent going into the Bokaro river. The State Pollution Board imposed conditions requiring the Company to construct two settling tanks for settlement of solids and rewashing the same. The Board directed for the regular samples being taken and tested for suspended solids and for the communication of the results of the tests to the Board each month. The State Board has asserted that the Company has constructed four ponds ensuring more storing capacity of effluent. The Pollution Board has been monitoring the effluent. It is further stated that on the receipt of the notice of the instant writ petition the Board carried out an inspection of the settling tanks regarding the treatment of the effluent from the washeries on 20th June, 1988. On inspection it was found that all the four settling tanks had already been completed and work for further strengthening of the embankment of the tanks was in progress, and there was no discharge of effluent from the washeries into the river Bokaro except that there was negligible seepage from the embankment. It is further stated that the Board considered all the aspects and for further improvement it directed the management of the collieries for removal of the settled slurry from the tanks. The Board has directed that the washeries shall perform dislodging of the settling tanks at regular intervals to achieve the proper required retention time for the separation of solids and to achieve discharge of effluents within the standards prescribed by the Board. It is further asserted that at present there is no discharge from any of the tanks to the Bokaro river and there is no question of pollution of the river water or affecting the fertility of land. In their affidavits filed on behalf of the respondents Nos. 4 and 5 they have also denied the allegations made in the petition. They have asserted that effective steps have been taken to prevent the flow of the water discharge from the washeries into the river Bokaro. It is stated that in fact river Bokaro remains dry during 9 months in a year and the question of pollution of water by discharge of slurry into the river does not arise. However, the management of the washeries have constructed four different ponds to store the slurry. The slurry which settles in the ponds is collected for sale. The slurry contains highly carboniferous materials and it is considered very valuable for the purpose of fuel as the ash contents are almost nil in the coal particles found in the slurry. Since, it has high

market value, the Company would not like it to go in the river water. The Company has taken effective steps to ascertain that no slurry escapes from its ponds as the slurry is highly valuable. The Company has been following the directions issued by the State Pollution Control Board constituted under the 1974 Act.

5. On the facts as appearing from the pleadings and the specific averments contained in the counter-affidavit filed on behalf of the State Pollution Control Board of Bihar, prima facie we do not find any good reason to accept the petitioner's allegation that the water of the river Bokaro is being polluted by the discharge of sludge or slurry into it from the washeries of the respondent company. On the other hand we find that the State Pollution Control Board has taken effective steps to check the pollution. We do not consider it necessary to delve into greater detail as the present petition does not appear to have been filed in public interest instead the petition has been made by the petitioner in his own interest.

6. On a perusal of the counter-affidavit filed on behalf of the respondents Nos. 4 and 5 it appears that the petitioner has been purchasing slurry from the respondents Nos. 4 and 5 for the last several years. With the passage of time he wanted more and more slurry, but the respondent-company refused to accept his request. The petitioner is an influential businessman, he had obtained a licence for coal trading, he tried to put pressure through various sources on the respondent-company for supplying him more quantity of slurry but when the Company refused to succumb to the pressure, he started harassing the Company. He removed the Company's slurry in an unauthorised manner for which a Criminal Case No. 178 of 1987 under Sections 379 and 411 of the Indian Penal Code read with Section 7 of the Essential Commodities Act was registered against the petitioner and Pradip Kumar his brother at Police Station Mandu, which is pending before the Sub-Judge, Hazaribagh. One Shri Jugal Kishore Jayaswal also filed a criminal complaint under Sections 379 and 411 of the I.P.C. against the petitioner and his brother Pradip Kumar in the Court of Judicial Magistrate, First Class, Hazaribagh, which is also pending before the Court of Judicial Magistrate, 2nd Class Hazaribagh. The petitioner initiated several proceedings before the High Court of Patna under Article 226 of the Constitution for permitting him to collect slurry from the raiyati land. These petitions were dismissed on the ground of existence of dispute relating to the title of the land. The petitioner filed a Writ Petition C.W.J.C. No. 887 of 1990 in the High Court of Patna for taking action against the Deputy Commissioner, Hazaribagh for implementing the Full Bench judgment of the Patna High Court in Kundori Labours Co-operative' Society Ltd. v. State of Bihar, AIR 1986 Pat 242, wherein it was held that the slurry was neither coal nor mineral instead it was an industrial waste of coal mine, not subject to the provisions of the Mines and Mineral (Regulation and Development) Act, 1957. Consequently the collection of slurry which escaped from the washeries could be settled by the State Government with any person without obtaining the sanction of the Central Government. The petitioner has been contending before the High Court that the slurry which was discharged from washeries did not belong to the Company and he was entitled to collect the same. Since the respondent-company prevented the petitioner from collecting slurry from its land and as it further refused to sell any additional quantity of slurry to him, he entertained grudge against the respondent-company. In order to feed fat his personal

grudge he has taken several proceedings against the respondent-company including the present proceedings. These facts are quite apparent from the pleadings of the parties and the documents placed before the Court. In fact, there is intrinsic evidence in the petition itself that the primary purpose of filing this petition is not to serve any public interest instead it is in self interest as would be clear from the prayer made by the petitioner in the interim stay application. The petitioner claimed interim stay application. The petitioner claimed interim relief from this Court permitting him to arrest/ collect sludge/ slurry flowing out of the washeries of the respondents Nos. 4 and 5 and with a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/ slurry and transporting the same. The prayer for the interim relief made by the petitioner clearly indicates that he is interested in collecting the slurry and transporting the same for the purposes of his business. As already stated a Full Bench of the Patna High Court held that the slurry was not coal and the provisions of the Mines and Mineral (Regulation and Development) Act, 1957 were not applicable, the State Government was free to settle the same and the Tata Steel & Iron Co. had no right to collect the slurry which escaped from its washeries. The respondent-company filed an appeal before this Court. During the pendency of the aforesaid appeal, the petitioner filed the present petition. The appeal preferred by the Tata Iron & Steel CO Ltd. and Bharat Coking Coal Ltd. was allowed by this Court and the judgment of Patna High Court was set aside. The judgment of this Court is reported in (1990) 3 JT (SC) 533, wherein it has been held that the slurry/coal deposited on any land continues to be coal and the State Government has no authority in law to deal with the same and the slurry deposited on the Company's land belongs to the Company and no other person had authority to collect the same.

7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to life is a fundamental right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has 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. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced though the process of this Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty

of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation, see Bandhua Mukti Morcha v. Union of India, (1984) 2 SCR 67: (AIR 1984 SC 802); Sachidanand Pandey v. State of West Bengal, (1987) 2SCC 295 at p 331: (AIR 1987 SC 1109); Ramsharan Autyanuprasi v. Union of India, (1989) Supp 117 SCC 251 and Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P., (1990) 4 SCC 449.

8. In view of the above discussion, we are of the opinion that this petition has been filed not in any public interest but for the Petitioner's personal interest and for these reasons we dismiss the same and direct that the petitioner shall pay Rs. 5,000/- as costs. These costs are to be paid to the respondents Nos. 3, 4 and 5.

Petition dismissed.

Surendra Kumar Singh v. The State of Bihar
AIR 1991 Supreme Court 1042 (Form: Patna High Court)
Interlocutory Application Nos. 1-2 of 1990, D/-7-1-1991
M. N. Venkatachaliah and R. M. Sahai, JJ.

Constitution of India, Art. 136 - Protected monuments - Maintenance and preservation - Stone crushing industries located nearby directed to be shifted - Alternative area provided - Authorities of State Electricity Board directed to supply electricity at alternative site.

Monuments - Protection - Stone crushing industry located nearby shifted.

Ecology - De-secretion of hills - Prevented by shifting stone crushing industry.

(Paras 2, 5)

ORDER: - Heard learned counsel for the parties. Delay condoned.

2. The petitioners seek special leave to appeal to this Court from the two orders dated 15-12-1989 and 6-2-1990 respectively of the Patna High Court in M.J.C. No. 435 of 1989. Those orders were interlocutory in character by which the High Court, in substance, directed that as the three Hills - Ramshilla, Prethilla and Branhmyoni - had been declared protected monuments no stone crushing industry should be allowed to be located within a distance of $^1/_2$ kilometre from the area so declared and any stone crushing industries located within such $^1/_2$ kilometre area should be shifted. This measure was intended to prevent illegal quarrying on and consequent desecration of the Hills. Petitioners urge that their stone crushing establishment, admittedly, not being within the protected-area, they should not be asked to move further away by the artificial extension of the area brought about by the High Court's orders which petitioners say are without jurisdiction. The State of Bihar seeks to support the directions of the High Court on the ground that such directions were issued to effectuate the purposes of the notifications and prevent their violation.

3. The present special leave petition, as stated earlier, is against these interlocutory directions. But the High Court has since passed a final order dated 14-5-1990 disposing of the main matter itself. In regard to petitioners 8 and 10 in their Special Leave Petitions who were interveners in the proceedings before the High Court, the High Court in the course of its final order provided:

> ".....So far as interveners are concerned, they should have no further grievance as to the loss of business in view of earmarking of 5.85 acres of land as stated in the affidavit aforementioned. They, if so advised, may apply to the District Magistrate-cum-Collector, Gaya, for settlement of such land and such area thereof that may be equivalent to the land upon which their crushers were operated. The Collector shall be obliged, in view of the statement made therein to honour the commitment of the State of Bihar and accordingly enter into fresh agreements with such persons subject to such terms and conditions which may be found necessary particularly with reference to the maintenance and preservation of the hill aforementioned ...."

4. At the outset, there is one thing that requires to be set-right. There are 10 petitioners in this Special Leave Petition. Only two of them, namely petitioners Nos. 8 and 10, were interveners before the High Court and High Court issued certain directions for the protection of their interests in the course of the final order dated 14-5-1990. So far as the rest of the petitioners are concerned, we are afraid, we cannot investigate their claims here. We do not know whether they were also carrying on the stone crushing operations in the vicinity of the three protected Hills and whether they are also the intended beneficiaries of the extent of 5.85 acres said to have been earmarked for the rehabilitation of stone crushing industries affected by the orders of the High Court. We, accordingly, confine this order to petitioners Nos. 8 and 10. The special leave petition so far as all other petitioners are concerned is dismissed with liberty to them to approach the High Court if so advised.

5. We were told that the area of 5.85 acres stated to have been set apart for the location of the Stone Crushing Industries is within about a Kilometre from the area of the protected Hills. Petitioners 8 and 10 say that they are willing to shift to places to be provided to them if facilities for shifting of the electric supply are made available at new sites. Sri Mahabir Singh, learned counsel for the State of Bihar, submitted that this is an administrative matter for Electricity Board and that Government would afford such help as the petitioners may require securing the shifting of their power installations. Indeed, if after petitioners shift their establishments to a new location, the power installation is not also shifted the contemplated arrangements would be to no purpose. Therefore, we direct the authorities of the State Electricity Board to act in aid of the assurance given by the Government and provide facilities for shifting of the electrical installation of petitioners 8 and 10 to the place allotted to them for their stone cruising operations. With these directions, the Special Leave Petition of petitioners 8 and 10 is disposed of. So far as the rest of the petitioners are concerned, the Special Leave Petition is dismissed.

Order accordingly.

U. P Legal Aid and Advice Board v. State of U. P
AIR 1991 Allahabad 281
Civil Misc. Writ Petition No. 10055 of 1989, D/-4-2-91
R. R. K. Trivedi, J.

(A) Forest Act (1927), Ss. 4, 6(1) and 7 - Constitution of land as reserved forest - Inquiry into claims of Adivasis and Banvasis living in area covered by Notification - Forest settlement officer is under legal obligation to enquire into all claims including those existence of which is not claimed in writing but can be ascertained from records of Government.

(B) Forest Act (1927), Ss. 7 and 20 – Right of tenure holders recognised by competent courts – Orders in that respect gaining finality – Forest settlement officer justified in excluding such area from Notification under S. 20.

(C) Forest Act (1927), Ss. 7, 8 and 20 – Orders of Forest Settlement Officer excluding some area from Notification under S. 20 – Orders cannot be found fault with on ground of non-framing of issues or failure to make local inspection of the land by himself.

(D) Forest Act (1927), Ss. 6, 7 – Forest Settlement Officer excluding land (not fit for declaring as reserve forest) in favour of gaon sabha – Additional District Judge not justified in reversing order on ground that only State Government could exclude the same in favour of gaon sabha.

U. P. Zamindari and Abolition Act (1 of 1951), S. 117.

(E) Forest Act (1927), Ss 4, 6, 7 – Notification under S. 4 – Statements of claims preferred under S. 6 – Rejection on ground that the same were not stamped is improper.

Banwasi Seva Ashram v. State of U.P.
(1992) 2 Supreme Court Cases 202
Kuldip Singh, P.B. Sawant and N.M. Kasiwali, JJ.

ORDER

1. On the basis of a letter received from Banwasi Seva Ashram operating in Mirzapur District of Uttar Pradesh Writ Petition (Criminal) No.1061 of 1982 under Article 32 of the Constitution of India was registered. Meanwhile the National Thermal Power Corporation Limited (TPC) decided to set up a super-thermal plant on the part of the lands, which were subject matter of the writ petition. NTPC got itself impleaded as a party in the writ petition and claimed that the completion of the project was a time-bound programme as such the land earmarked for the project be made free from prohibitive directions of this Court in the Writ Petitions. The Writ petition was disposed of by an order dated November 20, 1986. This Court issued comprehensive directions and

appointed a Board of Commissioners to supervise the implementation of the said directions. This Court has been monitoring the project during all these years in terms of the directions issued on November 20, 1986.

2. By this order we are finally disposing of the proceedings and the monitoring process so far as the NTPC is concerned. The directions dated November 20, 1986 relevant for this purpose are as under:

> *"(1) So far as the lands which have already been declared as reserved forest under Section 20 of the Act, the same would not form part of the writ petition and any direction made by this Court earlier, now or in future in this case would not relate to the same. In regard to the lands declared as reserved forest, it is however open to the claimants to establish their rights, if any in any other appropriate proceeding. We express no opinion about the maintainability of such claim.*
>
> (5) The land sought to be acquired for the Rihand Super-Thermal Power Project of the NTPC shall be freed from the ban of dispossession. Such land is said to be about 153 acres for Ash pipeline and 1643 acres for Ash Dyke and are located in the villages of Khamariya, Mithahani, Parbatwa, Jheelotola, Dodhar and Jarha. Possession thereof may be taken but such possession should be taken in the presence of one of the commissioners who are being appointed by this order and a detailed record of the nature and extent of the land, the name of the person who is being dispossessed and the nature of enjoyment of the land and all other relevant particulars should be kept for appropriate use in future. Such records shall be duly certified by the Commissioner in whose presence possession is taken and the same should be available for use in all proceedings that may be taken subsequently.
>
> The NTPC has agreed before the Court that it shall strictly follow the policy on facilities to be given to land oustees as placed before the Court in the matter of lands which are subjected to acquisition for its purposes. The same shall be taken as an undertaking to the Court".

3. Mr. Datta learned Senior Advocate appearing for the NTPC has stated that the NTPC has already taken actual/symbolic possession 1375 acres of land. In respect of 1004 acres of the said land a notification under Section 4 of the Indian Forest Act, 1927 (hereinafter called "the Act") was issued and the proceedings for declaring the said area as reserved forest were undertaken. The remaining 371 acres were part of Goan Sabha land and the ownership in the said land vested in the State Government. According to Mr. Datta this land measuring 1375 acres is under the possession of NTPC and the project construction is in progress. Mr. Ramamurthy, on the other hand, has contended that the actual possession of whole of the area is not with the NTPC and the Adivasi/land owners are still in possession of their respective holdings.

4. Mr. Datta further states that apart from 1375 acres, mentioned above, the NTPC has yet to obtain possession of 465 acres of land, which is reserved forest under Section 20 of the Act. In view of the directions quoted above the lands which have been declared as

reserved forest under the Act are not the subject matter of the writ petition and as such no direction can be issued by this Court in that respect. In this order we are concerned with 1004 acres of land which is subject matter of Section 4 notification under the Act. We have to ensure that the rights of the oustees are determined in their respective holdings and they are properly rehabilitated and adequately compensated.

5. According to the summary of rehabilitation package filed on the record by Mr. Datta there are 678 families, which have been ousted from the land. Mr.Ramamurthy however states that there are more than 1500 families, which are likely to be affected by the take-over of 1004 acres of land by the NTPC.

6. We direct that the following measures to rehabilitate the evicts who were in actual physical possession of the lands/houses etc. be taken by the NTPC in collaboration with the State Government:

(1) The NTPC shall submit a list of the evictees claimants to the District Judge, Sonebhadra before April 15,1992 Mr. Prem Singh shall also submit the list of the evictees to the District Judge by April 15,1992. The District Judge Sonebhadra shall be the authority to finalise the list of the evictees.

(2) One plot land measuring 60' x 40' to each of the evictee families be distributed for housing purposes through the district administration. Mr. Datta has informed us that the plots of the said measurements have already been given to 641 families. We direct that the remaining evictees be also given the plots.

(3) Shifting allowance of Rs.1500 and in addition a lump sum rent of Rs.3000 towards housing be given to each of the evictee families.

(4) Free transportation shall be provided for shifting.

(5) Monthly subsistence allowance equivalent to loss of net income from the acquired land to be determined by the District Judge Sonebhadra subject to a maximum of Rs.750 for a period of 10 years. The said payment shall not be linked with employment or any other compensation.

(6) Unskilled and semi-skilled posts in the project shall be reserved for the evictees subject to their eligibility and suitability.

(7) The NTPC shall give preference to the oustees in employment in Class III and IV posts under its administration subject to their suitability and eligibility.

(8) The evictees be offered employment through the contractors employed by the NTPC.

(9) The jobs of contractors under the administration of the NTPC be offered to the evictees.

(10) The Shops and other business premises within the NTPC campus be offered to the evictees.

(11) The NTPC shall operate for the benefit of the evictees self-generating employment schemes such as carpentry training (free tools to be provided after completion of training), carpet weaving training sericulture, masonry training, dairy farming, poultry farming and basket weaving training etc.

(12) The NTPC shall provide facilities in the rehabilitative area such as pucca roads, pucca drainage system, handpumps, wells, potable water supply, primary school, health center, Panchyat Bhavan, electricity connections, bank and Sulabh Sauchalaya complex etc.

(13) The NTPC shall provide hospitals, schools, adult education classes and spot centres for the evictees.

7. The Deputy Commission Sonebhadra shall supervise and ensure that the above rehabilitation measures directed by us are fully complied with by the NTPC and other authorities.

8. As regards compensation in respect of lands, crops etc Mr. Datta states that crop compensation at Rs.850 per acre per year has been paid to the oustees. He states that a sum of Rs.16,44,529.68 paise has been paid to the oustees in this respect. He further states that Rs.1 crore and Rs.5,07,500 have been further been deposited by the NTPC with the State Government on March 13, 1991 and January 20, 1992 respectively. According to him out of the said amount Rs.48,35,649.17 paise have so far been paid to the oustees as land compensation at the rate of Rs.10,000 per acre for the land has been determined as provisional compensation. We direct that the provisional compensation at the above rates be paid to the oustees, if not already paid within 8 weeks from today. In respect we further issue the following directions:

(a) The District Judge, Sonebhadra shall be the authority to determine the compensation in respect of land, crop, house and any other legitimate claim based on existing rights of the oustees.

(b) Mr. Prem Singh, Commissioner along with the Project Officer of the NTPC and sarpanch of the area concerned shall verify the extent of the property of the oustees who have been or are likely to be evicted from the actual physical possession of the land/houses etc. It has been stated before us that such verification can be done within a period of two months. We direct that the verification be completed before April 15, 1992. The rights determined by Mr. Prem Singh and party shall be subject to the final approval of District Judge, Sonebhadra.

(c) The District Judge, Sonebhadra shall issue notices to all the claimants before May,15 1992 asking them to file their respective claims for compensation. The evictees may also on their own whether they have received provisional compensation or not prefer their claims for compensation to the District Judge, Sonebhadra before August 1,1992.

(d) The District Judge Sonebhadra shall finally decide all the compensation claims expeditiously preferably before March 31, 1993. The orders passed by the District Judge in each case shall be treated as the orders under Section 17 of the Act as amended by the Uttar Pradesh Act of 1965.

(e) Any party, not satisfied with the order of the District Judge may have recourse to any remedy available under law.

9. With the above directions we finally close the proceedings in respect of the lands in possession of the NTPC.

Chairman-cum-Managing Director, Bihar State Road Transport Corporation, Patna, v. Smt. Manju Bhushan Sinha
AIR 1992 Patna 109
Misc. Appeal No. 81 of 1988, D/-19-11-1990
Bhuvaneshwar Prasad, J.

(A) Motor Vehicles Act (4 of 1939) (since repealed), S. 110-B – Negligence – Proof – Accident – S. T. Bus coming from behind and dashing against rickshaw which is comparatively slow moving vehicle – Deceased thrown out of rickshaw due to impact – Held, bus was driven rashly and negligently and Maxim "Res Ipsa Loquitur' was applicable in such case.

Torts – Negligence – Proof – Res Ipsa Loquitur – Applicability.

(B) Motor Vehicles Act (4 of 1939) (since repealed), S. 110-B - Accident - Compensation – Quantum Determination – Tribunal should take into account future prospect, changes of promotion of deceased in his service and also monetary inflation.

In the matter of: Cauvery Water Disputes Tribunal
AIR 1992 Supreme Court 522
Special Reference No. 1 of 1991, D/- 22-11-1991
Ranganath Misra C.J.I., K. N. Singh, A. M. Ahmadi, Kuldip Singh and P.B. Sawant, JJ.

(A) Constitution of India, Art. 246, Sch. 7, List 2, Entries 17, 14, 18 and List I Entry 56 – Inter-State river water – Power of State Legislature to legislate – Like Entry 17 of List 2 any State legislation either under Entry 14 or 18 of List 2 affecting inter-State river water would be subject to Entry 56 of List I.

The State has competence to legislate with respect to all aspects of water including water flowing through inter-State rivers, subject to certain limitations, viz. the control over the regulation and development of the inter-State river waters should not have been taken over by the Union (Entry 56 of List I) and secondly, the State cannot pass legislation with respect to or affecting any aspect of the waters beyond its territory. Entry 14 of List II

relates, among other things, to agriculture. In so far as agriculture depends upon water including river water, the State legislature while enacting legislation with regard to agriculture may be competent to provide for the regulation and development of its water resources including water supplies, irrigation and canals, drainage and embankments, water storage and water power which are the subjects mentioned in Entry 17 of list II. However, such a legislation enacted under Entry 14 of List II in so far as it relates to inter-State river water and its different uses and the manners of using it, would also be subject to the provisions of Entry 56 of List I. So also Entry 18 of List II which speaks, among other things, of land improvement which may give the State Legislature the powers to enact similar legislation as under Entries 14 and 17 of List II would be subject to the same restrictions.

(Para 7)

(B) Inter-State Water Disputes Act (33 of 1956), S.1 – Source of legislation – It is Art. 262 and not Entry 56 of list I – Art. 262, Entry 56 of List I and Entry 17 of List II – Distinction between, stated.

Constitution of India, Art. 262, Sch. 7, List I, Entries 56, 97, List II, Entry 17.

Article 262 gives exclusive power to the Parliament to enact a law providing for the adjudication of disputes relating to waters of inter-State river or river valleys. The disputes or complaints for which adjudication may be provided relate to the "use, distribution or control" of the waters of, or in any inter-State river or river valley. The words "use", "distribution" and "control" are of wide import and may include regulation and development of the said waters. The provisions clearly indicate the amplitude of the scope of adjudication inasmuch as it would take within its sweep the determination of the extent, and the manner, or the use of the said waters, and the power to give directions in respect of the same. The language of the Article has further to be distinguished from that of Entry 56 of List I and Entry 17 of List II. Whereas Art. 262 (1) speaks of adjudication of any dispute or complaint and that too with respect to the use, distribution or control of the waters of or in any inter-State river or river valley Entry 56 of List I speaks of regulation and development of inter-State rivers and river valleys. Thus the distinction between Article 262 and Entry 56 of List I is that whereas former speaks of adjudication of disputes with respect to use, distribution or control of the waters of any inter-State rivers and river valleys, Entry 56 of List I speaks of regulation and development of inter-State rivers and river valleys. Entry 17 of List II likewise speaks of water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I. It does not speak either of adjudication of disputes or of an inter-State river as a whole as indeed it cannot, for a State can only deal with water within its territory.

(Para 11)

The provisions of Inter-State Water Disputes Act clearly show that apart from is title, the Act is made by the Parliament pursuant to the provisions of Art. 262 of the constitution specifically for the adjudication of the disputes between the riparian States with regard to the use, distribution or control of the waters of the Inter-State rivers or river valleys. The Act is not relatable to Entry 56 of List I and, therefore, does not cover either the field

occupied by Entry 56 of List I or by Entry 17 of List II. Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, by necessary implication the subject stands excluded from the field covered by Entry 56 of Lists I and 17 of List II. It is not, therefore, permissible either for the Parliament under Entry 56 of List I or for a State Legislature under Entry 17 of list II to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with the adjudication or adjudicatory process of the machinery for adjudication established by law under Article 262. This is apart from the fact that the State legislature would even otherwise be incompetent to provide for adjudication or to affect in any manner the adjudicatory process or the adjudication made in respect of the inter-State river waters beyond its territory or with regard to disputes between itself and another State relating to the use, distribution or control of such waters. Any such act on its part will be extraterritorial in nature and, therefore, beyond its competence.

(Para 13)

It cannot be said that the topic use, distribution and control of waters of an inter-State river must be deemed to be covered by Entry 97 of List I. This is so firstly because the expression "regulation and development of inter-State rivers and river valleys" in Entry 56 of List I would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the intention of the Constituent Assembly to provide for the Union to take over the regulation and development under its control makes no sense and serves no purpose. What is further, the River Boards Act, 1956 which is admittedly enacted under Entry 56 of List I for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. This shows that the expression "regulation and development" of the inter-State rivers and river valleys in Entry 56 of List I has legislatively also been construed to include the use, distribution or allocation of the waters of the inter-State rivers and river valleys between riparian States. Moreover to contain the operation of Entry 17 of List II to the waters of an inter-State river and river valleys within the boundaries of a State and to deny the competence to the State legislature to interfere with or to affect or to extend to the use, distribution and allocation of the waters of such river or river valley beyond its territory, directly or indirectly, it is not necessary to fall back on the residuary Entry 97 of List I as an appropriate declaration under Entry 56 of List I would suffice. The very basis of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the constitutional scheme and the Constitution itself. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State river and river valley from the "use, distribution and allocation" of its water, it is neither warranted nor necessary to do so. It is thus clear that the inter-State Water Disputes Act, 1956 can be enacted and has been enacted only under Article 262 of the Constitution. It has not been enacted under Entry 56 of List I as it relates to the adjudication of the disputes and with no other aspect either of the inter-State river as a whole or of the waters in it.

(Para 14)

(C) Karnataka Cauvery Basin Irrigation Protection Ordinance (1991), S.1 – Constitutional validity – Karnataka Ordinance of 1991 is unconstitutional – It is in direct conflict with Art. 262, is against judicial power of State and also bad for having extraterritorial operation.

Constitution of India, Arts. 262, 245.

Inter-State Water Disputes Act (1956), Ss. 5, 6, 11.

The Karnataka Cauvery Basin Irrigation Protection Ordinance (1991) is unconstitutional because it affects the jurisdiction of the Tribunal appointed under the Central Act, viz., the inter-State Water Disputes Act 1956 which legislation has been made under Article 262 of the Constitution. It is obvious from the provisions of the Ordinance that its purpose is to nullify the effect of the interim order passed by the Cauvery Water Disputes Tribunal on 25th June, 1991. The Ordinance makes no secret of the said fact. The written statement filed and the submissions made on behalf of the State of Karnataka show that since according to the State of Karnataka the Cauvery Water Disputes tribunal has no power to pass any interim order or grant any interim relief as it has done by the order of 25th June, 1991, the order is without jurisdiction and, therefore, void ab initio. This being so, it is not a decision, according to Karnataka, within the meaning of Section 6 of 1956 Act and not binding on it and in order to protect itself against the possible effects of the said order, the Ordinance has been issued. The State of Karnataka has thus arrogated to itself the power to decide unilaterally whether the Tribunal has jurisdiction to pass the interim order or not and whether the order is binding on it or not. Secondly, the State has also presumed that till a final order is passed by the Tribunal, the State has the power to appropriate the waters of the river Cauvery to itself unmindful of and unconcerned with the consequence of such action on the lower riparian State. Karnataka has thus presumed that it has superior rights over the said waters and it can deal with them in any manner. In the process, the State of Karnataka has also presumed that the lower riparian States have no equitable rights and it is the sole judge as to the share of the other riparian States in the said waters. What is further, the State of Karnataka has assumed the role of a judge in its own cause. Thus, apart from the fact that the Ordinance directly nullifies the decision of the Tribunal dated 25th June, 1991, it also challenges the decision dated 26th April, 1991 of the Supreme Court (1991 AIR SCW 1286) which has ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it. The Ordinance further has an extra-territorial operation inasmuch as it interferes with the equitable rights of Tamil Nadu and Pondicherry to the waters of the Cauvery river. To the extent that the Ordinance interferes with the decision of the Supreme Court and of the Tribunal appointed under the Central legislation, it is clearly unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the inter-State Water Disputes Act is made but being also in conflict with the judicial power of the State.

(Para 17)

Section 11 of inter-State Water Disputes Act excludes the jurisdiction of all Courts including Supreme Court in respect of Water disputes referred to a Tribunal. The effect of the provisions of Section 11 read with Article 262 of the Constitution therefore, is that

the entire judicial power of the State and, therefore, of the courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control or control of the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the 1956 Act. It is, therefore, not possible to say that the question of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Karnataka Ordinance (1991) seeks directly to nullify the order of the Tribunal passed on 25th June, 1991, it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution

(Para 17)

Further the effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the State and is ultra vires the provisions of Article 245(1).

(Para 17)

The Karnataka Ordinance 1991 is also against the basic tenets of the rule of law inasmuch as the State of Karnataka by issuing the Ordinance has sought to take law in its own hand and to be above the law. Such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. The Ordinance if allowed to stand would lead to the break down of the Constitutional mechanism and affect the unity and integrity of the nation.

(Para 17)

(D) Constitution of India, Articles 245, 246 – Legislative powers – Scope – Annulling of judicial decision – Legislature cannot set aside an individual decision inter-parties – It can change basis of such decision.

The legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter-parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or Tribunal.

(Para 17)

(E) Constitution of India, Art. 143 – Reference of question to Supreme Court for opinion – Scope – President cannot ask Supreme Court to reconsider its decision – Decision of Supreme Court that water disputes Tribunal can give interim relief

when grant of interim relief forms part of reference – Operates as res judicata and cannot be reopened.

Civil P.C. (1908), S. 11.

It cannot be said that the President can refer any question of law under Article 148 and, therefore, also ask the Supreme Court to reconsider any of its decisions. Clause (1) of Article 143 empowers the President to refer for Supreme Court's opinion a question of law or fact which has arisen or is likely to arise. When the Supreme Court in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law or the same is res integra so as to require the president to know what the true position of law on the question is. The decision of the Supreme Court on a question of law is binding on all courts and authorities. Hence under the said clause the President can refer a question of law only when this Court has not decided it. Secondly, a decision given by the Supreme Court can be reviewed only under Article 137 read with Rule 1 of Order XL of the Supreme Court Rules 1966 and on the conditions mentioned therein. When, further, the Supreme Court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if its is manifestly wrong and productive of public mischief. Under the Constitution such appellate jurisdiction does not vest in the Supreme Court; nor can it be vested in it by the President under Article 148. Any other interpretation would mean that the advisory jurisdiction under Art. 148 is also an appellate jurisdiction of the Supreme Court over its own decision between the same parties and the executive has a power to ask this Court to revise its decision. If such power is read in Article 143 it would be a serious in road into the independence of judiciary. The provisions of Cl. (2) of Art. 374 of the Constitution also do not support the view that judgment could be reconsidered by S.C. in its advisory jurisdiction.

(Para 21)

The Supreme Court in 1991 AIR CW 1280 after perusing the relevant provisions of the Act which were undoubtedly brought to its notice, has come to the conclusion that the Tribunal had jurisdiction to grant interim relief when the question of granting interim relief formed part of the Reference. There is further no violation of any of the principles of natural justice or of any provision of the Constitution. The decision also does not transgress the limits of the jurisdiction of this Court. The decision being inter-parties operates as res judicata on the said point and cannot therefore be reopened.

(Para 23)

(F) Constitution of India, Art. 143 – Water disputes Tribunal – Whether can grant interim relief when no reference for grant of interim relief is made – Question left unanswered as context in which reference was made did not have any bearing on it.

(Para 24)

(G) Inter-State Water Disputes Act (1956), Ss. 5(2), (3), 6 – Water disputes Tribunal – Report and decision – Water constitutes – Interim order or relief granted by Tribunal which is not procedural and has to implemented by parties – Is report and decision of Tribunal – Interim order passed by Cauvery Water Disputes Tribunal dt. 25-7-91 is report and decision of Tribunal.

The interim orders passed or reliefs granted by the Water Disputes Tribunal when they are not of purely procedural nature and have to be implemented by the parties to make them effective, are deemed to be a report and a decision within the meaning of Section 5(2) and 6 of the Act. The Order dt. 25-7-1991 of the Cauvery Water Disputes Tribunal discusses the material on the basis of which it is made and gives a direction to the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC of water is available in Tamil Nadu's Mettur reservoir in a year from June to May. It makes the order effective from 1st July, 1991 and also lays down a time-table to regulate the release of water from month to month. It also provides for adjustment of the supply of water during the said period. It further directs the State of Tamil Nadu to deliver 6 TMC of water for the Karaikl region of the Union Territory of Pondicherry. In addition, it directs the State of Karnataka not to increase its area under irrigation by the waters of the river Cauvery beyond the existing 11.2 lakh acres. It further declares that it will remain operative till the final adjudication of the dispute. Thus the Order is not meant to be merely declaratory in nature but is meant to be implemented and given effect to by the parties. Hence, the order dt. 25-7-1991 constitutes a report and a decision within the meaning Section 5(2) and is required to be published by the Central Government under Section 6 of the Act in order to be binding on the parties and to make it effective.

(Paras 28, 30)

The event that the interim order passed by the Tribunal does or does not say that it is a report and decision is not determinative of the issue. Either the Order is such a report and decision because of its contents or not so at all. It the contents do not show that it is such a report, it will not become on because the Order states so.

(Para 27)

The plea that it is only the decision which finds support from the report of the Tribunal which in turn must be the result of a full and final investigation in full which is required to be published under Section 6 of the Act and not an order passed by the Tribunal on interim or incomplete investigation; is not tenable. The scope of the investigation that a Tribunal or a court makes at the stage of passing an interim order is limited compared to that made before making the final adjudication. The extent and the nature of the investigation and the degree of satisfaction required for granting or rejecting the application for interim relief would depend upon the nature of the dispute and the circumstances in each case. No hard and fast rule can be laid down in this respect. However, no Tribunal or court is prevented or prohibited from passing interim orders on the ground that it does not have at that stage all the material required to take the final decision. To read such an inhibition in the power of the Tribunal or a court is to deny to it the power to grant interim relief when Reference for such relief is made. Hence, it will have to be held that the Tribunal constituted under the Act is not prevented from passing

an interim order or direction, or granting an interim relief pursuant to the reference merely because at the interim stage it has not carried out a complete investigation which is required to be done before it makes its final report and gives its final decision. It can pass interim orders on such material as according to it is appropriate to the nature of the interim order.

(Para 27)

The provisions of S. 5(3) providing for second reference or reconsideration of its decision by Tribunal cannot be so construed so as to incapacitate the Tribunal from passing interim orders. If the Tribunal has power to make an interim decision when a reference for the same is made, that decision will also attract the provisions of S. 5(3). The Central Government or any State Government after considering even such decision may require an explanation or guidance from the tribunal as stated in the said provisions and such explanation and guidance may be sought within three months from the date of such decision. The Tribunal may then reconsider the decision and forward to the Central Government a further report giving such explanation or guidance as it deems fit. In such cases it is the interim decision thus reconsidered which has to be published by the Central Government under Section 6 of the Act and becomes binding and effective. Once a decision, whether interim or final, is made under Section 5(2) it attracts the provisions both of sub-section (3) of that Section as well as the provisions of Section 6.

(Para 29)

(H) Constitution of India, Art. 143 – Advisory jurisdiction – Opinion given by Supreme Court – Is it binding on all Courts – Question left unanswered. (Para 31)

Cases Referred:	**Chronological Paras**
AIR 1991 SC 696: (1990) 4 SCC 453	2
1991 AIR SCW 1286	3,6,21,23,25,30
(1991) 2JT (SC) 617	21
AIR 1990 SC 1316	1
AIR 1988 SC 1531: (1988) Suppl 1 SCR 1:1988 Cri LJ 1661	23
AIR 1987 SC 663: (1987) 1 SCR 879	17
AIR 1984 SC 684: (1984) 2 SCR 495: 1984 Cri LJ 613	23
AIR 1978 SC 803: (1978) 3 SCR 334: 1978 Lab IC 612	17
AIR 1970 SC 1992: (1971) 1 SCR 288	17
AIR 1955 SC 233: (1955) 1 SCR 1104	21
AIR 1955 SC 661: (1955) 2 SCR 603	21
AIR 1954 Bombay 351	21
AIR 1951 SC 332: 1951 SCR 747	21
AIR 1949 FC 175: 1949 FCR 595: (1949) 50 Cri LJ 897	21
(1906) 206 US 46: 51 Law Ed 956, State of Kansas v. State of Colorado	15

SAWANT, J.:- On July 27, 1991 the president, under Article 143 of the Constitution, referred to this Court three questions for its opinion. The Reference reads as follows:

"Whereas, in exercise of the powers conferred by Section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as "the Act"), the Central Government constituted a Water Disputes Tribunal called "the Cauvery Water Disputes Tribunal" (hereinafter called "the Tribunal") by a notification dated 2 June, 1990, a copy whereof is annexed hereto, for the adjudication of the Water Dispute regarding the Inter-State River Cauvery;

Whereas on 25 June 1991, the Tribunal passed an interim Order (hereinafter referred to as "the Order"), a copy whereof is annexed hereto;

Whereas, differences have arisen with regard to certain aspects of the Order;

Whereas, on 25 July 1991, the Governor of Karnataka promulgated the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 (hereinafter referred to as "the Ordinance"), a copy whereof is annexed hereto;

Whereas, doubts have been expressed with regard to the constitutional validity of the Ordinance and its provisions;

Whereas, there is likelihood of the constitutional validity of the provisions of the Ordinance, and any action taken thereunder, being challenged in Courts of law involving protracted and avoidable litigation;

Whereas, the said differences and doubts have given rise to a public controversy which may lead to undesirable consequences;

And whereas, in view of what is hereinafter stated, it appears to me that the following questions of law have arisen and are of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

Now, therefore, in exercise of the powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, Ramaswamy Venkataraman, President of India, hereby refer the following question to the Supreme Court of India for consideration and report thereon, namely:

(1) Whether the Ordinance and the provisions thereof are in accordance with the provisions of the Constitution;

(2) (i) Whether the Order of the Tribunal constitutes a report and a decision within the meaning of Section 5(2) of the Act; and

(ii) Whether the Order of the Tribunal is require to be published by the Central Government in order to make it effective;

(3) Whether a Water Disputes Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute."

To appreciate the significance of the questions referred and our answers to hem, it is necessary to understand the factual background which has led to the Reference.

The river Cauvery is a inter-State river and is one of the major rivers of the Southern Peninsula. The basin area of the river and its tributaries has substantial spread-over within the territories of the two States, namely, Karnataka and Tamil Nudu, Karnataka being the upper riparian State and Tamil Nadu being the lower riparian State. The other areas which are the beneficiaries of the river water are the territories comprised in the State of Kerala and in the Union Territory of Pondicherry. The total length of the river from its head to its outflow into the Bay of Bengal is about 802 kms. It travels about 381 kms. in Southern-Easternly direction before it reaches the border of Karnataka and Tamil Nadu. It also constitutes boundary between the said two States to an extent about 64 kms. and then traverses a distance of about 357 kms. in Tamil Nadu before joining the sea.

There were two agreements of 1892 and 1924 for sharing the water of the river between the areas which are predominantly today comprised in the State of Karnataka and Tamil Nadu, and which were at the time of the agreements comprised in the then Presidency of Madras on the one hand and the State of Mysore on the other. The last agreement expired in 1974. The river presently covers three States of Karnataka, Tamil Nadu and Kerala and the Union Territory of Pondicherry. The present State of Tamil Nadu has an area of about 43,868 sq. kms. of the Cauvery River basin, reducing the basin area which at the time of the agreement was about 49,136 sq.kms. As against this the basin area of the said river which was about 28,887 sq. kms. in the State of Mysore has increased to about 34, 273 sq. kms. in the present State of Karnataka.

The contributions made to the flows of the Cauvery River by Karnataka, Tamil Nadu and Kerala, according to the State of Karnataka is 425 TMC, 252 TMC and 113 TMC respectively together amounting to 790 TMC. According to the State of Tamil Nadu, the contributions of the three States respectively are 392 TMC, 222 TMC and 126 TMC together amounting to 740 TMC. The Study Team appointed by the Central Government in 1974 worked out the appropriations of the respective States as follows: Karnataka – 177 TMC, Tamil Nadu including Pondicherry – 489 TMC and Kerala – 5 TMC.

In 1956 the Parliament enacted the river Boards Act, 1956 for the purpose of regulation and development of inter-State rivers and river valleys and also the Inter-State Water Disputes Act, 1956 for adjudication of disputes with regard to the use, distribution or control etc. of the said waters. In 1970 Tamil Nadu invoked the provisions of Section 3 of the Inter-State Water Disputes Act, 1956 and requested the Central Government for reference of the dispute between the two States, viz. Tamil Nadu and Karnataka to a Tribunal under the Act. The Central Government initiated negotiations between the two States. Simultaneously, Tamil Nadu moved this Court by means of a suit under Article 131 of the Constitution being Suit No. 1 of 1971 seeking a direction to the Union Government to constitute a Tribunal and to refer the dispute to it. In the said suit, Tamil Nadu applied for an interim order to restrain the State of Karnataka from proceeding with and executing the projects mentioned therein. This Court by its Order of 25th January, 1971 dismissed the application for interim relief.

It appears that the negotiations between the two States which were going on in the meanwhile, resulted in the constitution of a Fact Finding Committee in Jun 1972 which was set up to ascertain facts, amongst others, as to the availability of water resources, the

extent of utilization and the nature of the areas in the respective States within the river basin, and their requirements. In view of the constitution of the Committee, Tamil Nadu withdrew its suit.

The Fact Finding Committee submitted its Reports in December, 1972, and August 1973. A Central Study Team headed by Shri CC Patel, then Addl. Secretary to Government of India, in the Ministry of Irrigation was also set up to examine the question of assessing the savings of water in the existing and planned projects of the three States in the Cauvery basin. The recommendation of the Study Team on improvement and modernization of the irrigation system including the strengthening of the works and the lining of channels, integrated operations of the reservoirs within the Cauvery basin, scientific assessment of water requirement in the command area and for monitoring the releases from the reservoirs for an efficient tie up between the rainfall and command, water requirement and release were announced at the Inter-State Conference of June, 1974.

Further negotiations resulted in what is known as "the 1976 Understanding". This Understanding envisaged the apportionment of the surplus water in the ratio of 30: 53: 17 amongst the States of Tamil Nadu, Karnataka and Kerala respectively. In the case of savings, the Study Team proposed the apportionment in the ratio of 87 TMC to Karnataka, 4 TMC to Tamil Nadu and 34 TMC to Kerala.

It appears that in spite of the information gathered through the Fact Finding Committee and the Study Team set up by the Union Government, the negotiations were not fruitful. In 1983, Tamil Nadu Ryots Association presented a petition to this Court under Article 32 of the Constitution being Writ Petition No. 13347 of 1983. The petition sought issue of a writ of mandamus to the Central Government requiring it to refer the dispute to a Tribunal under the Act. The petition was also accompanied by an application seeking interim relief. The State of Tamil Nadu supported the Writ Petition. Notices were issued to the respondents including the Union Government and the State of Karnataka. The petition remained pending in this Court for nearly seven years. No application for interim relief was moved during this period.

Although the inter-State meetings continued to be held during this period, nothing worthwhile emerged out of them. Hence, in June 1986, the State of Tamil Nadu lodged a Letter of Request under Section 3 of the Act with the Central Government for the constitution of a Tribunal and for reference of the water dispute for adjudication to it. It the said letter, Tamil Nadu primarily made a grievance against the construction of works in the Karnataka area and the appropriation of water upstream so as to prejudice the interests downstream in the State of Tamil Nadu. It also sought the implementation of the agreements of 1892 and 1924 which had expired in 1974.

At the hearing of the Writ Petition filed by the Tamil Nadu Ryots Association, the Central Government left the matter to the Court. This Court taking into consideration the course of negotiations and the length of time which had passed, by its judgment dated May 4, 1990 (reported in AIR 1990 SC 1316) held that the negotiations between the two States had failed and directed the Union Government to constitute a Tribunal under

Section 4 of the Act. In pursuance of the directions given by this Court, the Union Government by its Notification dated June 2, 1990, constituted the Cauvery Water Disputes Tribunal and by another Notification of the even date referred to it the water dispute emerging from Tamil Nadu's Letter of Request dated July 6, 1986.

2. The Cauvery Water Disputes Tribunal (hereinafter referred to as the "Tribunal") commenced its first sitting on 20th July, 1990. On that day, Tamil Nadu submitted a letter before the Tribunal seeking interim reliefs. The Tribunal diierected Tamil Nadu to submit a proper application. Thereupon Tamil Nadu and the Union Territory of Pondicherry submitted two separate applications for interim reliefs being CMP Nos. 4 and 5 of 1990.

The interim relief claimed by Tamil Nadu was that Karnataka be directed not to impound or utilize water of Cauvery river beyond the extent impounded or utilized by them as on 31-5-1972, as agreed to by the Chief Ministers of the basin States and the Union Minister for Irrigation and Powers. It further sought passing of an order restraining Karnataka from under taking any new projects, dams reservoirs, canals and/or from proceeding further with the construction of projects, dams, reservoirs canals etc. in the Cauvery basin.

In its application for interim relief Pondicherry sought a direction from the Tribunal both to Karnataka and Tamil Nadu to release the water already agreed to, i.e., 9.355 TMC during the months of September to March.

The Tribunal considered simultaneously both the applications for interim reliefs as well as the procedure governing the trial of the main dispute. It directed the disputant States to file their pleading by way of statements of cases and also required t States of Karnataka and Kerala to submit their replies to the applications for interim reliefs made by Tamil Nadu and Pondicherry. By September, 1990, all the disputant States submitted their first round of pleadings or statements of cases. By November, 1990, Karnataka and Kerala also submitted their replies to the applications for interim reliefs. The Tribunal gave time to the States to submit their respective counter-statements in reply to the statements of cases filed earlier in the main dispute.

It appears that before the disputant States submitted their counter-statements in the main dispute, the Tribunal heard the applications for interim reliefs since Tamil Nadu had, in the meanwhile, filed an application being CMP No. 9 of 1990 as an urgent petition to direct Karnataka as an emergent measure, to release at least 20 TMC of water as the first instalment, pending final orders on their interim application CMP No. 4/90. It appears that this application was filed on the ground that the samba crop could not be sustained without additional supplies at Mettur reservoir in the Tamil Nadu State. Besides contesting the application on merits, both Karnataka and Kerala raised a preliminary objection to the jurisdiction of the Tribunal to entertain the said application and to grant any interim relief. The preliminary objection was that the Tribunal constituted under the Act, had a limited jurisdiction. It had no inherent powers as an ordinary Civil Court has, and there was no provision of law which authorized or conferred jurisdiction on the Tribunal to grant any interim relief. The tribunal heard the parties both on the preliminary

objection as well as on merits, and by its Order of January 5, 1991, had, among other things, as follows :-

> "…… This Act is a complete Code in so far as the reference of a dispute is concerned. In the circumstances, in our opinion, the Tribunal is authorized to decide only the 'water dispute' or disputes which have been referred to it. If the Central Government is of the opinion that there is any other matter connected with or relevant to the 'water dispute' which has already been +referred to the Tribunal, it is always open to the Central Government to refer also the said matter as a dispute to the Tribunal constituted under Section 4 of the Act. Further, no water dispute can be referred by the Central Government unless the Central Government is of the opinion that the said dispute cannot be settled by negotiations. In fact, no water dispute can be adjudicated without its reference to the Tribunal.

The interim reliefs which have bee sought for even if the same are connected with or relevant to the water dispute already referred, cannot be considered because the disputes in respect of the said matters have not been referred by the Central Government to the Tribunal. Further, neither there is any averment in these petitions that the dispute related to interim relief cannot be settled by negotiations and that the Central Government has already formed the opinion that it shall be referred to the Tribunal. In case the petitioners of CMPs. Nos. 4,5 and 9 of 1990 are aggrieved by the conduct of the State of Karnataka and an emergent situation had arisen, as claimed, they could have raised a dispute before the Central Government and in case the Central Government was of the opinion that the said dispute could not be settled by negotiations, the said dispute could also have been referred by the Central Government to the Tribunal. In case such a dispute had been referred then it would have been open to the Tribunal to decide the said dispute which decision would then be final and binding on the parties.

x x x x x x x x

From the letter dated 6-7-1986, which was the request made on behalf of the State of Tamil Nadu to the Central Government for referring the dispute to the Tribunal, it is clear that the dispute which has been referred to this Tribunal in regard to the executive action taken by the Karnataka State in constructing Kabini, Hemavathi, Harangi, Swarnavathi and other projects and expanding the ayacuts and the failure of the Karnataka Government to implement the agreements of 1892 and 1924 relating to the use, distribution and control of Cauvery waters. No interim dispute in regard to the release of waters by the Karnataka Government from year to year subsequent to the date of the request made by the State of Tamil Nadu was at all referred to the Tribunal. The Tribunal has been called upon to decide the main water dispute, which, when adjudicated upon, would undoubtedly be binding on the parties. In view of the above, we are of the opinion that the Tribunal cannot entertain the prayer for interim relief unless the dispute relating to the same is specifically referred to the Tribunal.

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The observations made by the Hon'ble Supreme Court in Union of India v. Paras Laminates (P) Ltd. (1990) 4 SCC 453 : (AIR 1991 SC 696) – supplied] were in relation to the Appellate Tribunal constituted under the Customs Act, 1962. It was held that Tribunal functions as a court within the limits of its jurisdiction. Its area of jurisdiction is defined but within the bounds of its jurisdiction it has all the powers expressly and impliedly granted. The Supreme Court while discussing the extent of the power of the Tribunal in respect of the grant made by a particular statute held that the Tribunal will have all incidental and ancillary powers for doing of such acts or employing all such means as are reasonable necessary to make the grant effective. The import of the decision of the Hon'ble Supreme Court is that the Tribunal will have incidental and ancillary powers while exercising the powers expressly conferred. These incidental and ancillary powers must relate to the actual dispute referred and not to any other matter including granting of interim reliefs which are not at all subject-matter of reference.

In our opinion what the Supreme Court intended to hold was that the Tribunal has incidental and ancillary powers to pass order in respect of a reference for adjudication of which it has been constituted. It has not, however, further laid (sic) that it has also incidental and ancillary powers to grant relief in respect of a dispute which has not at all been referred.

In the instant case, the water dispute which has been referred to us is that which emerges from the letter of the state of Tamil Nadu dated 6th July, 1986. The Tribunal will have the power to pass such consequential orders as are required to be made while deciding the said dispute and will also have incidental and ancillary powers which will make the decision of the reference effective but these powers are to be exercised only to enable it to decide the reference effectively but not to decide disputes not referred including a dispute in regard to grant of interim relief/interim reliefs.

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The second submission raised by the learned counsel for Tamil Nadu namely to the effect that Tribunal alone could exercise jurisdiction in respect of a water dispute by virtue of Art. 262 of the Constitution of India and in case Tribunal holds otherwise the State of Tamil Nadu will be left with no remedy available to it, it may be stated that since we have taken the view that in case a water dispute really arises and such water dispute could not be resolved by negotiations then it will be open to the Central Government to refer the said dispute to the Tribunal for adjudication, the question of not having a remedy for a wrong does not arise before the Tribunal. The Central Government if it finds that the dispute is connected with or related to the water disputes already referred to the Tribunal, it is open to it to refer the said dispute also to the Tribunal in regard to the granting of an interim relief.

In the view that it took, as above, the Tribunal held that it could not entertain the said applications for grant of interim reliefs as they were not maintainable in law, and dismissed the same.

3. Being aggrieved, the State of Tamil Nadu approached this Hon'ble Court by means of special leave petitions under Art. 136 of the Constitution against the orders passed both in the original application for interim relief being CPM No. 4 of 1990 as well as in the application for urgent interim relief being CMP No. 9 of 1990. So did the Union Territory of Pondicherry against the order passed by the Tribunal in its application for interim relief being CMP No. 5 of 1990. These special leave petitions which were later on converted into Civil Appeals Nos. 303-04 of 1991 and Civil Appeal No. 2036 of 1991respectively were heard together and disposed of by this Court by its judgment dated April 26, 1991 (reported in 1991 AIR SCW 1286). While allowing the appeals this Court held as follows (paras 15 and 21):

> "Thus, we hold that the Court is the ultimate interpreter of the provisions of the Inter-State Water Disputes Act, 1956 and has an authority to decide the limits, powers and the jurisdiction of the Tribunal constituted under the Act. This Court has not only the power but obligation to decide as to whether the Tribunal has any jurisdiction or not under the Act to entertain any interim application till it finally decides the dispute referred to it.
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> x x x x x x x x
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> A perusal of the order of reference dated 2-6-90 as already extracted above clearly goes to show that the Central Government had referred the water disputes regarding the inter-State river Cauvery and the river valley thereof, emerging from letter dated 6th July, 1986 from the Government of Tamil Nadu. Thus all the disputes emerging from letter dated 6th July, 1986 had been referred to the Tribunal. The Tribunal committed a serious error in omitting to read the following important paragraph contained in the aforesaid letter dated 6-7-86."

This Court then quoted the said paragraph from the said letter of 6-7-1986 which reads as follows:

> "REQUEST FOR EXPEDITIOUS ACTION IN REFERRING THE DISPUTE TO TRIBUNAL:
>
> > From 1974-74 onwards, the Government of Karnataka has been impounding all the flows in their reservoirs. Only after their reservoirs are filled up, the surplus flows are let down. The injury inflicted on this State in the past decade due to the unilateral action of Karnataka and the suffering we had in running around for a few TMC of water every time and crops reached the withering stage has been briefly stated in note (Enclosure XXVIII). It is patent that the Government of Karnataka have badly violated the inter-State agreements and caused irreparable harm to the age old irrigation in this State. Year after year, the realization at Mettur is falling fast and thousands of acres in our ayacut in the basis are forced to remain fallow. The bulk of the existing ayacut in Tamil Nadu concentrated mainly in Thanjavur and Thiruchirappalli districts is already gravely affected in that the cultivation operations are getting long delayed, traditional double crop lands are getting reduced to single crop lands and crops

even in the single crop lands are withering and falling for want of adequate wettings at crucial times. We are convinced that the inordinate delay in solving the dispute is taken advantage of by the Government of Karnataka in extending their canal systems and their ayacut in the new projects and every day of delay in adding to the injury caused to our existing irrigation."

"The Court then proceeded to observe as follows [1991 AIR SCW 1286, Para 22]:

"The above passage clearly goes to show that the State of Tamil Nadu was claming for an immediate relief as year after year, the realization of Mettur was falling fact and thousands of acres in their ayacut in the basin were forced to remain fallow. It was specifically mentioned that the inordinate delay in solving the dispute is taken advantage of by the Government of Karnataka in extending their canal systems and their ayacut in the new projects and every day of delay is adding to the injury caused to their existing irrigation. The Tribunal was thus clearly wrong in holding that the Central Government had not made any reference for granting any interim relief. We are not concerned, whether the appellants are entitled or not, for any interim relief on merits, but we are clearly of the view that the reliefs prayed by the appellants in their C.M.P. Nos. 4, 5 and 9 of 1990 clearly come within the purview of the dispute referred by the Central Government under Section 5 of the Act. The Tribunal has not held that it had no incidental and ancillary powers for granting an interim relief, but it has refused to entertain the C.M.P Nos 4, 5 and 9 on the ground that the reliefs prayed in these applications had not been referred by the Central Government. In view of the above circumstances we think it is not necessary for us to decide in this case, the larger question whether the Tribunal constituted under the Water Disputes Act has any power or not to grant any interim relief. In the present case the appellants become entitled to succeed on the basis of the finding recorded by us in their favour that the reliefs prayed by them in their C.M.Ps. Nos. 4,5 and 9 of 1990 are covered in the reference made by the Central Government. It may also be noted that at the fag-end of the arguments it was submitted before us on behalf of the State of Karnataka that they were agreeable to proceed with the C.M.Ps. on merits before the Tribunal on the terms that all party States agreed that all questions arising out of or connected with or relevant to the water dispute (set out in the respective pleadings of the respective parties), including all applications for interim directions/reliefs by party States be determined by the Tribunal on merits. However, the above terms were not agreeable to the State of Tamil Nadu as such we have decided the appeals on merits."

In view of its findings as above, this Court by the said order directed the Tribunal to decide CMPs Nos. 4, 5 and 9 of 1990 on merits. In pursuance of these directions, the Tribunal heard the said applications of Tamil Nadu and Pondicherry. It appears that before the Tribunal, objections were again raised on behalf of the State of Karnataka with regard to the maintainability of the applications filed by Tamil Nadu and Pondicherry for interim reliefs. The Tribunal did not countenance the said objections holding that the direction given by this Court was binding on it. The Tribunal then proceeded to decide the applications on merits and by its order dated June 25, 1991 held as follows:

"When we are deliberating whether any emergent order ought to be passed, our prime consideration ought to be to preserve, as far as possible, pending final adjudication the rights of the parties and also to ensure that by unilateral action of one party other party is not prejudiced from getting appropriate relief at the time of the passing of the final orders. We ought to also endeavour to prevent the commission of any act by the parties which might impede the Tribunal from making final orders in conformity with the principles of fair and equitable distribution of the waters of this inter-State river.

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..... At this stage it would be neither feasible nor reasonable to determine how to satisfy the needs of each State to the greatest extent possible with a minimum of detriment to others. We do not also propose at this stage to enter into the question whether the present use of water of the river Cauvery either by the State of Tamil Nadu or the State of Karnataka is the most beneficial use to which the water could be put to.

x x x x x x x x

.....We do not propose to examine at this stage the legality or justifiability of erection of these reservoirs, dams, canals, etc. The said matters may be gone into if found necessary at the appropriate stage. In this case it would be in accordance with justice to fix the annual releases into Mettur Dam by making average of the same for a number of normal years in the immediate past.

x x x x x x x x

..... We have already mentioned that at the present stage we would be guided by consideration of balance of convenience and maintenance of the existing utilization so that rights of the parties may be preserved till the final adjudication....."

The Tribunal then directed the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC water is available in Tamil Nadu's Mettur reservoir in a year from June to May. The Tribunal further directed Karnataka to regulate the release of water every year in the manner stated in the order. The monthly quota of the water was to be released in four equal instalments every week, and if there was not sufficient water available in any week the deficit was directed to be made good in the subsequent week. The Tribunal also directed Tamil Nadu to deliver to Pondicherry 6 TMC water for its Karaikal region in a regulated manner. In addition, the Tribunal directed Karnataka not to increase its area under irrigation by the waters of Cauvery, beyond the existing 11.2 lakh acres. The Tribunal then observed that its said order would remain operative till the final adjudication of the dispute referred to it.

Thereafter, on July 25, 1991 the Governor of Karnataka issued an Ordinance named "the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991" which reads as follows:

"An Ordinance to provide in the interest of the general public for the protection and preservation of irrigation in irrigable areas of the Cauvery basin in Karnataka dependent on the waters of the Cauvery river and its tributaries.

Whereas the Karnataka Legislative Council is not in Session and the Governor of Karnataka is satisfied that circumstances exist which render it necessary for him to take immediate action, for the protection and preservation of irrigation in the irrigable areas of the Cauvery basin in Karnataka dependent on the water of Cauvery river and its tributaries.

Now, therefore, in exercise of the power conferred under CI. (1) of Art. 213 of Constitution of India, I, Khurshed Alam Khan, Governor of Karnataka, an pleased to promulgate the following Ordinance, namely:

1. Short title, extent and commencement:

(1) This Ordinance may be called the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991.

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force at once.

2. Definitions: Unless the context other wise requires:

(a) "Cauvery basin" means the basin area of the Cauvery river and its tributaries lying within the territory of the State of Karnataka.

(b) "Irrigable area" means the areas specified in the Schedule.

(c) "Schedule" means the Schedule annexed to this Ordinance.

(d) "Water year" means the year commencing with the 1st of June of a Calendar year and ending with the 31st of May of the next Calendar year.

3. Protection of Irrigation in irrigable area:

(1) It shall be the duty of the State Government of protect, preserve and maintain irrigation from the waters of the Cauvery river and its tributaries in the irrigable area under the various projects specified in the Schedule.

(2) For the purpose of giving effect to sub-sec. (1) the State Government may abstract or cause to be abstracted, during every water year, such quantity of water as it may deem requisite, from the flows of the Cauvery river and its tributaries, in such manner and during such intervals as the State Government or any Officer, not below the rank of an Engineer-in-Chief designated by it, may deem fit and proper.

4. Overriding effect of the Ordinance:

The provisions of this Ordinance (and of any Rules and Orders made thereunder), shall have effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal (whether made before or after the commencement of this Ordinance), save and except a final decision under the provisions of sub-sec. (2) of S. 5 read with S.6 of the Inter-State Water Disputes Act, 1956.

5. Power to remove difficulties:

If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order, as occasion requires, do anything (not inconsistent with the provisions of this Ordinance) which appears to be necessary for purpose of removing the difficulty.

6. Power to make rules:

(1) The State Government may, by Notification in the Official Gazette make rules to carry out the purpose of this Ordinance.

(2) Every rule made under this Ordinance shall be laid as may be after it is made, before each House of the State Legislature while it is in Session for a total period of thirty days which may be comprised in one Session or in two or more Sessions and if before the expiry of the said period, either House of the State Legislature makes any modification in any rule or order directs that any rule or order shall not have effect, and if the modification or direction is agreed to by the other House, such rule or order shall thereafter have effect only in such modified form or be no effect, as the case may be."

The Schedule mentioned in the Notification refers to the irrigable areas in Cauvery basin of Karnataka under various projects including minor irrigation works.

Hot on the heels of this Ordinance, the State of Karnataka instituted a suit under Art. 131 against the State of Tamil Nadu and others for a declaration that the Tribunal's order granting interim relief was without jurisdiction and, therefore, null and void, etc.

Another development which may be noticed is that the Ordinance has since been replaced by Act No. 27 of 1991. The provisions of the Act are a verbatim reproduction of the provisions of the Ordinance except that in S. 4 of the Act the words "any Court or" are omitted and S. 7 is added repealing the Ordinance. The omission of the above words excludes this Court's order dated April 26, 1991 from the overriding effect of the said provision. Reference to the Ordinance hereafter will include reference to the Act also unless the context otherwise requires.

4. It is in the context of these developments that the President has made the Reference which is set out in the beginning.

5. Before us are arraigned the State of Tamil Nadu and the Union Territory of Pondicherry on the one hand and the States of Karnataka and Kerala on the other with the

Union of India taking no side on the issues arising out of the Reference. There are also interveners on both sides. The contentions of the parties are summarized hereafter. The contentions also include a plea on both sides not to answer either all or one or the other question raised in the Reference for reasons differently advanced. These pleas will also be dealt with at their proper places. Before we deal with the contentions, it is necessary to note certain features of the Reference which are also alluded to in the contentions of the parties. The reference is made under Art. 143 (1) of the Constitution of India seeking opinion of this Court under its advisory jurisdiction. As has been stated in the preamble of the Reference and is also not disputed before us, the first two questions are obviously the outcome of the dispute relating to the sharing of waters between Tamil Nadu and Pondicherry on the one hand and Karnataka and Kerala on the other and the developments that took place in the said dispute till the date of Reference. As has been contended on behalf of Tamil Nadu and Pondicherry, even the third question has a relation to the dispute and the said events, and is not general in nature though it is couched in general terms. According to them, the question has been posed with an oblique motive of getting over the judgment of this Court dated April 26,1991 and the consequent order of the Tribunal dated June 25, 1991. Hence the said question should not be answered. Their other contention is that if the question is general in nature, it requires no answer at all.

6. The contentions of the parties on the questions referred may now be summarized.

With reference to Question 1 the State of Karnataka contends, in the light of the presumption of constitutional validity which ordinarily attaches to a legislation, that the onus lies heavily on the party challenging the same to show that the impugned Ordinance (now Act) is ultra vires the Constitution. The impugned legislation clearly falls within the competence of the State Legislature under Entry 17 as well as Entries 14 and 18 of List II in the Seventh Schedule of the Constitution. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power fall within Entry 17 of List II (hereinafter referred to as 'Entry 17') and the State Legislature has every right to legislate on the subject and this legislative power is subject only to Entry 56 of List I (hereinafter referred to as 'Entry 56'). That entry deals with regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. This entry, it is contended, does not denude the States of the power to legislate under Entry 17, since it merely empowers the Union, if Parliament has by law declared it to be in public interest, that the regulation and development of inter State rivers and river valleys should, to the extent the declaration permits, be taken under the control of the Union. On a plain reading of the said Entry it is evident that barring 'regulation and development' of an inter State river, subject to he declaration, the Central Government is not conferred with the power to legislate on water, etc., which is within the exclusive domain of the State Legislatures. The River Boards Act, 1956, being the only legislation made by Parliament under Entry 56, and the scope of the declaration in S. 2 thereof being limited 'to the extent hereinafter provided', that is to say provided by that statute, and no River Board having been constituted thus far in

respect of and (an) inter-State river under the said law, the power to legislate under Entry 17 is not whittled down or restricted. Thus, contends the State of Karnataka, the River Boards Act merely authorizes the Union to set up a River Board with a view to take under its control the regulation and development of inter-State rivers without in any manner restricting or controlling the legislative power under Entry 17. But in the absence of the Constitution of a River Board for Cauvery, it is contended that the State of Karnataka retains full legislative power to make laws as if Entry 17 has remained untouched. Further, the executive power of the Union under Art. 73 cannot extend to any State with respect to matters on which the State alone can legislate in view of the field having been covered by Art. 162 of the Constitution. Since the Act enacted under Art. 262 of the Constitution does not attract any Entry in List I, it is a law essentially meant to provide for the adjudication of a dispute with respect to the use, distribution or control of waters of, or in, any inter-State river or river valley and does not, therefore, step on the toe of Entry 17. What the Ordinance (now Act) seeks to do is to impose by S. 3 a duty on the State Government to protect, preserve and maintain irrigation from Cauvery waters in the irrigable areas falling within the various projects specified in the Schedule to the said legislation. The State of Karnataka, therefore, contends that the impugned legislation is clearly within the scope of the State's power to legislate and is, therefore intra vires the Constitution. A fortiori, the power to legislate conferred on the State Legislature by Entries 14, 17 and 18 of List II, cannot be inhibited by an interim order of the Tribunal since the scheme of the Act envisages only one final report or decision of the Tribunal under S. 5(2) which would have to be gazetted under S. 6 thereof. Until a final adjudication is made by the Tribunal determining the shares of the respective States in the waters of an inter-State river, the States would be free to make optimum use of water within the State and the Tribunal cannot interfere with such use under the guise of an interim order. Consequently it was open to the Karnataka Legislature to make a law ignoring or overriding the interim order of the Tribunal.

With regard to Question 2(i) of the Reference, the State of Karnataka contends that the scheme of the Act does not envisage the making of an interim order by the Tribunal. S. 5 of the Act provides that after a Tribunal has been constituted under S. 4, the Central Government shall refer the water dispute and any matter appearing to be connected with, or relevant to, the water dispute to the Tribunal for adjudication. On such reference the Tribunal must investigate the matters referred to it and forward a report setting out the facts found by it and giving its decision on the matters referred to it. If upon consideration of the decision, the Central Government or any State Government is of opinion that anything contained therein requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, such Government may within three months from the decision again refer the matter for further consideration, and on such reference, the Tribunal may forward a further report giving such explanation and guidance as it deems fit and thereupon the decision of the Tribunal shall be deemed to be modified accordingly. S. 6 then enjoins upon the Central Government to publish the decision of the Tribunal in the Official Gazette and on such publication 'the decision shall be final and binding on the parties to the dispute and shall be given effect to by

them'. It is contended by the State of Karnataka that the scheme of the aforestated provisions clearly envisages that once a water dispute is referred to the Tribunal, the Tribunal must 'investigate' the matters referred to it and forward a report to the Central Government 'setting out the facts found by it' and 'giving its decision' on the matters referred to it. It is this decision which the Central Government must publish in the Official Gazette to make it final and binding on the parties to the dispute. The State of Karnataka, therefore, contends that the scheme of the Act contemplates only one final report made after full investigation in which findings of fact would be set out along with the Tribunal's decision on the matters referred to it for adjudication, and does not contemplate an interim report based on half-baked information. Finality is attached to that report which records findings of facts based on investigation and not an ad hoc, tentative and prima facie view based on no investigation or cursory investigation. The State of Karnataka, therefore, contends that since the interim order was not preceded by an investigation of the type contemplated by the Act, the said order of 25th June, 1991 could not be described as 'a report' or 'a decision' under S. 5(2) of the Act and hence there could be no question of publishing it in the Gazette. It is, therefore, contended that no finality can attach to such an order which is neither a report nor a decision and even if published in the Gazette it cannot bind the parties to the dispute and can have no efficacy in law. On Question 2(ii), it is, therefore, contended that since there was no investigation, no findings on facts, no report and no decision, the Central Government is under no obligation to publish the interim order of the Tribunal.

With reference to Question 3, the State of Karnataka reiterates that the scheme of the Act clearly envisages a final report to be given by the Tribunal on conclusion of the investigation and after the Tribunal has reached firm conclusions on disputed questions of fact raised before it by the contesting parties. It is only thereafter that it can in its report record its decision which on being gazetted becomes final and binding on the parties. The words 'any matter appearing to be connected with or relevant to water dispute' employed in S. 5(1) of the Act do not contemplate reference of an interim relief matter nor can the same empower the Tribunal to make an interim order pendentelite. The Act has deliberately not conferred any power on the Tribunal to make an interim order for the simple reason that a water dispute has many ramifications, social, economic and political, and involves questions of equitable distribution of water which cannot be done without a full-fledged investigation of the relevant data-material including statistical information. In the very nature of things, therefore, it is impossible to think that the Act envisaged the making of an interim order. While conceding that certain kinds of interlocutory orders which are procedural in nature can be made by the Tribunal to effectuate the purpose of the Act, namely, adjudication of a water dispute, no interim relief or order can be granted which will affect the existing rights of the parties because that would in effect deprive the concerned State of the power to legislate in respect of water under Entry 17 and / or make executive orders in that behalf under Art. 162 of the Constitution. The jurisdiction conferred on the Tribunal under the Act to adjudicate upon a water dispute does not extend to grant of interim relief. The State of Karnataka, therefore, contends that having regard to the purpose, scope and intendment of the Act, the Tribunal constituted thereunder has no power or authority to grant any interim relief which would have the

effect of adversely interfering with its existing rights, although while finally adjudicating the dispute it can override any executive or legislative action taken by the State. Since the allocation of flow waters between the concerned States is generally based on the principle of 'equitable apportionment', it is incumbent on the Tribunal to investigate the facts and all relevant materials before deciding on the shares of the concerned States which is not possible at the interim stage and hence the legislature has advisedly not conferred any power on the Tribunal to make an interim order affecting the existing rights of the concerned parties. The State of Karnataka, therefore, urges that this question deserves to be answered in the negative.

The State of Kerala has its written submissions of 10th August, 1991 by and large supported the stand taken by the State of Karnataka. It contends that the provisions of the Act enacted under Article 262 of the Constitution constitute a complete Code and the Tribunal has been conferred the powers of a civil Court under the Civil Procedure Code only in respect of matters enumerated in Section 9(1) of the Act. The power to grant interim relief is conspicuously absent and in the absence of an express provision in this behalf, the Tribunal, which is a creation of the Act, can have no jurisdiction to grant interim relief. It would be advantageous to state the contention of the State of Kerala in its own words:

> "…..Tribunal has no jurisdiction or power to make an interim award or grant any interim relief to a party unless the dispute relating to the interim relief has itself been referred to the Tribunal." (Paragraph 1.5)

This is further amplified in paragraph 3.3 of its submissions as under:

> "Such a relief can be granted to a party if that forms the subject matter of separate reference to the Tribunal by the Central Government. In such a situation, the order of the Tribunal would constitute a separate report and decision within Section 5 (2) of the Act which would then be published by the Central Government and would, therefore, be binding on the parties."

It is, however, the stand of Kerala that no specific reference for grant of interim relief was made to the Tribunal and hence the interim order of 25th June, 1991 does not constitute a report and a decision within the meaning of Section 5(2) and hence the Central Government is not expected to gazette the same. Unless the same is gazetted finality cannot attach to it nor can it bind the parties. Therefore, contends the State of Kerala, the Tribunal had no jurisdiction to grant interim relief which it has granted by its aforesaid interim order. Hence the said order has no efficacy in law and can be ignored.

On the question of issuance of the Ordinance, the State of Kerala contends, that such a legislation falls within the scope and ambit and Entry 17 and is, therefore, perfectly legal and constitutional and is not in any manner inconsistent with Entry 56 nor does it trench upon any part of the declaration in Section 2 of the River Boards Act or any of the provisions thereof. Thus according to Kerala, the legislative competence to pass such a statute vests in the State legislature under Entry 17 and, therefore, the Governor of Karnataka was competent to issue the Ordinance under Article 213 of the Constitution.

However, in the course of his submissions before this Court, Mr. Shanti Bhushan, counsel for the State of Kerala departed from the Stand taken in the written submissions and contended that the scheme of the Act does not confer any power whatsoever on the Tribunal to make an interim order and, therefore, the only remedy available to a state which apprehends any action by the upper riparian State likely to adversely affect its right, i.e. the rights of its people, is to move the Supreme Court under Article 131 of the Constitution notwithstanding the provisions of Article 262 and Section 11 of the Act. According to the learned counsel since the scopes of Article 262 read with the scheme of the Act does not contemplate a Reference regarding the grant of interim relief to the Tribunal constituted under the Act, the field is left open for a suit to be instituted under Article 131 of the Constitution. Mr. Shanti Bhushan went so far as to contend that even if the Act had invested power in the Central Government such a provision would have been hit by Article 262 itself as the scope of that Article is limited while Article 131 is wider in scope. Thus, according to counsel, this Court's majority view expressed by Kasliwal, J. in Civil Appeals Nos. 303, 304 & 2036 of 1991 : (reported in 1991 AIR SCW 1286) which held that there was a reference to the Tribunal for grant of interim relief is not consistent with the true meaning and scope of Article 262 and the provisions of the Act and this Court should not feel bound by it if it agrees with counsel's interpretation, for to do so would be to render wrong advice to the President. It is thus manifest that counsel's submissions are a clear departure from the written submissions filed by the State on 10th August, 1991.

The State of Tamil Nadu contends that ordinarily a dispute between (i) the Government of India and one or more States or (ii) between the Government of India and any State or States on one side and one or more other States on the other or (iii) between two or more States would be governed by Article 131 of the Constitution and, subject to the provisions of the Constitution, the Supreme Court alone would have jurisdiction if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. Article 131 begins with the words 'subject to the provisions of the Constitution' and hence it must be read subject to Article 262 of the Constitution. Article 262 enables Parliament to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. That law may, notwithstanding anything contained in the Constitution, provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to above. In exercise of power conferred by this provision, the Parliament enacted the Act and by Section 11 provided as under:

> "Notwithstanding anything contained in any other law, neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."

While Article 262 (2) begins with the words 'notwithstanding anything in this Constitution', Section 11 begins with the words 'Notwithstanding anything contained in any other law', which conveys that all courts including the Supreme Court are debarred

from exercising jurisdiction in respect of any water dispute which may be referred to the Tribunal for adjudication.

It is, therefore, contended that the Tribunal required to perform a purely judicial function which but for Article 262 and Section 11 of the Act would have been performed by a Court of law. An independent high level machinery consisting of a Chairman and two other members nominated by the Chief Justice of India from amongst sitting Judges of the Supreme Court or of a High Court is to constitute the Tribunal for adjudicating the water dispute. As the Tribunal is invested with the State's judicial function it has all the trappings of a civil court and inconceivable that such a high powered judicial body would not be empowered to make interim orders or grant interim relief, particularly when it is empowered even to override an existing legislation or interfere with a future legislation. Since the Tribunal is a substitute for the Supreme Court (but for Articles 262 and Section 11 of the Act, Article 131 would have applied) it is reasonable to infer that all the powers which the Supreme Court (has) under Article 131 can be exercised by the Tribunal while adjudicating a water dispute and, therefore, the power to grant interim relief inheres in such a Tribunal without the need for an express provision in that behalf. A Tribunal on which is conferred a jurisdiction to adjudicate as to the prejudicial effect of a future legislation or executive action must of necessity possess the power to make interim orders interdicting a prejudicial act. The State of Tamil Nadu, therefore, contends that a high powered Tribunal like the present one which is a substitute for this Court must be presumed to have jurisdiction to grant an appropriate interim relief. Such an ancillary and incidental power always inheres in a Tribunal which discharges judicial functions. It is, therefore, contended that Question 3 must be answered in the affirmative.

Without prejudice to the generality of the above submission, the State of Tamil Nadu contends that insofar as the question of jurisdiction to grant interim relief concerning the Cauvery water dispute is concerned, the decision of this Court dated 26th April, 1991 in Civil Appeals Nos. 303, 304 and 2036 of 1991 (reported in 1991 AIR SCW 1286) operates as res judicata and is binding on the contesting parties regardless of the view that this Court may take on the generality of the question referred for decision. It must be recalled that this Court in its judgment of 26th April, 1991 came to the conclusion that the reference made to the Tribunal included the question of grant of interim relief and this conclusion based on the interpretation of the terms of the reference dated 2nd June, 1990 read with the letter dated 6th July, 1991 was clearly binding on the concerned parties and the Tribunal's interim order on the merits of the matter made in pursuance of this Court's directive to decide on merits is equally binding and cannot be disturbed in proceedings arising out of a reference under Article 143(1) of the Constitution. If the question of grant of interim relief forms part of the reference, the Tribunal is duty bound to decide the same and such decision would constitute a report under Section 5(2) of the Act which the Central Government would be duty bound to publish as required by Section 6 of the Act. It is further contended that in the view of the State of Tamil Nadu a Tribunal constituted under the Act has inherent jurisdiction to grant interim relief as pointed out earlier, whether or not the question regarding grant of interim relief is specifically referred, and its decision thereon would constitute a report under Section 5(2) of the Act liable to be published in the official Gazette as required by Section 6 thereof. If there is any

ambiguity in the interim order the same can be taken care of under Section 5(3) of the Act. The State of Tamil Nadu, therefore, contends that both parts of Question 2 deserve to be answered in the affirmative.

So far as Question 1 of the reference is concerned, the State of Tamil Nadu contends that the Karnataka Ordinance (now Act) is ultra vires the Constitution for diverse reasons. It is contended that the real object and purpose of the legislation is to unilaterally nullify the Tribunal's interim order after having failed in the first round of litigation. It is contended that the State of Karnataka had and has no right to unilaterally decide the quantum of water it will appropriate or the extent to which it will diminish the flow of Cauvery waters to the State of Tamil Nadu and thereby deny to the people of Tamil Nadu their rightful share in the Cauvery waters. The right to just and reasonable use of water being a matter for adjudication by the Tribunal, no single State can by the use of its legislative power arrogate unto itself the judicial function of equitable apportionment and decide for itself the quantum of water it will use from the inter-State river regardless of the prejudice it would cause to the other State by its unilateral action. Such a power cannot be read in Entry 17 as it will be destructive of the principle that such water disputes are justifiable and must be left for adjudication by an independent and impartial special forum to which it is referred, namely, the Tribunal constituted for resolving the dispute, and not by unilateral executive or legislative interference. It is, therefore, contended that the object of the legislation not being bona fide, the same cannot be allowed to stand as it has the effect of overruling a judicial order passed by a Tribunal specially appointed to adjudicate on the water dispute between the parties thereto.

On the question of legislative competence, the State of Tamil Nadu contends that the statute is ultra vires the Constitution for the following reasons:

(a) the Ordinance (now Act) is ultra vires the Constitution as it seeks to override or neutralize the law enacted by Parliament in exercise of power conferred by Article 262 (and not Article 246 read with the relevant entry in the Seventh Schedule) of the Constitution. A State Legislature can have no power to legislate with regard to a water dispute as it would be incongruous to confer or infer such power in a State Legislature to destroy what a judicial body has done under a Central Law;

(b) the impugned legislation purporting to be under Entry 17 of List II has extraterritorial operation, in that, it directly impinges on the rights of the people of Tamil Nadu to the use of Cauvery waters;

(c) The impugned legislation is contrary to the Rule of Law and a power not comprehended even by Article 262 cannot be read into the legislative power of the State for it would pervert the basic concept of justice, and

(d) The impugned legislation is violative of the fundamental rights of the inhabitants of Tamil Nadu guaranteed by Articles 14 and 21 of the Constitution, in that, the action of Karnataka is wholly arbitrary and in total disregard of the right to life of those inhabitants in Tamil Nadu who survive on Cauvery waters.

The State of Tamil Nadu strongly contends that in a civilized society governed by the Rule of Law, a party to a 'lis' - water dispute - cannot be allowed to arrogate to itself the right to decide on the dispute or to nullify an interim order made by a Tribunal in obedience to the decision of the apex Court by abusing the legislative power under Entry 17 under which the impugned legislation purports to be.

Without raising any preliminary objection and without prejudice to its aforementioned contentions, the State of Tamil Nadu contends that the jurisdiction of this Court under Article 143 of the Constitution is discretionary and this Court should refrain from answering a reference which is in general terms without background facts and is likely to entail a roving inquiry which may ultimately prove academic only. Secondly, the State of Karnataka has immediately after the interim order instituted a suit, being Original Suit No. 1 of 1991, in this Court in which it has prayed for a declaration that the interim order of the Tribunal dated 25th June, 1991 is without jurisdiction, null and void, and for setting aside the said order. It is contended that while on the one hand the decision of this Court, per Kasliwal, J., has become final and is res judicata between the parties thereto, on the other hand the State of Karnataka in ranking up the same question of jurisdiction before this Court in a substantive suit with a view to overreaching this Court's earlier order. The Presidential reference in terms refers to disputes and difference having arisen out of the Tribunal's interim order which it is said, has given rise to a public controversy likely to result in undesirable consequences. Such matters, contends the State of Tamil Nadu, can be effectively countered by the concerned Government and do not call for a Presidential reference. If there is any doubt or difficulty in the implementation of the impugned order recourse can always be had to Section 5(3) of the Act. In the circumstances it is urged that this Court should refuse to answer the Reference.

The Union Territory of Pondicherry contends that the promulgation of the Ordinance (now Act) is intended to further protract the long standing water dispute which came to be referred to the Tribunal only after this Court issued a mandamus in that behalf and is likely to prejudicially affect the interest of the State as well as the farmers and other inhabitants who utilize the water from river Cauvery. It is contended that the said legislation is unconstitutional and is a piece of colourable legislation for the following reasons:

(a) the power of the State Legislature to enact a law on the subject falling in Entry 17 List II, is subject to the provisions of Entry 56 in List I, and once Parliament had made a declaration in that behalf in Section 2 of the River Boards Act, the State Legislature was not competent to enact the impugned law,

(b) once the Central Government had entrusted the Cauvery water dispute to an independent Tribunal under the provisions of the Act, it was not constitutionally permissible for Karnataka to enact the impugned law,

(c) in the case of flowing water the riparian States have no ownership or proprietary right therein except in the usufruct thereof and, therefore, the power to legislate therein under Entry 17 of List II can extend to only the usufructuary right subject to the right of a riparian State to get the customary quantity of water,

(d) the objective of the impugned legislation is to set at naught the interim order of the Tribunal and to the extent it seeks to interfere with the exercise of judicial powers it is unconstitutional,

(e) The impugned legislation is violative of Article 21 of the Constitution as it is intended to diminish the supply of water to Tamil Nadu and Pondicherry which is also against the spirit of Article 38 and 39 of the Constitution, and

(f) The impugned legislation seeks to eclipse the interim order of the Tribunal constituted under an Act made in virtue of Article 262 of the Constitution and being in conflict with the Central legislation is void for repugnancy.

For the above reasons, Pondicherry contends that the Ordinance (now the Act) is constitutionally invalid.

As regards Question 2 it is contended that the water dispute referred to the Tribunal comprised the issue regarding the grant of interim relief as held by Kasliwal, J. and hence the interim order made by the meaning of Section 5(2) of the Act and consequently the Central Government is obliged to publish it as required by Section 6 of the Act and it is so published it will operate as a decision in rem but even without publication it is binding on Karnataka as a decision in personam. If any explanation or guidance is required it can be had from the Tribunal by virtue of Section 5 (3) of the Act. Once the time for seeking explanation or guidance is over the law enjoins on the Central Government the obligation to publish the report under Section 6 of the Act. Both the elements of Question 2 must, contends Pondicherry, be answered in the affirmative.

So far as Question 3 is concerned, it is contended that the Tribunal constituted under the Act, though not a Court, has all the attributes of a Court since it is expected to discharge a judicial function and must, therefore, be presumed to have incidental and ancillary powers' to grant interim relief if equity so demands. That is so because the jurisdiction of all Courts including this Court is taken away by virtue of Section 11 of the Act read with Article 262(2) of the Constitution. The Tribunal is, therefore, required to discharge the judicial function of adjudication a water dispute between two or more States and must, therefore, be deemed to possess the inherent power to grant interim relief which inheres in all such judicial bodies. Absence of an express provision conferring power to grant interim relief does not detract from the view that such power inheres in a Tribunal which is called upon to discharge an essentially judicial function. For discharging such a function it is essential that the Tribunal must possess inherent power to pass interim orders from time to time in aid of adjudication. The Union Territory of Pondicherry is, therefore, of the view that Question 3 must be answered in the affirmative.

Six intervention applications have been filed by different persons and bodies from Karnataka including the Advocate General of the State in support of the case of Karnataka raising contentions more or less similar to those raised by the State itself. One intervention application is filed by the Tamil Nadu Society which has preferred the original Writ Petition in which a mandate to constitute a Tribunal under the Act was given. The contentions raised by the interveners are covered in the written submissions

filed by the State of Tamil Nadu and need not be reiterated. The said intervener has also filed written submissions through counsel Shri Ashok Sen which we shall deal with in the course of this judgment.

Of the three questions which have been referred to this Court under Article 143(1) of the Constitution, there can be no dispute, and indeed there was none, that question 2 arises solely and entirely out of the Tribunal's order granting interim relief. The question is whether that order constitutes a report within the meaning of Section 5(2) of the Act and is required to be published in the gazette of the Central Government to make it effective. The first question refers to the constitutional validity of the Karnataka Ordinance (now the Act). Although this question does not specifically refer to the Cauvery water dispute or the interim order passed by the Tribunal, the preamble of the said statute leaves no doubt that is concerned with the protection and preservation of irrigation in irrigable areas of the Cauvery basin in Karnataka dependent on the waters of the Cauvery river and its tributaries. The provisions of the said law extracted earlier leave no manner of doubt that the state Government has been charged with the duty to abstract or cause to be abstracted, during every water year, such quantity of water as it may deem requisite, from the flows of river Cauvery and its tributaries, notwithstanding anything contained in any order, report or decision of any--- Tribunal', whether made before or after the commencement of the said law, save and except a final decision under Section 5(2) read with Section 6 of the Act. There can, therefore, be no doubt that if the provisions of this special Karnataka enactment become legally effective, the Tribunal's order dated 25th June, 1991 grating interim relief would stand eclipsed. In that view of the matter Question 1 is clearly intertwined with the Cauvery water dispute referred to the Tribunal and the interim order made by that body. The third question, it was contended by Tamil Nadu and Pondicherry, though innocent in appearance and apparently general in nature, is in fact likely to nullify the interim order of the Tribunal. There can be no doubt that this Court's opinion on Question 3 will certainly have a bearing on the interim order of the Tribunal. Bearing this in mind we may now proceed to deal with the questions referred to this Court in the light of the submissions made at the Bar.

7. We will deal with the respective contentions with reference to each of the questions.

Question No. 1:

To examine the validity of the contentions advanced on this question it is first necessary to analyze the relevant provisions of the Constitution.

The distribution of legislative powers is provided for in Chapter I of Part XI of the Constitution. Article 245, inter alia states that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of the State may make laws for the whole or any part of the State. Article 246 provides, among other things, that subject to clause (1) and (2) of the said Article, the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in the State List in the Seventh Schedule, Clauses (1) and (2) of the said Article refer to the Parliament's exclusive powers to make laws with respect to any of the matters enumerated in the

Union List and the power of the Parliament and the legislature of the State to make laws with respect to any of the matters enumerated in the Concurrent List. Article 248 gives the Parliament exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or the State List.

Entry 56 of the Union List reads as follows:

> "Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

A reading of this Entry shows that so far as inter-State rivers and river valleys are concerned, their regulation and development can be taken over by the union by a Parliamentary enactment. However, that enactment must declare that such regulation and development under the control of the Union is expedient in the public interest.

Entry 17 in the State List reads as follows:

> "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I."

An examination of both the Entries shows that the State has competence to legislate with respect to all aspects of water including water flowing through inter-State rivers, subject to certain limitations, viz. the control over the regulation and development of the inter-State river waters should not have been taken over by the Union and secondly, the State cannot pass legislation with respect to or affecting any aspect of the waters beyond its territory. The competence of the State legislature in respect of inter-State river waters is however, denuded by the Parliamentary legislation only to the latter legislation occupies the field and no more, and only if the Parliamentary legislation in question declares that the control of the regulation and development of the inter-State rivers and river valleys is expedient in the public interest, and not otherwise. In other words, if a legislation is made which fails to make the said declaration it would not affect the powers of the State to make legislation in respect of inter-State river water under Entry 17.

Entry 14 of List II relates, among other things, to agriculture. In so far as agriculture depends upon water including river water, the State legislature while enacting legislation with regard to agriculture may be competent to provide for the regulation and development of its water resources including water supplies, irrigation and canals, drainage and embankments, water storage and water power which are the subjects mentioned in Entry 17. However, such a legislation enacted under Entry 14 in so far as it relates to inter-State river water and its different uses and the manners of using it would also be, it is needless to say, subject to the provisions of Entry 56. So also Entry 18 of List II which speaks, among other things, of land improvement which may give the State Legislature the powers to enact similar legislation as under Entries 14 and 17 and (sic) subject to the same restrictions.

Entry 97 of the Union List is residuary and under it the Union has the power to make legislation in respect of any matter touching inter-State river water which is not enumerated in the State List or the Concurrent List. Correspondingly, the State legislature cannot legislate in relation to the said aspects or matters.

8. Article 131 of the Constitution deals with original jurisdiction of the Supreme Court and states as follows:

> "131. Original Jurisdiction of the Supreme Court:- Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute---
>
> (a) between the Government of India and one or more States; or
>
> (b) between the Government of India and any State or States on one side and one or more other States on the other; or
>
> (c) between two or more States,
>
> if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:
>
> Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

It is clear from the Article that this Court has original jurisdiction, among other things, in any dispute between two or more States where the dispute involves any question whether of law or fact on which the existence and extent of a legal right depends except those matters which are specifically excluded from the said jurisdiction by the proviso. However, the Parliament has also been given power by Article 262 of the Constitution to provide by law that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any dispute or complaint with respect to the use, distribution or control of the water of, or in, any inter-State river or river valley. Section 11 of the Act, namely, the Inter-State Water Disputes Act, 1956 has in terms provided for such exclusion of the jurisdiction of the Courts. It reads as follows:-

> "Sec. 11 --- Notwithstanding anything contained in any other law, neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."

This provision of the Act read with Article 262 thus excludes original cognizance or jurisdiction of the inter-State water disputes which may be referred to the Tribunal established under the Act, from the purview of any Court including the Supreme Court under Article 131.

9. We may now analyze the provisions of the Karnataka Ordinance in question the text of which is already reproduced. Its preamble states that it is issued (i) to provide for the protection and preservation of irrigation in irrigable areas of the Cauvery basin in Karnataka dependent on the waters of the Cauvery river and its tributaries, and (ii) that the Governor of Katnataka was satisfied that circumstances existed which rendered it necessary for him to take immediate action for the said protection and preservation. The irrigable areas of which protection and preservation is sought by the Ordinance are mentioned in the Schedule to the Ordinance. Admittedly the Schedule includes the irrigable area as existing in 1972 during the tenure of the agreement of 1924 between Karnataka and Tamil Nadu as well as the increase in the same since 1972 till the date of the Ordinance as well as the areas which are committed to be brought under irrigation on account of some of the projects mentioned in Column II of the Schedule. Clause 3(1) of the Ordinance then makes a declaration of the duty of the State Government to protect, preserve and maintain irrigation from the waters of the Cauvery river and its tributaries in the said irrigable area. Sub-clause (2) of the said clause then gives powers to the State Government to abstract or cause to be abstracted during every water year (which is defined as the year commencing with 1st of June of a calendar year and ending with 31st May of next calendar year) such quantity of water as it may deem requisite, from the flow of the Cauvery river and its tributaries and in such manner and during such intervals as the State Government or any officer not below the rank of an Engineer-in-Chief designated by it may deem fit and proper. (Emphasis supplied). This clause, therefore, vests in the State Government or the officer designated by it, an absolute power to appropriate any quantity of water from the Cauvery river and its tributaries and in any manner and at any interval as may be deemed fit and proper. The power given by the clause is unrestricted and uninhibited by any consideration save and except the protection and preservation of the irrigable area of the Karnataka State.

Clause (4) is still more absolute in its terms and operation inasmuch as it declares that the Ordinance and any rules and orders made thereunder shall have effect notwithstanding anything contained in any Order, report or decision of any Court or tribunal (whether made before or after the commencement of the Ordinance) save and except a final decision under the provisions of sub-section (2) of Section 5 read with Section 6 of the Inter-State Water Disputes Act.

Clause (5) states that when any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order, as occasion requires, do anything which appears to be necessary for the purpose of removing the difficulty, and clause (6) gives power to the State Government to make rules to carry out the purpose of the Ordinance. Clauses (4), (5) and (6) read together show that the Ordinance, Rules and Order made thereunder will prevail over any order, report or decision of any Court including the Supreme Court and, of course, of the Tribunal under the Inter-State Water Disputes Act. The only decision which is excluded from the overriding effect of the Ordinance is the final decision of the Water Disputes Tribunal given under Section 5(2) read with Section 6 of the Inter-State Water Disputes Act.

10. The object of these provisions of the Ordinance is obvious. Coming close on the Order dated 25th June, 1991 of the Tribunal and in the context of the stand taken by the State of Kartanaka that the Tribunal has no power or jurisdiction to pass any interim order or grant any interim relief, it is to override the said decision of the Tribunal and its implementation. The Ordinance has thus the effect of defying and nullifying any interim order of the Tribunal appointed under a law of the Parliament. This position is not disputed before us on behalf of the State of Karnataka. The other effect of the Ordinance is to reserve to the State of Karnataka exclusively the right to appropriate as much of the water of river Cauvery and its tributaries as it deems requisite and in a manner and at periods it deems fit and proper, although pending the final adjudication by the Tribunal.

11. It cannot be disputed that the Act, viz., the Inter-State Water Disputes Act, 1956 is not a legislation under Entry 56. In the first instance, Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. Secondly, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising therefrom and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the Entry since it is not applicable to the subject matter of the legislation. Thirdly, no Entry in either of the three Lists refers specifically to the adjudication of disputes with regard to inter-State river waters.

The reason why none of the Entries in the Seventh Schedule mentions the topic of adjudication of disputes relating to the inter-State river waters is not far to seek. Article 262 of the Constitution specifically provides for such adjudication. The Article appears under the heading "Disputes relating to Waters" and reads as follows:

> "262. Adjudication of disputes relating to waters of inter-State rivers or river valleys. - (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
>
> (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)".

An analysis of the Article shows that an exclusive power is given to the Parliament to enact a law providing for the adjudication of such disputes. The disputes or complaints for which adjudication may be provided relate to the "use, distribution or control" of the waters of, or in any inter-State river or river valley. The words "use", "distribution" and "control" are of wide import and may include regulation and development of the said waters. The provisions clearly indicate the amplitude of the scope of adjudication inasmuch as it would take within its sweep the determination of the extent, and the manner, of the use of the said waters, and the power to give directions in respect of the same. The language of the Article has, further to be distinguished from that of Entry 56 and Entry 17. Whereas Article 262(1) speaks of adjudication of any dispute or complaint and that too with respect to the use, distribution or control of the waters of or in any inter-

State river or river valley, Entry 56 speaks of regulation and development of inter-State rivers and river valleys. Thus the distinction between Article 262 and Entry 56 is that whereas former speaks of adjudication of disputes with respect to use, distribution or control of the waters of any inter-State river or river valley, Entry 56 speaks of regulation and development of inter-State river and river valleys (Emphasis supplied). Entry 17 likewise speaks of water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56. It does not speak either of adjudication of disputes or of an inter-State river as a whole as indeed it cannot, for a State can only deal with water within its territory. It is necessary to bear in mind these distinctions between Article 262, Entry 56 and Entry 17 as the arguments and counter-arguments on the validity of the Ordinance have a bearing on them.

12. We have already pointed out another important aspect of Article 262, viz., Clause (2) of the Article provides that notwithstanding any other provision in the Constitution, Parliament may by law exclude the jurisdiction of any Court including the Supreme Court in respect of any dispute or complaint for the adjudication of which the provision is made in such law. We have also noted that Section 11 of the Inter-State Water Disputes Act makes such a provision.

13. The said Act, as its preamble shows, is an Act to provide for the "adjudication of disputes relating to waters of inter-State rivers and river valleys". Clause (c) of Section 2 of the Act defines "water disputes" as follows:

> "2. In this Act, unless the context otherwise requires,--
>
> (a) & (b) …….
>
> (c) "water dispute" means any dispute or difference between two or more State Governments with respect to
>
> (i) the use, distribution or control of the waters of, or in, any inter-State river or river valley; or
>
> (ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or
>
> (iii) the levy of any water rate in contravention of the prohibition contained in Section 7".

Section 3 of the Act states that if it appears to the Government of any State that the water dispute with the Government of another State of the nature stated therein, has arisen or is likely to arise, the State Government may request the Central Government to refer the water dispute to a Tribunal for adjudication. Section 4 of the Act provides for the constitution of a Tribunal when a request is received for referring the dispute to a Tribunal and the Central Government is of the opinion that the water dispute cannot be settled by negotiations. Section 5 of the Act requires the Tribunal to investigate the matter referred to it and forward to the Central Government the report of its findings and

its decision. The Central Government has then to publish the decision under Section 6 of the Act which decision is final and binding on the parties to the dispute and has to be given effect to by them. These dominant provisions, among others, of the Act clearly show that apart from its title, the Act is made by the Parliament pursuant to the provisions of Article 262 of the Constitution specifically for the adjudication of the disputes between the riparian State with regard to the use, distribution or control of the waters of the inter-State rivers or river valleys. The Act is not relatable to Entry 56 and, therefore, does not cover either the field occupied by Entry 56 or by Entry 17. Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, by necessary implication the subject stands excluded from the field covered by Entries 56 and 17. It is not, therefore, permissible either for the Parliament under Entry 56 or for a State legislature under Entry 17 to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with the adjudication or adjudicatory process or the machinery for adjudication established by law under Article 262. This is apart from the fact that the State legislature would even otherwise be incompetent to provide for adjudication or to affect in any manner the adjudicatory process or the adjudication made in respect of the inter-State river waters beyond its territory or with regard to disputes between its territory or with regard to disputes between itself and another State relating to the use, distribution or control of such waters. Any such act on its part will be extra-territorial in nature and, therefore, beyond its competence.

14. Shri Venugopal has in this connection urged that it is Entry 97 of the Union List which deals with the topic of the use, distribution and control of waters of an inter-State river. The use, distribution and control of the waters of such rivers, by itself is not a topic which is covered by Article 262. It is also, according to him, not a topic covered by Entry 56 which only speaks of regulation and development of inter-State rivers and river valleys meaning thereby the entirety of the rivers and river valleys and not the waters at or in a particular place (emphasis supplied). Further, the regulation and development, according to him, has nothing to do with the use, distribution or allocation of the waters of the inter-State river between different riparian States. That topic should, therefore, be deemed to have been covered by the said residuary Entry 97.

With respect to the learned counsel, it is not possible to accept this interpretation of the Entry 97. This is so firstly because, according to us the expression "regulation and development of Inter-State rivers and river valleys" in Entry 56 would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the intention of the Constituent Assembly to provide for the Union to take over the regulation and development under its control makes no sense and serves no purpose. What is further, the River Boards Act, 1956 which is admittedly enacted under Entry 56 for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. This shows that the expression "regulation and development" of the inter-State rivers and river valleys in Entry 56 has legislatively also been construed to include the use, distribution or allocation of the waters of the inter-State rivers and river valleys between riparian States. We are also of

the view that to contain the operation of Entry 17 to the waters of an inter-State river and river valleys within the boundaries of a State and to deny the competence to the State legislature to interfere with or to affect or to extend the use, distribution and allocation of the waters of such river or river valley beyond its territory, directly or indirectly, it is not necessary to fall back on the residuary Entry 97 as an appropriate declaration under Entry 56 would suffice. The very basis of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the constitutional scheme and the Constitution itself. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State river and river valleys from the "use, distribution and allocation" of its water, it is neither warranted nor necessary to do so.

The above analysis of the relevant legal provisions dealing with the inter-State rivers and river valleys and their waters shows that the Act, viz., the Inter-State Water Disputes Act, 1956 can be enacted and has been enacted only under Article 262 of the Constitution. It has not been enacted under Entry 56 as it relates to the adjudication of the disputes and with no other aspect either of the inter-State river as a whole or of the waters in it.

15. It will be pertinent at this stage also to note the true legal position about the inter-State river water and the rights of the riparian States to the same. In State of Kansas v. State of Colorado, (1906) 206 US 46, the Supreme Court of the United States has in this connection observed as follows:

> "One cardinal rule, underlying all the relations of the States to each other, it that of equality of right. Each State stands on the same level with all the rest. It can impose its own legislation on no one of the others and is bound to yield its own view to none."
>
> "…… the action of one State reaches, through the agency of natural laws into the territory of another State, the question of the extent and the limitation of the rights of the two States becomes a matter of justifiable dispute between them….this court is called upon to settle that dispute in such a way as will recognize the equal rights of both and at the same time establish justice between them."
>
> "The dispute is of a justifiable nature to be adjudicated by the Tribunal and is not a matter for legislative jurisdiction of one State…"
>
> "The right to flowing water is now well settled to be a right incident to property in the land; it is a right publici juris, of such character that, whilst it is common and equal to all through whose land it runs, and no one can obstruct or divert it, yet as one of the beneficial gifts of Providence, each proprietor has a right to a just and reasonable use of it, as it passes through his land, and so long as it is not wholly obstructed or diverted, or no larger appropriation of the water running through it is made than a just and reasonable use, it cannot be said to be wrongful or injurious to a proprietor lower down."
>
> "The right to the use of the flowing water is publici juris, and common to all the riparian proprietors; it is not an absolute and exclusive right to all the water flowing

past their land so that any obstruction would give a cause of action; but it is a right to the flow and enjoyment of the water subject to a similar right in all the proprietors to the reasonable enjoyment of the same gift of Providence. It is therefore only for an abstraction and deprivation of this common benefit or for an unreasonable and unauthorized use of it that an action will lie."

16. Though the waters of an inter-State river pass through the territories of the riparian States such waters cannot be said to be located in any one State. They are in a state of flow and no State can claim exclusive ownership of such waters so as to deprive the other States of their equitable share. Hence in respect of such waters, no State can effectively legislate for the use of such waters since its legislative power doses not extend beyond its territories. It is further an acknowledged principle of distribution and allocation of waters between the riparian States that the same has to be done on the basis of the equitable share of each States. What the equitable share is will be depend upon the facts of each case. It is against the background of these principles and the provisions of law we have already discussed that we have to examine the respective contentions of the parties.

17. The Ordinance is unconstitutional because it affects the jurisdiction of the Tribunal appointed under the Central Act, viz., the Inter-State Water Disputes Act which legislation has been made under Article 262 of the Constitution. As has been pointed out above, while analyzing the provisions of the ordinance, its obvious purpose is to nullify the effect of the interim order passed by the Tribunal on 25th June, 1991. The Ordinance makes no secret of the said fact and the written statement filed and the submissions made on behalf of the State of Karnataka show that since according to the State of Karnataka the Tribunal has no power to pass any interim order or grant any interim relief as it has done by the order of 25th June, 1991, the order is without jurisdiction and, therefore, void ab initio. This being so, it is not a decision, according to Karnataka, within the meaning of Section 6 and not binding on it and in order to protect itself against the possible effects of the said order, the Ordinance has been issued. The State of Karnataka has thus arrogated, to itself the power to decide unilaterally whether the Tribunal has jurisdiction to pass the interim order or not and whether the order is binding on it or not. Secondly the State has also presumed that till a final order is passed by the Tribunal, the State has the power to appropriate the waters of the river Cauvery to itself unmindful of and unconcerned with the consequences of such action on the lower riparian States. Karnataka has thus presumed that it has superior rights over the said waters and it can deal with them in any manner. In the process, the State of Karnataka has also presumed that the lower riparian States have no equitable rights and it is the sole judge as to the share of the other riparian States in the said waters. What is further, the State of Karnataka has assumed the role of a judge in its own cause. Thus, apart from the fact that the ordinance directly nullifies the decision of the Tribunal dated 25th June, 1991, it also challenges the decision dated 26th April, 1991 of this Court which has ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it. The Ordinance further has an extra-territorial operation inasmuch as it interferes with the equitable rights of Tamil Nadu and Pondicherry to the waters of the Cauvery river. To the extent that the Ordinance interferes with the decision of this Court and of the Tribunal appointed under the Central legislation, it is clearly

unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the said enactment is made but being also in conflict with the judicial power of the State.

In this connection, we may refer to a decision of this Court in Municipal Corporation of the City of Ahmedabad v. New Shorock Spg. & Wvg. Co., Ltd (1971) 1 SCR 288: (AIR 1970 SC 1292). The facts in this case were that the High Court as well as this Court had held that property tax collected for certain years by the Ahmedabad Municipal Corporation was illegal. In order to nullify the effect of the decision, the State Government introduced Section 152A by amendment to the Bombay Provincial Municipal Corporation Act the effect of which was to command the Municipal Corporation, to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. This Court held that the said provision makes a direct inroad into the judicial powers of the State. The legislatures under the Constitution have, within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of a decision rendered by a competent court thereby rendering the decision ineffective. But no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts. Consequently, the provisions of sub-section (3) of Section 152A were held repugnant to the Constitution and were struck down. To the same effect is another decision of this Court in Madan Mohan Pathak v. Union of India, (1978) 3 SCR 334: (AIR 1978 SC 803). In this case a settlement arrived at between the Life Insurance Corporation and its employees have become the basis of a decision of the High Court of Calcutta. This settlement was sought to be scuttled by the Corporation on the ground that they had received instructions from the Central Government that no payment of bonus should be made by the Corporation to its employees without getting the same cleared by the Government. The employees, therefore, moved the High Court, and the High Court allowed the petition. Against that, a Letters Patent Appeal was filed and while it was pending, the Parliament passed the Life Insurance Corporation (Modification of Settlement) Act, 1976 the effect of which was to deprive the employees of bonus payable to them in accordance with the terms of the settlement and the decision of the single Judge of the High Court. On this amendment of the Act, the Corporation withdrew its appeal and refused to pay the bonus. The employees having approached this Court challenging the constitutional validity of the said legislation, the Court held that is would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific settlement which has been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

Yet another decision of this Court on the point is P. Sambamurthy v. State of Andhra Pradesh, (1987) 1 SCR 879: (AIR 1987 SC 663). In this case what was called in question was the insertion of Article 371-D of the Constitution. Clause (5) of the Article provided that the order of the Administrative Tribunal finally disposing of the case would become

effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order was made, whichever was earlier. The proviso to the clause provided that the State Government may by special order made in writing for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it became effective and in such a case the order of the Tribunal shall have effect only in such modified form or be of no effect. This Court held that it is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of the law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. If the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would be meaningless as it would be open to the State Government to defy the law and yet get away with it. The proviso to C1. (5) of Art. 371-D was, therefore, violative of the basic structure doctrine.

The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or Tribunal.

The effect of the provisions of Section 11 of the present Act, viz., the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control of the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the said Act. It is, therefore, not possible to accept the submission that the question of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order of a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Ordinance in question seeks directly to nullify the order of the Tribunal passed on 25th June, 1991, it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution.

Further, admittedly, the effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the state and it ultra vires the provisions of Article 245(1) of the Constitution.

The Ordinance is also against the basic tenets of the rules of law inasmuch as the State of Karnataka by issuing the Ordinance has sought to take law in its own hand and to be above the law, such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other states, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to issue such an Ordinance is upheld it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation.

18. In view of our finding as above on the unconstitutionality of the Ordinance, it is not necessary for us to deal with the contention advanced on behalf of Tamil Nadu and Pondicherry that the Ordinance is unconstitutional also because it is repugnant to the provisions of the River Boards Act, 1956 which is admittedly enacted under Entry 56.

19. We also do not propose to deal with the Contentions advanced on behalf of both sides with reference to Arts. 19 (1)(g) and 21 of the Constitution. On behalf of Karnataka the said Article are invoked to support the Ordinance contending that the Ordinance has been issued to protect the fundamental rights of its inhabitants guaranteed to them by the said Article which rights were otherwise being denied by the Tribunal's order of 25th June, 1991. As against it, it was contended on behalf of Tamil Nadu that it was the Ordinance which was designed to deny to its inhabitants the said rights. Underlying the contentions of both is the presumption that the Tribunal's order denies to Karnataka and ensures to Tamil Nadu the equitable share in the river water. To deal with the said contentions is, therefore, to deal with the factual merits of the said order which it is not for us to examine. Of the same genre are the contentions advanced on behalf of Karnataka, viz., that the order creates new rights in favour of Tamil Nadu and leads to inequitable consequences so far as Karnataka is concerned. For the same reasons, we cannot deal with these contentions either.

Question No. 3:

20. Question 3 is intimately connected with Question 2. However, Question 3 itself has to be answered in two parts, viz., whether a Water Disputes Tribunal constituted under the Act is competent to grant any interim relief (i) when no reference for grant of interim relief is made to the Tribunal, and (ii) when such reference is made to it. It was contended on behalf of Karnataka and Kerala that the answer to the second part of the question will also depend upon the answer to the first part. For if the Tribunal has no power to grant interim relief, the Central Government would be incompetent to make a reference for the purpose and the tribunal in turn will have no jurisdiction to entertain such reference, ever if made. And if the Tribunal has no power to grant interim relief, then the order made by the Tribunal will not constitute a report and a decision within the meaning of Section 5(2) and hence it would not be required to the published by the Central Government under Section 6 of the Act in order to make it effective. Further if the Tribunal has no such power to grant interim relief then the order passed by the Tribunal on 25th June, 1991 will

be void being without jurisdiction and, therefore, to that extent the Ordinance issued by the State of Karnataka will not be in conflict with the provisions of the Act, viz., the Inter-State Water Disputes Act, 1956.

21. This Court by its decision of April 26, 1999 (reported in 1991 AIR SCW 1286) has held, as pointed out above, that the Central Government had made a reference to the Tribunal for the consideration of the claim for interim relief prayed for by the State of Tamil Nadu and hence the Tribunal had jurisdiction to consider the said request being a part of the Reference itself. Implicit in the said decision is the finding that the subject of interim relief is a matter connected with or relevant to the water dispute within the meaning of Section 5(1) of the Act. Hence the Central Government could refer the matter of granting interim relief to the Tribunal for adjudication. Although this Court by the said decision has kept open the question, viz., whether the Tribunal has incidental, ancillary, inherent or implied power to grant the interim relief when no reference for grant of such relief is made to it, it has in terms concluded the second part of the question. We cannot, therefore, countenance a situation whereby Question 3 and for that matter Questions 1 and 2 may be so construed as to invite our opinion on the said decision of this Court. That would obviously be tantamount to our sitting in appeal on the said decision which it is impermissible for us to do even in adjudicatory jurisdiction. Nor is it competent for the President to invest us with an appellate jurisdiction over the said decision through a Reference under Article 143 of the Constitution.

Shri Nariman, however, contended that the President can refer any question of law under Article 143 and, therefore, also ask this court to reconsider any of its decisions. For this purpose, he relied upon the language of clause (1) of Article 143 which is as follows:

> "143 Power of President to consult Supreme Court .---(1) If at any time it appears to the president that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion there on."

In support of his contention he also refereed us to the opinion expressed by this Court in re, The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, (1951) SCR 747 : (AIR 1951 SC 332). For the reasons which follow, we are unable to accept this contention. In the first instance, the language of Clause (1) of Article 143 far from supporting Shri Nariman's contention is opposed to it. This said clause empowers the President to refer for this Court's opinion a question of law or fact which has arisen or is likely to arise. When this Court in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law or the same is res integra so as to require the President to know what the true position of law on the question is. The decision of this court on a question of law is binding on all courts and authorities. Hence under the said clause the President can refer a question of law only when this Court has not decided it. Secondly, a decision given by this Court can be reviewed only when this Court has not decided it. Secondly, a decision given by this Court can be

reviewed only under Article 137 read with Rule I of Order XL of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, this court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief. [See: Bengal Immunity Company Ltd. v. State of Bihar, (1955) 2 SCR 603: (AIR 1955 SC 661).] Under the Constitution such appellate jurisdiction does not vest in this Court; nor can it be vested in it by the President under Article 143. To accept Shri Nariman's contention would mean that the advisory jurisdiction under Article 143 is all so an appellate jurisdiction of this court over its own decision between the same parties and the executive has a power to ask this Court to revise its decision. If such power is read in Article 143 it would be a serious inroad into the independence of judiciary.

So far as the opinion expressed by this Court in re, The Delhi Laws Act, 1912: (AIR 1951 SC 332) (supra) is concerned, as the Reference itself makes clear, what was referred was a doubt expressed by the President on the decision of the Federal Court in Jatindra Nath Gupta v. Province of Bihar (1949) FCR 595: (AIR 1949 FC 175) which was delivered on 20th May, 1949. The Federal Court at that time was not the apex court. Up to 10th October, 1949, the appeals from its decisions lay to the Privy Council including the appeal from the decision in question. The decisions of the Federal Court were not binding on the Supreme Court as held in Hari Vishnu Kamath v. Syed Ahmed Isheque, (1955) 1 SCR 1104 : (AIR 1955 SC 233). Hence it was not a case where the President had referred to this Court for its opinion a decision which had become a law of the land. Hence the case in re the Delhi Laws Act, 1912 (supra) does not support the contention.

The provisions of clause (2) of Article 374 of the Constitution also do not help Shri Nariman's contention since the said provisions relate to the transitional period and the "judgments and orders of the Federal Court" referred to therein are obviously the interim judgments and orders in the suits, appeals and proceedings pending in the Federal Court at the commencement of the Constitution and which stood transferred to the Supreme Court thereafter. This is also the view taken by a Division Bench of Bombay High Court in State of Bombay v. Gajanan Mahadev Babley, AIR 1954 Bombay 351. This view has been confirmed by this Court in Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat, (1991) 3 JT (SC) 617. Paragraphs 32 to 37 of the judgment deal with this subject specifically.

22. Both Shri Parasaran and Shri Venugopal requested us not to answer the first part of Question 3 on the ground that the said part of the question is purely theoretical and general in nature, and any answer given would be academic because there will be no occasion to make any further interim order or grant another interim relief in this Reference. According to him, the recitals of the order of Reference have bearing only on Question 1 and 2 and the second part of Question 3. They have no bearing on the first part of Question 3 and since the Reference has been made in the context of particular

facts which have no connection with the theoretical part of Question 3, the same should be returned unanswered as being factually unwarranted.

23. On behalf of Karnataka and Kerala, however, as pointed out above, it was urged that we should answer the said part of the question for the reasons stated there. Shri Shanti Bhushan in this connection relied upon the decision of this Court in A.R. Antulay v.R.S. Nayak. [(1988) Suppl 1 SCR 1: (AIR 1988 SC 1531)]. He pointed out that by the said decision the directions given by this Court in its earlier decision were held to be void being without jurisdiction and the same were quashed. In view of this precedent, he submitted that a similar course is open to this Court and the decision dated April 26, 1991 (Reported in 1991 AIR SCW 1286) given by this Court may also be declared as being without jurisdiction and void. In A.R. Antulay's case (supra) two questions were specifically raised, viz., (i) whether the directions given by this Court in R.S. Nayak v. A. R. Antulay, (1984) 2 SCR 495 : (AIR 1984 SC 684) (hereinafter referred to as 'R.S. Nayak's case') withdrawing the Special Case No. 24 of 1982 and Special Case No. 3 of 1983 arising out of a complaint filed by a private individual pending in the court of Special Judge, Greater Bombay and transferring the same to the High Court of Bombay in breach of Section 7(1) of the Criminal Law Amendment Act, 1952 (which mandates that the offences as in the said case shall be tried by a Special Judge only) thereby denying at least one right of appeal to the appellant, was violative of Articles 14 and 21 of the Constitution and whether such directions were at all valid or legal and, (ii) if such directions were not valid or legal, whether in view of the subsequent orders passed by this Court on 17th April, 1984 in a writ petition challenging the validity of the order and judgment of this Court in R.S. Nayak's case whereby this Court had dismissed the writ petition without prejudice to the right of the petitioner to approach this Court with an appropriate review petition or to file any other application which he may be entitled in law to file, the appeal filed was sustainable and the grounds of the appeal wee justifiable. The latter question was further explained by stating that the question was whether the direction given in R.S. Nayak's case in a proceedings inter partes were binding even if bad in law or violative of Articles 14 and 21 of the Constitution and as such were immune from correction by this Court even though they caused prejudice and did injury. It may be stated here that the said proceedings had come before this Court by way of a special leave petition against an order passed by the learned Judge of the High Court to whom the said case came to be assigned subsequently in pursuance of the directions given in R.S. Nayak's case. By the order passed by the learned Judge, as many as 79 charges were framed against the appellant and it was decided not to proceed against other named co-conspirators. In the special leave petition filed to challenge the said order, two questions which we have stated above wee raised and leave was granted. This Court in that case held that (i) the directions given by this Court in R.S. Nayak's case were violative of the limits of jurisdiction of this Court since this Court could not confer jurisdiction on a High Court which was exclusively vested in the Special Judge under the provisions of the Criminal Law Amendment Act of 1952; (ii) the said directions deprived the appellant of his fundamental rights guaranteed under Articles 14 and 21 of the Constitution since the appellant had been treated differently from other offenders and he was deprived of a right of appeal to the High Court; (iii) the directions were issued

without observing the principle of audi alteram partem; and (iv) the decision given was per incuriam. Shri Shanti Bhushan urged that since in that case this Court had quashed its own earlier directions on the ground that the High Court had no jurisdiction to try the offence and this Court could not confer such jurisdiction on it, in the present case also the decision of the Court dated April 26, 1991 (Reported 1991 AIR SCW 1286) may be ignored for having proceeded on the basis that the Tribunal had jurisdiction to pass interim relief when it had no such jurisdiction.

We are afraid that the facts in A.R. Antulay's case (AIR 1988 SC 1531) (supra) are peculiar and the decision has to be confined to those special facts. As this Court has pointed out in the said decision, in the first instance, the directions which were given for withdrawing the case from the Special Judge to the High Court were without hearing the appellant. Those directions deprived the appellant of a right of appeal to the High Court and thus were prejudicial to him. There was, therefore, a manifest breach of the rule of audi alteram partem. Secondly, while giving the impugned directions, the Court had not noticed that under the said Act of 1952, the Special Judge had an exclusive jurisdiction to try the offence in question and this being a legislative provision, this Court could not confer the said jurisdiction on the High Court. The Court also pointed out that to the extent that the case was withdrawn from the Special Judge and sent to the High Court, both Articles 14 and 21 were violated. The appellant was discriminated against and the appellant's right of appeal which was an aspect of Article 21 was affected. It would, thus, appear that not only the directions given by this Court were without jurisdiction but they were also per incuriam and in breach of the principles of natural justice. They were further violative of he appellant's fundamental rights under Articles 14 and 21 of the Constitution. None of the said defects exists in the decision of this Court dated April, 26, 1991 (reported in 1991 AIR SCW 1286). It cannot be said that this Court had not noticed the relevant provisions of the inter-State Water Disputes Act. The Court after perusing the relevant provisions of the Act which were undoubtedly brought to its notice, has come to the conclusion that the Tribunal had jurisdiction to grant interim relief when the question of granting interim relief formed part of the Reference. There is further no violation of any of the principles of natural justice or of any provision of the Constitution. The decision also does not transgress the limits of the jurisdiction of this Court. We are, therefore, of the view that the decision being inter-partes operates as res judicate on the said point and it cannot be reopened.

24. We, however, agree with the contention that it is not necessary to answer the first part of Question 3. The context in which all the questions are referred to us and the preamble of the Reference amply bear out that the questions have been raised against the background of a particular set of facts. These facts have no bearing on the first part of Question 3 which is theoretical in nature. It is also legitimate to conclude that this part of the question was not prompted by the need to have a theoretical answer to comprehend situations in general. Our answer to the second part of the question should meet the exigencies of the situation.

Question No. 2:

25. Coming now to Question 2, although the question is split into two parts, they deal with the same aspect of the subject inasmuch as the answer to the first part would automatically answer the second part of the question. This situation, like the first question, relates to the specific Order of the Tribunal dated June 25, 1991. Hence, our opinion will have to be on the legal merits of the said order.

Sub-section (1) of Section 5 expressly empowers the Central Government of refer to the Tribunal not only the main water dispute but any matter appearing to be connected with or relevant to it. It cannot be disputed that a request for an interim relief whether is the nature of mandatory direction or prohibitory order, whether for the maintenance of status quo or for the grant of urgent relief or to prevent the final relief being rendered infructuous, would be a matter connected with or relevant to the main dispute. In fact, this Court, by its said decision of April 26, 1991 (reported in 1991 AIR SCW 1286), has in terms held that the request of the State of Tamil Nadu for granting interim relief had been referred by the Central Government to the Tribunal and directed the Tribunal to consider the request on merits, the same being a part of the Reference. Hence the order of the Tribunal will be a report and decision within the meaning of Section 5(2) and would have, therefore, to be published under Section 6 of the Act in order to make it effective.

26. One of the contentions advanced in this behalf was that the Order of the Tribunal dated June 25, 1991 does not purport to be and does not state to be a report and decision. It only states that it is an order. Secondly, the said Order cannot be a report and decision within the meaning of Section 5(2) of the Act because: (i) the Tribunal can make report only after final adjudication of the Dispute and there cannot be adjudication without investigation. There is no provision for interim investigation and interim finding and report; (ii) the Tribunal could not have made the report because on its own showing: (a) pleadings were not complete, parties had not yet placed on record all their documents and papers etc; (b) there was no investigation of the matters, the investigation could have been done only after disclosure of documents followed by a detailed hearing, the evidence and arguments of the parties and judicial finding in consonance with natural justice; (c) the assessors appointed to assess on the technical matters conducted their proceedings without consultation with the engineers of the State. Sometimes the engineers of Tamil Nadu were called for consultation in the absence of engineers of Karnataka. The summoning of documents and information by the assessors was also causal and did not conform to the principles of natural justice and fair-play. A copy of the advice given by the assessors to the members of the Tribunal was not made available to the parties; (d) the Tribunal has stated "at this stage it would not be feasible nor reasonable to determine how to satisfy the needs of each State to the greatest possible extent with the minimum detriment to others". Such an approach is contrary to the concept of an investigation contemplated by the Act and hence no interim order for interim relief could be made on such investigation not contemplated under the Act before making any order, (iii) it is only the decision which finds support from the report of the Tribunal which in turn must be the result of a full and final investigation in full which is required to be published under Section 6 of the Act and not an order such as the one passed by the Tribunal. The present order is neither a decision nor an adjudication and hence cannot be published.

27. The contention that since the Order does not say that it is a report and decision and, therefore, it is not so under Section 5(2) of the Act is to say the least facetious. Either the Order is such a report and decision because of its contents or not so at all. If the contents do not show that it is such a report, it will not become one because the Order states so. As is pointed out a little later the contents of the Order clearly show that it is a report and a decision within the meaning of Section 5(2).

Some of the aforesaid submissions relate to the merits of the Order passed and its consequences rather than to the jurisdiction and the power of the Tribunal to pass the said Order. While giving our opinion on the present question, we are not concerned with the merits of the order and with the question whether there was sufficient material before the Tribunal, whether the tribunal had supplied the copies of the advice given by the assessor to the respective parties and whether it had heard them on the same before passing the Order in question. The limited question we are required to answer is whether the order granting interim relief is a report and a decision within the meaning of Section 5(2) and is required to be published in the Official Gazette under Section 6 of the Act. It is needless to observe in this connection that the scope of the investigation that a Tribunal or a court makes at the stage of passing an interim order is limited compared to the made before making the final adjudication. The extent and the nature of the investigation and the degree of satisfaction required for granting or rejecting the application for interim relief would depend upon the nature of the dispute and the circumstance in each case. No hard and fast rule can be laid down in this respect. However, no Tribunal or court is prevented or prohibited from passing interim orders on the ground that it does not have at that stage all the material required to take the final decision. To read such an inhibition in the power of the Tribunal or a court is to deny to it the power to grant interim relief when Reference for such relief is made. Hence, it will have to be held that the Tribunal constituted under the act is not prevented from passing an interim order or direction, or granting an interim relief pursuant to the reference merely because at the interim stage it has not carried out a complete investigation which is required to be done before it makes its final report and gives its final decision. It can pass interim orders on such material as according to it is appropriate to the nature of the interim order.

28. The interim orders passed or reliefs granted by the Tribunal when they are not of purely procedural nature and have to be implemented by the parties to make them effective, are deemed to be a report and a decision within the meaning of Section 5(2) and 6 of the Act. The present Order of the Tribunal discusses the material on the basis of which it is made and gives a direction to the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC of water is available in Tamil Nadu's Mettur reservoir in a year from June to May. It makes the order effective from 1st June, 1991 and also lays down a time-table to regulate the release of water from month to month. It also provides for adjustment of the supply of water during the said period. It further directs the State of Tamil Nadu to deliver 6 TMC of water for the Karaikal region of the Union Territory of Pondicherry. In addition, it directs the State of Karnataka not to increase its area under irrigation by the waters of the river Cauvery beyond the existing 11.2 lakh acres. It further declares that it will remain operative till the final adjudication of the dispute. Thus the Order is not meant to be merely declaratory in nature but is

meant to be implemented and given effect to by the parties. Hence, the order in question constitutes a report and a decision within the meaning of Section 5(2) and is required to be published by the Central Government under Section 6 of the Act in order to be binding on the parties and to make it effective.

29. The contention that Section 5(3) of the Act cannot apply to the interim orders as it is only the final decision which is meant to undergo the second reference to the Tribunal provided for in it has no merit. If the Tribunal has, as held above, power to make an interim decision when a reference for the same is made, that decision will also attract the said provisions. The Central Government or any State Government after considering even such decision may require an explanation or guidance from the Tribunal as stated in the said provisions and such explanation and guidance may be sought within three months from the date of such decision. The Tribunal may then reconsider the decision and forward to the Central Government a further report giving such explanation or guidance as it deems fit. In such cases it is the interim decision thus reconsidered which has to be published by the Central Government under Section 6 of the Act and becomes binding and effective. We see, therefore, no reason prevent or incapacitate the Tribunal from passing the interim order. Once decision, whether interim of final, is made under Section 5(2) it attracts the provisions both of sub-Section (3) of that Section as well as the provision of Section 6 of the Act.

30. As pointed out earlier, the present Order having been made pursuant to the decision of this Court dated April 26, 1991 in C.As. Nos. 303-04 of 1991: (reported in 1991 in AIR SCW 1286) on a matter which was part of the Reference as held by this Court in the said decision, cannot but be a report and a decision under Section 5(2) and has to be published under Section 6 of the Act to make it effective and binding on the parties. This legal position of the said order is not open for doubt. To question its efficacy under the Act would be tantamount to flouting it.

31. Before concluding we may add that the question whether the opinion given by this Court on a Presidential Reference under Article 143 of the Constitution such as the present one is binding on all courts was debated before us for a considerable length of time. We are, however, of the view that we need not record our opinion on the said question firstly, because the question does not form part of the Reference and secondly, any opinion we may express on it would again be advisory in nature. We will, therefore, leave the matter where it stands. It has been held adjudicatively that the advisory opinion is entitled to due weight and respect and normally in will be followed. We feel that the said view which holds the field today may usefully continue to do so till a more opportune time.

32. Our opinion on the questions referred to us is, therefore, as follows:

Question No. 1---- The Karnataka Cauvery Baisn Irrigation Protection Ordinance, 1991 passed by the Governor of Karnataka on 25th July, 1991 (now the Act) is beyond the legislative competence of the State and is, therefore, ultra vires the Constitution.

Question No. 2 ---- (i) The order of the Tribunal dated June 25, 1991 constitutes report and decision within the meaning of Section 5 (2) of the Inter-State Water Disputes Act. 1956;

(ii) The said Order is, therefore, required to be published by the Central Government in the Official Gazette under Section 6 of the Act in order to make it effective.

Question No. 3--- (i) A Water Disputes Tribunal constituted under the Act is competent to grand any interim relief to the parties to the dispute when a reference for such relief is made by the Central Government:

(ii) Whether the Tribunal has power to grant interim relief when no reference is made by the Central Government for such relief is a question which does not arise in the facts and circumstances under which the Reference is made. Hence we do not deem it necessary to answer the same.

Order accordingly.

M. C. Mehta v. State of Orissa
AIR 1992 Orissa 225
O.J.C. No. 115 of 1990, D/- 6-3-1992
A. Pasayat and S. K. Mohanty, JJ.

Constitution of India, Arts. 226, 51A (g) - Public interest litigation - Water pollution - Discharge of sewage from Medical College Campus and by storm water drain - Survey report by Prevention Board revealing health injuries caused by use of water - State, instead of taking serious note, feigning ignorance of pollution and filing evasive reply - Authorities directed to take immediate action to prevent and control water pollution.

Water (Prevention and Control of Pollution) Act (6 of 1974), S. 17.

Environment - Pollution of water - Prevention - Directions issued to State Govt.

Environment - Improvement and Protection of - Fundamental obligation of citizen.
(Paras 9, 10)

Cases Referred: **Chronological Paras**

AIR 1980 SC 1622: 1980 Cri LJ 1075 9

PASAYAT, J.:- "Water, water every-where, nor any drop to drink" wrote S.T. Coleridge in "The Ancient Mariner". Shall such a contingency befall majority of the populace of Cuttack city is the primary concern of petitioner, a practising advocate of the Supreme Court and General Secretary of the Indian Council for Inver-Legal Action, a registered voluntary organisation. He has filed this writ application for a writ of mandamus to protect the health of thousands of innocent people living in Cuttack and adjacent areas,

who are suffering from pollution being caused by the Municipal Committee, Cuttack and the S.C. Medical College Hospital, Cuttack. Several acts of the aforesaid authorities and the State of Orissa are alleged to be in violation of Article 21 of the Constitution of India, the National Health Policy, the Environment (Protection) Act, 1986, and the Water (Prevention and Control of Pollution) Act, 1974. The provisions of the last named Act being the pivotal statute in this application, the same is referred to as the 'Act' hereinafter.

2. Since the allegations were found to be horrid, the Orissa Legal Aid and Advice Board was directed by this Court to engage a Senior Counsel for the petitioner. Notices were issued to the Health department of the State of Orissa, the Municipal authorities, the authorities of the S.C.B. Medical College Hospital and the State Prevention and Control of Pollution Board (in short the 'Board').

3. Counter-affidavits have been filed by the aforesaid authorities and the functionaries.

4. The allegations, stated in brief, are to the following effect:

> The petitioner came to visit the thousand year old silver city, Cuttack hoping to have a look at the rich and cultural heritage of the city. Instead what he found was a horrible pollution of water in the city. The petitioner visited certain areas nearby the Taladanda canal. This canal was excavated about one hundred years back for the purpose of irrigation of a part of Mahanadi delta of Cuttack district. But it has become a refuse of untreated waste-water of the hospital and some other parts of the city. The water of the canal consequently has become highly polluted. A large section of populace living in the bustees along the coast of the canal is using the water of the canal for bathing, drinking and other domestic purposes. The storm water drain which was constructed in the city for the purpose of discharge of excess water during heavy rains into the river Kathajori to avoid water stagnation was intended to discharge such water through sluice-gate. Unfortunately, the storm water drain which is expected to remain dry except during the rainy season is full throughout the year and sewage water from various parts of the city gets into it and consequently to the river. The unsanitary condition of this drain creates health problem in the city. A sewage treatment plant was contemplated for the city waste-water at Matagajpur, but the project has been abandoned mid-way. Steps are necessary to complete and upgrade the sewage treatment plant so as to stop discharge of city waste-water into the storm water drain and into the Taladanda canal by constructing appropriate sewage system for the city, and installing waste-water treatment plant at the hospital. Because of unavoidable situations the people are bound to drink contaminated water and consequentially becoming victims of water-borne diseases. The authorities by their callous acts have inflicted suffering and pain on the thousands of people by forcing them to drink the contaminated/polluted water instead of acting for their welfare to prevent it. The Board constituted under Section 17 of the Act has also been deficient in its functioning.

5. The State of Orissa through the Secretary, Health Department and the Principal, S.C.B. Medical College Hospital has filed their counter-affidavit. Their stand in essence is that

they have no information about the people suffering from pollution being caused by discharge of sewage. It is asserted that a Central Sewerage system has been installed in the S. C. B. Medical College Hospital campus and the sewage generated in the medical campus is being collected by this water carriage system from different buildings. All toilets inside the hospital have been connected to the Central Sewerage system, and there is no sewage flow into the Taladanda canal as alleged. It is also stated that no specific instance has been given by the petitioners as to how the people suffer from water pollution. The Health Department is not responsible for supply of drinking water to the people of Cuttack city and the surrounding areas. Supply of clean drinking water, it is stated, is the job of Urban Development Department. So far as discharge of storm water from the S.C.B. Medical College Hospital campus is concerned, it is stated that open drains have been installed. Sometimes waste-water other than sewage flows through these drains to Taladanda canal. No specific case of epidemic of water-borne diseases caused by contamination of Taladanda canal has been indicated, and no such instance has come to the notice of the Health Department. The Board have never reported since 1983 about pollution of Taladanda canal by discharge of waste-water from the medical college campus to it. As a matter of policy, government want to protect the water of Taladanda canal, and therefore, arrangements are being made to prevent discharge of water from the medical college hospital to the canal. For this purpose, a scheme has been prepared which will be implemented subject to availability of funds in the 8th Plan. It is also stated that the Health and Family Welfare department is not connected with the maintenance of the storm water drain constructed within the city for the purpose of discharge of excess water to river Kathajori.

6. More or less, in similar terms is the counter-affidavit filed by the Cuttack Municipality. It has been stated that Cuttack Municipality has provided water facilities by extending pipe points to the road. The people of the city are utilising water coming from the said pipes during fixed time-intervals. Where installation has not been made for storage of water, water is lifted from pumps operated through electricity. Occasional disruption is caused due to failure of electricity and the same is a general problem for the State. Therefore, pollution of water cannot be attributed to carelessness and callousness of the municipality.

7. The Indian Constitution, in the 42nd Amendment, has laid the foundation in Articles 48A and 51A for a jurisprudence of environmental protection. Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures. The two Articles read as follows:

> "Article 43A - Protection and improvement of environment and safeguarding of forests and wildlife - The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".
>
> "Article 51A (g) - It shall be the duty of every citizen of India .....to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

"Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. (Vide Section 2 (a) of the Environment (Protection) Act, 1989)

The expressions "pollution", "sewage effluent", "sewer" and "stream" are defined in the Act as follows:

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

(e) 'pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;
...

(g) 'sewage effluent' means effluent from any sewerage system of sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel open or closed carrying sewage or trade effluent;
...
(j) 'stream' includes -
(i) river;
(ii) water course (whether flowing or for the time being dry);
(iii) inland water (whether natural or artificial);
(iv) Sub-terranean waters;
(v) sea or tidal water to such extent or as the case may be, to such point as the State Government may, be notification in the Official Gazette, specify in this behalf;
...

8. The assertions in the counter-affidavit are in general terms and are full of contradictions. At one hand it has been accepted that Government has taken steps to protect water of Taladanda canal from pollution and arrangements are being made to prevent discharge of water from the medical campus to the canal, on the other it has been stated that there was no pollution of water, and/or that no specific instance of suffering from such pollution has been indicated. The counter-affidavit filed by the Board is, however, revealing. It has been asserted that during the period from November, 1987 to April, 1988 with the objective of assessing the prevailing water quality vis-a-vis the actual use of the canal water, since there are many existing and potential sources of pollution, eleven sampling points of survey were fixed during the entire length of the

canal from its origin at Jobra in Cuttack to its end point near Atharabanki creek at Pradeep. The test report so far as it is relevant reveals as follows:

"Sampling Stations -

1. Jobra Ghat: A bathing ghat very close to the Mahanadi-Sirupa Barrage. The reservoir water just enters to the canal at this point.
2. Hind Cinema: About a kilometre downstream of Jobra, this site was chosen mainly because the discharge from the biggest hospital complex of Orissa (the S.C.B. Medical College & Hospital), are let out to the canal, about $^1/_2$ km upstream of this sampling point.

Besides, there are a number of slums in its immediate upstream vicinity.

3. PHED Office: In between the second and this sampling station, there are a number of bathing ghats and two drainage outlets.
4. Railway Bridge: Besides a number of bathing ghats in between, at this place is located the sluice gate on the main sewerage drain of the city for discharging the storm water into the canal. On the opposite bank there is another storm water outlet coming from the railway stations and malgodown areas.
5. Nuabazar Bridge: There is a gate for letting out the sewerage from the Nuabazar-one of the upcoming down town residential and commercial areas.
6. Matagaijpur: There are several outlets of storm water drains, besides a number of bathing ghats, in between the points 5 and 6.
7. Gandarpur: Mainly a residential and commercial area.
8. Raghunathpur Bridge: Rural residential area.
9. Thanagada: A thickly populated village.
10. Atharbanki Creek: End point of the canal.

At about 1.5 Km. of its upstream, on the left bank, the area is extensively used for fish drying.

(i) November 3 & 4, 1987,
ii) December 28, 1987, and
iii) April 25, 1988."

The results of the survey undertaken clearly show that the water is unfit for human consumption and drinking water particularly in respect of Biochemical Oxygen Demand (BOD), Coliform and Turgidity. The report further reveals that the canal water is unfit for use as drinking water sources even with treatment. With respect to BOD, the entire canal and with respect to Coliform, most part of it was unsustainable for bathing. In conclusion the report shows that it is the biological pollution of Taladanda canal as reflected by the BOD and Coliform levels which is responsible for the down grading quality of water, in the following words:

"A survey along with the banks of the canal would clearly reveal that the most horrendous aspect of the present status of the canal is its use as a refuge for sewage

and garbage. In its stretch within the municipal limits of Cuttack, one can observe at least half a dozen major sewage/domestic waste outlets to the canal. We have not, however, ascertained whether they are with the permission of the competent authority or the discharges are let out surreptitiously. From its origin at Jobra to Hind Cinema, in a distance of about 1.5 Km there are three major outfalls, two of them coming straight from the SCB Medical College and Hospital, the largest hospital complex of Orissa. The third outfall is mercifully mixed with domestic waste from the residential areas of Orissa Schools of Engineering. The quality of discharge from one of the major outfalls from the hospital complex (measured more recently), along with the standards stipulated for discharge into inland surface water, are given in Table IX. Besides the undesirable quality of the effluent, the extent of pollution it causes to the canal water is also evident from a comparison of the upstream and downstream water qualities. The main sewage drain of Cuttack, which is euphemistically referred to as a storm water drain in official papers, runs parallel to the right bank of the canal during the stretch from the sampling station 3 (PHED Office) to 6 (Matagajpur). Somewhere in the half way between the stations 4 and 5 (near Matrumandir), a sluice gate between the canal and the drain has been installed. Reportedly, during heavy rains, the drain is closed and the excess storm water is discharged to the canal".

The recommendations of the Board were to the following effect:

"In view of the various types of actual uses of Taladana canal, it is imperative that the quality of canal water be improved and sincere efforts be made by all concerned towards this end. Since most of the organised discharges occur within its limits, the maximum responsibility in this connection perhaps lies with the Cuttack Municipality, which must take appropriate steps to stop all sewage/waste water discharges to the canal. All outfall on the right bank can be diverted to the sewage drain. The medical college authorities appear to have been very callous in this matter by letting the undisinfected waste water from their premises into the canal. A health survey of the people using the canal water for various domestic purposes (other than irrigation and navigation) will reveal the health injury caused by the use of this polluted water".

The Board also undertook a thorough and detailed survey of the effect of pollution caused by the mass bathing in Mahanadi river at Cuttack during Kartik Purnima and Bali Yatra. The Board examined the water quality of stretch of Mahanadi river covering about 4 Kms at 5 points. The results of the survey/study revealed that the water at Gadagadia is not only unfit for outdoor bathing with respect to its bacteriological quality, but also has immense potential for causing serious epidemics and other kinds of ailments. It was concluded that the remedial measures undertaken by the Cuttack Municipality and the State Health authorities are inadequate. The recommendations of the Board were as follows:

1. From the nature of dispersion of the pollutants, it appears quite probable that the flow of the river is quite lean. Though this depends on climatological parameters, which may differ from year to year, it is not likely that there would be much

variation (Kartik Purnima generally falls during the 2nd 4th week of November). Hence for all practical purpose the stretch of the river from Gadagadia to about 1 Km. downstream should be treated as a pond for public health purpose and every care should be taken to maintain the water quality fit for bathing, by adequate chlorinating, with the help of boats, if necessary.

2. Chlorinating should commence from a few days (at least a week) earlier and the dose should gradually be increased and then decreased slowly till about a week after the Bali Yatra a large carnival associate with the celebrations of the festival.

3. There should be continuous monitoring of water quality (particularly with respect of BOD and Total Coliform) all these days which should indicate the adequacy (but not excess of chlorinating).

4. Specific zones located at a distance should clearly be demarcated for defecation. This area should frequently be sprayed with bleaching powder and should be protected with a low level embankment to prevent run off in case of rain. Trenches and pits should be filled up after use. Defecation at any other place in the area should be seriously dealt with.

5. It should be ensured that the hotels and sweetmeat vendors in Bali Yatra do not use the untreated river water under any circumstances.

6. Offerings inside the river should be discouraged. The potential health hazards of polluted water should be widely publicised and the public should be made aware that unless they conduct themselves properly, the river water which is believed by them to be so sacred, will become dangerously polluted. The sins of the faithful may be washed by the ritual bath but diseases are most likely to be acquired".

Ultimately the Board's stand point as revealed from the counter-affidavit is that the water of Taladanda canal is totally unfit for human bathing as well as consumption. This conclusion has been arrived at after thorough studies of the effect of pollution caused to Taladanda canal from the discharges of the S.C.B. Medical College Hospital, Cuttack and other discharges of the city and also the effect of pollution caused in river Kathejori from sewage flowing into the river from the storm water drain constructed on scientific line. The reports have been supplied to the different authorities including the Department of Heath, Cuttack Municipality and the S.C.B. Medical College Hospital in time in order to create general public awareness of the fact of pollution in Taladanda canal as well as river Kathajori and in order to stop/prevent health hazards due to such pollution, but unfortunately no such remedial measure has been taken by them. Notices were issued by the Board to the Cuttack Municipality, Superintendent, S.C.B. Medical College Hospital, and the Government in the Department of Science, Technology and Environment as well as the Department of Housing and Urban Development on several occasions for obtaining consent of the Board for discharge of sewage effluent of Cuttack Municipality and other local bodies. The copies of correspondence have been appended to the counter-affidavit. The Board requested the Collector, Cuttack and the authorities of the Cuttack Municipality on a number of occasions to take necessary remedial measure in

consultation with the Public Health Department. But no action has been taken and consequentially, the proceedings for violation of various provisions of the Act have been initiated. In the letter dated 8-12-1987, the Board has specifically brought to the notice of the Collector, Cuttack that on analysis water quality of Taladanda canal as well as the river Kathajori was found to be polluted, and the Coliform counts are too high and the water was found to be not potable. It was found that the water is unfit for human consumption as drinking water as well as for the purpose of bathing. The Public Health Department takes water for supply to the Khapuria Industrial Estate area at a point immediate down-stream of the sluice gate. It is, therefore, very likely that the water supply to Khapuria may not be of desired quality. Notice has also been issued to the Executive Officer of the Cuttack Municipality to apply for consent of the Board for discharge of Municipality waste-water from the municipal area in terms of Sections 25 and 26 of the Act. But unfortunately the authorities of Cuttack Municipality have never applied for consent of the Board and continued to discharge untreated waste-water and thereby causing pollution of river Mahanadi and Kathajori in sheer violation of the provisions of the Act. Prosecution has been launched against the Executive Officer, Cuttack Municipality for non-compliance with the direction of the Board and unlawfully discharging trade sewage effluent without consent of the Board and thereby violating various provisions of the Act. By letter dated 2-1-1990 the Superintendent, S.C.B. Medical College Hospital was directed not to discharge any sewage or waste-water from the hospital premises into the stream including Taladanda canal or well or on land. Similarly, directions were issued to the Executive Officer, Cuttack Municipality.

9. As indicated above, the stand of the State and its functionaries and the Municipal authorities is evasive and considering the counter-affidavits filed by them, it is found that while the Board has revealed the correct position, they have tried to suppress the truth. It is unfortunate particularly when the reports of the Board referred to above disclose a horrendous state of affair. The health of large number of people is at stake. Therefore, no amount of plea of helplessness or passing the buck to the other wings of the Department will be of any assistance. The Act intends to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid of Boards for the prevention, and control of water pollution for conferring on and assigning to such Board's powers and functions relating thereto and for matters connected therewith. After encapsulating materials collected after thorough research, Board submitted its reports. Instead of taking serious note thereof, the authorities have resorted to falsehood. While the State and its functionaries and the Municipal authorities feigned ignorance of any pollution, the Board in its counter-affidavit has referred to the correspondence made by it with these authorities, and functionaries in that regard. A highly fallacious plea that because of inadequate supply of electricity, there may be occasion for non-supply of standard drinking water has been taken. Be that as it may, it is high time that all concerned should wake up to prevent water pollution in Cuttack city which has potentialities to become cause of epidemic of great proportions, which is looming large. It is not in good taste to say that supply of drinking water falls within the purview of another Department and therefore, the Health Department has no concern. State is one, the Government is one. For facilities of functioning, different departments have been created. We fail to understand as to how the Health Department is not concerned with supply of drinking water. Ultimately it is the health of the people which is affected.

There is no reason to disbelieve the findings of the Board. The approach of the functionaries and the authorities is evasive. They have brought no material on record to rebut the assertion of the Board about intimations, notices regarding pollution. There is no denial of the assertion that reports were sent to them and requests were made for compliance with statutory mandates. Like the Supreme Court in Municipal Council, Ratlam v. Shri Vardhichand, AIR 1980 SC 1622: (1980 Cri LJ 1075) we are left wondering whether our municipal bodies and Government departments are functional irrelevances, banes, rather than boons, and 'Lowless' by long neglect. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working condition cannot be avoided by pleading financial inability. Article 51-A (g) mandates compassion for living creatures. Why is it lacking in them whose primary function is to protect. Man's inhumanity to man made Mark Twain remark: "Man is the only animal that blushes or needs to". There are some men formed with feelings so blunt that they can hardly be said to be awake during the whole course of their lives, said Edmond Burke. That appears to be the case here.

The nature of water pollution problem has been highlighted by U.N. Mahida I.S.E. (Retd.) in the book "Water Pollution and Disposal of Waste-water on Land". It is stated as follows:

> "The introduction of modern water carriage systems transferred the sewage disposal from the streets and surroundings of townships to neighbouring streams and rivers. This was the beginning of the Problem of water pollution".

The urgency of the problem has been stated in the following words:

> "The crucial question is not whether developing countries can afford such measures for the control of water pollution but it is whether they can afford to neglect them".

The enormity of the problem can be gauged from the following extract of the World Health Organisation (W.H.O.) report.

> ".....One hospital bed out of four in the world is occupied by a patient who is ill because of polluted water ..... Provision of a safe and convenient water supply is the single most important activity that could be undertaken to improve the health of people living in rural areas of the developing world."

10. Be that as it may the authorities should wake up before the matter slips out of their hands. Their approach should not smack of mercenaries. We direct the State Government to immediately act on the reports relating to Pollution Load in Taladanda Canal and Water Pollution from Mass Bathing in Mahanadi during Kartik Purnima annexed as Annexures 1/6 to 2/6 to the counter-affidavit filed by the Board. We also direct constitution of a committee consisting of the Executive Engineer, Public Health, Cuttack; the Chairman, Cuttack Municipality; the collector, Cuttack; the Secretary to Government in the Urban and Housing Department; the Secretary to Government in the Health Department; the Executive Officer, Cuttack Municipality; the Vice-Chairman, Cuttack Development Authority; the Superintendent, S.C.B. Medical College Hospital; Cuttack; and such other functionaries and authorities as the State may feel necessary immediately to consider the reports, and take necessary steps to prevent and control water pollution

and to maintain wholesomeness of water which is supplied for human consumption. Ways and means to prevent entry of sewage water and effluents to rivers Mahanadi and Kathajodi and Taladanda canal shall be worked out. If there is necessity and desirability of having Sewage Treatment Plant or Plants, the same be set up without further delay. The Storm Water Drain may be operated in such a manner as to prevent entry of sewage water through it to the rivers. The exercises indicated by us and such other decision and exercises as may be necessary to prevent pollution of water may be taken within one year from today.

11. As stated by Thomas Fuller in Gnomolgia, 5451, we never know the worth of water till the well is dry. The authorities and functionaries must bear in mind that "nature never did betray the heart that loved her". (Wordsworth in Tintern Abbey). Nature's fury when aroused has been described by Robert. E. Sherwood in "The Petrified Forest", in the following words:

> ".....Nature is hitting back. Not with the old weapons - Floods, plagues, holocausts. We can naturalise them. She's fighting back with strange instruments called neuroses. She's deliberately inflicting mankind with the jitters ..... She's taking the world away from the intellectuals and giving it back to the apes".

Let all concerned continue as intellectuals and not become apes by provoking, antagonising nature. Easiest way to provoke nature is by polluting water and/or remaining callous to pollution, because water is one of the greatest gifts of nature.

12. Our views and conclusions have their matrix on the materials placed before us. We shall not be understood to have expressed any opinion on the merits of several proceedings stated to have been initiated by the Board. They shall, if pending, be disposed off in accordance with law.

The writ application is disposed off.

S. K. MOHANTY, J.:- 13. I agree.

Order accordingly.

M. C. Mehta v. Union of India
AIR 1992 Supreme Court 382
Writ Petition (Civil) No. 860 of 1991, D/-22-11-1991
Ranganath Misra, C.J., G.N. Ray and A.S. Anand, JJ.

Constitution of India, Art. 32 – Environment - Protection of - Education/awareness - Prayers for directions for exhibition of slides in cinema halls containing information and messages on environment, spread of relative information through Radio and T.V. and making environment as compulsory subject in schools and colleges – Supreme Court accepted prayers on principal and issued directions to that effect.

Environmental pollution - Mass awareness through slide show, Radio and T.V. - Directions for issued.

Environment - To be made compulsory subject is school.

Education - Environment - To be made compulsory subject in school.

Law - Ensuring mass awareness - Obligation of Govt. in democratic policy.

Law is a regulator of human conduct but no law can indeed effectively work unless there is an element of acceptance by the people in society. No law works out smoothly unless the interaction is voluntary. In order that human conduct may be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires and there is an element of acceptance that the requirement of law is grounded upon a philosophy which should be followed. This would be possible only when steps are taken in an adequate measure to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law. In a democratic polity dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the Government. It is equally the responsibility of society to adequately educate every component of it so that the social level is kept up. Supreme Court, therefore, accepted on principle the prayers made by the petitioner, for issuing appropriate directions to cinema exhibition halls to exhibit slides containing information and messages on environment free of cost; directions for spread of information relating to environment in national and regional languages and for broadcast thereof on the All India Radio and exposure thereof on the television in regular and short term programmes with a view to educating the people of India about their social obligation in the matter of the upkeep of the environment in proper shape and making them alive to their obligation not to act as polluting agencies or factors; and to make environment as a compulsory subject in schools and colleges in a graded system so that there would be a general growth of awareness and issued certain directions to the Govt. to that effect.

(Paras 3, 5, 6, 8)

ORDER:- This application is in public interest and has been filed by a practising advocate of this Court who has consistently been taking interest in matters relating to environment and pollution. The reliefs claimed in this application under Art. 32 of the Constitution are for issuing appropriate directions to cinema exhibition halls to exhibit slides containing information and messages on environment free of cost; directions for spread of information relating to environment in national and regional languages and for broadcast thereof on the All India Ratio and exposure thereof on the television in regular and short term programmes with a view to educating the people of India about their social obligation in the matter of the upkeep of the environment in proper shape and making them alive to their obligation not to act as polluting agencies or factors. There is also a prayer that environment should be made a compulsory subject in schools and colleges in a graded system so that there would be a general growth of awareness. We had issued notice to the Union of India on the petition and the Central Government has immediately responded.

2. Until 1972, general awareness of mankind to the importance of environment for the well being of mankind had not been appropriately appreciated though over the years for more than a century there was a growing realizations that mankind had to live in tune with nature if life was to be peaceful, happy and satisfied. In the name of scientific development, man stated distancing himself from Nature and even developed an urge to conquer nature. Our ancestors had known that nature was not subduable and, therefore, had made it an obligation for man to surrender to nature and live in tune with it. Our Constitution underwent an amendment in 1976 by incorporating an Art. (51A) with the heading "Fundamental Duties". Cl.(g) thereof requires every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Soon after the international conference on environment the Water Pollution Control Act of 1974 came on the statue book; the Air Pollution Control Act came in 1981 and finally came the Environment Protection Act of 1986.

3. Law is a regulator of human conduct as the professors of jurisprudence say, but no law can indeed effectively work unless there is an element of acceptance by the people in society. No law works out smoothly unless the interaction is voluntary. In order that human conduct may be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires and there is an element of acceptance that the requirement of law is grounded upon a philosophy which should be followed. This would be possible only when steps are taken in an adequate measure to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law.

4. There has been an explosion of human population over the last 50 years. Life has become competitive. Sense of idealism in the living process has systematically eroded. As a consequence of this the age old norms of good living are no longer followed. The anxiety to do good to the needy or for the society in general has died out, today oblivious of the repercussions of one's actions on society, everyone is prepared to do whatever is easy and convenient for his own purpose. In this backdrop if the laws are to be enforced and the malaise of pollution has to be kept under control and the environment has to be protected in a unpolluted state it is necessary that people are aware of the vice of pollution and its evil consequences.

5. We are in a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the Government. It is equally the responsibility of society to adequately educate every component of it so that the social level is kept up. We, therefore, accept on principle the prayers made by the petitioner. We are happy to find that the learned Attorney-General who appeared for the Union of India has also appreciated the stand of the petitioner and has even co-operated to work out the procedure by which some of the prayers could be granted.

6. We dispose of this writ petition with the following directions:

(1) Respondents 1, 2 and 3 shall issue appropriate directions to the State Governments and Union Territories to invariably enforce as a condition of license of all cinema halls, touring cinemas and video parlours to exhibit free

of cost at least two slides/messages on environment in each show undertaken by them. The Ministry of Environment should within two months from now come out with appropriate slide material which would be brief but efficiently carry the message home on various aspects of environment and pollution. This material should be circulated directly to the Collectors who are the licensing authorities for the cinema exhibition halls under the respective State laws for compliance without any further direction and helping the cinema halls and video parlours to comply with the requirements of our order. Failure to comply with our order should be treated as a ground for cancellation of the licence by the appropriate authorities. The material for the slides should be such that it would at once be impressive, striking and leave an impact on every one who sees the slide.

(2) The Ministry of Information and Broadcasting of the Government of the India should without delay start producing information films of short duration as is being done now on various aspects of environment and pollution bringing out the benefits for society on the environment being protected and the hazards involved in the environment being polluted. Mind catching aspects should be made the central theme of such short films. One such film should be shown, as far as practicable, in one show every day by the cinema halls and the Central Government and the State Governments are directed to ensure compliance of this condition from February 1, 1992.

(3) Realising the importance of the matter of environment and the necessity of protecting it in an unpolluted form as we had suggested to learned Attorney-General to have a dialogue with the Ministry of Information and Broadcasting as to the manner the All India Radio and Doordarshan can assist this process of education. We are happy to indicate that learned Attorney General as told us that five to seven minutes can be devoted every day and there could be, once a week, a longer programme. We do not want to project an impression that we are authorities on the subject, but we would suggest to the programme controlling authorities of the Doordashan and the All India Radio to take proper steps to make interesting programmes and broadcast the same on the radio and exhibit the same on the television. The national network as also the State Doordarshan Centres should immediately take steps to implement this direction so that from February 1, 1992, regular compliance can be made.

(4) We accept on principal that through the medium of education awareness of the environment and its problems related to pollution should be taught as a compulsory subject. Learned Attorney-General pointed out to us that the Central Government is associated with education at the higher levels and the University Grants Commission can monitor only the under graduate and post graduate studies. The rest of it, according to him, is a State subject. He has agreed that the University Grants Commission will take appropriate steps immediately to give effect to what we have said, i.e., requiring the Universities to prescribe a course on environment. They would consider the feasibility of

making this a compulsory subject at every level in college education. So far as education up to the college level is concerned, we would require every State Government and every Education Board connected with education up to the matriculation stage or even intermediate colleges to immediately take steps to enforce compulsory education on environment in a graded way. This should be so done that in the next academic year there would be compliance of this requirement.

7. We have not considered it necessary to hear the State Governments and the other interested groups as by now there is a general acceptance throughout the world as also in our country that protection of environment and keeping it free of pollution is an indispensable necessity for life to survive on earth. If that be the situation, every one must turn his immediate attention to the proper care to sustain environment in a decent way.

8. We dispose of the matter with the aforesaid direction but give liberty to Mr. Mehta to apply to the Court from time to time for further directions, if necessary.

Order accordingly.

Tarun Bharat Sangh, Alwar v. Union of India
AIR 1992 Supreme Court 514
Interlocutory Applications Nos. 2 and 3 of 1991 in Writ Petition (C) No. 509 of 1991, D/- 11-10-1991
M. N. Venkatachallah and K. Jayachandra Reddy, JJ.

Rajasthan Forest Act (13 of 1953), S. 29 (3) - Notification under dated 1-1-1975 declaring certain area as Reserved Forest - Notification itself providing that it is issued subject to enquiry as to nature and extent of right of Government and private persons over forest land - Inquiry under S. 29 (3) not concerned with mining privileges - Interlocutory order prohibiting mining operations detrimental to protection of wild life could be issued - Committee formed and necessary directions issued.

Rajasthan Wild Animals and Birds Protection Act (13 of 1951), S. 5.

Wild Life (Protection) Act (53 of 1972), S. 18

Environment - Preservation of Wild Life - Interlocutory order prohibiting mining operations - Competency.

Mining operations - Prohibition by granting interlocutory order for preserving wild life - Competency.

It cannot be said that since the notification dated 1-1-1975 under S 29 (3) of the Rajasthan Forest Act, 1953 declaring Sariska as a protected forest itself contemplates an enquiry as to "the nature and extent of the rights of the State Government and of private persons in or over the forest land or waste land comprised therein" interlocutory order

prohibiting mining operations cannot be granted. The inquiry under S. 29 (3) has nothing to do with the mining privileges claimed by the miners. Indeed, none of miners asserts any private rights in or over the forest land. They, to the extent they derive their rights under a grant from the State subsequent to 1-1-1975, cannot claim any private rights in or over the Forest land and the inquiry envisaged under sub-sec. (3) of S. 29 has nothing to do with mining privileges derived by them from the State.

(Paras 5, 6)

The purpose of the notification declaring the area as a Game Reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951; or the declaration of the area as sanctuary under the Wild Life (Protection) Act, 1972 and the notification dated 1-1-1975 declaring the area as a protected forest under the Rajasthan Forest Act, 1953 is to protect the Forest wealth and Wild Life of the area. It is indeed, odd that the State Government while professing to protect the environment by means of these notifications and declarations should, at the same time, permit degradation of the environment by authorising mining operations in the protected area.

AIR 1989 SC 1, Rel. on.

(Para 7)

In view of the facts and circumstances of the instant case a Committee was appointed and necessary instructions given by the Supreme Court. An interlocutory direction that no mining operation of whatever nature shall be carried on within the protected area, w.e.f. 31-12-1991 issued.

(Paras 8, 9, 11)

Cases Referred:

AIR 1989 SC 1: (1988) 4 SCC 655: 1989 Cri LJ 1005 (Rel. on)

ORDER: - The petitioner, Tarun Bharat Sangh, Alwar, stated to be a Social Action Group concerned with and working for the protection of Environment and preservation of Wild Life, has brought this public interest action for the enforcement of certain statutory notifications promulgated under the Wild Life, Environment Protection and Forest Conservation Laws in areas declared as a Reserved Forest in Alwar District of the State of Rajasthan. Issue rule nisi.

2. The area, now popularly known as the "Sariska Tiger Park" was, it would appear, an exclusive hunting forest of the Rulers of the Quondam, Alwar State. The area has since been declared as a 'Game Reserve' under the Rajasthan Wild Animals & Birds Protection Act, 1951. The area is also notified pursuant to the Notification dated 1-1-1975, under Sections 29 and 30 of the Rajasthan Forest Act, 1953, as a Reserved Forest. The area is again declared as a sanctuary under Section 35 of the Wild Life Protection Act, 1972. The direct effect of these, it is averred, is to impose restrictions on the carrying on of any activity in the protected area which would impair Environment and Wild Life. It is averred that the express and avowed intendment and effect of the notification of the area as a reserved forest is that no mining activity shall be permitted in the protected area. It is, accordingly, further contended that any mining activity in the area would also be

inconsistent with and impermissible under the Forest (Conservation) Act, 1980 and that even under the relevant mining laws any grant of mining privileges in the area would be bad.

3. The petitioners allege that despite these notifications and the clear mandate against carrying on the mining operation in this Protected Area both units core and buffer zones, Government of Rajasthan has, illegally and arbitrarily, issued about 400 mining privileges to various persons enabling them to carry on mining operations of lime and dolomite stones inside the protected area and that consequently deep-cast mines are operated to extract Marble by blasting, drilling, chiselling etc. which in the very process of their execution and the deep scars on the landscape they leave behind tend to degrade and diminish the ecology of the area, besides constituting a threat to the habitat of Wild Life. The petitioners rely upon the reports of environmental researchers of the Indian Institute of Public Administration, New Delhi in this behalf. Petitioners, accordingly, seek an interlocutory interdiction of the mining operations in the protected are during the pendency of this writ petition.

4. The State of Rajasthan in its counter feebly endeavoured to suggest that the grant of the mining privileges might possibly be the result of some confusion as to the exact boundaries of the "reserved-forest" and the "National-Park" and the exact location of the areas of the mining operations. But the State ultimately seems to acknowledge that the mining areas are within the protected area and that appropriate action to enforce the statutory notifications is necessary. This is what the State Government, inter alia, says:

> "It is respectfully submitted that irrespective of the facts that the areas under notifications have been declared as sanctuary, national Park, Tiger Project Sariska and the reserved and Protected forest, mining leases were granted more particularly in the villages namely Kalwar, Mallana, Tilwar, Tilwari, Palpur, Baldeo Garh, Jasisinghpura, Bairley which fall in the protected forest blocks called Kalwar, Gordhanpura (covering Mallana, Jaisingpura Bairley), Berwa Doongri, Baldeo Garh, Tilwari, Tilwar-D, (covering Palpur Tilwar.)"
>
> ".....However it has now come to the knowledge of the answering respondents that these areas fall within the protected zone. Proper action is being taken to strictly comply with the provisions of the Forest Conservation Act and other relevant rules and regulations.
>
> The respondents are extremely keen to protect the entire protected forest and reserved forests and Tiger Project Sariska area and have been doing their level best to see that the environment and ecology is not adversely affected by exploiting the order through illegalities".

The position that emerges is that prima facie, there has been a violation of the statutory notification and their salutary objectives

5. In these proceedings, the "Zila Khaniz Udyog Sangh" said to be a representative body of the mining operation of the area has sought impleadment. We allow its application for such impleadment and implead the said Sangh as an additional party-respondent.

The stand of the Zila Khaniz Udyog Sangh seems to be that the notification under S. 29 (3) of the Rajasthan Forest Act, 1953, declaring Sariska as a protected forest itself contemplates doubts as to the statutory entitlement of the State to promulgate such notification without an enquiry as to "the nature and extent of the rights of the State Government and of private persons in or over the forest land or waste land comprised therein", that the notification dated 1-1-1975 itself provides that it is issued subject to and pending such inquiry and that till such inquiries are completed no prohibition sought in the interlocutory prayer could be granted.

6. We have heard Sri Rajeev Dhawan, learned counsel for the petitioner; Sri Aruneshwar Gupta for the State of Rajasthan and Sri Arun Jaitley for the Zila Khaniz Udyog Sangh.

We might, at the outset, clear some misconceptions about the inquiry contemplated by the notification under the Rajasthan Forest Act, 1953. That inquiry is nothing to do with the mining privileges claimed by the members of the Zila Khaniz Udyog Sangh. Indeed, none of them asserts any private rights in or over the forest land, to the extent they derive their rights under a grant from the State subsequent to 1-1-1975, cannot claim any private rights in or over the Forest land and the inquiry envisaged under sub-s. (3) of S. 29 has nothing to do with mining privileges derived by them from the State.

7. The purpose of the notification declaring the area as a Game Reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951; or the declaration of the area as sanctuary under the Wild Life (protection) Act, 1951; or the notification dated 1-1-1975 declaring the area as a protected forest under the Rajasthan Forest Act, 1953 is to protect the Forest Wealth and Wild Life of the area. It is, indeed, odd that the State Government while professing to protect the environment by means of these notifications and declarations should at the same time, permit degradation of the environment by authorising mining operations in the protected area.

Indeed, referring to the high purposes of the measures for protection of environment and ecology, this court said:

> "The State to which the ecological imbalances and the consequent environmental damage have reached, is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee". In his foreword to International Wild Life Law, H.R.H. Prince Philip, the Duke of Edinburgh said:

> Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that .....
>
> .....As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow ..."
>
> "Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is "a series of complex biotic communities of which a man is an interdependent part" and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the "civilised man" operating directly through, excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitat".

See State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655 at pp. 660-61: (AIR 1989 SC 1 at pp. 3-4).

8. This litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment, Ecology and the Wild Life should be shared by the Government. No oblique motives are even suggested to the petitioner's motivation in this litigation. It is of utmost importance that the law sought to be effectuated through these notifications should be enforced strictly. We were initially of the opinion that we should forthwith interdict any further mining operations in the protected area. But there are certain minor problems and controversies which might have to be resolved on the spot. It is possible that some of the mining operators carry on their operations in such close proximity of the protected area that it may be difficult, at first sight, to determine whether they fall within or without the propitiatory interlocutory orders. It might equally be possible, as predicted by Sri Jaitley, that a part of the mining area in particular case might fall within the prohibited area and the rest outside it. These are matters to be sorted out on the spot with reference to the revenue records and the relevant notifications. It is difficult for this Court to decide these disputes on the basis of affidavits alone.

9. Having regarded all the circumstances of the case, we think it is necessary to appoint a Committee consisting of the authorities of the State charged with the duty of enforcing the statutory measures and some experts in the field under the Chairmanship of a retired Judge. The task of the Committee primarily is to ensure the enforcement of the notifications and the orders of this Court, and to prevent devastation of the environment and wild life within the protected area. We have discussed the Constitution and the composition of the Committee with the learned counsel. The composition is, by and large, on the basis of their suggestions and advice.

The committee shall consist of the following members : (1) Mr. Justice M. L. Jain, former Chief Justice of the High Court of Delhi, (2) The Chief Conservator of Forest and Wild Life Warden, Government of Rajasthan (3) Additional Director of Mines, Udaipur;

(4) Collector, Alwar District, and (5) Dr. Anil Agrawal of the Centre for Science and Environment, New Delhi. The Chairman of the Committee shall convene, preside over and conduct the meetings and deliberations of the Committee.

10. The Committee shall have its first meeting preferably within two weeks from today, and shall meet as often as the exigencies of its business require. The Committee shall ensure that appropriate authorities of the Government of Rajasthan enforce the notifications issued under the various laws for the protection of the forest and wild life in the protected area strictly. The Committee shall have, through the appropriate officers and authorities of the Government of Rajasthan the boundaries of the protected area and more particularly such boundaries in relation to the area over which mining leases are granted and where mining operations are said to be going on, precisely demarcated. This shall be done as expeditiously as possible and, in any case, not later than 15-12-1991. The Zila Khaniz Udyog Sangh shall file before the Committee within two weeks from today the names of all the mining licensees or lessees of the area together with all the particulars of their grants. The Sangh shall also furnish a map of the area in which its members are said to be carrying on their mining operations or claim to be entitled to carry on such operations. The Committee shall also independently gather such information from the records of the concerned Departments of the Government of Rajasthan.

11. We make an interlocutory direction that no mining operation of whatever nature shall be carried on within the protected area. The Committee shall ensure the obedience, enforcement and implementation of this order by all the concerned authorities. However in order that the problems and controversies turning on the precise demarcation of the protected area are sorted out and that the rights and interest of those mining privilege-holders who are not carrying on their operations within the protected area are not adversely affected, till the demarcation of the area we direct that the prohibition under this interlocutory order banning mining operations in the protected area be strictly enforced with effect from 31-12-1991.

12. The Committee shall well before 31-12-1991 prepare, with reference to the records to be submitted by the Zila Khaniz Udyog Sangh as well as the records of the Department of the Mines of the State of Rajasthan, a list of mining leases and mining lessees the grants in whose favour fall within the protected area so as to be able to make for effective implementation of the ban on mining operation in the Protected Area.

13. The Committee in cases in which it thinks it proper may recommend to the State Government grant, elsewhere in the State of Rajasthan, alternative mining areas for the unexpired period of the leases to those mining lessees whose grants fall within the protected area and who, by virtue of this order, shall be prevented from carrying on their operations if the Committee is of the view that they were bona fide grantees and would be exposed to hardship owing to the termination of their operations in the Protected Area. Government shall, of course be at liberty to examine such cases even independently.

14. The Committee shall assess the damage done to the environment, ecology and Wild Life by the mining activity carried on in the protected area and make appropriate recommendation to this Court as to the remedial measures, including measures for

restoring the land to its original form and for reforestation and the like, and shall also make its assessment and recommendations as to the possible financial outlays necessary for such restorative and reforestation schemes and the agencies through which such schemes should be implemented.

15. All the concerned authorities of the State of Rajasthan and of the Union of India are directed to co-operate with the Committee and afford all assistance to it and generally act in aid of its deliberations.

16. The Committee may, wherever it finds it so necessary, invite the representatives of the petitioner-organisation as also of Zila Khaniz Udyog Sangh to assist the Committee in its deliberations.

17. In the meanwhile, during the pendency of the writ petitions or until further orders, as the case may be, the State of Rajasthan is prohibited from granting any mining leases or renewals thereof in respect of the protected area.

18. Appropriate directions shall be issued to the State Government in regard to funding the expenses of the Committee.

Order accordingly.

The Goa Foundation v. The Konkan Railway Corporation
AIR 1992 Bombay 471
Writ Petition No. 170 of 1992, D/- 29-4-1992
M. L. Pendise and G. D. Kamat, JJ.

(A) Constitution of India, Art. 226 - Public interest litigation - Protection of environment - Laying of new board gauge railway line passing through three States - Project undertaken for public benefit only after approval of renowned experts from the area - Alleged cutting of trees and damage to ecology and environment of lands and churches and temples - High Court declined to interfere with project of such magnitude.

Environment (Protection) Act (29 of 1986), S. 3.

(Para 6, 7, 9)

Railways - Laying of new Railway line - Allegations of damage to ecology and environment - No interference.

Environment - Laying of new Railway line - Allegation of damage to ecology - Effect.

(B) Constitution of India, Art. 226 - Laying of new broad gauge railway line - Writ petition against - Apprehension that small lake would be filled up, thus preventing migratory birds from reaching State of Goa - High Court declined to interfere on basis of such imaginary apprehension.

(Para 7)

(C) Railway Act (9 of 1890), S. 11 - Laying of new board gauge railway line - Clearance under Environment Act -Not required even though line passes over rivers, creeks etc. in view of S. 11 of Railways Act.

Environment (Protection) Act (1986), S. 3.

(Para 8)

(D) Environment (Protection) Act (29 of 1986), S. 3(2) - Lying of new board gauge railway line - Providing a rail line is not an industry within meaning of S. 3(2) - Work of bounding for the purpose - Is not a prohibited activity - Notification issued under S. 3(2) prescribing restrictions on setting up and expansion of industries, operations or processes in the Costal Regulation Zone - Has no application to laying of new railway line.

(Para 8)

(E) Forest (Conservation) Act (69 of 1980), S. 2 - Laying of new board gauge railway line - Project approved by Central Govt. - Use of forest land for proposed railway alignment - Not affecting existence of forest - Prior approval of Central Govt. under S. 2, not necessary.

(Para 7)

Union Carbide Corporation v. Union of India

AIR 1992 Supreme Court 248 (From: Madhya Pradesh)

Civil Misc. Petitions Nos. 29377-A of 1988, 7942-43, 16093 and 17965 of 1989, Review Petitions Nos. 229 & 623-24 of 1989, In Civil Appeal Nos. 3187-88 of 1988, (with Writ Petition Nos. 257, 297, 354, 379, 293, 399, 420, 231, 300, 378 & 382 of 1989), In Civil Appeal Nos. 3187-88 of 1988 & Interlocutory Apllication No. 1 of 1990 (in Writ Petition Nos. 281 of 1989 and Writ Petition Nos. 741 of 1990 & 3461 of 1989), D/- 3-10-1991

Ranganath Misra, C. J.,K. N. Singh, M.N. Venkatachallah, A. M. Ahmadi and N. D. Ojha, JJ.

(A) Constitution of India, Art. 139A, 136, 142 (1) - Transfer or withdrawal of proceedings - Power of Supreme Court - Not exhausted by Art. 139A - Art. 139A not intended to whittle down powers under Arts. 136, 142 - Settlement reached in Bhopal Gas disaster case and quashing of criminal proceedings ordered by Supreme Court while hearing appeal from an interlocutory order - Not without jurisdiction.

To the extent power of withdrawal and transfer of cases to the apex court is, in the opinion of the Court necessary for the purpose of effectuating the high purpose of Arts. 136 and 142 (1), the power under Art. 139A must be held not to exhaust the power of withdrawal and transfer. Art. 139A was introduced as part of the scheme of the 42nd Constitutional Amendment. That amendment proposed to invest the Supreme Court with exclusive jurisdiction to determine the constitutional validity of central law. Art. 139A was not intended, nor does it operate, to whittle down the existing wide powers under Art. 136 and 142 of the Constitution. Art. 136 is worded in the widest terms possible. It

vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing of appeals by granting special leave against any kind of judgement or order made by a Court or Tribunal in any cause or matter and the powers can be exercised in spite of the limitations under the specific provisions for appeal contained in the Constitution or other laws. The powers given by Art. 136 are, however, in the nature of special or residuary powers which are exercisable outside the purview of the ordinary laws in cases where the needs of justice demand interference by the Supreme Court. Art. 142 seeks to effectuate the wide and sweeping powers under Art. 136. The expression "cause or matter" in Art. 142 (1) is very wide covering almost every kind of proceedings in Court. Any limited interpretation of the expression "cause or matter" having regard to the wide and sweeping powers under Art. 136 which Article 142 (1) seeks to effectuate, limiting it only to the short compass of the actual dispute before the Court and not to what might necessarily and reasonably be connected with or related to such matter in such a way that their withdrawal to the Apex court would enable the court to do "complete justice", would stultify the very wide constitutional powers. Giving or accepting limited interpretation would mean that when an interlocutory appeal comes up before the Supreme Court by special leave, even with the consent of the parties, the main matter cannot finally be disposed off by the Supreme Court as such a step would imply an impermissible transfer of the main matter. Such technicalities do not belong to the content and interpretation of constitutional powers.

(Para 34)

The final disposal of the main suits and the criminal proceedings in the Bhopal Gas Disaster Case by the Supreme Court by recording a settlement while hearing the appeal arising out of interlocutory order passed in the suit is not without jurisdiction.

(B) Civil P. C. (1908), O. 23, R. 3-B and S. 112 - Representative suit - Voidity of compromise entered without notice to interested persons - Settlement recorded by Supreme Court in Bhopal Gas Disaster case - Not void for absence of notice to interested persons - R. 3-B does not apply proprio vigore to proceedings under Art. 136 of Constitution.

Constitution of India, Arts. 136, 145.

The settlement recorded by the Supreme Court in Bhopal Gas Disaster case cannot be said to be void under O. 23, R. 3-B of Civil P.C. on ground that the recording of the settlement was not preceded by notice to persons interested in the suit. R 3B of O. 23, Civil P.C. does not proprio vigore apply to proceedings under Art. 136. If the principle of natural justice underlying Order XXIII, Rule 3-B, CPC is held to apply, the consequences of non-compliance should not be different from the consequences of the breach of rules of natural justice implicit in S. 4 of Bhopal Gas Leak Disaster (Processing of Claims) Act 1985. And the Supreme Court in Sahu's case AIR 1990 SC 1480, while dealing with non-compliance of S. 4 had declined to push the effect of non-compliance to its logical conclusion and declare the settlement void.

(Paras 36, 37)

Moreover S. 112 CPC, inter alia, says that nothing contained in that Code shall be deemed to affect the powers of the Supreme Court under Art. 136 or any other provision of the Constitution or to interfere with any rules made by the Supreme Court. The Supreme Court Rules are framed and promulgated under Art. 145 of the Constitution. Under Order 32 of the Supreme Court Rules, Order XXIII, Rule 3-B, CPC is not one of the rules expressly invoked and made applicable. In relation to the proceedings and decisions of superior Court and unlimited jurisdiction, imputation of nullity is not quite appropriate.

(Para 37)

(C) Constitution of India, Art. 142 - Power of Supreme Court under – Scope - Prohibitions or Limitations in statutory provisions do not limited this power - Ss. 320, 321, 482 of Criminal P.C. - Do not limit power of Supreme Court to quash criminal proceedings.

Criminal P.C. (1974), Ss. 320, 321, 482.

Observations in AIR 1963 SC 996 and AIR 1988 SC 1531, held to be obiter dicta.

The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Art. 142 (1) is unsound and erroneous. The power of the court under Art. 142 in so far as quashing of criminal proceedings are concerned is not exhausted by Ss. 320 or 321 or 482, Cr. P.C. or all of them put together. The power under Art. 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Art. 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers - limited in some appropriate way - is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. The prohibition should be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under. Art. 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Art. 142 and in assessing the needs of "complete justice" of a cause or matter, the apex court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the court under Art. 142, but only to what is or is not 'complete justice' of a case or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.

(Para 43)

The decision in Gargs as well as Antualy's case turned on the breach of constitutional rights. The observations in the two cases as to the effect of inconsistency with statutory provisions were therefore unnecessary.

Observations in AIR 1963 SC 996, AIR 1988 SC 1531 held to be obiter dicta.

(Para 43)

When in the Bhopal Gas Disaster case the Supreme Court was invited by the Union of India to permit the termination of the prosecution and the court consented to it and quashed the criminal cases, it could not be said that there was some prohibition in some law for such powers being exercised under Art. 142. The mere fact that the word 'quashing' was used did not matter. Essentially, it was a matter of mere form and procedure and not of substance. The power under Art. 142 was exercised with the aid of the principles of S. 321, Cr. P.C. which enables withdrawal of prosecutions. The order quashing and terminating the criminal proceedings was therefore not without jurisdiction. However as no specific ground or grounds for withdrawal of the prosecution was/were made out, the order quashing the criminal proceedings was liable to be as aside.

(Paras 44, 46)

As a logical corollary to the setting aside of withdrawal of prosecution all portions in the order of the Supreme Court D/- 14/15-2-1989 which related to the incompetence of any future prosecution were ordered to be deleted.

(Paras 49, 50)

(D) Evidence Act (1872), S. 115 - Estoppel – Exception – Agreement - Plea that it is nullity being opposed to public policy - Can be raised even by a person who had earlier consented to the agreement.

Contract Act (1872), Ss. 23, 24.

(Para 52)

(E) Civil P.C. (1908), O. 23, R. 3 - Consent order – Validity - Depends wholly on legal validity of agreement on which it rests - Can be set aside any ground which justifies setting aside of agreement

(Para 53)

(F) Contract Act (1872), S. 62 - Accord and satisfaction - Illegal contract - Cannot constitute or effect an accord and satisfaction.

(Para 54)

(G) Contract Act (1872), Ss. 23, 24 - Void contracts - Unlawfulness of consideration - Doctrine of stifling of prosecution – applicability - Motive and consideration for reaching agreement to be distinguished - Settlement reached in Bhopal Gas Disaster case - No part of consideration was unlawful.

Stifling of prosecution – Doctrine - Applicability.

Contract - Consideration - Stifling of prosecution.

The allegations of unlawfulness of consideration against the settlement reached in Bhopal Gas Disaster case on ground that dropping of criminal charges and undertaking to abstain from bringing criminal charges in future were part of the consideration for the offer of 470 million US dollars by the UCC and as the offences involved in the charges were of public nature and non-compoundable, the consideration for the agreement was stifling of prosecution and, therefore, unlawful, are not tenable. The settlement is not hit by S. 23 or 24 of the Contract Act and no part of the consideration for payment of 470 million US dollars was unlawful.

(Paras 57, 63)

The essence of the doctrine of stifling of prosecution is that no private person should be allowed to take the administration of criminal justice out of the hands of the Judges and place it in his own hands. In this sense, private party is not taking administration of law in its own hands in the instant case (Bhopal Gas Disaster case). It is the Union of India, as the Dominus Litis, that consented to the quashing of the proceedings. What was purported to be done was not a compounding of the offences. The arrangement which purported to terminate the criminal cases was one of a purported withdrawal not forbidden by any law but one which was clearly enabled. More importantly, the distinction between the "motive" for entering into agreement and the "consideration" for the agreement must be kept clearly distinguished. Where dropping of the criminal proceedings is a motive for entering into the agreement - and not its consideration - the doctrine of stifling of prosecution is not attracted. Where there is also a pre-existing civil liability, the dropping of criminal proceedings need not necessarily be a consideration for the agreement to satisfy that liability.

(Paras 59, 60, 61)

(H) Bhopal Gas Disaster (Processing of Claims) Act (21 of 1985), S. 4 – Settlement - Rights of victims to express their views on - Does not envisage or compel fairness hearing before entering into settlement - Settlement not vitiated for want of fairness hearing.

Constitution of India, Art. 226.

Representative Actions – Compromise - Fairness hearing - Whether condition precedent.

The right of the victims read into S. 4 of the Act to express their views on a proposed settlement does not contribute to a position analogous to that in United States in which fairness hearings are imperative. Section 4 to which the right is traceable merely enjoins Government of India to have 'due-regard' to the views expressed by victims. The power of the Union of India under the Act to enter into a compromise is not necessarily confined to a situation where suit has come to be instituted by it on behalf of the victims. Statute enables the Union of India to enter into a compromise even without such a suit. Right of being heard read into S. 4—and subject to which its constitutionality has been upheld in Sahu's case AIR 1990 SC 1480— subjects the Union of India to a corresponding obligation. But that obligation does not envisage or compel a procedure like a "Fairness-Hearing" as a condition precedent to a compromise that Union of India may reach, as the

situations in which it may do so are not necessarily confined to a suit. The settlement reached in the Bhopal Gas Disaster case is not vitiated by reason alone of want of a "Fairness-Hearing" procedure preceding it.

(Para 71)

(I) Bhopal Gas Disaster (Processing of Claims) Act (21 of 1985), S. 4 – Settlement - Absence of reopener clause - Does not vitiate settlement.

Torts - Toxic tort action - Settlement of claims - absence of reopener clause - Settlement not vitiated.

(Para 71)

(J) Civil P. C. (1098), S. 144 – Restitution - An equitable principle - Court must see that litigant does not go back with feeling that he was prejudiced by act done on faith of court's order - Settlement in Bhopal Gas Disaster Case - If set aside - U.C.C. will be entitled to restitution of entire amount deposited with interest.

Section 144, Code of Civil Procedure, embodying the doctrine of restitution does not confer any new substantive right to the party not already obtained under the general law. The section merely regulates the power of the court in that behalf. There is always an inherent jurisdiction to order restitution a fortiori where a party has acted on the faith of an order of the court. A litigant should not go back with the impression that the judicial process so operated as to weaken his position and whatever the litigant did on the faith of the court's order operated to its disadvantage. It is the duty of the court to ensure that no litigant goes back with a feeling that he was prejudiced by an act which he did on the faith of the court's order.

(Paras 75, 76)

The Union Carbide Corporation (UCC) transported the funds to India and deposited the foreign currency in the Reserve Bank of India on the faith of the Court order. If the settlement is set aside they shall be entitled to have their funds remitted to them back in the United States together with such interest as has accrued thereon. Such restitution would however be subject to the compliance with and proof of satisfaction of the terms of the order D/- 30-11-1986 made by District Court Bhopal.

(Paras 76, 77)

(J1) Constitution of India, Arts. 14, 226 - Natural justice - Audi Alteram Partem rule - Non-compliance - There should be circumstantial flexibility in consequences.

Omission to comply with the requirements of the rule of Audi Alteram Partem, as a general rule, vitiates a decision. Where there is violation of natural justice no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient prejudice and it is no answer to say that even with observance of natural justice the same conclusion would have been reached. The citizen is entitled to be under the Rule of Law and not the Rule of Discretion and to remit the maintenance of constitutional right to judicial discretion is to shift the foundations of freedom from the rock to the sand. But the effects and consequences of non-compliance may alter with situational variations and particularities, illustrating a flexible use of discretionary remedies to meet novel legal

situations. Natural justice should not degenerate into a set of hard and fast rules. There should be a circumstantial flexibility.

(Para 79)

(K) Constitution of India, Art. 141 - Bhopal Gas Disaster (Processing of Claims) Act (1985), S. 4 - Binding Precedent - What is - Court considering constitutionality of Act of 1985 and scope of obligation under S. 4 to afford hearing - Suggesting curatives in case of non-compliance of obligation to afford hearing - Curatives suggested cannot be treated as obiter dicta.

Precedent - What is - Observations in judgment - When can be called obiter dicta.

Obiter dicta - What constitutes.

The Supreme Court in Sahu's case AIR 1910 SC 1480 was not only sitting in judicial review of legislation namely the Bhopal Gas Disaster (Processing of Claims) Act 1985; but was a court of construction also, for, it is upon proper construction of the provisions, questions of constitutionality come to be decided. The Supreme Court was considering the scope and content of the obligations to afford a hearing implicit in S. 4 of the Act of 1985. It cannot be said to have gone beyond the pale of the enquiry when it considered the further question as to the different ways in which that obligation to afford a hearing could be complied with or satisfied. It cannot be said that these observations were made by the way and had no binding force.

AIR 1990 SC 1480, Explained.

(Para 79)

(L) Constitution of India, Art. 137 – Review – Scope - Mass disaster cases - Review proceedings should not be strict, orthodox and conventional - Its scope should be such as would accommodate great needs of justice.

(Para 84)

(M) Constitution of India, Arts. 137, 142, 226 - Bhopal Gas Disaster - Settlement reached in - Not vitiated by absence of hearing to victims and victim-groups - Settlement fund – Adequacy - Supreme Court having regards to complexity of issues involved thought it proper to leave the settlement undisturbed - Supreme Court however declared that in event settlement fund is exhausted the Union of India should made good the deficiency.

Torts - Mass tort action – Settlement - Hearing to victims.

Natural justice - Mass tort action - Hearing to victims.

Majority view - The court assisted settlement reached in Bhopal Gas Disaster case is not vitiated for not affording the victims and victim-groups and opportunity of being heard. As regards the adequacy of the settlement fund the Supreme Court after rejecting the charge that medical documentation done of the victims of Bhopal Gas disaster was faulty and was calculated to play down the ill-effects of the exposure of MIC (poisonous gas) and after taking into consideration the complexity of issues involved in the case such as,

the basis of UCC's liability, assessment of the quantum of compensation in a mass tort action, admissibility of scientific and statistical data in the quantification of damages without resort to the evidence as to injuries in individual cases, left the settlement reached in the Bhopal Gas Disaster case undisturbed. The Supreme Court to ensure that in the - perhaps unlikely - event of the settlement-fund being found inadequate, to meet the compensation determined in respect of all the present claimants, those persons who may have their claims determined after the fund is exhausted are not left to fend themselves, declared that the Union of India would make good the deficiency.

(Paras 91, 92, 98, 99, 107)

(Minority view -) Per A. M. Ahmadi, J.):- The Union of India cannot be directed to suffer the burden of the shortfall, if any, without finding the Union of India liable in damages on any count. The Court has to reach a definite conclusion on the question whether the compensation fixed under the agreement is adequate or otherwise and based thereon decide whether or not to convert it into a decree. But on a mere possibility of there being a shortfall, a possibility not supported by any realistic appraisal of the material on record but on a mere apprehension, quia timet, it would not be proper to saddle the Union of India with the liability to make good the shortfall by imposing an additional term in the settlement without its consent, in exercise of power under Art. 142 of the Constitution or any statute or on the premises of its duty as a welfare State. It is impermissible in law to impose the burden of making good the shortfall on the Union of India and thereby saddle the Indian tax-payer with the tort-feasor's liability, if at all.

(Paras 110, 113)

(N) Torts - Toxic tort action - Quantification of damages - Scientific and statistical evidence - Admissibility of, discussed.

(Paras 93, 94)

(O) Torts - Toxic tort action - Award of damages - Principle that size of award should be proportional to economic superiority of offender - Cannot be applied to settlement reached in Bhopal Gas Disaster case.

The principle in M. C. Mehta v. Union of India, AIR 1987 SC 1086 that in Toxic tort actions the award for damages should be proportional to the economic superiority of the offender - a principle that has arisen in a strict adjudication - Cannot be pressed to assail the settlement reached in the Bhopal Gas Disaster Case.

(Para 100)

In the matter of determination of Compensation also under the Bhopal Gas Leak Disaster (P.C.) Act, 1985, and the Scheme framed thereunder, there is no scope for applying the Mehta principle inasmuch as the tort-feasor, in terms of the settlement -for all practical purposes - stands notionally substituted by the settlement-fund which now represents and exhausts the liability of the alleged hazardous entrepreneurs viz., UCC and UCIL. The Mehta principle can have no application against Union of India inasmuch as in requiring it to make good the deficiency, if any, the Supreme Court did not impute to it the position of a tort-feasor but only of a welfare State.

(Para 100)

(P) Torts - Toxic tort action - Medical surveillance - Bhopal Gas disaster - Medical surveillance of exposed population - Facilities for, to be granted for 8 years - Supreme Court ordered establishment of full-fledged hospital equipped as specialist hospital for treatment and research of MIC (poisonous gas) related afflictions - Court directed that land should be given by State Govt. and capital outlays and operational expenses should be borne by UCC and UCIL.

(Para 101, 102)

(Q) Torts - Toxic tort action – Compensation - Persons and children born to exposed mothers who may become symptomatic in future - Court directed Union of India to obtain appropriate medical group insurance cover to take care of compensation for such prospective victims - Premium ordered to be paid from settlement fund.

(Para 103)

(R) Constitution of India, Art. 145 - Bhopal Gas disaster - Claims for compensation - Expeditious adjudication necessary - Supreme Court directed Union and State Govt. to expeditiously set-up adjudicatory machinery - Court also directed the authorities to prevent exploitation of illiterate beneficiaries by properly investing the adjudicated amount for benefit of beneficiaries - Court also suggested adoption of guidelines in 1982 (1) 23 Guj LR 756 with appropriate modifications, in this regard.

1982 (1) 23 Guj LR 756, Approved.

(Paras 104, 105)

(S) Constitution of India, Arts. 226, 32, 137 - Civil P.C. (1908), O. 6, R.1 - Shifting of stand - Union of India entering into court assisted settlement with Union Carbide corporation etc. - Review petition filed against settlement - Union of India supporting review petitioners without seeking Court's leave to withdraw from the settlement on permissible grounds or itself filing a review petition - Conduct of Union of India held was surprising. (Per A.M. Ahmadi, J.)

(Para 114)

Cases Referred: **Chronological Paras**

AIR 1990 SC 1480 (Explained) 31, 33, 35, 36, 44, 70, 71, 79, 80, 81, 85, 111, 112
AIR 1989 SC 568: (1989) 1 SCC 764: 1989 Lab IC 1031 79
AIR 1989 SC 1038: (1989) 1 SCC 628: 1989 Tax LR 389 79
AIR 1988 SC 686: (1987) 4 SCC 431: 1988 Lab IC 1497 79
AIR 1988 SC 1531: (1988) 2 SCC 602: 1988 Cri LJ 1961 41, 42, 43
(1988) 855 F 2d 1188, Sterling v. Velsicol Chemical Corp. 93
AIR 1987 SC 71: (1986) 4 SCC 537 79
AIR 1987 SC 188: (1986) 4 SCC 335: 1987 Cri LJ 151 44
AIR 1987 SC 877: (1987) 1 SCC 288: 1987 Cri LJ 793 44
AIR 1987 SC 1086: (1987) 1 SCC 395 13, 14, 15, 16, 28, 100
1987 AC 625: (1987) 2 WLR 821: (1987) 1 All ER 1118, Llovd v. McMahon 79

AIR 1941 Oudh 593	61
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(1924) 2 Ch D 76: 131 LT 307: 93 LJ Ch 497, Re A. Bankruptcy Notice	52
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AIR 1922 PC 269	76
AIR 1922 Patna 502	61
AIR 1916 Madras 483: 16 Cri LJ 750	43
(1913) ILR 40 Cal 113	43, 59
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(1895) 2 Ch 273: 72 LT 703: 64 LJ Ch 523, Huddersfield Banking Company Ltd. v. Henry Lister & Son Ltd.	53
(1890) 45 Ch D 351: 59 LJ Ch 608: 63 LJ 366, Windhill Local Board of Health v. Vint	57
(1871) 3 PC 465: 40 LJPC 1: LT 111, Rodger v. Compoir D'Dscopte de Paris	76
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(1844) 6 QB 308: 115 ER 118: 13 LJQB 359, Keir v. Leeman	57
(1762) 2 Wils 347: 95 ER 850, Collins v. Blantern	57
4 Abb App Dec 363: 100 Am Dec 415, Toylor v. Bradley	94
13 ALR 1427, Apodaca v. Viramontes	47
257 NY 244, Doyle v. Hafstader	47
712 F 2d Supp 1019 (Amercian Case) Acushnet River v. New Bedford Harbour	68

RANGANATH MISRA, C.J.:- I entirely agree with my noble and learned Brother Venkatachaliah and hope and trust that the judgement he has produced is the epitaph on the litigation. I usually avoid multiple judgments but this seems to be a matter where something more than what is said in the main judgment perhaps should be said.

2. Early in the morning of December 3, 1984, one of the greatest industrial tragedies that history had recorded got clamped down on the otherwise quiet township of Bhopal, the capital of Madhya Pradesh. The incident was large in magnitude 2,660 people died instantaneously and quite a good number of the inhabitants of the town suffered from several ailments. In some cases the reaction manifested contemporaneously and in others the effect was to manifest itself much later.

3. Union Carbide Corporation ('UCC' for short), a multi-national one, has diverse and extensive international operations in countries like India, Canada, West Asia, the Far

East, African countries, Latin America and Europe. It has a sister concern known as Union Carbide India Limited ('UCIL') for short). In the early hours of the 3rd of December, 1984, there was a massive escape of lethal gas from the MIC Storage Tank of the plant into the atmosphere which led to the calamity.

4. Several suits were filed in the United States of America for damages by the legal representatives of the deceased and by many of the affected persons. The Union of India under the Bhopal Gas Leak Disaster (Processing of Claims) Act of 1985 took upon itself the right to sue for compensation on behalf of the affected parties and filed a suit for realisation of compensation. The suits were consolidated and Judge Keenan by his order dated 12th of May, 1986, dismissed them on the ground of forum non conveniens subject, inter alia, to the following conditions:

(1) Union Carbide shall consent to submit to the jurisdiction of the Courts of India and shall continue to waive defences based on the statute of limitations; and

(2) Union Carbide shall agree to satisfy any judgment rendered against it in an Indian Court, and if appeal able, upheld by any appellate court in that country, whether such judgment and affirmance comport with the minimal requirements of due process.

5. The United States Court of Appeals for the Second Circuit by its decision of January 14, 1987, upheld the first condition and in respect of the second one stated:

> "In requiring that UCC consent to enforceability of an Indian judgement against it, the district court proceeded at least in part on the erroneous assumption that, absent such a requirement, the plaintiffs, if they should succeed in obtaining an Indian judgement against UCC, might not be able to enforce it against UCC in the United States. The law, however, is to the contrary. Under New York law, which governs actions brought in New York to enforce foreign judgements ..... foreign country judgement that is final, conclusive and enforceable where rendered must be recognised and will be enforced as "conclusive between the parties to the extent that it grants or denies recovery of a sum of money" except that it is not deemed to be conclusive if:
>
> "1. the judgement was rendered under a system which does not provide impartial tribunals of procedures compatible with the requirements of due process of law;
>
> 2. the foreign court did not have personal jurisdiction over the defendant."
>
> Art. 53. Recognition of Foreign Country Money judgments. Although 5304 further provides that under certain specified conditions a foreign country judgement need not be recognized, none of these conditions would apply to the present cases except for the possibility of failure to provide UCC with sufficient notice of proceedings or the existence of fraud in obtaining the judgment, which do not presently exist but conceivably could occur in the future".

The Court rejected the plea advanced by UCC of breach of due process by non-observance of proper standard and ultimately stated:

> "Any denial by the Indian Courts of due process can be raised by UCC as a defence to the plaintiffs' later attempt to enforce a resulting judgement against UCC in this country".

6. After Judge Keenan made the order of 12th of May, 1986, in September of that year Union of India in exercise of its power under the Act filed a suit in the District Court at Bhopal. In the plaint it was stated that death toll up to then was 2, 660 and serious injuries had even suffered by several thousand persons and in all more than 5 lakh person had sought damages up to then. But the extent and nature of the injuries or the after-effect thereof suffered by victims of the disaster had not yet been fully ascertained though survey and scientific and medical studies had already been undertaken. The suit asked for a decree for damages for such amount as may be appropriate under the facts and the law and as may be determined by the Court so as to fully, fairly and finally compensate all persons and authorities who had suffered as a result of the disaster and were having claims against the UCC. It also asked for a decree for effective damages in an amount sufficient to deter the defendant and other multi-national corporations involved in business activities from committing wilful and malicious and wanton disregard of the rights and safety of the citizens of India. While the litigations were pending in the US Courts an offer of 350 million dollars had been made for settlement of the claim. When the dispute arising out of interim compensation ordered by the District Court of Bhopal came before the High Court, efforts for settlement were continued. When the High Court reduced the quantum of interim compensation from Rs. 350 crores to a sum of Rs. 250 crores, both UCC and Union of India challenged the decision of the High Court by filing special leave petitions. It is in these cases that the matter was settled by two orders dated 14th and 15th of February, 1989. On May 4, 1989, the Constitution Bench which had recorded the settlement proceeded to set out brief reasons on three aspects:

> "(a) How did this Court arrive at the sum of 470 million US dollars for an over-all settlement ?
>
> (b) Why did the Court consider this sum of 470 million US dollar as just, equitable and reasonable?
>
> (c) Why did the Court not pronounce on certain important legal question of far reaching importance said to arise in the appeals as to the principles of liability of monolithic, economically entrenched multinational companies operating with inherently dangerous technologies in the developing countries of the third world - questions said to be of great contemporary relevance to the democracies of the third-world?"

7. The Court indicated that considerations of excellence and niceties of legal principles were greatly overshadowed by the pressing problems of very survival of a large number of victims. The Court also took into account the law's proverbial delays. In para 31 of its order the Constitution Bench said:

"As to the remaining question, it has been said that many vital juristic principles of great contemporary relevance to the Third World generally, and to India in particular, touching problems emerging from the pursuit of such dangerous technologies for economic gains by multi-nationals arose in this case. It is said that this is an instance of lost opportunity to this apex Court to give the law the new direction on new vital issues emerging from the increasing dimensions of the economic exploitation of developing countries by economic forces of the rich ones. This case also, it is said, concerns the legal limits to be envisaged in the vital interests of the protection of the constitutional rights of the citizenry, and of the environment, on the permissibility of such ultra-hazardous technologies and to prescribe absolute and deterrent standards of liability if harm is caused by such enterprises. The prospect of exploitation of cheap labour and of captive-markets, it is said, induces multi-nationals to enter into the developing countries for such economic-exploitation and that this was eminently an appropriate case for a careful assessment of the legal and Constitutional safeguards stemming from these vital issues of great contemporary relevance."

8. The Bhopal gas leak matter has been heard in this Court by four different Constitution Benches. The first Bench consisted of Pathak, C.J. Venkataramiah, Misra, Venkatachaliah and Ojha, JJ. The hearing continued for 24 days. The challenge to the validity of the Act was heard by a different Bench consisting of Mukharji, CJ, Singh, Ranganathan, Ahmadi and Saikia, JJ. where the hearing continued for 27 days. The review proceedings wherein challenge was to the settlement were then taken up for hearing by a Constitution Bench presided over by Mukharji, CJ with Misra, Singh, Venkatachaliah and Ojha, JJ. as the other members. This continued for 18 days. It is unfortunate that Mukharji, CJ. passed away soon after the judgement had been reserved and that necessitated a re-hearing. The matters were reheard at the earliest opportunity and this further hearing took 19 days. Perhaps this litigation is unique from several angles and this feature is an added one to be particularly noted. The validity of the Act has been upheld and three separate but concurring judgments have been delivered. At the final hearing of these matters long arguments founded upon certain varying observations of the learned Judges constituting the vires Bench in their respective decisions were advanced and some of them have been noticed in the judgment of my learned brother.

9. In the main judgment now being delivered special attention has been devoted to the conduct of Union of India in sponsoring the settlement in February, 1989, and then asking for a review of the decision based upon certain developments. Union of India as rightly indicated is a legal entity and has been given by the Constitution the right to sue and the liability of being sued. Under our jurisprudence a litigating party is not entitled to withdraw from a settlement by choice. Union of India has not filed a petition for review but has supported the stand of others who have asked for review. The technical limitations of review have not been invoked in this case by the Court and all aspects have been permitted to be placed before the Court for its consideration.

10. It is interesting to note that there has been no final adjudication in a mass tort action anywhere. The several instances which counsel for the parties placed before us were

cases where compensation had been paid by consent or where settlement was reached either directly or through a circuitous process. Such an alternate procedure has been adopted over the years on account of the fact that trial in a case of this type would be protracted and may not yield any social benefit. Assessment of compensation in cases of this type has generally been by a rough and ready process. In fact, every assessment of compensation to some extent is by such process and the concept of just compensation is an attempt of approximate compensation to the loss suffered. We have pointed out in our order of May 4, 1989, that 'the estimate in the very nature of things cannot share the accuracy of an adjudication'. I would humbly add that even an adjudication would only be an attempt at approximation.

11. This Court did take into account while accepting the settlement the fact that though a substantial period of time had elapsed the victims were without relief. For quite some time the number of claims in courts or before the authorities under the Act was not very appreciable. Perhaps an inference was drawn from the figures that the subsequent additions were to be viewed differently. I do not intend to indicate that the claims filed later are frivolous particularly on account of the fact that there are contentions and some prima facie materials to show that the ill-effects of exposure to MIC could manifest late. The nature of injuries suffered or the effect of exposure are not the same or similar; therefore, from the mere number no final opinion could be reached about the sufficiency of the quantum. The Act provides for a Fund into which the decretal sum has to be credited. The statute contemplates of a procedure for quantification of individual entitlement of compensation and as and when compensation becomes payable it is to be met out of the Fund. The fact that the Union of India has taken over the right to sue on behalf of all the victims indicates that if there is a shortfall in the Fund perhaps it would be the liability of Union of India to meet the same. Some of the observations of the vires Bench support this view. The genuine claimants thus have no legitimate grievance to make as long as compensation statutorily quantified is available to them because the source from which the compensation comes into the Fund is not of significant relevance to the claimant.

12. When the settlement was reached a group of social activists, the Press and even others claiming to be trustees of society came forward to question it. For some time what appeared to be a tirade was carried on by the media against the Court. Some people claiming to speak on behalf of the social Think Tank in meetings disparaged the Court. Some of the innocent victims were even brought into the Court premises to shout slogans at the apex institution. Some responsible citizens oblivious of their own role in the matter carried on mud-slinging.

13. The main foundation of the challenge was two-fold:

(i) The criminal cases could not have been compounded or quashed and immunity against criminal action could not be granted; and

(ii) The quantum of compensation settled was grossly low.

So far as the first aspect is concerned, the main judgment squarely deals with it and nothing more need be said. As far as the second aspect goes, the argument has been that the principle enunciated by this Court in M. C. Mehta v. Union of India (1987) 1 SCC 395: (AIR 1987 SC 1086) should have been adopted. The rule in Rylands v. Fletcher, (1868) LR 3 HL 330 has been the universally accepted authority in the matter of determining compensation in tort cases of this type. American jurisprudence writers have approved the ratio of that decision and American Courts too have followed the decision as a precedent. This Court in para 31 of the Mehta judgment said:

> "The Rule of Rylands v. Fletcher (1868) LR 3 HL 330: 19 LT 220) was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, he is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keep there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury's Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise

the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands v. Fletcher as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortuous principle of strict liability under the rule of Rylands v. Fletcher".

14. In M. C. Mehta's case (AIR 1987 SC 1086) no compensation was awarded as this Court could not reach the conclusion that Shriram (the delinquent company) came within the meaning of "State" in Art. 12 so as to be liable to the discipline of Art. 21 and to be

subjected to a proceeding under Art. 32 of the Constitution. Thus what was said was essentially obiter.

15. The extracted part of the observations from M. C. Mehta's case (AIR 1987 SC 1086) perhaps is a good guideline for working out compensation in the cases to which the ratio is intended to apply. The statement of the law ex facie makes a departure from the accepted legal position in Rylands v. Fletcher (1968 LR 3 HL 330). We have not been shown any binding precedent from the American Supreme Court where the ratio of M. C. Mehta's decision has in terms been applied. In fact Bhagwati, CJ clearly indicates in the judgment that his view is a departure from the law applicable to the western countries.

16. We are not concerned in the present case as to whether the ratio of M.C. Mehta should be applied to cases of the type referred to in it in India. We have to remain cognizant of the fact that the Indian assets of UCC through UCIL are around Rs. 100 crores or so. For any decree in excess of that amount, execution has to be taken in the United States and one has to remember the observation of the U.S. Court of Appeals that the defence of due process would be available to be raised in the execution proceedings. The decree to be obtained in the Bhopal suit would have been a money decree and it would have been subject to the law referred to in the judgment of the U. S. Court of Appeals. If the compensation is determined on the basis of strict liability a foundation different from the accepted basis in the United States the decree would be open to attack and may not be executable.

17. If the litigation was to go on merits in the Bhopal Court it would have perhaps taken at least 8 to 10 years; an appeal to the High Court and a further appeal to this Court would have taken in all around another spell of 10 years with steps for expedition taken. We can, therefore, fairly assume that litigation in India would have taken around 20 years to reach finality. From 1986, the year when the suit was instituted, that would have taken us to the beginning of the next century and then steps would have been made for its execution in the United States. On the basis that it was a foreign judgment, the law applicable to the New York Court should have been applicable and the 'due process" clause would have become relevant. That litigation in the minimum would have taken some 3-10 years to be finalised. Thus, relief would have been available to the victims at the earliest around 2010. In the event the U.S. Courts would have been of the view that strict liability was foreign to the American jurisprudence and contrary to U.S. public policy, the decree would not have been executed in the United States and apart from the Indian assets of UCIL, there would have been no scope for satisfaction of the decree. What was said by this Court in Municipal Council, Ratlam v. Vardichand, (1981) 1 SCR 97: (AIR 1980 SC 1622 at p. 1631) may be usefully recalled:

> "Admirable though it may be, it is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice to time, money and talent.
>
> This "beautiful" system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims".

We had then thought that the Bhopal dispute came within the last category and now we endorse it.

18. When dealing with this case this Court has always taken a pragmatic approach. The oft-quoted saying of the great American Judge that 'life is not logic but experience' has been remembered. Judges of this Court are men and their hearts also bleed when calamities like the Bhopal gas leak incident occur. Under the constitutional discipline determination of disputes has been left to the hierarchical system of court and this Court at its apex has the highest concern to ensure that Rule of Law work effectively and the cause of justice in no way suffers. To have a decree after struggling for a quarter of a century with the apprehension that the decree may be ultimately found not to be executable would certainly not have been a situation which this Court could countenance.

19. In the order of May 4, 1989, this Court had clearly indicated that it is our obligation to uphold the rights of the citizens and to bring to them a judicial fitment as available in accordance with the laws. There have been several instances where this Court has gone out of its way to evolve principles and make directions which would meet the demands of justice in a given situation. This, however, is not an occasion when such an experiment could have been undertaken to formulate the Mehta principle of strict liability at the eventual risk of ultimately loosing the legal battle.

20. Those who have clamoured for a judgement on merit were perhaps not alive to this aspect of the matter. If they were and yet so clamoured, they are not true representatives of the cause of the victims, and if they are not, they were certainly misleading the poor victims. It may be right that some people challenging the settlement who have come before the Court are the real victims. I assume that they are innocent and unaware of the rig marble of the legal process. They have been led into a situation without appreciating their own interest. This would not be the first instance where people with nothing at stake have traded in the misery of others.

21. This Court is entitled under the constitutional scheme to certain freedom of operation. It would be wrong to assume that there is an element of judicial arrogance in the act of the Court when it proceeds to act in a pragmatic way to protect the victims. It must be conceded that the citizens are equally entitled to speak in support of their rights. I am prepared to assume, any, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the service ability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled. Lord Simonds in Snaw v. Director of Public Prosecutions (1961) 2 Al ER 446 (447) said:

> "I entertain no doubt that there remains in the courts of law a residual power to enforce the Supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the State".

22. Let us remember what had once seen said in a different context:

> **"It depends upon the present age whether this great national institution shall descend to our children in its masculine majesty to protect the people and fulfil their great expectations".**

23. Let us also remember what Prof. Harry Jones in the Efficacy of Law has said:

> **"There are many mansions in the house of jurisprudence, and I would not belittle any one's perspective on law in society, provided only that he does not insist that his is the only perspective that gives a true and meaningful view of ultimate legal reality".**

24. In the facts and circumstances indicated and for the reasons adopted by my noble brother in the judgement I am of the view that the decree obtained on consent terms for compensation does not call for review.

25. I agree with the majority view.

VENKATACHALIAH J.:- 26. These Review petitions under Art. 137 and writ petitions under Art. 32 of the Constitution of India raise certain fundamental issues as to the constitutionality, legal validity, propriety and fairness and conceivability of the settlement of the claims of the victims in a mass-tort-action relating to what is known as the "Bhopal Gas Leak Disaster" .....considered world's worst industrial disaster, unprecedented as to its nature and magnitude. The tragedy, in human terms, was a terrible one. It has taken a toll of 4000 innocent human lives and has left tens of thousands of citizens of Bhopal physically affected in various degrees. The action was brought up by the Union of India as parens-patriae before the District Court Bhopal in Original Suit No. 1113 of 1986 pursuant to the statutory enablement in that behalf under the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 ('Act for short') claiming 3.3 Billion Dollars as compensation. When an interlocutory matter pertaining to the interim-compensation came up for hearing there was a court assisted settlement of the main suit claim itself at 470 million U.S. Dollars recorded by the orders of this Court dated 14th and 15th of February 1989. The petitions also raise questions as to the jurisdiction and powers of the Court to sanction and record such settlement when appeals brought up against an interlocutory order were alone before this Court.

The Union Carbide (India) Limited (for short the UCIL) owned and operated, in the northern sector of Bhopal, a chemical plant manufacturing pesticides commercially marketed under the trade-names "Sevin" and "Temik". Methyl Isocyanate (MIC) is an ingredient in the composition of these pesticides. The leak and escape of the poisonous fumes from the tanks in which they were stored occurred late in the night on the 2nd of December 1984 as a result of what has been stated to be a 'run-away' reaction owing to water entering into the storage tanks. Owing to the then prevailing wind conditions the fumes blew into the hutments abutting the premises of the plant and the residents of that

area had to bear the burnt of the fury of the vitriolic fumes. Besides large areas of the city were also exposed to the gas.

27. Referring to this industrial accident this Court in the course of its order dated 4th May, 1989 had occasion to say:

> "The Bhopal Gas Leak tragedy that occurred at midnight on 2nd December, 1984, by the escape of deadly chemical fumes from the appellant's pesticide-factory was a horrendous industrial mass disaster, unparalleled in its magnitude and devastation and remaining a ghastly monument to the de-humanising influence of inherently dangerous technologies. The tragedy took an immediate toll of 2,660 innocent human lines and left tens of thousands of innocent citizens of Bhopal physically impaired or affected in various degrees. What added grim poignance to the tragedy was that the industrial-enterprise was using Methyl Isocyanate, a lethal toxic poison, whose potentiality for destruction of life and biotic-communities was, apparently, matched only by the lack of a pre-package of relief procedures for management of any accident based on adequate scientific knowledge as to the ameliorative medical procedures for immediate neutralisation of its effects."

The toll of life has since gone up to around four thousand and the health of tens of thousands of citizens of Bhopal City has come to be affected and impaired in various degrees of seriousness. The effect of the exposure of the victims to Methyl Isocyanate (MIC) which was escaped on the night of the 2nd of December 1984 both in terms of acute and chronic episodes has been much discussed. There has been growing body of medical literature evaluating the magnitude and intensity of the health hazards which the exposed population of Bhopal suffered as immediate effects and to which it was potentially put at risk.

It is stated that the MIC is the most toxic chemical in industrial use. The petitioners relied upon certain studies on the subject carried out by the Toxicology Laboratory, Department of Industrial Environmental Health Sciences, Graduate School of Public Health, University of Pittsburg, (reported in Environmental Health Perspective Volume 72, pages 159 to 167). Though it was initially assumed that MIC caused merely simple and short-term injuries by scalding the surface tissues owing to its highly exothermic reaction with water it has now been found by medical research that injury caused by MIC is not to the mere surface tissues of the eyes and the lungs but is to the entire system including nephrological lymph, immune, circulatory system, etc. It is even urged that exposure to MIC has mutagenic effects and that the injury caused by exposure to MIC is progressive. The hazards of exposure to this lethal poison are yet an unknown quanta.

Certain studies undertaken by the Central Water and Air Pollution Control Board, speak of the high toxicity of the chemical.

The estimates of the concentration of MIC at Bhopal that fateful night by the Board indicate a concentration of 26.70 parts per million as against the 'OSHA' standard for work environment of 0.02 P.P.M. which is said to represent the threshold of tolerance. This has led to what can only be described as a grim and grisly tragedy. Indeed the effects

of exposure of the human system to this toxic chemical have not been fully grasped. Research studies seem to suggest that exposure to this chemical fumes renders the human physiology susceptible to long term pathology and the toxic is suspected to lodge itself in the tissues and cause long term damage to the vital systems, apart from damaging the exposed parts such as the eyes, lung membranes etc. It is also alleged that the 'latency period' for the symptomatic manifestation of the effects of the exposure is such that a vast section of the exposed population is put at risk and the potential risk of long term effects is presently unpredictable. It is said that even in cases of victims presently manifesting symptoms, the prospects of aggravation of the condition and manifestation of other effects of exposure are statable possibilities.

Immediately symptomatic cases showed ocular inflammation affecting visual acuity and respiratory distress owing to pulmonary edema and a marked tending toward general morbidity. It is argued that analysis of the case histories of persons manifesting general morbidity trends at various intervals from 3rd December, 1989 up to April, 1990 indicate that in all the severely affected, moderately affected and mildly affected areas the morbidity trend initially showed a decline compared with the acute phase. But the analysis for the later periods, it is alleged, showed a significant trend towards increase of respiratory, ophthalmic and genera morbidity in all the three areas. It is also sought to be pointed out that the fatal miscarriages in the exposed group was disturbingly higher than in the control group as indicated by the studies carried out by medical researchers. One of the points urged is that the likely long term effects of exposure have not been taken into account in approving the settlement and that the only way the victims interest could have been protected against future aggravation of their gas related health hazards was by the incorporation of an appropriate "re-opener" clause.

28. On 29th of March, 1985 the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (Act) was passed authorising the Government of India, as parens patriae exclusively to represent the victims so that interests of the victims of the disaster are fully protected, and that claims for compensation were pursued speedily, effectively, equitably and to the best advantage of the claimants. On 8th of April, 1985 Union of India, in exercise of the powers conferred on it under the Act, instituted before the U.S. District. Court, Southern District of New York, an action on behalf of the victims against the Union Carbide Corporation (UCC) for award of compensation for the damage caused by the disaster.

A large number of fatal-accidents and personal-injury actions had earlier also come to be filed in Courts in the United States of America by and on behalf of about 1,86,000 victims. All these earlier claims instituted in the various Courts in United States of America had come to be consolidated by the "Judicial Panel on Multi District Litigation" by its direction dated 6th February 1985 and assigned to United States District Court, Southern District of the New York, presided over by a Judge Keenan. The claim brought by the Union of India was also consolidated with them.

The UCC held 50.9% of the shares in the UCIL. The latter was its subsidiary. UCC's liability was asserted on the averments that UCC, apart from being the holding company, had retained and exercised powers of effective control over its Indian subsidiary in terms of its Corporate Policy and the establishment of the Bhopal Chemical Plant - with defective and inadequate safety standards which, compared with designs of UCC's American plants, manifested an indifference and disregard for human-safety - was the result of a conscious and deliberate action of the UCC. It was averred that UCC had, on considerations of economic advantages, consciously settled and opted for standards of safety for its plant in a developing country much lower than what it did for its own American counter-parts. The claim was partly based on 'design liability' on the part of UCC. The liability was also said to arise out of the use of ultra-hazardous chemical poisons said to engender not merely strict liability on Rylands v. Fletcher (1968 LR 3 HL 330) principle but an absolute liability on the principles of M.C. Mehta's case (AIR 1987 SC 1086).

The defences of the UCC, inter alia, were that UCC was a legal entity distinct in law from the UCIL; that factually it never exercised any direct and effective control over UCIL and that its corporate policy itself recognised, and was subject to, the country and therefore subject to the statutes in India which prohibit any such control by a foreign company over its Indian subsidiary, except the exercise of rights as share-holder permitted by law.

The UCC also resisted the choice of the American Forum on the pea of Forum-Non-Conveniens. Union of India sought to demonstrate that the suggested alternative forum before the judiciary in India was not an 'adequate' forum pointing out the essential distinction between the American and Indian systems of Tort Law both substantive and procedural and a comparison of the rights, remedies and procedure available under the competing alternative forums. The nature and scope of a defendant's plea of Forum Non-Conveniens and the scope of an enquiry on such plea have received judicial considerations before the Supreme Court of United States of America in Gulf Oil Corp. v. Gilbert, (1946) 330 US 501, Koster v. Lumbermens Mutual Casualty Co. (1946) 330 US 518 and Piper Aircraft Co. v. Reyno, (1981) 454 US 235.

The comparison of rights, remedies and procedures available in the two proposed forums though not a "major-factor", nevertheless, were relevant tests to examine the adequacy of the suggested alternative forum. System of American Tort Law has many features which make it a distinctive system. Judge Keenan adopting the suggested approach in Piper's decision that doctrine of forum non conveniens was designed in part to help courts in avoiding complex exercises in comparative laws and that the decision should not hinge on an unfavourable change in law which was not a major factor in the analysis was persuaded to the view that differences in the system did not establish inadequacy of the alternative forum in India. Accordingly on 12th of May, 1986, Judge Keenan allowed UCC's plea and held that the Indian judiciary must have the "opportunity to stand tall before the world and to pass judgment on behalf of its own people".

29. Thereafter the Union of India was constrained to alter its choice of the forum and to pursue the remedy against the UCC in the District Court at Bhopal. That is how original

Suit No. 1113 of 1986 seeking a compensation of 3.3 Billion Dollars against the UCC and UCIL came to be filed at Bhopal.

Efforts were made by the District Court at Bhopal to explore the possibilities of a settlement. But they were not fruitful. Zahreeli Gas Kand Sangharsh Morcha one of the victim-organisations appears to have moved the Court for award of interim-compensation. On 13th December 1987, the District Court made an order directing payment of Rupees 350 crores as interim compensation. UCC challenged this award before the High Court of Madhya Pradesh. The High Court by its order dated 4th of April, 1988 reduced the quantum of interim compensation to Rs. 250 crores. Both Union of India and UCC brought up appeals by Special Leave before this Court against the order of the High Court - Government of India assailing the reduction made by the High Court in the quantum of interim compensation from Rs. 350 crores to Rs. 250 crores and the UCC assailing the very jurisdiction and permissibility to grant interim compensation in a tort action where the very basis of liability itself had been disputed. The contention of the UCC was that in a suit for damages where the basis of the liability was disputed the Court had no power to make an award of interim compensation. It was urged that in common law - and that the law in India too - in a suit for damages no court could award interim compensation.

Prior to 1980 when the Rules of Supreme Court in England were amended (Amendment No. 2/1980) Courts in United Kingdom refused interim-payments in actions for damages. In Moore v. Assignment Courier, (1977) 2 All ER 842 (CA), it was recognised that there was no such power in common law. It was thereafter that the rules of the Supreme Court were amended by inserting Rules 10 and 11 of Order 29 Rules of Supreme Court specifically empowering the High Court to grant interim relief in tort injury actions. The amended provision stipulated certain pre conditions for the invokability of its enabling provision. But in England Lord Denning in the Court of Appeal thought that even under the common law the court could make an interim award for damages (See Lim Poh Choo v. Camden Islington Area Health Authority, (1979) 1 All ER 332. But his view was disapproved by the House of Lords (See 1979 (2) All ER 910 at pages 913, 914). Lord Scarman said:

> "Lord Denning MR in the Court of Appeals declared that a radical reappraisal of the law is needed. I agree. But I part company with him on ways and means. Lord Denning MR believes it can be done by the Judges, whereas I would suggest to your Lordships that such a reappraisal calls for social, financial, economic and administrative decisions which only the legislature can take. The perplexities of the present case, following on the publication of the report of Royal Commission of Civil Liability and Compensation of Personal Injury (the Pearson report), emphasise the need for reform of the law.
>
> Lord Denning MR appeared, however, to think, or at least to hope, that there exists machinery in the rules of the Supreme Court which may be adopted to enable an award of damages in a case such as this to be 'regarded as an interim award'.

> It is an attractive, ingenious suggestion, but, in my judgment, unsound. For so radical a reform can be made neither by judges nor by modification of rules of court. It raises issues of social, economic and financial policy not amenable to judicial reform, which will almost certainly prove to be controversial and can be resolved by the legislature only after full consideration of factors which cannot be brought into clear focus, or be weighed and assessed, in the course of the forensic process. The Judge, however wise, creative, and imaginative he may be, is cabined, cribbed, confined, bound in not as was Macbeth, to his 'saucy doubts and fears' but the evidence and arguments of the litigants. It is this limitation, inherent in the forensic process, which sets bounds to the scope of judicial law reform".

But in cases governed by common law and not affected by the statutory changes in the Rules of Supreme Court in U. K., the Privy Council said:

> "Their Lordships cannot leave this case without commenting on two unsatisfactory features. First, there is the inordinate length of time which has elapsed between service of the writ in February 1977 and final disposal of the case in the early months of 1984. The second is that, as their Lordships understand the position, no power exists in a case where liability is admitted for an interim payment to be ordered pending a final decision on quantum of damages. These are matters to which consideration should be given. They are, of course, linked; though the remedy for delay may be a matter of judicial administration, it would be seen legislation may be needed to enable an interim award to be made".

See: Jamil Bin Harun v. Yong Kamsiah: 1984 (1) AC 529, 538.

The District Court sought to sustain the interim-award on the inherent powers of the court preserved in S. 151, CPC. But the High Court of Madhya Pradesh thought that appeal to and reliance on S. 151 was not appropriate. It invoked S. 9 CPC read with the principle underlying the English Amendment, without its strict pre-conditions. The correctness of this view was assailed by the UCC before this Court in the appeal.

On 14th February, 1989 this Court recorded an over-all settlement of the claims in the suit for 470 million U.S. Dollars and the consequential termination of all civil and criminal proceedings. The relevant portions of the order of this Court dated 14th Feb. 1989 provide:

(1) The Union Carbide Corporation shall pay a sum of U.S. Dollars 470 millions (Four hundred and seventy millions) to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31st March, 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand transferred to this

Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending.

A memorandum of settlement shall be filed before us tomorrow setting forth all the details of the settlement to enable consequential directions, if any, to issue."

On 15th February, 1989 the terms of settlement signed by learned Attorney General for the Union of India and the Counsel for the UCC was filed. That memorandum provides:

"1. The parties acknowledge that the order dated February 14, 1989 as supplemented by the order dated February 15, 1989 disposes of in its entirety all proceedings in Suit No. 1113 of 1986. This settlement shall finally dispose of all past, present and future claims, causes of action and civil and criminal proceedings (of any nature whatsoever wherever pending) by all Indian citizens and all public and private entities with respect to all past, present and future deaths, personal injuries, health effects, compensation, losses, damages and civil and criminal complaints of any nature whatsoever against UCC, Union Carbide India Limited, Union Carbide Eastern, and all of their subsidiaries and affiliates as well as each of their present and former directors, officers, employees, agents, representatives, attorneys, advocates and solicitors arising out of, relating to or concerned with the Bhopal gas leak disaster, including past, present and future claims, causes of action and proceedings against each other. All such claims and causes of action whether within or outside India of Indian citizens, public or private entities are hereby extinguished, including without limitation each of the claims filed or to be filed under the Bhopal Gas Leak Disaster (Registration and Processing Claims) Scheme 1985, and all such civil proceedings in India are hereby transferred to this court and are dismissed with prejudice, and all such criminal proceedings including contempt proceedings stand quashed and accused deemed to be acquitted.

2. Upon full payment in accordance with the Court's directions the undertaking given by UCC pursuant to the order dated Nov. 30, 1986 in the District Court, Bhopal stands discharged, and all orders passed in Suit No. 113 of 1986 and or in any Revision therefrom, also stand discharged".

A further order was made by this Court on 15th February, 1989 which, apart from issuing directions in paras 1 and 2 thereof as to the mode of payment of the said sum of 470 million U.S. Dollars pursuant to and in terms of the settlement, also provided the following:

"3. Upon full payment of the sum referred to in para 2 above:

(a) The Union of India and the State of Madhya Pradesh shall take all steps which may in future become necessary in order to implement and give effect to this order including but not limited to ensuring that any suits, claims or civil or criminal complaints which may be filed in future against any Corporation, Company or person referred to in this settlement are defended by them and disposed of in terms of this order.

(b) Any such suits, claims or civil or criminal proceedings filed or to be filed before any court or authority are hereby enjoined and shall not be proceeded with before such court or authority except for dismissal or quashing in terms of this order.

4. Upon full payment in accordance with the Court's directions:

(a) The undertaking given by Union Carbide Corporation pursuant to the order dated 30 November, 1986 in the District Court Bhopal shall stand discharged, and all orders passed in Suit No. 1113 of 1986 and or in revision therefrom shall also stand discharged.

(b) Any action for contempt initiated against counsel or parties relating to this case and arising out of proceedings in the courts below shall be treated as dropped."

30. The settlement is assailed in these Review Petitions and Writ Petitions on various grounds. The arguments of the petitioners in the case have covered a wide range and have invoked every persuasion - jurisdictional, legal, humanitarian and those based on considerations of public-policy. It is urged that the Union of India had surrendered the interests of the victims before the might of multinational cartels and that what are in issue in the case are matters of great moment to developing countries in general. Some of these exhortations were noticed by this Court in the Course of its order of 4th May, 1989 in the following words.

"31. As to the remaining question, it has been said that many vital juristic principles of great contemporary relevance to the Third World generally, and to India in particular, touching problems emerging from the pursuit for such dangerous technologies for economic gains by multi-nationals arose in this case. It is said that this is an instance of lost opportunity to this apex Court to give the law the new direction on vital issues emerging from the increasing dimensions of the economic exploitation of developing countries by economic forces of the rich ones. This case also, it is said, concerns the legal limits to be envisaged in the vital interests of the protection of the constitutional rights of the citizenry, and of the environment, on the permissibility of such ultra-hazardous technologies and to prescribe absolute and deterrent standards of liability if harm is caused by such enterprises. The prospect of exploitation of cheap labour and of captive-markets, it is said, induces multi-nationals to enter into the developing countries for such economic-exploitation and that this was eminently an appropriate case for a careful assessment of the legal and constitutional safeguards stemming from these vital issues of great contemporary relevance.

On the importance and relevance of these considerations, this Court said:

32. These issues and certain cognate areas of even wider significance and the limits of the adjudicative disposition of some of their aspects are indeed questions of seminal importance. The culture of modern industrial technologies, which is sustained on processes of such pernicious potentialities, in the ultimate analysis, has

thrown open vital and fundamental issues of technology options. Associated problems of the adequacy of legal protection against such exploitative and industrial adventurism, and whether the citizens of the country are assured the protection of a legal system which could be said to be adequate in a comprehensive sense is such contexts arise. These, indeed are issues of vital importance and this tragedy, and the conditions that enabled it happen, are of particular concern.

33. The chemical pesticide industry is a concomitant, and indeed, an integral part, of the Technology of Chemical Farming. Some experts think that it is time to return from the high-risk, resource-intensive, high input, anti-ecological, monopolistic 'hard' technology which feeds, and is fed on, its self assertive attribute, to a more human and humane flexible, eco-conformable, "soft" technology with its systemic-wisdom and opportunities for human creativity and initiative. "Wisdom demands" says Schumacher "a new orientation of science and technology toward the organic, the gentle, the non-violent, the elegant and beautiful". The other view stressing the spectacular success of agricultural production in the new era of chemical farming with high-yielding strains, points to the break-through achieved by the Green Revolution with its effective response to, and successful management of the great challenges of feeding the millions. This technology in agriculture has given a big impetus to enterprises of chemical fertilizers and pesticides. This, say its critics, has brought in its trail its own serious problems. The technology-options before scientists and planners have been difficult".

31. Before we examine the grounds of challenge to the settlement we might, perhaps, refer to three events. The first is that the Central Bureau of Investigation, Government of India, brought criminal charges u/Ss. 304, 324, 326, 429 read with S. 35 of the Indian Penal Code against Mr. Warren Anderson, the then Chairman of the UCC and several other persons including some of the officers in-charge of the affairs of the UCIL. On 7th December, 1984 Mr. Warren Anderson came to India to see for himself the situation at Bhopal. He was arrested and later released on bail. One of the points seriously urged in these petitions is the validity of the effect of the order of this Court which terminated those criminal proceedings.

The second event is that on 17th of Nov. 1986 the District Court at Bhopal, on the motion of the plaintiff-Union of India, made an order restraining the UCC by an interlocutory injunction, from selling its assets, paying dividends, buying back debts, etc. during the pendency of the suit. On 30th of November, 1986 the District Court vacated that injunction on the written assurance and undertaking dated 27th November 1986 filed by the UCC to maintain unencumbered assets of three billion U.S. Dollars. One of the points argued in the course of the hearing of these petitions is whether, in the event the order recording the settlement is reviewed and the settlement set aside, the UCC and UCIL would become entitled to the restitution of the funds that they deposited in Court pursuant to and in performance of their obligations under the settlement. The UCC deposited 420 million U.S. Dollars and the UCIL the rupee equivalent of 45 million U.S. Dollars. 5 million U.S. Dollars directed by Judge Keenan to be paid to the International Red Cross was given credit to. The petitioners urge that even after setting aside of the settlement,

there is no compulsion or obligation to restore to the UCC the amounts brought into Court by it as such a step would prejudicially affect the interests of the victims. The other cognate question is whether, if UCC is held entitled to such restitution, should it not, as a pre-condition, be held to be under a corresponding obligation to restore and effectuate its prior undertaking dated 27th Nov. 1987 to maintain unencumbered assets of three billion U.S. Dollars, accepting which the order dated 30th November, 1987 of the District Court Bhopal came to be made.

The third event is that subsequent to the recording of the settlement a Constitution Bench of this Court dealt with and disposed of writ petitions challenging the constitutionality of the 'Act' on various grounds in what is known as Charan Lal Sahu's case (AIR 1990 SC 1480) and connected matters. The Constitution Bench upheld its constitutionality and in the course of the Court's opinion Chief Justice Mukharji made certain observations as to the validity of the settlement and the effect of the denial of a right of being heard to the victims before the settlement, a right held to be implicit in Section 4 of the Act. Both sides have heavily relied on certain observations in that pronouncement in support of the rival submissions.

32. We have heard learned Attorney General for the Union of India; Sri Shanti Bushan, Sri R. K. Garg, Smt. Indira Jaising, Sri Danial Latif, Sri Trehan learned counsel and Shri Prashant Bhushan, learned counsel for petitioners and Sri F.S. Nariman, learned senior counsel for the UCC, Sri Rajinder Singh, learned senior counsel for the UCIL and Dr. N. M. Ghatate and Sri Ashwini Kumar, learned senior counsel for the State of Madhya Pradesh and its authorities.

At the outset, it requires to be noticed that Union of India which was a party to the settlement has not be stirred itself to assail the settlement on any motion of its own. However, Union of India while not assailing the factum of settlement has sought to support the petitioners' challenge to the validity of the settlement. Learned Attorney General submitted that the factum of compromise or settlement recorded in the orders dated 14th & 15th of February, 1989 is not disputed by the Union of India. Learned Attorney-General also made it clear that the Union of India does not dispute the authority of the then Attorney General and the Advocate on record for the Union of India in the case to enter into a settlement. But, he submitted that this should not preclude the Union of India from pointing out circumstances in the case which, it accepted, would detract from the legal validity of the settlement.

33. The contentions urged at the hearing in support of these petitions admit of the following formulations:

Contention (A):

The proceedings before this Court were merely in the nature of appeals against an interlocutory order pertaining to the interim-compensation. Consistent with the limited scope and subject-matter of the appeals, the main suits themselves could not be finally disposed of by the settlement. The jurisdiction of this Court to withdraw or transfer a suit or proceeding to itself is exhausted by Article 139A of the Constitution. Such transfer

implicit in the final disposal of the suits having been impermissible suits were not before the Court so as to be amenable to final disposal by recording a settlement. The settlement is, therefore, without jurisdiction.

Contention (B):

Likewise the pending criminal prosecution was a separate and distinct proceeding unconnected with the suit from the interlocutory order in which the appeals before this Court arose. The criminal proceedings were not under or relatable to the 'Act'. The Court had no power to withdraw to itself those criminal proceedings and quash them. The orders of the Court dated 14th and 15th of February 1989, in so far as they pertain to the quashing of criminal proceedings are without jurisdiction.

Contention (C):

The 'Court-assisted-settlement' was as between, and confined to, the Union of India on the one hand and UCC & UCIL on the other. The original Suit No. 1113 of 1986 was really and in substance a representative suit for purposes and within the meaning of Order XXIII Rule 3B C.P.C. inasmuch as any order made therein would affect persons not eo nomine parties to the suit. Any settlement reached without notice to the persons so affected without complying with the procedural drill of Order XXIII Rule 3B is a nullity.

That the present suit is such a representative suit; that the order under review did affect the interests of third parties and that the legal effects and consequences of non-compliance with Rule 3B are attracted to case are concluded by the pronouncement of the Constitution Bench in Charanlal Sahu's case (AIR 1990 Sc 1480).

Contention (D):

The termination of the pending criminal proceedings brought about by the orders dated 14th and 15th of February, 1989 is bad in law and would require to be reviewed and set aside on grounds that (i) if the orders are constructed as permitting a compounding of offences, they run in the teeth of the statutory prohibition contained in S. 320 (9) of the Code of Criminal Procedure; (ii) if the orders are construed as permitting a withdrawal of the prosecution under Section 321, Cr. P.C. they would, again, be bad as violative of settled principles guiding withdrawal of prosecutions; and (iii) if the orders amounted to a quashing of the proceedings under Section 482 of the Code of Criminal Procedure, grounds for such quashing did not obtain in the case.

Contention (E):

The effect of the orders under review interdicting and prohibiting future criminal proceedings against any person or persons whatsoever in relation to or arising out of the Bhopal Gas Leak Disaster, in effect and substance, amounts to conferment of an immunity from criminal proceedings. Grant of immunity is essentially a legislative function and cannot be made by a judicial act.

At all events, grant of such immunity is opposed to public policy and prevents the investigation of serious offences in relation to this horrendous industrial disaster where

UCC had inter alia alleged sabotage as cause of the disaster. Criminal investigation was necessary in public interest not only to punish the guilty but to prevent any recurrence of such calamitous events in future.

Contention (F):

The memorandum of settlement and the orders of the Court thereon, properly construed, make the inference inescapable that a part of the consideration for the payment of 470 million U.S. Dollars was the stifling of the criminal prosecutions which is opposed to public-policy. This vitiates the agreement on which the settlement is based for unlawfulness of the consideration. The consent order has no higher sanctity than the legality and validity of the agreement on which it rests.

Contention (G):

The process of settlement of a mass tort action has its own complexities and that a "Fairness-Hearing" must precede the approval of any settlement by the court as fair, reasonable and adequate. In concluding that the settlement was just and reasonable the Court omitted to take into account and provide for certain important heads of compensation such as the need for and the costs of medical surveillance of a large section of population, which though symptomatic for the present was likely to become symptomatic later having regard to the character and the potentiality of the risks of exposure and the likely future damages resulting from long term effects and to build-in a 're-opener' clause.

The settlement is bad for not affording a fairness-hearing and for not incorporating a "re-opener" clause. The settlement is bad for not indicating appropriate break-down of the amount amongst the various classes of victim groups. There were no criteria to go by at all to decide the fairness and adequacy of the settlement.

Contention (H):

Even if the settlement is reviewed and set aside there is no compulsion or obligation to refund and restore to the UCC the funds brought in by it, as such restitution is discretionary and in exercising this discretion the interest of the victims be kept in mind and restitution denied.

At all events, if restitution is to be allowed, whether UCC would not be required to act upon and effectuate its under taking dated 27th November, 1986 on the basis of which order dated 30th November, 1986 of the Bhopal District Court vacating the injunction against it was made.

Contention (I):

Notice to the affected-person implicit in Section 4 of the Act was imperative before reaching a settlement and that as admittedly no such opportunity was given to the affected person either by the Union of India before entering into the settlement or by the Court before approving it, the settlement is void as violative of natural justice. Sufficiency of natural justice at any later stage cannot cure the effects of earlier

insufficiency and does not bring life back to a purported settlement which was in its inception void.

The observations of the constitution Bench in Charanlal Sahu's case suggesting that a hearing was viable at the review stage and should be sufficient compliance with natural justice, are mere obiter-dicta and do not alter the true legal position.

Point (J):

Does the settlement require to be set aside and the Original Suit No. 1113 of 1986 directed to be proceeded with on the merits? If not, what other reliefs require to be granted and what other directions require to be issued?

Re: Contentions (A) and (B)

34. The contention articulated with strong emphasis is that the court had no jurisdiction to withdraw and dispose of the main suits and the criminal proceedings in the course of hearing of appeals arising out of an interlocutory order in the suits. The disposal of the suits would require and imply their transfer and withdrawal to this court for which, it is contended, the Court had no power under law. It is urged that there is no power to withdraw the suits or proceedings dehors. Article 139-A and the conditions enabling the application of Article 139-A do not, admittedly, exist. It is, therefore, contended that the withdrawal of the suits, implicit in the order of their final disposal pursuant to the settlement, is a nullity. It is urged that Article 139A is exhaustive of the powers of the Court to withdraw suits or other proceedings to itself.

It is not disputed that Article 139-A in terms does not apply in the facts of the case. The appeals were by special leave under Article 136 of the Constitution against an interlocutory order. If Article 139A exhausts the power of transfer or withdrawal of proceedings, then the contention has substance. But is that so?

This Court had occasion to point out that Article 136 is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing of appeals by granting special leave against any kind of judgment or order made by a Court or Tribunal in any cause or matter and the powers can be exercised in spite of the limitations under the specific provision for appeal contained in the Constitution or other laws. The powers given by Article 136 are, however, in the nature of special or residuary powers which are exercisable outside the purview of the ordinary laws in cases where the needs of justice demand interference by the Supreme Court. (See Durga Shankar Mehta v. Thakur Raghuraj Singh, 1955 SCR 267: (AIR 1954 SC 520).

Article 142 (1) of the Constitution provides:

> "142 (1) The Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under

any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."

(Emphasis added)

The expression "cause or matter" in Article 142 (1) is very wide covering almost every kind of proceedings in Court. In Halsbury's Laws of England - Fourth Edition (Vol. 37) para 22 referring to the plenitude of that expression it is stated:

> "Cause or matter - The words "cause" or "matter" are often used in juxtaposition, but they have different meanings. "Cause" means any action or any criminal proceedings and "matter" means any proceedings in court not in a cause. When used together, the words "cause or matter" cover almost every kind of proceeding in court, whether civil or criminal, whether interlocutory or final, and whether before or after judgment". (Emphasis added)

Any limited interpretation of the expression "cause or matter" having regard to the wide and sweeping powers under Article 136 which Article 142 (1) seeks to effectuate, limiting it only to the short compass of the actual dispute before the Court and not to what might necessarily and reasonably be connected with or related to such matter in such a way that their withdrawal to the Apex court would enable the court to do "complete justice", would stultify the very wide constitutional powers. Take for instance, a case where an interlocutory order in a matrimonial cause pending in the trial court comes up before the apex court, the parties agree to have the main matter itself either decided on the merits or disposed of by a compromise. If the argument is correct this court would be powerless to withdraw the main matter and dispose it of finally even if it be on consent of both sides. Take also a similar situation where some criminal proceedings are also pending between the litigating spouses. If all disputes are settled, can the court not call up to itself the connected criminal litigation for a final disposal? If matters are disposed off by consent of the parties, can any one of them later turn around and say that the apex court's order was a nullity as one without jurisdiction and that the consent does not confer jurisdiction? This is not the way in which jurisdiction with such wide constitutional powers is to be construed. While it is neither possible nor advisable to enumerate exhaustively the multitudinous ways in which such situations may present themselves before the Court where the Court with the aid of the powers under Article 142 (1) could bring about a finality to the matters, it is common experience that day-in-and-day-out such matters are taken up and decided in this court. It is true that mere practice, however long, will not legitimize issues of jurisdiction. But the argument, pushed to its logical conclusions, would mean that when an interlocutory appeal comes up before this Court by special leave, even with the consent of the parties, the main matter cannot be finally disposed of by this court as such a step would imply an impermissible transfer of the main matter. Such technicalities do not belong to the content and interpretation of constitutional powers.

To the extent power of withdrawal and transfer of cases to the apex court is, in the opinion of the Court, necessary for the purpose of effectuating the high purpose of Articles 136 and 142 (1), the power under Article 139A must be held not to exhaust the

power of withdrawal and transfer. Article 139A, it is relevant to mention here, was introduced as part of the Scheme of the 42nd Constitutional Amendment, that amendment proposed to invest the Supreme Court with exclusive jurisdiction to determine the constitutional validity of central laws by inserting Articles 131A, 139A and 144A. But Articles 131A and 144A were omitted by the 43rd Amendment Act, 1977, leaving Article 139A intact. That article enables the litigants to approach the Apex Court for transfer of proceedings if the conditions envisaged in that Article are satisfied. Article 139A was not intended, nor does it operate, to whittle down the existing wide powers under Articles 136 and 142 of the Constitution.

The purposed constitutional plenitude of the powers of the Apex Court to ensure due and proper administration of justice is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Indeed, in Harbans Singh v. U. P. State (1982) 3 SCR 235 at 243: (AIR 1982 SC 849 at p. 853), the Court said:

> "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Arts. 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extra-ordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere".

We find absolutely no merit in this hyper technical submission of the petitioners' learned counsel. We reject the argument as unsound.

A similar ground is urged in support of contention (B) in relation to such withdrawal implicit in the quashing of the criminal proceedings. On the merits of the contention whether such quashing of the proceedings was, in the circumstances of the case, justified or not we have reached a decision on Contentions (D) and (E). But on the power of the Court to withdraw the proceedings, the contention must fail.

We, accordingly, reject both Contentions (A) and (B).

Re: Contention (C)

35. Shri Shanti Bhushan contends that the settlement recorded on the 14th and 15th of February, 1989, is void under Order XXIII, Rule 3B Code of Civil Procedure, as the orders affect the interests of persons not eonomine parties to the proceedings, and, therefore, the proceedings become representative proceedings for the purpose and within the meaning of O. XXIII, R. 3B, C.P.C. The order recording the settlement, not having been preceded by notice to such persons who may appear to the Court to be interested in the suit, would, it is contended, be void.

Order XXIII, Rule 3-B, CPC provides:

"Order XXIII, Rule 3-B.

No agreement or compromise to be entered in a representative suit without leave of Court.

(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation - In this rule, "representative suit" means, -

(a) a suit under Section 91 or Section 92.

(b) a suit under R. 8 of O. 1,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for time being in force bind any person who is not named as party to the suit".

Shri Shanti Bhushan says that the present proceedings by virtue of clause (d) of the Explanation should be deemed to be a representative suit and that the pronouncement of the Constitution Bench in Sahu case (AIR 1990 SC 1480) which has held that Order XXIII, Rule 3-B, CPC is attracted to the present proceedings should conclude the controversy. The observations in Sahu's case relied in this behalf are these (Paras 116 and 119 of AIR):

"However, Order XXIII, Rule 3-B of the Code is an important and significant pointer and the principles behind the said provision would apply to this case. The said rule 3B provides that no agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and sub-rule (2) of R. 3-B enjoins that before granting such leave the Court shall give notice in such manner as it may think fit in a representative action. Representative suit, again, has been defined under Explanation to the said rule vide clause (d) as any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit. In this case, indubitably the victims would be bound by the settlement thought not named in the suit. This is a position conceded by all. If that is so, it would be a representative suit in terms of and for the purpose of R. 3-B of O. XXIII of the Code. If the principles of this rule are the principles of natural justice then we are of the opinion that the principles behind it would be applicable, and also that section 4 should be so construed in spite of the difficulties of the process of notice and other difficulties of making "informed

decision making process cumbersome", as canvassed by the learned Attorney General".

"The Learned Attorney General, however sought to canvas the view that the victims had notice and some of them had participated in the proceedings. We are, however, unable to accept the position that the victims had notice of the nature contemplated under the Act upon the underlying principle of O. XXIII, R. 3-B of the Code. It is not enough to say that the victims must keep vigil and watch the proceeding .....In the aforesaid view of the matter, in our opinion, notice was necessary. The victims at large did not have the notice. (Emphasis added)

36. We have given our careful consideration to this submission. The question is whether R. 3-B of O. XXIII, proprio vigore, is attracted to the proceedings in the suit or whether the general principles of natural justice underlying the provision apply. If it is the latter, as indeed, the Sahu case has held, the contention in substance is not different from the one based on non-compliance with the right of being heard which has been read into Section 4. The Sahu case did not lay down that provisions of O. XXIII, R. 3-B, CPC, proprio vigore, apply. It held that the principles of natural justice underlying the said provisions were not excluded. It is implicit in that reasoning that O. XXIII, R. 3-B, CPC, proprio vigore, apply. The court thereafter considered the further sequential question whether the obligation to hear had been complied with or not and what were the consequences of failure to comply. The Court in the Sahu case after noticing that the principle underlying R. 3-B had not been satisfied, yet, did not say that the settlement was, for that reason, void. If as Shri Shanti Bhushan says the Sahu case had concluded the matter, it would have as a logical consequence declared the settlement void. On the contrary, the discussion of the effect of failure of compliance would indicate that the court declined to recognise any such fatal consequences. The Court said (AIR 1990 SC 1480 at pp. 1545-46):

"Though entering into a settlement without the required notice is wrong. In the facts and circumstances of this case, therefore, we are of the opinion, to direct that notice should be given now, would not result in doing justice in the situation. In the premises, no further consequential order is necessary by the Court. Had it been necessary for this Bench to have passed such a consequential order, we would not have passed any such consequential order in respect of the same".

37. The finding on this contention cannot be different from the one urged under Contention (I) infra. If the principle of natural justice underlying O. XXIII, R. 3-B, C.P.C is held to apply, the consequences of non-compliance should not be different from the consequences of the breach of rules of natural justice implicit in section 4. Dealing with that, the Sahu Case having regard to the circumstances of the case, declined to push the effect of non-compliance to its logical conclusion and declared the settlement void. On the contrary, the Court in Sahu's case considered it appropriate to suggest the remedy and curative of an opportunity of being heard in the proceedings for review. In Sahu decision the obligation under Section 4 to give notice is primarily on the Union of India. Incidentally there are certain observations implying an opportunity of being heard also before the Court even assuming that the right of the affected persons of being heard is

also available at a stage where a settlement is placed before the court for its acceptance, such a right is not referable to, and does not stem from, Rule 3-B of Order XXIII, C.P.C. The pronouncement in Sahu case as to what the consequences of non-compliance are is conclusive as the law of the case. It is not open to us to say whether such a conclusion is right or wrong. These findings cannot be put aside as mere obiter.

Section 112, C.P.C., inter alia, says that nothing contained in that Code shall be deemed to affect the powers of the Supreme Court under Article 136 or any other provision of the Constitution or to interfere with any rules made by the Supreme Court. The Supreme Court Rules are framed and promulgated under Article 145 of the Constitution. Under Order 32 of the Supreme Court Rules, O. XXIII, R. 3-B, C.P.C is not one of the rules expressly invoked and made applicable.

In relation to the proceedings and decisions of superior Courts of unlimited jurisdiction, imputation of nullity is not quite appropriate. They decide all questions of their own jurisdiction. In Isaacs v. Robertson (1984) 3 All ER 140 at p. 143 the Privy Council said:

> "The ..... legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court; if it is regular it can only be set aside by an appellate court on appeal if there is one to which appeal lies".

With reference to the "void" cases the Privy Council observed:

> " .....The cases that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind; what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside ex debito justitiae in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity and give to the judge a discretion as to the order he will make. The judges in the cases that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that being an order into the category that attracts ex debito justitiae the right to have it set aside, save that specifically it includes orders that have been obtained in breach of rules of natural justice".

This should conclude the present contention under C also against the petitioners.

Re: Contention (D)

38. This concerns the validity of that part of the orders of the 14th and 15th of February, 1989 quashing and terminating the criminal proceedings. In the order dated 14th February 1989 clause (3) of the order provides:

".....and all criminal proceeding related to and arising out of the disaster shall stand quashed wherever these may be pending".

Para 3 of the order dated 15th February, 1989 reads:

"Upon full payment of the sum referred to in paragraph 2 above:

(a) The Union of India and the State of Madhya Pradesh shall take all steps which may in future become necessary in order to implement and give effect to this order including but not limited to ensuring that any suits, claims or civil or criminal complaints which may be filed in future against any Corporation, Company or person referred to in this settlement are defended by them and disposed off in terms of this order.

(b) Any such suits, claims or civil or criminal proceedings filed or to be filed before any court or authority are hereby enjoined and shall not be proceeded with before such court or authority except for dismissal or quashing in terms of this order".

The signed memorandum filed by the Union of India and the UCC includes the following statement:

"This settlement shall finally dispose of all past, present and future claims, causes of action and civil and criminal proceedings (of any nature whatsoever wherever pending) by all Indian citizens and all public and private entities with respect to all past, present and future deaths, personal injuries, health effects, compensation, losses, damages and civil and criminal complaints of any nature whatsoever against UCC, Union Carbide India Limited, Union Carbide Eastern, and all of their subsidiaries and affiliates as well as each of their present and former directors, officers, employees, agents, representatives, attorneys, advocates and solicitors arising out of, relating or concerned with the Bhopal gas leak disaster, including past, present and future claims, causes of action and proceedings against each other.

.....and all such criminal proceedings including contempt proceedings stand quashed and accused deemed to be acquitted".

The order of 15th February, 1989 refers to the written memorandum filed by the learned counsel on both sides.

39. The two contentions of the petitioners, first, in regard to the legality and validity of the termination of the criminal proceedings and secondly, the validity of the protection or immunity from future proceedings, are distinct. They are dealt with also separately. The first - which is considered here - is in relation to the termination of pending criminal proceedings.

40. Petitioners' learned counsel strenuously contend that the orders of 14th and 15th of February, 1989, quashing the pending criminal proceedings which were serious non-compoundable offences under Sections 304, 324, 326 etc. of the Indian Penal Code are not supportable either as amounting to withdrawal of the prosecution under Section 321

Code of Criminal Procedure, the legal tests of permissibility of which are well settled or as amounting to a compounding of the offences under S. 320 Criminal Procedure Code as, indeed, sub-section (9) of S. 320, Cr. P.C. imposes a prohibition on such compounding. It is also urged that the inherent powers of the Court preserved under S. 482, Cr. P.C. could not be pressed into service as the principles guiding the administration of the inherent power could by no stretch of imagination, be said to accommodate the present case. So far as Article 142 (1) of the Constitution is concerned, it is urged, that the power to do "complete justice" does not enable any order "inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions" as observed by this Court in Prem Chand Garg v. Excise Commr. U.P., Allahabad, 1963 Suppl (1) SCR 885 at 899-900: (AIR 1963 SC 996 at p. 1003).

41. Shri Narman, however sought to point out that in Prem Chand Garg's case (AIR 1963 996) the words of limitation of the power under Article 142 (1) with reference to the "express statutory provisions of substantive law" were a mere obiter and were not necessary for the decision of that case. Shri Nariman contended that neither in Garg's case (AIR 1963 SC 996) nor in the subsequent decision in A. R. Antulay v. R. S. Nayak (1988) 2 SCC 602: (AIR 1988 SC 1531) where the above observations of inconsistency with the express statutory provision of substantive law arose and in both the cases the challenge had been on the ground of violation of fundamental rights. Shri Nariman said that the powers under Arts. 136 and 142 (1) are overriding constitutional powers and that while it is quite understandable that the exercise of these powers, however wide, should not violate any other constitutional provision, it would, however, be denying the wide sweep of these constitutional powers if their legitimate plenitude is whittled down by statutory provision. Shri Nariman said that the very constitutional purpose of Art. 142 is to empower the Apex Court to do complete justice and that if in that process the compelling needs of justice in a particular case and provisions of some law are not on speaking terms, it was the constitutional intendment that the needs of justice should prevail over a provision of law. Shri Nariman submitted that if the statement in Garg's case to the contrary passes into law it would wrongly alter the constitutional scheme. Shri Nariman referred to a number of decisions of this Court to indicate that in all of them the operative result would not strictly square with the provisions of some law or the other. Shri Nariman referred to the decisions of this court where even non-compoundable offences were permitted to be compounded in the interests of complete justice; where even after conviction under S. 302 sentence was reduced to one which was less than that statutorily prescribed; where even after declaring certain taxation laws unconstitutional for lack of legislative competence this court directed that the tax already collected under the void law need not be refunded etc. Shri Nariman also referred to the Sanchaita case where this Court, having regard to large issues of public interest involved in the matter, conferred the power of adjudication of claims exclusively on one forum irrespective of jurisdictional prescriptions.

42. Learned Attorney General submitted that the matter had been placed beyond doubt in Antulay's case (AIR 1988 SC 1531) where the court had invoked and applied the dictum in Garg's case (AIR 1963 SC 996) to a situation where the invalidity of a judicial

direction which, "was contrary to the statutory provision, namely section 7 (2) of the Criminal Law (Amendment) Act, 1952 and as such violative of Art. 21 of the Constitution" was raised and the court held that such a direction was invalid. Learned Attorney General said that the power under Art. 142 (1) could not be exercised if it was against an express substantive statutory provision containing a prohibition against such exercise. This, he said, is as it should be because justice dispensed by the Apex Court also should be according to law.

The order terminating the pending criminal proceedings is not supportable on the strict terms of Ss. 320 or 321 or 482, Cr. P.C. conscious of this, Shri Nariman submitted that if the Union of India as the Dominus Litis through its Attorney-General invited the court to quash the criminal proceedings and the court accepting the request quashed them, the power to do so was clearly referable to Art. 142 (1) read with the principle of S. 321, Cr. P.C. which enables the Government through its public-prosecutor to withdraw a prosecution. Shri Nariman suggested that what this Court did on the invitation of the Union of India as Dominus Litis was a mere procedural departure adopting the expedient of "quashing" as an alternative to or substitute for "withdrawal". There were only procedural and terminological departures and the Union of India as a party inviting the order could not, according to Shri Nariman, challenge the jurisdiction to make it. Shri Nariman submitted that the State as the Dominus Litis may seek leave to withdraw as long as such a course was not an attempt to interfere with the normal course of justice for illegal reasons.

43. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142 (1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Art. 142 (1) is unsound and erroneous. In both Garg's as well as Antulay's case the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the court under Art. 142 in so far as quashing of criminal proceedings are concerned is not exhausted by Ss. 320 or 321 or 482 Cr P.C. or all of them put together. The power under Art. 142 is at an entirely different level and of a different quality. Prohibitions or limitations of provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Art. 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers - limited in some appropriate way - is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Sri Sorabjee, learned Attorney-General, referring to Garg's case, said that limitation on the powers under Art. 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression ‘prohibition’ is read in place of ‘provision’ that would perhaps convey

the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Art. 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provision overrides a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Art. 142 and in assessing the needs of "complete justice" of a cause or matter, the apex court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public-policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the court under Art. 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.

Learned Attorney General said that S. 320 Criminal Procedure Code is "exhaustive of the circumstances and conditions under which composition can be effected" (See Sankar Rangayya v. Sankar Ramayya, AIR 1916 Mad 483 at p. 485) and that "the courts cannot go beyond a test laid down by the Legislature for determining the class of offences that are compoundable and substitute one of their own". Learned Attorney General also referred to the following passage in Biswabahan v. Gopen Chandra (1967) 1 SCR 447 at p. 451: (AIR 1967 SC 895) at p. 897):

> "If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge required into resulting either in conviction or acquittal".

He said that "if a criminal case is declared to be non-compoundable, then it is against public policy to compound it, and any agreement to that end is wholly void in law". (see (1913) ILR 40 Cal 113 at 117-118); and submitted that court "cannot make that legal which the law condemns". Learned Attorney-General stressed that the criminal case was an independent matter and of great public concern and could not be the subject matter of any compromise or settlement. There is some justification to say that statutory prohibition against compounding of certain class of serious offences, in which larger social interest and social security are involved, is based on broader and fundamental considerations of public policy. But all statutory prohibitions need not necessarily partake of this quality. The attacks on the power of the apex Court quash the crucial proceedings under Art. 142 (1) is ill-conceived. But the justification for its exercise is another matter.

44. The proposition that State is the Dominus Litis in criminal cases, is not an absolute one. The society for its orderly and peaceful development is interested in the punishment of the offender. (See A. R. Antulay v. R. S. Nayak (1984) 2 SCC 500 at 508, 509: (AIR 1984 SC 718 at pp. 722-23) and "If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated". (See Sheonandan Paswan v. State of Bihar (1987) 1 SCC 28 at p. 316: (AIR 1987 SC 877 at p. 889).

But Shri Nariman put it effectively when he said that if the position in relation to the criminal cases was that the court was invited by the Union of India to permit the termination of the prosecution and the court consented to it and quashed the criminal cases, it could not be said that there was some prohibition in some law for such powers being exercised under Art. 142. The mere fact that the word 'quashing' was used did not matter. Essentially, it was a matter of more form and procedure and not of substance. The power under Art. 141 is exercised with the aid of the principles of S. 321, Cr. P.C. which enables withdrawal of prosecutions. We cannot accept the position urged by the learned Attorney-General and learned counsel for the petitioners that court had no power or jurisdiction to make that order. We do not appreciate Union of India which filed the memorandum of 15th February, 1989, raising the plea of want of jurisdiction.

But whether on the merits there were justifiable grounds to quash is a different matter. There must be grounds to permit a withdrawal of the prosecution. It is really not so much a question of the existence of the power as one of justification for its exercise. A prosecution is not quashed for no other reason than that the Court has the power to do so. The withdrawal must be justified on grounds and principles recognised as proper and relevant. There is no indication as to the grounds and criteria justifying the withdrawal of the prosecution. The considerations that guide the exercise of power of withdrawal by Government could be and are many and varied. Government must indicate what those considerations are. This Court in State of Punjab v. Union of India, (1986) 4 SCC 335: (AIR 1987 SC 188) said that in the matter of power to withdraw prosecution the “broad ends of public justice may well include appropriate social, economic and political purpose". In the present case, no such endeavour was made. Indeed, the stand of the UCC in these review petitions is not specific as to the grounds justifying the exercise of the power of the court to permit a withdrawal. Even the stand of the Union of India has not been consistent. On the question whether Union of India itself invited the order quashing the criminal cases, its subsequent stand in the course of the arguments in Sahu case (AIR 1990 SC 1480) as noticed by the court appears to have been thus:

> " .....The Government as such had nothing to do with quashing of the criminal proceedings and it was not representing the victims in respect of the criminal liability of the UCC or UCIL to the victims. He further submitted that quashing of criminal proceedings was done by the Court in exercise of plenary powers under Arts. 136 and 142 of the Constitution ..."

The guiding principles in according permission for withdrawal of a prosecution were stated by this Court in M. N. Sankaranarayanan Nair v. P. V. Balakrishnan (1972) 2 SCR 599: (AIR 1972 SC 496 at p. 499):

> "..... Nevertheless it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the public prosecutor merely does so at the behest".

Learned counsel for the petitioners submitted that the case involved the allegation of commission of serious offences in the investigation of which the society was vitally interested and that considerations of public interest, instead of supporting a withdrawal, indicate the very opposite.

The offences relate to and arise out of a terrible and ghastly tragedy. Nearly 4,000 lives were lost and tens of thousands of citizens have suffered injuries in various degrees of severity. Indeed at one point of time UCC itself recognised the possibility of the accident having been the result of acts of sabotage. It is a matter of importance that offences alleged in the context of a disaster of such gravity and magnitude should not remain uninvestigated. The shifting stand of the Union of India on the point should not by itself lead to any miscarriage of justice.

We hold that no specific ground or grounds for withdrawal of the prosecutions having been set out at that stage the quashing of the prosecutions requires to be set aside.

45. There is, however, one aspect on which we should pronounce. Learned Attorney-General showed us some correspondence pertaining to a letter Rogatory in the criminal investigation for discovery and inspection of the UCC's plant in the United States for purposes of comparison of the safety standards. The inspection was to be conducted during the middle of February, 1989. The settlement, which took place on the 14th of February, 1989, it is alleged, was intended to circumvent that inspection. We have gone through the correspondence on the point. The documents relied upon do not support such an allegation. That apart, we must confess our inability to appreciate this suggestion coming as it does from the Government of India which was a party to the settlement.

46. However, on Contention (D) we hold that the quashing and termination of the criminal proceedings brought about by the orders dated 14th and 15th February, 1989 require to be, and are, hereby reviewed and set aside.

Re: Contention (E)

47. The written memorandum setting out the terms of the settlement filed by the Union of India and the U.C.C. contains certain terms which are susceptible of being construed as conferring a general future immunity from prosecution. The order dated 15th February, 1989 provides in clause 3 (a) and 3 (b):

> " .....that any suits, claims or civil or criminal complaints which may be filed in future against any Corporation, Company or person referred to in this settlement are defended by them and disposed of in terms of this order.
>
> Any such suits, claims or civil or criminal proceedings filed or to be filed before any court or authority are hereby enjoined and shall not be proceeded with before such court or authority except for dismissal or quashing in terms of this order".

These provisions, learned Attorney General contends, amount to conferment of immunity from the operation of the criminal law in the future respecting matters not already the subject matter of pending cases and, therefore, partake of the character of a blanket

criminal immunity which is essentially a legislative function. There is no power or jurisdiction in the courts, says learned Attorney-General, to confer immunity for criminal prosecution and punishment. Learned Attorney General also contends that grant of immunity to a particular person or persons may amount to a preferential treatment violative of the equality clause.

This position seems to be correct. In Apodaca v. Viramontes, (13 ALR 1427), it was observed:

> " ..... The grant of an immunity is in very truth the assumption of a legislative power".
> (pa. 1433)

> ".....The decisive question, then, is whether the district attorney and the district court in New Mexico, absent constitutional provision or enabling statute conferring the power, are authorized to grant immunity from prosecution for an offence to which incriminating answers provoked by questions asked will expose the witness.
>
> We are compelled to give a negative answer to this inquiry. Indeed, sound reason and logic, as well as the great weight of authority, to be found both in text books and in the decided cases, affirm that no such power exists in the district attorney and the district court, either or both, except as placed there by constitutional or statutory language. It is unnecessary to do more in this opinion in proof of the statement made than to give a few references to texts and to cite some of the leading cases ....."
> (p. 1431)

After the above observation, the court referred to the words of Chief Justice Cardozo (as he then was in the New York Court of Appeals) in Doyle v. Hafstader (257 NY 244) :

> ".....The grant of an immunity is in very truth the assumption of a legislative power, and that is why the Legislature, acting alone, is incompetent to declare it. It is the assumption of a power to annul as to individuals or classes the statutory law of crimes, to stem the course of justice, to absolve the grant jurors of the country from the performance of their duties, and the prosecuting officer from his. All these changes may be wrought through the enactment of a statute. They may be wrought in no other way while the legislative structure of our government continues what it is".

In the same case the opinion of Associate Judge Pound who dissented in part on another point, but who entirely shared the view expressed by Chief Justice Cardozo may also be cited:

> "The grant of immunity is a legislative function. The Governor may pardon after conviction (Ny Const. Art. 4 & 5), but he may not grant immunity from criminal prosecution or may the courts. Amnesty is the determination of the legislative power that the public welfare requires the witness to speak".
> (p. 1433)

Learned Attorney General referred us to the following passage in "jurisprudence" by Wortley:

> "Again, if we say that X has an immunity from arrest when a sitting member of the House of Commons, then during its subsistence he has an immunity that is denied to the generality of citizens; there is an inequality of rights and duties of citizens when the immunity is made out ...."
> (p. 297)

This inequality must be justified by intelligible differentia for classification which are both reasonable and have a rational nexus with the object.

Article 361 (2) of the Constitution confers on the President and the Governors immunity even in respect of their personal acts and enjoins that no criminal proceedings shall be instituted against them during their term of office. As to the theoretical basis for the need for such immunity, the Supreme Court of the United States in a case concerning immunity from civil liability (Richard Nixon v. Ernest Fitzgerald. (1982) 457 US 731: 73 Law Ed 2d 349) said:

> "......This Court necessarily also has weighed concerns of public policy, especially as illuminated by our history and the structure of our government ...."
> (p. 362)

> ".....In the case of the President the inquiries into history and policy though mandated independently by our case, tend to converge. Because the Presidency did not exist through most of the development of common law, any historical analysis must draw its evidence primarily from our constitutional heritage and structure. Historical inquiry thus merges almost at its inception with the kind of "public policy" analysis appropriately undertaken by a federal court. This inquiry involves policies and principles that may be considered implicit in the nature of the President's office in a system structured to achieve effective government under a constitutionally mandated separation of powers."
> (pp. 362 & 363)

> ".....In view of the special nature of the President's constitutional office and functions, we think it appropriate to recognise absolute Presidential immunity from damages liability for acts within the "outer perimeter" of his official responsibility.
>
> Under the Constitution and laws of the United States the President has discretionary responsibilities in a broad variety of areas, many of them highly sensitive. In many cases it would be difficult to determine which of the President's innumerable "functions" encompassed a particular action ...."
> (p. 367)

Following observations of Justice Storey in his "Commentaries in the Constitution of United States" were referred to:

"There are incidental powers, belonging to the executive department, which are necessarily implied from the nature of the functions, which are confided to it. Among these, must necessarily be included the power to perform them .... The President cannot, therefore, be liable to arrest, imprisonment, or detention, while he is in the discharge of the duties of his office; and for this purpose his person must be deemed, in civil cases at least, to possess an official inviolability".
(p. 363)

48. Indeed, the submissions of learned Attorney General on the theoretical foundations as to the source of immunity as being essentially legislative may be sound. But the question does not strictly arise in that sense in the present case. The direction that future criminal proceedings shall not be instituted or proceeded with must be understood as a concomitant and a logical consequence of the decision to withdraw the pending prosecutions. In that context, the stipulation that no future prosecutions shall be entertained may not amount to conferment of any immunity but only to a reiteration of consequences of such termination of pending prosecutions. Thus understood any appeal to the principle as to the power to confer criminal immunity becomes inapposite in this case.

49. However, in view of our finding on contention (D) that the quashing of criminal proceedings was not justified and that the orders dated 14th and 15th of February 1989 in that behalf require to be reviewed and set aside, the present contention does not survive because as a logical corollary and consequence of such further directions as to future prosecutions earlier require to be deleted. We, therefore, direct that all portions in the orders of this Court which relate to the incompetence of any future prosecutions be deleted.

50. The effect of our order on Contentions (D) and (E) is that all portions of orders dated 14th and 15th February, 1989 touching the quashing of the pending prosecution as well as impermissibility of future criminal liability are set aside. However, in so far as the dropping of the proceedings in contempt envisaged by clause (b) of para 4 of the order dated 15th February, 1989 is concerned, the same is left undisturbed.

Contention (E) is answered accordingly.

Re: Contention (F)

51. As we have seen earlier the memorandum of settlement as well as the orders of the Court contemplates that with a view to effectuation the settlement there be a termination of pending criminal prosecution with a further stipulation for abstention from future criminal proceedings. Petitioners have raised the plea and learned Attorney General supports them - that the language of the memorandum of settlement as well as the orders of the court leave no manner of doubt that a part of the consideration for the payment of 470 million US dollars was the stifling of the prosecution and, therefore, unlawful and opposed to public policy. Relying upon Ss. 23 and 24 of the Indian Contract Act it was urged that if any part of a single consideration for one or more objects or any one or any part of any one of several considerations for a single object is unlawful, the agreement becomes "void".

52. At the outset, learned Attorney General sought to clear any possible objections based on estoppel to the Union of India, which was a consenting party to the settlement raising this plea. Learned Attorney General urged that where the plea is one of invalidity the conduct of parties becomes irrelevant and that the plea of illegality is a good answer to the objection of consent. The invalidity urged is one based on public policy. We think that having regard to the nature of plea - one of nullity - no preclusive effect of the earlier consent should come in the way of the Union of India from raising the plea. Illegalities, it is said, are incurable. This position is fairly well established. In re A Bankruptcy Notice, (1924) 2 Ch D 76 at p. 97 Atkin L.J. said:

> "It is well established that it is impossible in law for a person to allege any kind of principle which precludes him from alleging the invalidity of that which the statute has, on grounds of general public policy, enacted shall be invalid".

In Maritime Electric Co. Ltd. v. General Dairies Ltd., AIR 1937 PC 114 at 116-117 a similar view finds expression:

> "..... and estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot therefore avail in such a case to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law.
>
> .....The court should first of all determine the nature of the obligation imposed by the statute, and then consider whether the admission of an estoppel would nullify the statutory provision.
>
> .....there is not a single case in which an estoppel has been allowed in such a case to defeat a statutory obligation of an unconditional character".

The case of this Court in point is of the State of Kerala v. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. (1974 1 SCR 671 at p. 688 : (AIR 1973 SC 2734 at p. 2745) where this court repelled the contention that an agreement on the part of the Government not to acquire, for a period of 60 years the lands of the company did not prevent the State from enacting or giving effect to a legislation for acquisition and that the surrender by the Government of its legislative powers which are intended to be used for public good cannot avail the company or operate against the Government as equitable estoppel. It is unnecessary to expand the discussion and enlarge authorities.

We do not think that the Union of India should be precluded from urging the contention as to invalidity in the present case.

53. The main arguments on invalidity proceed on the premise that the terms of the settlement and the orders of the court passed pursuant thereto contemplate, amount to and permit a compounding of non-compoundable offences which is opposed to public policy and, therefore, unlawful. The orders of the court based on an agreement whose or part of whose consideration is unlawful have, it is urged, no higher sanctity than the agreement

on which it is based. The orders of the court based on consent of parties do not, so goes the argument, reflect an adjudicative imposition of the court, but merely set the seal of the court on what is essentially an agreement between the parties. It is urged that the validity and durability of a consent order are wholly dependant on the legal validity of the agreement, on which it rests. Such an order is amenable to be set aside on any ground which would justify a setting aside of the agreement itself.

These principles are unexceptionable. Indeed, in Huddersfield Banking Company Ltd. v. Herry Lister & Son Ltd., (1895) 2 Ch. 273 at p. 76 Vaughan Williams J. said:

> ".....it seems to me that the clear result of the authorities is that, notwithstanding the consent order has been drawn up and completed, and acted upon to the extent that the property has been sold and the money has been paid into the hands of the receiver, I may now set aside the order and arrangement upon any ground which would justify me in setting aside an agreement entered into between the parties.

The real truth of the matter is that the order is a mere creature of the agreement, and to say that the court can set aside the agreement and it was not disputed that this could de done if a common mistake were provided - but that it cannot set aside an order which was the creature of that agreement, seems to me to be giving the branch of existence which is independent of the tree". (Emphasis added)

This was affirmed in appeal by Lindley I.J. in the following words:

> "the appellants, contend that there is no jurisdiction to set aside the consent order under such materials as we have to deal with; and they go so far as to say that a consent order can only be set aside on the ground of fraud. I dissent from that proposition entirely. A consent order, I agree, is an order; and so long as it stands it must be treated as such, and so long as it stands I think it is as good an estoppel as any other order. I have not the slightest doubt on that; nor have I the slightest doubt that a consent order can be impeached, not only on the ground of fraud, but upon any grounds which invalidate the agreement it expresses in a more formal way than usual."

(Para 280)

In Great North-West Central Railway Co. v. Charlebois, 1899 AC 114 at 124, the Privy Council stated the proposition thus:

> "It is quite clear that a company cannot do what is beyond its legal powers by simply going into court and consenting to a decree which orders that the thing shall be done ..... Such a judgement cannot be of more validity than the invalid contract on which it was founded".
>
> (Emphasis added)

It is, indeed, trite proposition that a contract whose object is opposed to public policy is invalid and it is not any the less so by reason alone of the fact that the unlawful terms are

embodied in a consensual decree. In State of Punjab v. Amar Singh (1974) 2 SCC 70 at p. 90: (AIR 1974 SC 994 at p. 1007, para 33) this court said:

> "After all, consent or agreement, parties cannot achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation ..... The true rule is that the contract of the parties is not the less a contract, and subject to the incidents of a contract, because there is superadded the command of the judge".

54. We do not think that the plea of "Accord and Satisfaction" raised by the UCC is also of any avail to it. UCC contends that the funds constituting the subject-matter of the settlement had been accepted and appropriated by Union of India and that, therefore, there was full accord and satisfaction. We find factually that there is no appropriation of the funds by the Union of India. The funds remain to the credit of the Reserve Bank of India. That apart as observed in Corpus Juris Secundum, Vol. I:

> "An illegal contract or agreement, such as one involving illegality of the subject matter, one involving the unlawful sale or exchange of intoxicating liquors, or a subletting, sub-leasing, or hiring out of convicts, held under lease from the State, in violation of statute, or stifling a prosecution for a public offence, or one which is against public policy, cannot constitute or effect an accord and satisfaction".
>
> (Emphasis added)

55. The main thrust of petitioners' argument of unlawfulness of consideration is that the dropping of criminal charges and undertaking to abstain from bringing criminal charges in future were part of the consideration for the offer of 470 million US dollars by the UCC and as the offences involved in the charges were of public nature and non-compoundable, the consideration for the agreement was stifling of prosecution and, therefore, unlawful. It is a settled proposition and of general application that where the criminal charges are matters of public concern there can be no diversion of the course of public justice and cannot be the subject matters of private bargain and compromise.

56. Shri Nariman urged that there were certain fundamental misconceptions about the scope of this doctrine of stifling of prosecution in the arguments of the petitioners. He submitted that the true principle was that while non-compoundable offences which are matter of private bargains and that administration of criminal justice should not be allowed to pass from the hands of Judges to private individuals, the doctrine is not attracted where side by side with criminal liability there was a pre-existing civil liability that was also settled and satisfied. The doctrine, he said, contemplates invalidity based on the possibility of the element of coercion by private individuals for private gains taking advantages of the threat of criminal prosecution. The whole idea of applicability of this doctrine in this case becomes irrelevant having regard to the fact that the Union of India as Dominus Litis moved in the matter and that administration of criminal justice was not sought to be exploited by any private individual for private gains. Shri Nariman submitted that distinction between "motive" and "consideration" has been well recognised in distinguishing whether the doctrine is or is not attracted.

57. The question that arise in the present case are, first, whether putting an end to the criminal proceedings was a part of the consideration and bargain for the payment of 470 million US dollars or whether it was merely one of the motives for entering into the settlement and, secondly, whether the memorandum of settlement and orders of this court, properly construed, amount to a compounding of the offences. If, on the contrary, what was done was that Union of India invited the court to exercise its powers under Art. 142 to permit a withdrawal of the prosecution and the expedient of quashing was a mere procedure of recognising the effect of withdrawal, could the settlement be declared void?

We think that the main settlement does not suffer from this vice. The pain of nullity does not attach to it flowing from any alleged unlawfulness of consideration. We shall set out our reasons presently.

Stating the law on the matter, Fry LJ in Windhil Local Board of Health v. Vint, (1890) 45 Ch. D. 351 at p. 366 said:

> "We have therefore a case in which a contract is entered into for the purpose of diverting - I may say perverting - the course of justice; and although I agree that in this case it was entered into with perfect good faith and with all the security which could possibly be given to such an agreement, I nevertheless think that the general principle applies, and that we cannot give effect to the agreement, the consideration of which is the diverting the course of public justice".

In Keir v. Leeman, (1844) 6 Queen's Bench 308 at 316, 322, Lord Denman, C.J. said:

> "The principle of law is laid down by Wilmot C.J. in Collins v. Blantern, (1767) (2) Wils 341) that a contract to withdraw a prosecution for perjury, and consent to give no evidence against the accused, is founded on an unlawful consideration and void.
>
> On the soundness of this decision no doubt can be entertained, whether the party accused were innocent, the law was abused for the purpose of extortion; if guilty the law was eluded by a corrupt compromise, screening the criminal for a bribe.
>
> .....But, if the offence is of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution for it.
>
> In the present instance, the offence is not confined to personal injury, but is accompanied with riot and obstruction of a public officer in the execution of his duty. These are matters of public concern, and therefore not legally the subject of a compromise.
>
> The approbation of the Judge (whether necessary or not) may properly be asked on all occasion where an indictment is compromised on the trial; plainly it cannot make that legal which the law condemns".

This was affirmed in appeal by Tindal C.J. who said (p. 393): (1846 (9) Qb 371)

> "It seems clear, from the various authorities brought before us on the argument, that some misdemeanours are of such a nature that a contract to withdraw a prosecution

in respect of them, and to consent to give no evidence against the parties accused, is founded on an illegal consideration. Such was the case of Collins v. Blantern, (1767) 2 Wils, 341, 347), which was the case of a prosecution for perjury. It is strange that such a doubt should ever have been raised. A contrary decision would have placed it in the power of a private individual to make a profit to himself by doing a great public injury".

58. V. Narasimha Raju v. V. Gurumurthy Raju, (1963) 3 SCR 687: (AIR 1963 SC 107) of this court is a case in point. The first respondent who had filed a criminal complaint in the Magistrate's Court against the appellant and his other partners alleging of commission of offences u/Ss. 420, 465, 468 and 477 read with Ss. 107, 120B of the Indian Penal Code entered into an agreement with the accused persons under which the dispute between the appellant and the first respondent and others was to be referred to arbitration on the first respondent agreeing to withdraw his criminal complaint. Pursuant to that agreement the complaint was got dismissed, on the first-respondent abstaining form educing evidence. The arbitration proceedings, the consideration for which was the withdrawal of the complaint, culminated in an award and the first respondent applied to have the award made a rule of the court. The appellant turned around and challenged the award on the ground that the consideration for the arbitration agreement was itself unlawful as it was one not to prosecute a non compoundable offence. This court held that the arbitration agreement was void u/S 23 of the Indian Contract Act as its consideration was opposed to public policy. The award was held void.

59. Even assuming that the Union of India agreed to compound non-compoundable offences, would this constitute a stifling of prosecution in the sense in which the doctrine is understood. The essence of the doctrine of stifling of prosecution is that no private person should be allowed to take the administration of criminal justice out of the hands of the Judges and place it is his own hands. In Rameshwar v. Upendranath, AIR 1926 Calcutta 455, 456 the High Court said:

> "Now in order to show that the object of the Agreement was to stifle criminal prosecution, it is necessary to prove that there was an agreement between the parties express or implied, the consideration for which was to take the administration of law out of the hands of the Judges and put it into the hands of a private individual to determine what is to be done in particular case and that the contracting parties should enter into a bargain to that effect".
>
> (Emphasis added)

In V. Narasimha Raju (1963) (3) SCR 687: AIR 1963 SC 107) (Supra) this Court said (p. 693) (of SCR): (at p. 110 para 8 of AIR):

> "The principle underlying this provision is obvious. Once the machinery of the Criminal Law is set into motion on the allegation that a non-compoundable offence has been committed, it is for the criminal courts and criminal courts alone to deal with that allegation and to decide whether the offence alleged has in fact been

committed or not. The decision of this question cannot either directly or indirectly be taken out of the hands of criminal courts and dealt with by private individuals". (Emphasis added)

This was what was reiterated in Ouseph Poulo v. Catholic Union Bank Ltd., (1964) 7 SCR 745: (AIR 1965) SC 166):

> "With regard to non-compoundable offence, however, the position is clear that no court of law can allow a private party to take the administration of law in its own hands and settle the question as to whether a particular offence has been committed or not for itself".
> (Emphasis added)

In this sense, a private party is not taking administration of law in its own hands in this case. It is the Union of India, as the Dominus Litis, that consented to the quashing of the proceedings. We have said earlier that what was purported to be done was not a compounding of the offences. Though, upon review, we have set aside that part of the order, the consequences of the alleged unlawfulness of consideration must be decided at the time of the transaction. It is here that we see the significance of the concurring observations of Chapman J. in Majibar Rahman v. Muktashed Hossein, (1913) ILR 40 Calcutta 113 at page 118 who said:

> "I agree, but desire to carefully confine my reason for holding that the bond was void on the ground that the consideration for the bond was found by the lower Court to be a promise to withdraw from the prosecution in a case the compromise of which is expressly forbidden by the Code of Criminal Procedure".

As stated earlier, the arrangement which purported to terminate the criminal cases was one of a purposed withdrawal not forbidden by any law but one which was clearly enabled. Whether valid grounds to permit such withdrawal existed or not is another matter.

60. Besides as pointed out by this court in Narasimha Raju's case (1963) (3) SCR 687 : AIR 1963 SC 107) (supra) the consequence of doctrine of stifling of prosecution is attracted, and its consequences follow where a "person sets the machinery of criminal law into action on the allegation that the opponent has committed a non-compoundable offence and by the use of this coercive criminal process he compels the opponent to enter into an agreement, that agreement would be treated as invalid for the reason that its consideration is opposed to public policy". (See page 692) (of SCR): (at p. 109 of AIR) of the report). In that case this court further held that the doctrine applies "when as a consideration for not proceeding with a criminal complaint, an agreement is made, in substance it really means that the complainant has taken upon himself to deal with his complaint and on the bargaining counter he has used his non-prosecution of the complaint as a consideration for the agreement which his opponent has been induced or coerced to enter into". (Emphasis added). These are not the features of the present case.

61. More importantly, the distinction between the "motive" for entering into agreement and the "consideration" for the agreement must be kept clearly distinguished. Where

dropping of the criminal proceedings is a motive for entering into the agreement - and not its consideration - the doctrine of stifling of prosecution is not attracted. Where there is also a pre-existing civil liability, the dropping of criminal proceedings need not necessarily be a consideration for the agreement to satisfy that liability. In Adkhikanda Sahu v. Jogi Sahu, AIR 1922 Patna 502, this distinction is pointed out:

> "The distinction between the motive for coming to an agreement and the actual consideration for the agreement must be kept carefully in view and this care must be particularly exercised in a case where there is a civil liability already existing, which is discharged or remitted by the Agreement".
> (p. 503)

In Deb Kumar Ray Choudhury v. Anath Bandhu Sen, AIR 1931 Cal 421 it was mentioned:

> "A contract for payment of money in respect of which a criminal prosecution was permissible under the law, was not by itself opposed to public policy.
>
> .....the withdrawal of the prosecution in the case before us might have been the motive but not certainly the object or the consideration of the contract as evidenced by the bond in suit so as to render the agreement illegal.
>
> These decisions are based upon the facts of the cases showing clearly that the agreements of the contracts sought to be enforced were the foundation for the withdrawal of non-compoundable criminal cases and were declared to be unlawful on the ground of public policy wholly void in law and, therefore, unenforceable. This class of cases has no application where, as in the present case, there was a pre-existing civil liability based upon adjustment of accounts between the parties concerned".
> (Emphasis added)

Again in Babu Harnarain Kapur v. Babu Ram Swarup Nigam, AIR 1941 Oudh 593 this distinction had been pointed out:

> "Though the motive of the executions of the document may be the withdrawal of a non-compoundable criminal case, the consideration is quite legal, provided there is an enforceable pre-existing liability. In the Patna case it was observed that the distinction between the motive for coming to an agreement and the actual consideration for the agreement must be kept carefully in view and this care must be particularly exercised in a case where there is a civil liability already existing which is discharged or remitted by the agreement".
> (p. 597)

Finally, this Court in Ouseph Poulo (1964) (7) SCR 745) at page 479: (AIR 1965 SC 166 at p. 186) (supra) held that:

> "In dealing with such agreements, it is, however, necessary to bear in mind the distinction between the motive which may operate in the mind of the complainant

and the accused and which may indirectly be responsible for the agreement and the consideration for such an agreement. It is only where the agreement is supported by the prohibited consideration that it falls within the mischief of the principle, that agreements which intend to stifle criminal prosecutions are invalid".
(Emphasis added)

62. On a consideration of the matter, we hold that the doctrine of stifling of prosecution is not attracted in the present case. In reaching this conclusion we do not put out of consideration that it is inconceivable that Union of India would, under the threat of a prosecution, coerce UCC to pay 470 million US dollars or any part thereof as consideration for stifling of the prosecution. In the context of the Union of India the plea lacks as much in reality as in a sense of proportion.

63. Accordingly on Contention (F) we hold that the settlement is not hit by S. 23 or 24 of the India Contract Act and that no part of the consideration for payment of 470 million US Dollars was unlawful.

Re: Contention (G)

64. This concerns the ground that a "Fairness-Hearing", as understood in the American procedure is mandatory before a mass-tort action is settled and the settlement in the present case is bad as no such procedure had preceded it. It is also urged that the quantum settled for is hopelessly inadequate as the settlement has not envisaged and provided for many heads of compensation such as the future medical surveillance costs of a large section of the exposed population which is put at risk; and that the toxic tort actions where the latency-period for the manifestation for the effects of the exposure is unpredictable it is necessary to have a "reopener" clause as in the very nature of toxic injuries the latency period for the manifestation of effects is unpredictable and any structured settlement should contemplate and provide for the possible baneful contingencies of the future. It is pointed out for the petitioners that the order recording the settlement and the order dated 4th May, 1989 indicate that no provision was made for such imminent contingencies for the future which even include the effect of the toxic gas on pregnant mothers resulting in congenital abnormalities of the children. These aspects, it is urged, would have been appropriately discussed before the Court, had the victims and victim-groups had a "Fairness-Hearing". It is urged that there has been no application of the Court's mind to matters particularly relevant to toxic injuries. The contention is twofold. First is that the settlement did not envisage the possibilities of delayed manifestation or aggravation of toxic morbidity, in the exposed population. This aspect, it is urged, is required to be taken care of in two ways: one by making adequate financial provision for medical surveillance costs for the exposed but still latent victims and secondly, by providing in the case of symptomatic victims a "re-opener clause" for meeting contingencies of aggravation of damages in the case of the presently symptomatic victims. The second contention is as to the infirmity of the settlement by an omission to follow the 'Fairness-Hearing' procedures.

65. On the first aspect, Sri Nariman, however, contends that the possibility that the exposed population might develop hitherto unsuspected complications in the future was

known to and was in the mind of the Union of India and it must be presumed to have taken all the possibilities into account in arriving at the settlement. Sri Nariman said we now have the benefit of hindsight of six years which is a sufficiently long period over which the worst possibilities would have blown-over. Indeed, in the plaint in the Bhopal Court, Shri Nariman points out, Union of India has specifically averred that there were possibilities of such future damage. Sri Nariman referred to the preface to the Report of April, 1986 of the Indian Council of Medical Research (ICMR) on "Health Effects of the Bhopal Gas Tragedy" where these contingencies are posited to point out that these aspects were in the mind of Union of India and that there was nothing unforeseen which could be said to have missed its attention. In the said preface ICMR said:

> "..... How long will they (i.e. the respiratory, ocular and other morbidities) last "What permanent disabilities can be caused? What is the outlook for these victims "What of their off-spring?"

Shri Nariman referred to the following passage in the introduction to the Working Manual I on "Health Problems of Bhopal Gas Victims", April, 1986, ICMR:

> "Based on clinical experience gained so far, it is believed that many of them (i.e. victims) would require specialised medicare for several years since MIC is an extremely reactive substance, the possibility of the exposed population developing hitherto unsuspected complications in the future cannot be overlooked".

What is, however, implicit in this stand of the UCC is the admission that exposure to MIC has such grim implications for the future; but UCC urges that the Union of India must be deemed to have put all these into the scales at the time it settled the claim for 470 million US Dollars. UCC also suggest that with the passage of time all such problems of the future must have already unfolded themselves and that going by the statistics of medical evaluation of the affected persons done by the Directorate of Claims, even the amount of 470 million US dollars is very likely to be an over-payment. UCC ventures to suggest that on the estimates of compensation based on the medical categorisation of the affected population, a sum of Rs. 440 crores could be estimated to be an overpayment and that for all the latent-problems not manifested yet, this surplus of Rs. 440 crores should be a protective and adequate financial cushion.

66. We may at this stage have a brief look at the work of the medical evaluation and categorisation of the Health Status of the affected persons carried out by the Directorate of Claims. It would appear that as on 31st October, 1990, 6, 39, 793 claims had been filed. It was stated that a considerably large number of the claimants who were asked to appear for medical evaluation did not turn up and only 3, 61, 166 of them responded to the notices. Their medical folders were prepared. The total number of deaths had risen to 3,828. The results of medical evaluation and categorisation of the affected persons on the basis of the data entered in their Medical Folders as on 31st October, 1990 are as follows:

No. of medical folders prepared	3,61,966
No of folders evaluated	3,58,712
No. of folders categorised	3,58,712

No injury	1,55,203
Temporary injuries	1,73,382
Permanent injuries	18,922
Temporary disablement caused by a temporary injury	7,172
Temporary disablement caused by a permanent injury	1,313
Permanent partial disablement	2,680
Permanent total disablement	50
Deaths	3,828

67. On the medical research literature placed before us it can reasonably be posited that the exposure to such concentrations of MIC might involve delayed manifestations of toxic morbidity. The exposed population may not have manifested any immediate symptomatic medical status.

But the long latency-period of toxic injuries renders the medical surveillance costs a permissible claim even though ultimately the exposed persons may not actually develop the apprehended complications. In Ayers v. Jackson T.P., (525 A 2d 287 (N.J. 1987), referring to the admissibility of claims of medical surveillance expenses, it was stated:

> "The claim for medical surveillance expenses stands on a different footing from the claim based on enhanced risk. It seeks to recover the cost of periodic medical examinations intended to monitor plaintiffs health and facilitate early diagnosis and treatment of disease caused by plaintiffs' exposure to toxic chemicals.....".
>
> ".....The future expense of medical monitoring, could be a recoverable consequential damage provided that plaintiffs can establish with a reasonable degree of medical certainty that such expenditures are "reasonably anticipated" to be incurred by reason of their exposure. There is no doubt that such a remedy would permit the early detection and treatment of maladies and that as a matter of public policy the tort-feasor should bear its cost.
>
> Compensation for reasonable and necessary medical expenses is consistent with well accepted legal principles. It is also consistent with the important public health interest in fostering access to medical testing for individuals whose exposure to toxic chemicals creates an enhanced risk of disease. The value of early diagnosis and treatment for cancer patients is well-documented".
>
> "Although some individuals exposed to hazardous chemicals may seek regular medical surveillance whether or not the cost is reimbursed, the lack of reimbursement will undoubtedly deter others from doing so. An application of tort law that allows post injury, pre-symptom recovery in toxic tort litigation for reasonable medical surveillance costs is manifestly consistent with the public interest in early detection and treatment of disease.
>
> Recognition of pre-symptom claims for medical surveillance serves other important public interest. The difficulty of proving causation, where the disease is manifested years after exposure, has caused many commentators to suggest that tort law has no

capacity to deter polluters because the costs of proper disposal are often viewed by polluters as exceeding the risk of tort liability ...."

"Other considerations compel recognition of a pre-symptom medical surveillance claim. It is inequitable for an individual, wrongfully exposed to dangerous toxic chemicals but unable to prove that disease is likely to have to pay his own expenses when medical intervention is clearly reasonable and necessary ....."

"Accordingly, we hold that the cost of medical surveillance is a compensable item of damages where the proves demonstrate, through reliable expert testimony predicated upon the significance and extent of exposure to chemicals the toxicity of the chemicals, the seriousness of the diseases for which individuals are at risk, the relative increase in the chance of onset of disease in those exposed, and the value of early diagnosis, that such surveillance to monitor the effect of exposure to toxic chemicals is reasonable and necessary ....."

In the "Law of Toxic Torts" by Michael Dore, the same idea is expressed:

"In Myers v. Johns-Manville Corporation, the court permitted plaintiff prove emotional harm where they were suffering from "serious fear or emotional distress or a clinically diagnosed phobia of cancer". The court distinguished, however, between a claim for fear of cancer and a claim for cancer phobia. The former could be based on plaintiff's fear, preoccupation and distress resulting from the enhanced risk of cancer but the latter would require expert opinion testimony ...."

"The reasonable value of future medical services required by a defendant's conduct is recoverable element of damage in tradition and toxic tort litigation. Such damages have been awarded even in circumstances where no present injury exists but medical testimony establishes that such future medical surveillance is reasonably required on the basis of the conduct of a particular defendant ...."

It is not the reasonable probability that the persons put at risk will actually suffer toxic injury in future that determines whether the medical surveillance is necessary. But what determines it is whether, on the basis of medical opinion, a person who has been exposed to a toxic substance known to cause long time serious injury should undergo periodical medical test in order to look for timely warning signs of the on-set of the feared consequences. These costs constitute a relevant and admissible head of compensation and may have to be borne in mind in forming an opinion whether a proposed settlement - even as a settlement - is just, fair and adequate.

68. Sri Nariman, however, urged that the only form of compensation known to the common law is a lump sum award - a once and for all determination of compensation for all plaintiffs' losses, past, present and future - and that split-trials for quantification of compensation taking into account future aggravation of injuries, except statutorily enabled, are unknown to common law.

Indeed, that this is the position in common law cannot be disputed. In an action for negligence, damages must be and are assessed once and for all at the trial of such an

issue. Even if it is found later that the damage suffered was much greater than was originally supposed, no further action could be brought. It is well settled rule of law that damages resulting from one and the same cause of action must be assessed and recovered once and for all. Two actions, therefore, will not lie against the same defendant for personal injury sustained in the same accident. (See Charlsworth and Percy on Negligence (1990) 8th Edn. para 443).

Indeed, even under the Common Law, as administered in U.K. prior to the introduction of S. 32A of the Supreme Court Act 1981, Lord Denning thought that such special awards were not impermissible. But as pointed out earlier the House of Lords in Lim Poh Choo v. Camden Islington, (1979) (1) All ER 332) did not approve that view.

Later S. 32A of the Supreme Court Act, 1981 expressly enabled award of provisional damages and Order 37 Rules 7 to 10 (Part II) Rules of Supreme Court provided for the assessment of such further damages. The contention of the UCC is that the common law rule of once and for all damages is unaltered in India unlike in England where split awards are now statutorily enabled and that, therefore, references to future medical surveillance costs and "re-opener" clauses are inapposite to a once for all payment. The concept of re-opener clause in settlement, it is contended, is the result of special legal requirements in certain American jurisdictions and a settlement is not vitiated for not providing for future medical surveillance costs inasmuch as all these must be presumed to have engaged the minds of the settling parities at the time of a once for all settlement. Shri Nariman pointed out that the American case of Acushnet River v. New Bedford Harbour (712F 2d Supp. 1019) referred to by the learned Attorney-General was a case where the "re-opener" clause was a statutory incident under the Comprehensive Environmental Response, Compensation and Liability Act, 1980.

But petitioners say that in the process of evolving what is a fair, reasonable and adequate settlement some of the elements essential and relevant to fairness and adequacy such as provision for future medical surveillance and the likely future, but yet unforeseen, manifestation of toxic injury, having regard to the nature of the hazard, have not been kept in mind and, therefore, the approval accorded to the settlement is on an incomplete criteria. But UCC would say that Union of India was aware of the possibility of such future manifestations of the effects of the exposure and must be deemed to have kept all those in mind at the time of settlement.

69. But the point to emphasise is that those who were not parties to the process of settlement are assailing the settlement on these grounds. In personal injury actions the possibility of the future aggravation of the condition and of consequent aggravation of damages are taken into account in the assessment of damages. The estimate of damages in that sense is a very delicate exercise requiring evaluation of many criteria some of which may border on the imponderable. Generally speaking actions for damages are limited by the general doctrine of remoteness and mitigation of damages. But the hazards of assessment of once and for all damages in personal injury actions lie in many yet inchoate factors requiring to be assessed. It is in this context we must look at the ‘very proper refusal of the courts to sacrifice physically injured plaintiffs on the altar of the certainty principle’. The likelihood of future complications though they may mean mere

assessment or evaluation of mere chances - are also put into the scales in quantifying damages. This principle may, as rightly pointed out by Sri Nariman, take care of the victims who have manifest symptoms. But what about those who are presently wholly a symptomatic and have no material to support a present claim? Who will provide them medical surveillance costs and if at some day in the future they develop any of the dreaded symptoms, who will provide them with compensation? Even if the award is a "once and for all" determination, these aspects must be taken into account.

70. The second aspect is the imperative of the exercise of a "Fairness-Hearing" as a condition for the validity of the settlement. Smt. Indira Jaising strongly urged that in the absence of a "Fairness-Hearing" no settlement could at all be meaningful. But the question is whether such a procedure is relevant to and apposite in the context of the scheme under the Act. The "fairness-Hearing" in a certified class of action is a concept in the United States for which a provision is available under Rule 23 of US Federal Rules of Procedure. Smt. Indira Jaising referred to certain passages in the report of Chief Judge Weinstein in what is known as the Agent Orange Litigation (597 Federal Supplement 740 (1984), to indicate what according to her, are the criteria a Court has to keep in mind in approving a settlement. The learned judge observed (at page 760 para 9):

"In deciding whether to approve the settlement the Court must have a sufficient grasp of the facts and the law involved in the case in order to make a sensible evaluation of the litigation's prospects. (See Malchman v. Davis, 706 F. 2d 426, 433 (2d Cir. 1983). An appreciation of the probabilities of plaintiff's recovery after a trial and the possible range of damages essential. The cases caution, however, that the Court "should not ....turn the settlement hearing 'into a trial or rehearsal of the trial'". Flin v. FMC Corpn. 528 F. 2d 1169, 1172 (4th Cir. 1975), Crt. denied, 424 U.S. 967, 96 S. Ct. 1462, 47 L. Ed. 2D 734 (734 (1976), quoting Teachers Ins. & Annuity Ass'n of America v. Beame, 67 FRD 30, 33, (S.D.N.Y. 1975). See also Malchman v. Davis, 706 F. 2d 426, 433 (2D Cir. 1983).

> "A democratic vote by informed members of the class would be virtually impossible in any large class suit. The costs of ensuring that each member of the class in this case fully understood the issue bearing on settlement and then voted on it would be prohibitive and the enterprise quixotic. Even though hundreds of members of the class were heard from, there was an overwhelmingly large silent majority. In the final analysis there was and can be no "consent" in any meaningful sense".
>
> (Emphasis added)

Learned Judge also referred to the nine relevant factors: (1) The complexity expense and likely duration of the litigation, (2) The reaction of the class of the settlement, (3) The stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) The risks of establishing damages (6) The risks of maintaining the class action through the trial, (7) The ability of the defendants to withstand a greater judgement, (8) the range of reasonableness of the settlement fund in the light of the best possible recovery and, (9) The range of reasonableness of the settlement fund to a possible recovery in the light of all the attendant risks of litigation. But the limits were also indicated by learned Judge:

"Thus the trial court has a limited scope of review for determining fairness. The very purpose of settlement is to avoid trial of sharply disputed issue and the costs of protracted litigation".

"The Court may limit its fairness proceeding to whatever is necessary to aid it in reaching a just and informed decision. Flinn v. FMC Corp. 528 2d at 1173. An evidentiary hearing is not required".

The settlement must, of course, be an informed one. But it will be an error to require its quantum to be co-extensive with the suit claim or what, if the plaintiffs fully succeeded, they would be entitled to except.

The Bhopal Gas Disaster (Processing of Claims) Act, 1985, has its own distinctive features. It is a legislation to meet a one time situation. It provides for exclusivity of the right of representation of all claimants by Union of India and for divesting the individual claimants of any right to pursue any remedy for any cause of action against UCC and UCIL. The constitutionality of this scheme has been upheld in the Sahu's case (AIR 1990 SC 1480). Sri Nariman contended that the analogy of "Fairness-Hearing" envisaged in certified class actions in the United States is inapposite in the context of the present statutory right of the Union of India. Shri Nariman referred to the following statement of the court in Sahu case (Para 115 of AIR).

"....Our attention was drawn to the provision of Order 1 Rule 8 (4) of the Code. Strictly speaking Order 1, Rule 8 will not apply to a suit or a proceeding under the Act. It is a case of one having common interest with others. Here the plaintiff, the Central Government has replaced and divested the Victims".

(Emphasis added)

Consistent with the limitations of the scope of the review, says Shri Nariman, the Court cannot go behind the settlement so as to take it back to a stage of proposal and order a "Fairness-Hearing". He urged that a settlement was after all a settlement and an approval of a settlement did not depend on the legal certainty as to the claim or counter claim being worthless or valuable. Learned counsel commended the following passage from the judgment in the Court of Appeal for the Fifth Circuit stated in Florida Trailer and Equipment Co. v. Deal 284 F. 2d 567 (1960):

"...The probable outcome in the event of litigation, the relative advantages and disadvantages are, of course, relevant factors for evaluation. But the very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation and expense, lay behind the Congressional infusion of a power to compromise. This is a recognition of the policy of the law generally to encourage settlements. This could hardly be achieved if the test on hearing for approval meant establishing success or failure to a certainty. Parties would be hesitant to explore the likelihood of settlement apprehensive as they would mean by that the application for approval would necessarily result in a judicial determination that there was no escape from liability or no hope of recovery and (thus) no basis for a compromise".

Sri Nariman also pointed out that IN Agent Orange settlement only a small fraction of one percent of the class came forward at the fairness hearings; that there was no medical evidence nor a mini-trial about the factual aspects of the case and that in the end: "the silent majority remains inscrutable". It is pointed out that in United Kingdom a different variant or substitute of fairness hearing obtains. O. 15 R. 13, Rules of Supreme Court makes provision for orders made in representative actions binding on persons, class or members of a class who cannot be ascertained or cannot be readily ascertained.

71. In our opinion, the right of the victims read into S. 4 of the Act to express their views on a proposed settlement does not contribute to a position analogous to that in United States in which fairness hearing are imperative. S. 4 of the 'Act' to which the right is traceable merely enjoins Government of India to have 'due-regard' to the views expressed by victims. The power of the Union of India under the Act to enter into a compromise is not necessarily confined to a situation where suit has come to be instituted by it on behalf of the victims. Statute enables the Union of India to enter into a compromise even without such a suit. Right of being heard read into S. 4 - and subject to which its constitutionality has been upheld in Sahu's case - subjects the Union of India to a corresponding obligation. But that obligation does not envisage or compel a procedure like a "Fairness-Hearing" as a condition precedent to a compromise that Union of India may reach, as the situations in which it may do so are not necessarily confined to a suit.

Accordingly Contention (G) is answered against petitioners. We hold that the settlement is not vitiated by reason alone of want of a "Fairness-Hearing" procedure preceding it. Likewise, the settlement is not vitiated by reason of the absence of a "re-opener" clause built into it. But there is one aspect as to medical surveillance costs and as to a provision for possible cases which may become symptomatic after a drawn-out of latency period. We will discuss that aspect under Point (J) infra.

Re: Contention (H)

72. The question is if the settlement is reviewed and set aside what should happen to the funds brought in by the UCC pursuant to the order. This question was raised by the petitioners and argued before us by the parties inviting the stage for giving effect to it has not yet arrived.

The stand of the Union of India and other petitioners is that even upon a setting aside of the settlement, the funds should not be allowed to be repatriated to the Untied States as that would embroil the victims in endless litigations to realise the fruits of the decree that may be made in the suit and to realise the order for interim-payment. The stand of the Union of India as recorded in the proceedings dated 10-4-1990 is as follows:

> "1. It is submitted that the Union of India consistent with its duty as parens patriae to the victims cannot consent to the taking away by Carbide of the moneys which are in India outside the jurisdiction in Indian Courts.
>
> 2. At this stage, the Union of India is not claiming unilaterally to appropriate the moneys nor to disburse or distribute the same. The moneys can continue to be

deposited in the Bank as at present and earn interest subject to such orders that may be passed appropriate proceedings by courts.

3. It is submitted that in view of the facts and circumstances of the case, the previous history of the litigation, the orders passed by the District Court Bhopal, Madhya Pradesh High Court and this Hon'ble court, and the undertakings given by UCIL and Carbide to Courts in respect of their assets, this Hon'ble Court may, in order to do complete justice under Art. 142 of the Constitution, require retention of the moneys for such period as it may deem fit, in order to satisfy any decree that may be passed in the suit including the enforceable order of the M.P. High Court dated 4th April, 1988".

73. It is urged by the learned Attorney General that restitution being in the nature of a proceedings in execution, the party claiming that benefit must be relegated to the Court of first instance to work out its remedies. It is also urged that the UCC did not bring in the funds on the faith of the court's order, but did so deliberately and on its own initiative and choice and deposited the funds to serve its own interest even after it was aware of the institution of the proceedings challenging the settlement in an attempt to effectuate a fait accompli. It is further said that the order of the High Court directing payment of interim compensation of Rs. 250 crores is operative and since the UCC has not sought or obtained any stay of operation of that order, the sums to the extent of Rs. 250 crores should not, at all events, be permitted to be repatriated.

Learned Attorney General also sought to point out that the UCC had, subsequent to the settlement, effected certain corporate and administrative changes and without a full disclosure by the UCC of these changes and their effect on the interests of the claimants, the funds should not be permitted to be taken out of the court's jurisdiction, though, however, Government of India should not also be free to appropriate or use the funds.

74. We are not impressed by any of these contentions. It is not shown that the UCC brought in the monies with any undue haste with a view to confronting Union of India with a fait accompli. The records indicate a different complexion of the matter. The payment appears to have been expedited at instance by the Union of India itself.

75. Strictly speaking no restitution in the sense that any funds obtained and appropriated by the Union of India requiring to be paid back arises. The funds brought in by the UCC are deposited in the Reserve Bank of India and remain under this Court's control and jurisdiction. Restitution is an equitable principle and is subject to the discretion of the Court. S. 144, Code of Civil Procedure, embodying the doctrine of restitution does not confer any new substantive right to the party not already obtaining under the general law. The section merely regulates the power of the Court in that behalf.

76. But, in the present case, S. 144, C.P.C does not in terms apply. There is always an inherent jurisdiction to order restitution a fortiorari where a party has acted on the faith of an order of the court. A litigant should not go back with the impression that the judicial-process so operated as to weaken his position and whatever it did on the faith of the court's order operated to its disadvantage. It is the duty of the Court to ensure that no

litigant goes back with a feeling that he was prejudiced by an act which he did on the faith of the court's order. Both on principle and authority it becomes the duty of the Court - as much moral as it is legal - to order refund and restitution of the amount to the UCC - if the settlement is set aside.

In Binayak v. Ramesh, (1996) 3 SCR 24: (AIR 1966 SC 948) this Court dealing with scope of S. 144, C.P.C observed:

> " ....The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced therefrom ...." (p. of SCR) : (at p. 950 of AIR)
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> In Jai Berham v. Kedar Nath Marwari, AIR 1922 PC 269 at p. 271, the judicial Committee noticed that:
>
> > "The auction purchasers have parted with their purchase-money which they paid into Court on the faith of the order of confirmation and certificate of sale already referred to ....".
>
> and said:
>
> > ".....and it would be inequitable and contrary to justice that the judgment-debtor should be restored to this property without making good to the auction purchaser the moneys which have been applied for his benefit".

In L. Guran Ditta v. T. R. Ditta, AIR 1935 PC 12, Lord Atkin said:

> ".....The duty of the Court when awarding restitution under S. 144 of the Code is imperative. It shall place the applicant in the position in which he would have been if the order had not made; and for this purpose the Court is armed with powers [the 'may' is empowering, not discretionary] as to mesne profits, interest and so forth. As long ago as 1871 the Judicial Committee in (1871) 3 PC 465 made it clear that interest was part of the normal relief given in restitution: and this decision seems right to have grounded the practice in India in such cases ....." (p. 13)

In Jagendra Nath Singh v. Hira Sahu, AIR 1984 All 252 (FB) Mooham J. observed:

> "Every Court has a paramount duty to ensure that it does no injury to any litigant and the provisions of S. 144 lay down a procedure where effect can be given to that general provision of the law. The Court should be slow so to construe this section as to impose a restriction upon its obligation to act right and fairly according to the circumstances towards all parties involved", (P. 253)

77. We are satisfied in this case that the UCC transport the funds to India and deposited the foreign currency in the Reserve Bank of India on the faith of the Court's order. If the settlement is set aside they shall be entitled to have their funds remitted to them back in the United States together with such interest as has accrued thereon. So far as the point raised by the learned Attorney General as to the corporate changes of the UCC is concerned, we think, a direction to the UCC to prove and establish compliance with the District Court's order dated 30th November, 1986, should be sufficient safeguard and should meet the ends of justice.

78. Accordingly in the event of the settlement being set aside the UCC shall be entitled to have 420 million US Dollars brought-in by it remitted to it by the Union of India at the United States along with such interest as has accrued on it in the account.

But this right to have the restitution shall be strictly subject to the condition that the UCC shall restore its undertaking dated 27-11-1986 which was recorded on 30-11-1986 by District Court at Bhopal and on the strength of which the Court vacated the order of injunction earlier granted against the UCC. Pursuant to the orders recording the settlement, the said order dated 30-11-1986 of the District Court was set aside by this Court. If the settlement goes, the order dated 30-11-1986 of the District Court will automatically stand restored and the UCC would be required to comply with the order to keep and maintain unencumbered assets of the value of US 3 billion dollars during the pendency of the suit. The right of the UCC to obtain the refund of and repatriate the funds shall be subject to the performance and effectuation of its obligations under the said order of 30-11-1986 of the District Court at Bhopal. Till then the funds shall remain within the jurisdiction of this Court and shall not be amenable to any other legal process. The Contention (H) is disposed of accordingly.

Re: Contention (I)

79. The contention is that notices to and opportunities for hearing of the victims, whom the Union of India claims to represent, were imperative before the proposed settlement was recorded and this, admittedly, not having been done the orders dated 14th and 15th February, 1989 are nullities as these were made in violation of the rules of natural justice. Shri Shanti Bhushan urged that the invalidity of the settlement is squarely covered and concluded, as a logical corollary, by the pronouncement of the Constitution Bench in Sahu case (AIR 1990 SC 1480). He referred to and relied upon the following observations of Chief Justice Sabyasachi Mukharji in Sahu's case (paras 111, 114, 117 and 121):

> "It has been canvassed on behalf of the victims that the Code of Civil Procedure is an instant example of what is a just, fair and reasonable procedure, at least the principles embodied therein and the Act would be unreasonable if there is exclusion of the victims to vindicate properly their views and rights. This exclusion may amount to denial of justice. In any case, it has been suggested and in our opinion there is a good deal of force in this contention, that if a part of the claim, good reasons or bad, is sought to be compromised or adjusted without at least considering

the views of the victims that would be unreasonable deprivation of the rights of the victims ...."

".....Right to a hearing or representation before entering into a compromise seems to be embodied in the due process of law understood in the sense the term has been used in the constitutional jargon of this country though perhaps not originally intended ....."

"In view of the principles settled by this Court and accepted all over the world, we are of the opinion that in a case of this magnitude and nature, when the victims have been given some say by Section 4 of the Act, in order to make that opportunity contemplated by S. 4 of the Act meaningful and effective, it should be so read that the victims have to be given an opportunity of making their representation before the court comes to any conclusion in respect of any settlement".

"In our opinion, the constitutional requirements, the language of the section, the purpose of the Act and the principles of natural justice lead us to this interpretation of Section 4 of the Act that in case of a proposed or contemplated settlement, notice should be given to the victims who are affected or whose rights are to be affected to ascertain their views. Section 4 is significant. It enjoins the Central Government only to have "due regard" to any matters which such person may require to be urged. So the obligation is on the Central Govt. in the situation contemplated by S. 4 to have due regard to the views of the victims and that obligation cannot be discharged by the Central Government unless the victims are told that a settlement is proposed, intended or contemplated. It is not necessary that such views would require consent of all the victims. The Central Govt. as the representative of the victims must have the views of the victims and place such view before the court in such manner it considers necessary before a settlement is entered into. If the victims want of advert to certain aspects of the matter during the proceedings under the Act and settlement indeed is an important stage in the proceedings, opportunities must be given to the victims. Individual notices may not be necessary. The Court can, and in our opinion should, in such situation formulate modalities of giving notice and public notice can also be given inviting views of the victims by the help of mass media".

".....The Act would be bad if it is not construed in the light that notice before any settlement under S. 4 of the Act was required to be given..."

(Emphasis supplied)

Shri Shanti Bhushan urged that with these findings and conclusions the only logical resultant is that the settlement must be declared a nullity as one reached in violation of the rules of natural justice. For Shri Shanti Bhushan, the matter is as simple as that.

But after making the observations excerpted above, the Constitution Bench, having regard to the nature of this litigation, proceeded to spell out its views and conclusion on the effect of non-compliance of natural justices and whether there were other remedial and curative exercise. Chief Justice Mukharji noticed the problem arising out of non-compliance thus:

".....It further appears that that type of notice which is required to be given had not been given. The question, therefore, is what is to be done and what is the consequence? The Act would be bad if it is not construed in the light that notice before any settlement under S. 4 of the Act was required to be given. Then arises the question of consequences of not giving the notice ..."

(Emphasis supplied)

Learned Chief Justice proceeded to say:

".....In this adjudication, we are not strictly concerned with the validity or otherwise of the settlement, as we have indicated hereinbefore. But constitutional adjudication cannot be divorced from the reality of a situation, or the impact of an adjudication. Constitutional deductions are never made in the vacuum. These deal with life's problems in the reality of a given situation. And no constitutional adjudication is also possible unless one is aware of the consequences of such an adjudication. One hesitates in matters of this type where large consequences follow one way or the other to put as under what others have put together. It is well to remember, as old Justice Holmes, that time has upset many fighting faiths and one must always wager one's salvation upon some prophecy based upon imperfect knowledge. Our knowledge changes; our perception of truth also changes ..."

"....No man or no man's right should be affected without an opportunity to ventilate his views. We are also conscious that justice is a psychological yearning, in which men seek acceptance of their view point by having an opportunity of vindication of their view point before the forum or the authority enjoined or obliged to take a decision affecting their right. Yet, in the particular situations, one has to bear in mind how an infraction of that should be sought to be removed in accordance with justice. In the facts and the circumstances of this case where sufficient opportunity is available when review application is heard on notice, as directed by Court, no further opportunity is necessary and it cannot be said that injustice has been done. “To do a great right, after all, it is permissible sometime to do little wrong”. In the facts and circumstances of the case, this is one of those rare occasions ..."

(Emphasis supplied)

Chief Justice Mukharji also observed:

".....But having regard to the urgency of the situation and having regard to the need for the victims for relief and help and having regard to the fact that so much effort has gone in finding a basis for the settlement, we at one point of time, thought that a post-decisional hearing in the facts and circumstances of this case might be considered to be sufficient compliance with the requirements of principles of natural justice as embodied under S. 4 of the Act ...." (p. 63)

"In the facts and the circumstances of this therefore, we are of the opinion, to direct that notice should be given now, would not result in doing justice in the situation. In the premises, further consequential order is necessary by this Court ....". (p. 65)

While Shri Nariman understandably strongly relies on these observations as the law of the case, Shri Shantibhushan seeks to deny them any binding force on the ground that they were mere passing observation inasmuch as the question of validity of the settlement was not before the court in Sahu case (AIR 1990 SC 1480). Shri Shantibhushan relied upon several pronouncements of this Court viz. National Textile Workers Union v. P. R. Ramakrishnan (1983) 1 SCC 228: (AIR 2983 SC 75), Institute of Chartered Accountants v. L. K. Ratna (1986) 4 SCC 537: (AIR 1987 SC 71), K. I. Shepherd v. Union of India, (1987) 4 SCC 431: (AIR 1988 SC 686), R. B. Shreeram Durga Prasad v Settlement Commissioner, (1989) 1 SCC 628: (AIR 1989 SC 1038) and H. L. Trehan v. Union of India, (1989) 1 SCC 764: (AIR 1989 SC 568) to emphasise the imperatives of observance of natural justice and the inevitability of the consequences that flow from a non-compliance of the requirements of a pre-decisional hearing.

These are all accepted principles. Their wisdom, variety and universality in the discipline of law are well established. Omission to comply with the requirements of the rule of Audi Alteram Partem, as a general rule, vitiate a decision. Where there is violation of natural justice no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient prejudice and it is no answer to say that even with observance of natural justice the same conclusion would have been reached. The citizen "is entitled to be under the Rules of Law and not the Rule of Discretion" and "to remit the maintenance of constitutional right to judicial discretion is to shift the foundations of freedom from the rock to the sand". But the effects and consequences of non-compliance may alter with situational variations and particularities, illustrating a "flexible use of discretionary remedies to meet novel legal situations". "One motive" says Prof. Wade "for holding administrative acts to be voidable where according to principle they are void may be a desire to extend the discretionary powers of the Court". As observed by Lord Reid in Wiseman v. Borneman, 1971 AC 297, natural justice should not degenerate into a set of hard and fast rules. There should be a circumstantial flexibility.

In Sahu case (AIR 1990 SC 1480) this court held that there was no compliance with the principles of natural justice but also held that the result of the non-compliance should not be a mechanical invalidation. The Court suggested curatives. The Court was not only sitting in judicial review of legislation; but was a court of construction also, for, it is upon proper construction of the provisions, questions of constitutionality come to be decided. The Court was considering the scope and content to the obligations to afford a hearing implicit in Section 4 of the Act. It cannot be said to have gone beyond the pale of the enquiry when it considered further question as to the different ways in which that obligation could be complied with or satisfied. This is, in substance, what the Court has done and that is the law of the case. It cannot be said that these observations were made by the way and had no binding force.

Sri Garg submitted that when the Union of India did not, even prima facie, probabilise that the quantification reflected in the settlement was arrived on the basis of rational criteria relevant to the matter, the determination fails as the statutory authority had acted ultra vires its powers and trusts under the statutory scheme. Sri Garg said that it would be a perversion of the process to call upon the victims to demonstrate how the settlement is

inadequate. There was, according to Sri Garg, no material to shift the risk of non-persuasion. Sri Garg urged that unless the elements, of reasonableness and adequacy even to the extent a settlement goes - are not established and the quantification shown to be justified on some tenable basis the settlement would incur the criticism of being the result of an arbitrary action of Government.

Shri Shanti Bhushan, however, strongly commended the following observations of Megarry J. in Leary v. National Union of Vehicle Builders, (1971) Ch 34, which were referred to with approval by the court in Institute of Chartered Accountants v. L. K. Ratna (1986) 4 SCC 537: (AIR 1987 SC 71) as to the effect of non-observance of natural justice (at p. 78 of AIR):

> "If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body".

Prof Wade in his treatise on Administrative Law observes:

> "If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing; instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial".

We might recall here that the Privy Council in Calvin v. Carr, 1980 AC 574 (576) had expressed its reservations about Megarry J.'s 'General Rule' in Leary's case. However, the reservations were in the area of domestic jurisdiction, where contractual or conventional Rules operate. The case did not involve a public law situation. But the House of Lords in Lloyd v. McMahon, 1987 AC 625 applied the principle to a clearly public law situation. The principle in Leary's might, perhaps, be too broad a generalisation.

But the question here is not so much as to the consequences of the omission on the part of the Union of India to have "due regard" to the views of the victims on the settlement or the omission on the part of the Court to afford an opportunity to the victims of being heard before recording a settlement as it is one of the effects and implications of the pronouncements in Sahu case (AIR 1990 SC 1480) which is the law of the case. In Sahu case the Court expressly held that the non-compliance with the obligation to issue notices

did not by such reason alone, in the circumstances of the case, vitiate the settlement, and that the affected persons may avail themselves of an opportunity of being heard in the course of the review petitions. It is not proper to isolate and render apart the two implications and hold the suggested curative as a mere obiter.

80. While reaching this conclusion we are not unlawful of the force of the petitioners' case. The Sahu's case laid down that Section 4 of the Act contemplated and conferred a right on the victims of being heard. It also held that they were not so heard before the Government agreed to the terms of the settlement. According to the Sahu's case, victims should have an opportunity of being heard in the Review Proceedings. The petitioners who were litigating the matter did not represent all the victims and victim groups.

81. In the ultimate analysis, the crucial question is whether the opportunity to the affected persons predicated in the Sahu case (AIR 1990 SC 1480) can reasonably be said to have been afforded. Indeed, at the very commencement of the hearing of the review petitions, Smt. Indira Jaising made a pertinent submission that the court should determine and clarify the nature and scope of the review hearing: whether they partake of the nature of a "Fairness Hearing" or of the nature of a "post-decisional hearing" or whether the court would device some way in which the victims at large would have an effective sense of participation as envisaged in the Sahu decision. Smt. Indira Jaising submitted that the opportunity of being heard in the review suggested and indicated by the Sahu decision cannot be understood to confer the opportunity only to those who were eonomine parties to the review petitions.

82. In the present hearings Shri Nariman placed before us a number of press-clippings to show that, from time to time, largely circulated newspapers in the country carried detailed news reports of the settlement and of the subsequent legal proceedings questioning them. Shri Nariman's contention is that in view of this wide publicity the majority of the affected persons must be presumed to have had notice, though not in a formal way and to have accepted the settlement as they had not bestirred themselves to move the Court.

83. Shri Nariman also raised what he urged were basic objections as to the scope of the review jurisdiction and to the enlargement of the scope of the review hearings to anything resembling a "Fairness Hearing" by treating the concluded settlement as a mere proposal to settle. Shri Nariman said that the Court could either review the orders dated 14th and 15th February, 1989 if legal grounds for such review under law were strictly made out or dismiss the review petitions if petitioners fail to make out a case in accordance with the accepted principles regulating the review jurisdiction; but the court could not adopt an intermediate course by treating the settlement as a proposed or provisional settlement and seek now to do what the Union of India was expected to do before the settlement was reached.

84. The whole issue, shorn of legal subtleties, is a moral and humanitarian one. What was transacted with the court's assistance between the Union of India on one side and the UCC on the other is now sought to be made binding on the tens of thousands of innocent victims who as the law has now declared, had a right to be heard before the settlement

could be reached or approved. The implications of the settlement and its effect on lakhs of citizens of this country are, indeed, crucial in their grim struggle to reshape and give meaning to their torn lives. Any paternalistic condescension that what has been done is after all for their own good is out of place. Either they should have been heard before a settlement was approved in accordance with the law declared by this Court or it, at least, must become demonstrable in a process in which they have a reasonable sense of participation that the settlement has been to their evident advantage or, at least, the adverse consequences are effectively neutralised. The ultimate directions on Point J that we propose to issue will, we think serve to achieve the last mentioned expectation legal and procedural technicalities should yield to the paramount considerations of justice and humanity. It is of utmost importance that in an endeavour of such great magnitude where the court is trusted with the moral responsibility of ensuring justice to these tens of thousand innocent victims, the issues of human suffering do not become obscure in procedural thickets. We find it difficult to accept Shri Nariman's stand on the scope of the review. We think that in a situation of this nature and magnitude, the Review-proceeding should not be strict, orthodox and conventional but one whose scope would accommodate the great needs of justice. That apart, quite obviously, the individual petitioners and the petitioner-organisations which have sought review cannot be held to represent and exhaust the interest of all the victims.

Those represented by the petitioner-organisations - even if their claims of membership are accepted on face value - constitute only a small percentage of the total number of person medically devalued. The rest of the victims constitute the great silent majority.

When an order affects a person not a party to the proceedings the remedy of an affected person and the powers of the Court to grant it are well-settled. For instance, in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909 on a writ petition filed under Article 226 of the Constitution by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B, the High Court made an order cancelling the allotment though 'B' was not a party. Later, B filed a writ petition under Article 226 for impleading him as a party and for rehearing the whole matter.

The High Court granted it. Before this Court, the objection was this (para 8):

> "Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction".

This Court rejected the contention observing that (para 8):

> "It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude and High Court from exercising the power of review which inherits in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who are not made parties to the proceedings before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required

him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interest were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

85. The nature of the present review proceedings is indeed *sui generis*. Its scope is pre-set by the terms of the order dated 4th May 1989 as well as what are further necessarily implicit in Sahu's decision (AIR 1990 Sc 1480). In the course of the order dated 4th May 1989, it was observed:

"If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the court and that, as a result, serious miscarriage of justice, violating the constitutional and legal rights of the persons affected, has been occasioned, it will be the endeavour of this Court to undo any such injustice. But that, we reiterate, must be by procedures recognised by law.

Those who trust this Court will not have cause for despair".

The scope of the review in the present case is to ensure that no miscarriage of justice occurs in a matter of such great moment. This is, perhaps, the last opportunity to verify our doubts and to undo injustice, if any, which may have occurred. The fate and fortunes of tens of thousands of persons depend on the effectiveness and fairness of these proceedings. The legal and procedural technicalities should yield to the paramount considerations of justice and fairness. The considerations go beyond legalism and are largely humanitarian. It is of utmost importance that great issues of human suffering are not subordinated to legal technicalities.

But in view of our conclusion on Point J that on the material on record, the settlement found should be sufficient to meet the needs of a just compensation and the order we propose to pass with regard to Point J., the grievance of the petitioners on the present contention would not, in our opinion, really survive. Contention (I) is answered accordingly.

Re: Point (J)

86. Before we go into the question whether the settlement should be set aside on grounds of inadequacy of the settlement fund, certain subsidiary contentions and arguments may be noticed. They deal with (i) that there has been an exclusion of a large number of claims on the ground that despite service of notices they did not respond and appear for medical documentation and (ii) that the whole exercise of medical documentation is faulty and is designed and tends to exclude genuine victims. These contentions are really not directly germane to the question of the validity of the settlement. However, they were put forward to discredit the statistics emerging from the medical documentation done by the Directorate of Claims on which the UCC sought to rely. We may as well deal with these two contentions.

87. The first contention is that the claims of a large number of persons who had filed their claims are not registered on the ground that they did not respond to the notices calling upon them to undergo the requisite medical tests for medical documentation. It was urged that no effective service of notice had taken place and that the claims of a large number of claimants - according to them almost over 30% of the total number - have virtually gone for default. While the victim-groups allege that there was a systematic attempt to suppress the claims, the Directorate of Claims would say that the lack of response indicated that the claims were speculative and spurious and, therefore, the claimants did not offer themselves to medical examination.

In order to appreciate this grievance of the victim-groups it is perhaps, necessary to advert to the provisions of the Act and the Scheme attracted to this stage of processing of the claims. Section 9 of the Act enjoins upon the Central Government to frame a scheme providing for any or all of the matters enumerated in clauses (a) to (i) of sub-section (2) of Sec. 9. The Scheme, known as the "Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985" was promulgated by notification dated 24th September, 1985, published in the Gazette of India. Para 4 of the Scheme deals with the manner of filing of claims and specifies the forms in which they should be filed. Para 5 (1) requires the Deputy Commissioner of Claims to place the claims in the appropriate category amongst those enumerated in sub-para (2) of para 5. Sub-para (2) requires the registration of the claim under various heads such as "death", "total disablement resulting in permanent disability to earn livelihood", "temporary partial disablement resulting in reduced capacity to earn livelihood" and so on. Sub-paras (3), (4) and (5) of para 5 of the Scheme provide:

> "(3) On the consideration of a claim made under paragraph 4 of the Scheme, if the Deputy commissioner is of the opinion that the claim fall in a category different from the category mentioned by the claimant, he may decide the appropriate category after giving an opportunity to the claimant to be heard and also after taking into consideration any facts made available to him in this behalf by the Government or the authorities by the Government in this behalf.
>
> (4) Where the Deputy Commissioner is of the opinion that a claim made under paragraph 4 does not fall in any of the categories specified in sub-paragraph (2) he may refuse to register the claim:
>
> Provided that before so refusing he shall give a reasonable opportunity for a personal hearing to the claimant.
>
> (5) If the claimant is not satisfied with the order of the Deputy Commissioner under sub-paragraph (3) or sub-paragraph (4) he may prefer an appeal against such order to the Commissioner, who shall decide the same".

The stage at which medical examination was required related presumably to the exercise under sub-paragraph (3) of para 5 of the Scheme. Failure of a claimant to respond to the notice and offer himself for medical examination would entail a refusal to register the claim. It is manifest that such a refusal is appeal able under the Scheme. But this

grievance does not survive in view of the stand taken by the Government in these proceedings. In the affidavit of Sri Ramesh Yeshwant Durev, dated 5th December, 1989 in W.P. No. 843/88, it is stated:-

> "That all claimants who did not respond to the first notice were given a second and then a third notice to appear at one of the medical documentation centres for their medical examination. Wide publicity was also done by way of beating of drums in mohallas, radio announcements and newspaper advertisements. In addition to all these, ward committee members were also involved in motivating the claimants to get themselves medically examined. All those claimants who approach the Director of Claims even now are given a fresh date on which to appear for medical examination after service of all three notices and he makes an application for medical examination, his medical examination is arranged at one of the two medical documentation centres - TB Centre and JP Hospital - specially kept functioning for such claimants. It is relevant to point out that this arrangement has been approved by Supreme Court vide order dated 29 September, 1989 ....."
>
> "For the reasons given above a fresh public notice and fixing of dates for medical documentation is also not needed. It may be pointed out here that that these people will still have an opportunity to file claims when the Commissioner for Welfare of the gas victims issues a notification in terms of para 4 (i) of Bhopal Gas Leak Disaster (Registration & Processing of Claims) Scheme, 1985 inviting claims".

This assurance coupled with the right of appeal should sufficiently safeguard the interest of genuine claimants.

88. It was urged by the petitioners that the very concept of injury as an element in the eligibility for medical documentation was erroneous as it tended to exclude victims who did not have or retain some medical documentation of their initial treatment immediately after the exposure. The stand of the Director of Claims on the point is this:-

> "That it is unlikely that a person who was injured and suffered during the post-exposure period is not in possession of any form of medical record. The line of treatment was widely publicised. Therefore, the patient must have received treatment from one of the private practitioners, if not from one of the many temporary and permanent govt./semi-govt. institution or institution run by voluntary organisations, and he must be in possession of some form of record.
>
> Every claimant is advised to bring relevant medical record at the time of medical examination. Documents of post-exposure medical record are accepted even after the medical documentation of the claimant is over.
>
> It is incorrect to say that the documents for post-exposure period are just not available. Had it been so, 55% of the claimants who fall in category 'B' to 'CF' would also have been categorized as 'A'. In this connection it may be clarified that even in post-exposure period prescriptions were issued. Besides this, private practitioners were also issuing prescriptions in printed form. It is therefore incorrect to say that there is dearth of documentation. However, bearing this point in mind, a very liberal

approach in admitting documents was adopted as will be clear from the guidelines for evaluation. It will also be relevant here to state that the claimants are being helped to get the benefit of any medical records available in any hospital or dispensary. Institutions like ICMR, CMO (Gas Relief) Jawahar Lal Nehru Hospital, Bhopal Eye Hospital, India Red Cross Society, BHEL Hospital and the Railway Hospital have treated numerous gas victims during the post-exposure period. The relevant medical records from them have been retrieved and are being linked with respective claim folders so that the benefit of such post exposure record is extended to these claimants.

It will be irrational and unscientific to admit all claims without reference to any documentary evidence as suggested by the petitioner ..."

(See the affidavit dated 5th December, 1989 of Sri Ramesh Yeswant Durve filed in W.P. No. 843/88.)

89. As to the charge that after the purported settlement, Government is playing down the seriousness of the effects of the disaster, and that the medical documentation did not help proper evaluation it is, perhaps, necessary to read the affidavit dated 5th December, 1989 of the Additional Director of Claims, in W.P. No. 843 of 1988. The Additional Director says:

"The Medical Documentation Exercise has been an unique effort. It was possibly for the first time that such a comprehensive medical examination (with documentation, evaluation and categorisation) of such a large population was undertaken anywhere in the world. There was no earlier experience or expertise to fall back upon. The whole exercise had, therefore, to be conceived, conceptualised and concretised locally. But care was taken to ensure that the guidelines were approved by legal and medical experts not only at the State level but also at the National level. The guidelines were also approved by GOI's Committee of Experts on Medical Documentation. In other words, a systematic arrangement was organised to make the most objective assessment of the medical health status of the claimants in a scientific manner.

It has to be recognised in this context that the guidelines for categorisation can only be a broad indicator as it is not possible for anyone to envisage all types of situations and prescribe for them. Likewise, the examples cited are only illustrative examples' and not 'exhaustive instruction'.

Hundreds of graduate and post-graduate doctors assisted by qualified para-medical staff have examined the claimants with the help of sophisticated equipments. It cannot be reasonably contended that all of them have colluded with the Government to distort the whole exercise.

The exercise of categorisation is not just an arithmetical exercise directly flowing from the evaluation sheet. Had it been so, the same Assistant Surgeon, who does the evaluation can himself do the categorisation also. Post-graduate Specialists have been engaged for this work because the total medical folder has to be assessed

keeping the evaluation sheet as a basic indicator. In doing the categorisation, the postgraduate Specialist takes into account symptoms reported, clinical findings, specialist's opinions and investigation reports".

The Additional Director accordingly asserts:

> "...it will be meaningless to suggest that the Govt. is jeopardising the interest of the claimants by deliberately distorting the Medical Documentation Exercise. Similarly, it will be absurd to suggest that the Govt. is trying to help UCC in any way".

The Additional Director also refers to the attempts by unscrupulous persons to exploit the situation in pursuit of unjust gains and how the authorities had to encounter attempts of impersonation and "attempts by claimants to pass of other's urine as their own". It was said that there were urine donors. The affidavit also discloses certain malpractices involving medical prescriptions and certificates by some members of the medical profession and ante-dated urinethiocynate estimations. The Additional Director says that despite all this Government endeavoured to give the benefit to the claimants wherever possible. It is stated:

> "The State Govt. had to preserve the scientific character and ensure the credibility of the exercise of evaluation. Bearing this limitation in mind, wherever possible, the government has attempted to give the benefit to the claimants. The various guidelines relating to documentation of the immediate post-disaster phase are proof of this intention. At the same time, government has had to adhere to certain quality standards so that the exercise could stand up to scrutiny in any Court of law or in any scientific forum".

The stand of the Directorate cannot be brushed aside as arbitrary. However, provisions of appeal ensure that in genuine cases there will be no miscarriage of justice.

90. Shall we set aside the settlement on the mere possibility that medical documentation and categorisation are faulty? And that the figures of the various kinds of injuries and disablement indicated are undependable? As of now, medical documentation discloses that "there is no conclusive evidence to establish a casual link between cancer-incidence and MIC exposure". It is true that this inference is tentative as it would appear studies are continuing and conclusions of scientific value in this behalf can only be drawn after the studies are over. While the medical literature relied upon by the petitioners suggests possibilities of the exposure being carcinogenic, the ICMR studies show that as of now the annual incidence of cancer registration is more among the unexposed population as compared to the exposed population". (See Sri Ramesh Yeshwant Durve's affidavit dated 5th December, 1989, para 9). Similarly, "there is no definite evidence that derangement in immune system of the gas exposes have taken place". But the literature relied upon by petitioners does indicate that such prognosis cannot be ruled out. These matters are said to be under close study of the ICMR and other research agencies using, as indicated, the "multi-test CMI technique to screen the status of the immune system".

91. But the whole controversy about the adequacy of the settlement-fund arises on account of the possibility that the totality of the awards made on all the claims may

exceed the settlement-fund in which even the settlement-fund will be insufficient to satisfy all the Awards. This is the main concern of the victims and victim-groups. There is, as it now stands, a fund of one thousand two hundred cores of rupees for the benefit of the victims. The main attack on its adequacy rests solely on the possibility that the medical documentation and categorisation based thereon, of the victims' medical status done by the Directorate of Claims is faulty. The charge that medical documentation was faulty and was calculated to play down the ill-effects of the exposure to MIC is, in our opinion, not substantiated. This attack itself implies that if basis of the severity of the injuries is correct then the settlement-fund may not, as a settlement, be unreasonable.

92. At the same time, it is necessary to remind ourselves that in bestowing second thought whether the settlement is just, fair and adequate, we should not proceed on the premise that the liability of the UCC has been firmly established. It is yet to be decided if the matter goes to trial. Indeed, UCC has seriously contested the basis of its alleged liability. But it is true that even to the extent a settlement goes, the idea of its fairness and adequacy must necessarily be related to the magnitude of the problem and the question of its reasonableness must be assessed putting many considerations into the scales. It may be hazardous to belittle the advantages of the settlement in a matter of such complexity. Every effort should be made to protect the victims from the prospects of a protracted, exhausting and uncertain litigation. While we do not intend to comment on the merits of the claims and of the defences, factual and legal, arising in the suit, it is fair to recognise that the suit involves complex questions as to the basis of UCC's liability and assessment of the quantum of compensation in a mass tort action. One of the areas of controversy is as to the admissibility of scientific and statistical data in the quantification of damages without resort to the evidence as to injuries in individual cases.

93. Sri Nariman contended that scientific and statistical evidence for estimates of damages in toxic tort actions is permissible only in fairness hearings and such evidence would not be so admissible in the proceedings of adjudication, where personal injury must be proved by each individual plaintiff. That would, indeed, be a struggle with infinity as it would involve individual adjudication of tens of thousands of claims for purposes of quantification of damages.

In an article on 'Scientific and Legal Standard of Statistical Evidence in Toxic Tort and Discrimination Suits' by Carl Cranor and Kurt Nutting [See: Law and Philosophy Vol. 9 No. 2 May, 1990] there is an interesting discussion as to what would be the appropriate standard of evidence in presenting and evaluating scientific and statistical information for use in legal proceedings. The learned authors say:

> "These are two of the main sides in the controversy concerning the kind and amount of scientific evidence necessary to support legally a verdict of the plaintiff. Black seems to urge that courts should only accept evidence that is scientifically valid, and adhere to the standards of evidence implicit in the discipline, while the Ferebee Court urges that plaintiffs in presenting scientific evidence and expert scientific testimony should be held to legal standards of evidence. Powerful forces are arrayed on both sides of this issue. On the side on requiring scientific testimony only to measure up to legal standards of evidence, the social forces include plaintiffs or

potential plaintiffs, plaintiffs attorneys, public interest groups, consumer advocacy groups, all individuals who are concerned to make it somewhat easier to recover damages under personal injury law for alleged injuries suffered as a consequence of activities of others. On the other side of the same issue are defendants, potential defendants [typically corporations, manufacturing firms] and, interestingly, the scientific community".

(p. 118)

In Sterling v. Velsicol Chemical Corp. [855 F 2d 1188 (1988))] the US Court of Appeals tended to the view that generalised proof of damages is not sufficient to prove individual damages and that damages in mass tort personal injury cases must be proved individually by each individual plaintiff. The Court held:

"We cannot emphasise this point strongly enough because generalised proof will not suffice to prove individual damages. The main problem on review stems from a failure to differentiate between the general and the particular. This is an understandably easy trap to fall into in mass tort litigation. Although many common issues of fact and law will be capable of resolution on a group basis, individual particularised damages still must be proven on an individual basis".

94. While Shri Nariman contends that admissibility of scientific and statistical evidence is confined to Fairness Hearing alone and not in adjudication where personal injury by each individual plaintiff must be proved, the learned Attorney-General, however, urges that such evidence and estimates of damages are permissible in toxic-tort actions and says that the countless injured persons must not suffer because of the difficulty of proving damages with certainty or because of the delay involved in pursuing each individual claim. He referred to the following passage in Florance B. Bigelow v. RKO Radio Pictures Inc. (1945) 327 US 251, 264:

"The most elementary conceptions of justice and public policy require that the wrong doer shall bear the risk of the uncertainty which his own wrong has created".

Learned Attorney General also urged that in tort actions of this kind the true rules is the one stated in Story Parchment Company v. Paterson Parchment Paper Co. (1930) 282 US 555, 568):

"The rule which precludes the recovery of uncertain damages applies to such as are not the certain result of the wrong, not to those damages which are definitely attributable to the wrong and only uncertain in respect of their amount. Taylor v. Bradley, 4 Abb. App. Dec. 363, 366 367, 100 Am. Dec. 415:

It is sometimes said that speculative damages cannot be recovered, because the amount is uncertain; but such remarks will generally be found applicable to such damages as it is uncertain whether sustained at all from the breach. Sometimes the claim is rejected as being too remote. This is another mode of saying that it is uncertain whether such damages resulted necessarily and immediately from the breach complained of.

> The general rule is that, all damages resulting necessarily and immediately and directly from the breach are recoverable, and not those that are contingent and uncertain. The later description embraces, as I think, such only are not the certain result of the breach, and does not embrace such as are the certain result, but uncertain in amount.
>
> Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for this acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise".

And in Frederick Thomas Kingsley v. The Secretary of State for India, AIR 1923 Calcutta 49, it was observed:

> "Shall the injured party be allowed to recover no damages (or merely nominal) because he cannot show the exact amount of the certainty, though he is ready to show, to the satisfaction of the Jury, that he has suffered large damages by the injury ? Certainty, it is true, would be thus attained, but it would be the certainty of injustice. Juries are allowed to act upon probable and inferential, as well as direct and positive proof. And when, from the nature of the case, the amount of damages cannot be estimated with certainty, or only a part of them can be so estimated, we can see no objection to placing before the Jury all the facts and circumstances of the case, having any tendency to show damages, or their probable amount, so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit".

The risk of the uncertainty, says learned Attorney-General should, in such cases, be thrown upon the wrongdoer instead of upon the injured party. Learned Attorney General also urged that, on first principle, in cases where thousands have been injured, it is far simpler to prove that amount of damages to the members of the class by establishing their total damages than by collecting and aggregating individual claims as a sum to be assessed against the defendants. He said statistical methods are commonly accepted and used as admissible evidence in a variety of contexts including quantification of damages in such mass tort actions. He said that these principles are essential principles of justice and the Bhopal disaster is an ideal setting for an innovative application of these salutary principles.

95. The foregoing serves to highlight the complexities of the area. Indeed, in many tort actions the world-over speedy adjudications and expeditious relief's are not easily accomplished as many of them have ended in settlements. In the context of the problems presented by the issues of liability in cases of certain corporate torts beyond the corporate veil there is an impressive body of academic opinion amongst the schoolmen that the

very theories of limited corporate liability which initially served as incentives for commercial risk - taking needs rethinking in certain areas of tortuous liability of Corporations. Some scholars have advocated abolition of limited liability for" knowable tort risks". [See " "An Economic Analysis of Limited Liability in Corporation law" [30 U. Toronto LJ. 117, (1980)]; "The Place of Enterprise Liability in the Control of Corporate Conduct" [90 Yale Law Journal 1 (1980)]; "Should shareholders be personally liable for the torts of their Corporation?" [76 Yale Law Journal 1190 (1967)]. This, of course, has the limitation of one more shade of an academician's point of view for radical changes in law.

96. With the passage of time there are more tangible details available by way of the proceedings of the Directorate of Claims which has medically evaluated and categorised nearly 3,60,000 affected person. We have looked into the formats and folders prepared by the Directorate of Claims for the medical evaluation of the conditions of the victims. Some sample medical dossiers pertaining to some individual claimants containing an evaluation of the data pertaining to the medical status of the persons have also been shown to us. It is on the basis of such medical dossiers that evaluation and categorisation are stated to have been done. The guidelines for carrying out these medical evaluations, it is stated, have been formulated and issued by the Government of India.

97. Petitioners seriously assail the correctness of the guidelines for medical evaluation as also the result of the actual operational processes of evaluation based thereon. Petitioners described the results indicated by the medical categorisation done by the Directorate of Claims which showed only 40 cases of total permanent disablement as shocking and wholly unrelated to the realities. Indeed some learned counsel for the petitioners, of course in a higher vein, remarked that if these were the final figures of injuries and incapacitations caused by the Bhopal Gas leak Disaster, then UCC should be entitled to a refund out of the sum settled and wondered why, in the circumstances, UCC was taking shelter under the settlement and fighting shy of a trial.

It appears to us that particular care has gone into the prescription of the medical documentation test and the formulation of the results for purposes of evaluation and categorisation.

98. After a careful thought, it appears to us that while it may be wise or proper to deprive the victims of the benefit of the settlement, it is however, necessary to ensure that in the - perhaps unlike - event of the settlement-fund being found inadequate to meet the compensation determined in respect of all the present claimants, those persons who may have their claims determined after the fund is exhausted are not left to fend themselves. But, such a contingency may not arise having regard to the size of the settlement-fund. If it should arise, the reasonable way to protect the interest of the victims is to hold that the Union of India, as a welfare State and in the circumstances in which the settlement was made, should not be found wanting in making good the deficiency, if any. We hold and declare accordingly.

99. It is relevant here that the Union of India while, quite fairly, acknowledging that there was in fact such a settlement, however, sought to assail its validity on certain legal issues

but the factum of the settlement was not disputed. Indeed, Union of India did not initiate any substantive proceedings of its own to assail the agreement or the consensual element constituting the substratum of the order of the Court. The legal contentions as to the validity of the settlement were permitted to be raised in as much as that an order made on consent would be at no higher footing and could be assailed on the grounds on which an agreement could be. But, as stated earlier, the factum of the consensual nature of the transaction and its existence as a fact was not disputed. Those legal contentions as to the validity have now failed; the result is that the agreement subsists.

For all these reasons we leave the settlement and the orders dated 14/15th February, 1989 - except to the extent set aside or modified pursuant tot the other findings - undisturbed.

100. We may here refer to and set at rest one other contention which had loomed in the hearings. The petitioners had urged that the principles of the liability and the standards of assessment of damages in a toxic mass tort arising out of a hazardous enterprise should be not only on the basis of absolute liability - not merely on Rylands v. Fletcher (1968 L.R. 3 HL 330) principle of strict liability - not admitting of any exceptions but also that the size of the award be proportional to the economic superiority of the offender, containing a deterrent and punitive element. Sustenance was sought from M.C. Mehta v. Union of India, AIR 1987 SC 1086. This argument in relation to a proceeding assailing a settlement is to be understood as imputing an infirmity to the settlement process as not being informed by the correct principle of assessment of damages. Respondents, however, raised several contentions as to the soundness of the Mehta principle and its applicability. It was also urged that Mehta principle, even to the extent it goes, does not solve the issues of liability of the UCC as distinct from that of UCIL as Mehta case only spoke of the liability of the offending enterprise and did not deal with principles guiding the determination of a holding-company for the torts of its subsidiaries.

It is not necessary to go into this controversy. The settlement was arrived at and is left undisturbed on an over-all view. The settlement cannot be assailed as violative of Mehta principle which might have arisen for consideration in a strict adjudication. In the matter determination of compensation also under the Bhopal Gas Leak Disaster (PC) Act, 1985, and the Scheme framed thereunder, there is no scope for applying the Mehta principle inasmuch as the tort-feasor, in terms of the settlement - for all practical purposes - stands notionally substituted by the settlement-fund which now represents and exhausts the liability for the alleged hazardous entrepreneurs viz., UCC and UCIL. We must also add that the Mehta principle can have no application against Union of India inasmuch as requiring it to make good the deficiency, if any, we do not impute to it the position of a joint tort-feasor but only of a welfare State. There is, therefore, no substance in the point that Mehta principle should guide the quantification of compensation to the victim claimants.

101. This necessarily takes us to the question of the medical surveillance costs; and the operational expenses of the Hospital. We are of the view that for at least a period of eight years from now the population of Bhopal exposed to the hazards of MIC toxicity should have provision for medical surveillance by periodic medical check-up for gas related afflictions. This shall have to be ensured by setting up long-term medical facilities in the

form of a permanent specialised medical and research establishment with the best of expertise. An appropriate action-plan should be drawn up. It will be proper that expert medical facility in the form of the establishment of a full-fledged hospital of an expert medical facility in the form of the establishment of a full-fledged hospital of at least 500 bed strength with the best of equipment for treatment of MIC related affliction should be provided for medical surveillance and for expert medical treatment. The State of Madhya Pradesh shall provide suitable land free of cost. The allocation of the land shall be made within two months and the hospital shall be constructed, equipped and made functional within 18 months. It shall be equipped as a Specialist Hospital for treatment and research of MIC related afflictions and for medical surveillance of the exposed population.

102. We hold that the capital outlays on the hospital and its operation expenses for providing free treatment and services to the victims should, both on humanitarian considerations and in fulfilment of the offer made before the Bhopal Court, be borne by the UCC and UCIL. We are conscious that it is not part of the function of this Court to re-shape the settlement or restructure its terms. This aspect of the further liability is also not a matter on which the UCC and the UCIL had an opportunity to express their views. However, from the tenor of the written submissions made before the District Court at Bhopal in response to the proposal of the Court for "reconciliatory substantial interim relief" to the gas victims, both the UCC and UCIL had offered to fund and provide a hospital for the gas victims. The UCC had re-called that in January, 1986, it had offered "to fund the construction of hospital for the treatment of gas victims the amount being contributed by the UCC and UCIL in equal proportions". Shri Nariman had also referred to this offer during the submissions in the context of the bona fides of the UCC in that behalf. It is, no doubt, true that the offer was made in a different context and before an overall settlement. But that should not detract the UCC and UCIL from fulfilling these obligations, as, indeed, the moral sensibilities to the immense need for relief in all form and ways should make both the UCC and UCIL forthcoming in this behalf. Such a hospital should be fully equipped hospital with provision for maintenances for a period of eight years which in our estimate might together involve the financial outlay of around Rs. 50 crores. We hope and trust that UCC and UCIL will not be found waiting in this behalf.

103. Then comes the question which we posed at the end of paragraph 44. This concerns the exposed members of the populace of Bhopal who were put at risk and who though presently a symptomatic and filed no claim for compensation might become symptomatic in future. How should cases of yet unborn children of mothers exposed to MIC toxicity where the children are found to have or develop congenital defects?

The question is as to who would provide compensation for such cases?

We are of the view that such contingencies shall be taken care of by obtaining an appropriate medical group insurance cover from the General Insurance Corporation of India or the Life Insurance Corporation of India for compensation to this contingent class of possible prospective victims. There shall be no individual upper monetary limit for the insurance liability. The period of insurance cover should be a period of eight years in the future. The number of persons to be covered by this Group Insurance Scheme should be

about and not less than one lakh of persons. Having regard to the population of the seriously affected wards of Bhopal city at the time of the disaster and having regard to the addition to the population by the subsequent births extrapolated on the basis of national average of birth rates over the past years and the future period of surveillance, this figure broadly accords with the percentage of population of the affected wards bears to the number of person found to be affected by medical categorisation. This insurance cover will virtually serve to render the settlement an open ended one so far as the contingent class of future victims both existing and after-born are concerned. The possible claimants all into categories: those who were in existence at the time of exposure; and those who were yet unborn and whose congenital defects are traceable to MIC toxicity inherited or derived congenitally.

In so far as the second class of cases is concerned, some aspects have been dealt with in the report of the Law Commission in United Kingdom on "Injuries to Unborn Children".

The Commission, referring to the then-existing Law, said:

> "7. Claims for damages for pre-natal injuries have been made in many other jurisdictions but there is no English or Scottish authority as to whether a claim would lie and, if did, what rules and limitations should govern it. In our working paper we did not attempt to forecast how such a claim would be decided if it came before a court in this country, although we did add, as an appendix to the paper, a brief account of some of the decisions of courts in other jurisdictions ...."
>
> "8. It is, however, important from our point of view to express our opinion (reinforced by our general consultation and supported by the report of the Scottish Law Commission) that it is highly probable that the common law would, in appropriate circumstances, provide a remedy for a plaintiff suffering from a prenatal injury caused by another's fault. It is important to make our opinion on this point clear because, on consultation, it has become apparent that many people think that we were, in our working paper, proposing the creation of new liabilities, whereas it is probable that liability under the common law already exists ....".

Thereafter in United Kingdom, the Congenital Disabilities (Civil Liability) Act, 1976, was brought forth S. 1 (1) of that Act says:

> "1(1) If a child is born disabled as the result of such an occurrence before its birth as is mentioned in sub-sec. (2) below, and a person (other than the child's own mother) is under this section answerable to the child in respect of the occurrence, the child's disabilities are to be regarded as damage resulting from the wrongful act of that person and actionable accordingly at the suit of the child".

It is not necessary for the present purpose to go into other features of that legislation and the state of corresponding law in India. Our present question is as to how and who would provide compensation to the two classes of cases referred to us earlier. We hold that these two classes of cases are compensatable if the claimants are able to prove injury in the course of the next eight years from now.

The premia for the insurance shall be paid by the Union of India out of the settlement fund. The eligible claimants shall be entitled to be paid by the insurer compensation on such principles and upon establishment of the nature of the gas related toxic morbidity by such medical standards as are applicable to the other claimants under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and the scheme framed thereunder. The individual claimants shall be entitled to have their claims adjudicated under the statutory scheme.

104. We must, however, observe that there is need for expeditions adjudication and disposal of the claims. Even the available funds would not admit of utilisation unless the claims are adjudicated upon and the quantum of compensation determined. We direct both the Union of India and the State Government to take expeditious steps and set-up adequate machinery for adjudication of claims and determination of the compensation. The appointment of the Claim Commissioners shall be completed expeditiously and the adjudicative process must commence within four months from today. In the first instance, there shall at least be 40 Claim Commissioners with necessary secretarial assistance to start the adjudication of the claims under the Scheme.

105. In the matter of disbursement of the amounts so adjudicated and determined it will be proper for the authorities administering the funds to ensure that the compensation-amounts, wherever the beneficiaries are illiterate and are susceptible to exploitation, are properly invested for the benefit of the beneficiaries so that while they receive the income therefrom they do not, owing to their illiteracy and ignorance, deprive themselves of what may turn out to be the sole source of their living and sustenance for the future. We may usefully refer to the guidelines laid down in the case of Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd., 1982 (1) 23 Guj LR 256.

We approve and endorse the guidelines, with appropriate modifications, could usefully be adopted. We may briefly recapitulate those guidelines:

(i) The Claims Commissioner should, in the case of minors, invariably order the amount of compensation awarded to the minor to be invested in long term fixed deposits at least till the date of minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Commissioner should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any moveable or immovable property such as, agricultural implements, assets utilisable to earn a living, the Commissioner may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a rush to withdraw money;

(iii) In the case of semi literate persons the Commissioner should ordinarily report to the procedure set out in (ii) above unless he is satisfied that the whole or part of the amount is required for expanding any existing business or for purchasing some property for earning a livelihood;

(iv) In the case of widows the Claims Commissioner should invariably follow the procedure set out in (i) above;

(v) In personal injury cases if further treatment is necessary withdrawal of such amount as may be necessary for incurring the expenses for such treatment may be permitted;

(vi) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be.

It should be stipulated that the FDR shall carry a note on the face of the document that no loan or advance will be allowed on the security of the said document without express permission.

(vii) In all cases liberty to apply for withdrawal in case of an emergency should be available to the claimants.

Government might also consider such investments being handled by promulgating an appropriate scheme under the Unit Trust of India Act so as to afford to the beneficiaries not only adequate returns but also appropriate capital appreciation to neutralise the effect of denudation by inflation.

106. Point (J) is disposed of in terms of the foregoing directions.

107. We might now sum up the conclusion reached, the findings recorded and directions issued on the various contentions:

(i) The contention that the Apex Court had no jurisdiction to withdraw to itself the original suits pending in the District Court at Bhopal and dispose of the same in terms of the settlement and the further contention that, similarly, the Court had no jurisdiction to withdraw the criminal proceedings are rejected.

It is held that under Art. 142 (1) of the Constitution, the Court had the necessary jurisdiction and power to do so.

Accordingly, contentions (A) and (B) are held and answered against the petitioners.

(ii) The contention that the settlement is void for non-compliance with the requirements of O. XXIII, R. 3B, C.P.C. is rejected. Contention (C) is held and answered against the petitioners.

(iii) The contention that the Court had no jurisdiction to quash the criminal proceedings in exercise of power under Art. 142 (1) is rejected. But, in the particular facts and circumstances, it is held that the quashing of the criminal proceedings was not justified.

(iv) The orders dated 14th/15th of February, 1989 in so far as they seek to prohibit future criminal proceedings are held not to amount to a conferment of criminal

immunity; but are held to be merely consequential to the quashing of the criminal proceedings.

Now that the quashing is reviewed, this part of the order is also set-aside. Contention (E) is answered accordingly.

(v) The Contentions (F) that the settlement, and the orders of the Court thereon, are void as opposed to public policy and as amounting to a stifling of criminal proceedings is rejected.

(vi) Having regard to the scheme of the Bhopal Gas Leak Disaster (Processing of Claims)Act, 1985, the incidents and imperatives of the American Procedure of 'Fairness Hearing is not strictly attracted to the Court's sanctioning of a settlement. Likewise, the absence of a 'Re-opener'' clause does not, ipso facto, vitiate the settlement. Contention (G) is rejected.

(vii) It is held, per invitim, that if the settlement is set aside the UCC shall be entitled to the restitution of the US 420 million dollars brought in by it pursuant to the orders of this Court.

But, such restitution shall be subject to the compliance with and proof of satisfaction of the terms of the order dated 30th November, 1986, made by the Bhopal District Court. Contention (H) is rejected subject to the condition aforesaid.

(viii) The settlement is not vitiated for not affording the victims and victim-groups and opportunity of being heard. However, if the settlement-fund is found to be insufficient, the deficiency is to be made good by the Union of India as indicated in paragraph 72 (Para 98 of Report). Contention (I) is disposed off accordingly.

(ix) On point (J), the following findings are recorded and directions issued:

(a) For an expeditious disposal of the claims a time-bound consideration and determination of the claims are necessary. Directions are issued as indicated in paragraph 77 (Para 103 of Report).

(b) In the matter of administration and disbursement of the compensation amounts determined, the guide-lines contained in the judgement of the Gujarat High Court in Mulkibhai v. United India Insurance Co., (1982) (1) 23 Guj LR 756) are required to be taken into account and, wherever apposite, applied. Union of India is also directed to examine whether an appropriate scheme under the Unit Trust of India Act could be evolved for the benefit of the Bhopal victims.

(c) For a period of 8 years facilities for medical surveillance of the population of the Bhopal exposed to MIC should be provided by periodical medical check-up. For this purpose a hospital with at least 500 beds strength, with the best of equipment and facilities should be established. The facilities shall be provided free of cost of the victims at

least for a period of 8 years from now. The State Government shall provide suitable land free of cost.

(d) In respect of the population of the affected wards, (excluding those who have filed claims), Government of India shall take out an appropriate medical group insurance cover from the Life Insurance Corporation of India or the General Insurance Corporation of India for compensation to those who, though presently symptomatic and filed no claims for compensation, might become symptomatic in future and to those later-born children who might manifest congenital or prenatal MIC related afflictions. There shall be no upper individual monetary limit for the insurance liability. The period of insurance shall be for a period of eight years in future. The number of persons to be covered by this group shall be about one lakh persons. The premia shall be about one lakh persons. The premia shall be paid out of the settlement fund.

(e) On humanitarian consideration and in fulfilment of the offer made earlier, the UCC and UCIL should agree to bear the financial burden for the establishment and equipment of a hospital, and its operational expenses for a period of eight years.

108. In the result, the Review Petitions are allowed in part and all the contentions raised in the Review Petitions and the I. As in the civil appeals are disposed of in term of the findings recorded against the respective contentions. In the light of the disposal of the Review-Petitions, the question raised in the writ-petitions does not survive. The writ-petitions are dismissed accordingly without any order as to costs.

Ahmadi, J.:- 109. I have carefully gone through the elaborate judgement prepared by me learned Brother Venkatachaliah, J. and I am by and large in agreement with his conclusions except on a couple of aspects which I will presently indicate.

110. The points which arise for determination on the pleadings, documents and submission made at the Bar in the course of the hearing of these petitions have been formulated at points (A) to (J) in paragraph 8 of my learned Brother's judgment and the conclusions reached by him have been summarised and set out in the penultimate paragraph of his judgment at (i) to (ix), with their sub-paragraphs. I am in agreement with the conclusions at (i) to (vii) which answer Contentions (A) to (H). So far as conclusion (viii) pertaining Contention (I) is concerned, I agree that the settlement is not vitiated for not affording the victims or victim-groups and opportunity of being heard but I find it difficult to persuade myself to the view that if the Settlement Fund is found to be insufficient the shortfall must be made good by the Union of India. For reasons which I will presently state I am unable to comprehend how the Union of India can be directed to suffer the burden of the shortfall, if any, without finding the Union of India liable in damages on any count.

As regards conclusion (ix) referable to Contention (J) I am in agreement with sub-paragraphs (a), (b) and (d) thereof but so far as sub-paragraphs (c) and (e) are concerned I

agree with the directions therein as I understand them to the only recommendatory in nature and not linked with the settlement.

111. In Charan Lal Sahu's case (1990) 1 SCC 613: (AIR 1990 SC 1480) this Court upheld the constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter called 'the Act'). In that case although the question referred to the Bench was in regard to the constitutional validity of the said enactment, submissions were made on the question whether the impugned settlement was liable to be set aside on the ground that it was in flagrant violation of the principles of natural justice, in that, the victims as well as the victim-groups had no opportunity to examine the terms of the settlement and express their views thereon. Mukharji, C.J. who spoke for the majority (Ranganathan, J.) and myself expressing separately observed that on the materials available "the victims have not been able to show at all any other point or material which would go to impeach the validity of the settlement". It was felt that though the settlement without notice to the victims was not quite proper, justice had in fact been done to the victims but did not appear to have been done. Taking the view that in entering upon the settlement regard should have been had to the views of the victims and for that purpose notice should have been issued before arriving at the settlement, the majority held that "post decisional notice might be sufficient but in the facts and circumstances of this case, no useful purpose would be served by giving regard to the fact that there are no further additional data and facts available with the victims which can profitably and meaningfully be presented to controvert the basis of the settlement and further having regard to the fact that the victims had their say or on their benefit their views have been agitated in the proceedings and will have further opportunity in the pending review proceedings". It would, therefore, appear that the majority had applied its mind fully to the terms of the settlement in the light of the data as well as the facts and circumstances placed before it and was satisfied that the settlement was a fair and reasonable one and a post-decisional hearing would not be of much avail. Referring to the order of May 4, 1989 carrying the Court's assurance that it will be only too glad to consider any aspect which may have been overlooked in consideration the terms of the settlement, Mukharji, C.J., opined that the further hearing which the victims will receive at the time of the hearing of the review petitions will satisfy the requirement of the principles of natural justice. K. N. Singh, J. while agreeing with the view expressed by Mukharji, C. J. did not express any opinion on the question of inadequacy of the settlement. In the circumstances it was held that there was not failure of justice necessitating the setting aside of the settlement as violative of fundamental rights. After stating this, the learned Chief Justice observed that while justice had in fact been done, a feeling persisted in the minds of the victims that they did not have a full opportunity to ventilate their grievances in regard to the settlement. In his view this deficiency would be adequately met in the hearing on the Review Petitions (the present petitions).After taking notice of the aforesaid view expressed by the learned Chief Justice, Ranganathan, J. (myself concurring) observed as under (AIR 1990 SC 1480 at Pp. 1561-62) :

> "Though we are prima facie inclined to agree with him that there are good reasons why the settlement should not be set aside on the ground that the principles of natural justice have been violated quite apart from the practical complications that

may arise as a result of such an order, we would not express any final opinion on the validity of the settlement but would leave it open to be agitated to the extent permissible in law in the review petition pending before this Court."

It is therefore, manifest from the above that the Sahu Bench was 'prima facie' of the view that the settlement was not liable to be set aside on the ground that the principles of natural justice had been violated. Mukharji, C.J. went on to say that no useful purpose would be served by as post-decisional hearing and that the settlement was quite reasonable and fair. Of course K. N. Singh, J. did not express any opinion on the inadequacy of the settlement amount but he was otherwise in agreement with the view expressed by Mukharji, C.J. on all the other points. The view of Ranganathan, J. and myself is evident from the passage extracted above.

112. This case has gone through several twists and turns. One of the world's worst disasters occurred on the night between 2nd and 3rd December, 1984 choking several to death and injuring thousand of residents living near about the industrial plant of UCIL. Litigation was initiated on behalf of some of the victims in the U.S. District Court. Southern District of New York presided over by Judge Keenan. After the enactment of the Act on 29th March, 1985, the Union of India also approached Judge Keenan with a complaint. Judge Keenan ultimately terminated the proceedings before him on the ground of 'forum-non-convenience'. There after the Union of India representing the victims filed a suit for damages in the Bhopal District Court against the UCIL as well as the UCC in which an order for interim compensation was made against which an appeal was filed in the High Court. The matter was brought to this Court against the High Court order. It was during the hearing of the said matter that a Court assisted settlement was struck and orders were passed recording the same on 14th/15th February, 1989. On 4th May, 1989 this Court gave its reason for the settlement. Soon a hue and cry was raised against the settlement by certain victims and victim groups. In the meantime petitions were filed in this Court challenging the constitutional validity of the Act on diverse grounds. In the course of the hearing of the cases raising the question of validity of the Act submissions were also made regarding the validity of the settlement. The hearing continued from 18th March, 1989 to 3rd May, 1989 and the same received wide publication in the media. The judgment in the said case was pronounced on 22nd December, 1989 upholding the validity of the Act. In the meantime petitions were filed under Art. 137 of the Constitution to review the settlement. Several writ petitions under Art. 32 also came to be filed. These came up for hearing before a Constitution Bench prescribed over by Mukharji, C.J. The hearing continued for more than two weeks and media carried reports of the day to day Court proceedings throughout the country. Unfortunately, before the judgement could be pronounced a tragic event took place. Mukharji, C.J. passed away necessitating a rehearing by a Constitution Bench presided over by Misra, C.J. This hearing lasted for about 18 to 19 days and received the same wide coverage in the press, etc. In fact considerable heat was generated throughout the Court hearings and the press also was none too kind on the Court. It is, therefore, difficult to imagine that all those who were interested in the review of the settlement were unaware of the proceedings. Mr Nariman has placed on record a number of press-clippings to make good his point that newspapers having large circulation throughout the country carried news regarding the settlement and

subsequent attempts to challenge the same. Can it then be said that the victims were unaware of the proceedings before this Court? To say so would be to ignore the obvious.

113. In view of the observations in Sahu's case (AIR 1990 SC 1480), the scope of the inquiry in the present petitions can be said to be a narrow one. One way of approaching the problem is to ask what the Court could have done if a pre-decisional hearing was afforded to the victims. The option obviously would have been either to approve the terms of the compromise, or to refuse to super add the Court's seal to the settlement and leave the parties to go to trial. The Court could not have altered, varied or modified the terms of the settlement without the express consent of the contracting parties. If it were to find the compensation amount payable under the settlement inadequate, the only option left to it would have been to refuse to approve the settlement and turn it into a decree of the Court. It could not have unilaterally imposed any additional liability on any of the contracting parties. If it found the settlement acceptable it could turn it into a Court's decree. According to the interpretation put by the majority in Sahu's case on the scope of Ss. 3 and 4 of the Act, a pre-decisional hearing ought to have been given but failure to do so cannot vitiate the settlement as according to the majority the lapse could be cured by a post-decisional hearing. The scope of the review petitions cannot be any different at the post-decisional stage also. Even at that stage the Court can either approve of the settlement or disapprove of it but it cannot, without the consent of the concerned party, impose any new or additional financial obligation of it. At the post-decisional stage it must be satisfied that the victims are informed of or alive to the process of hearing, individually or through press report, and if it is so satisfied it can apply its mind to the fairness and reasonableness of the settlement and either endorse it or refuse to do so. In the present case the majority speaking through Brother Venkatachaliah, J. has not come to the conclusion that the settlement does not deserve to be approved nor has it held that the settlement-fund is inadequate. Merely on the apprehended possibility that the settlement fund way may prove to be inadequate, the majority has sought to saddle the Union of India with the liability to make good the deficit, if any. The Union of India has not agreed to bear this liability. And why should it burden the Indian tax-payer with this liability when it is neither held liable in tort nor is it shown to have acted negligently in entering upon the settlement? The Court has to reach a definite conclusion on the question whether the compensation fixed under the agreement is adequate or otherwise and based thereon decide whether or not to convert it into a decree. But on a mere possibility of there being a shortfall, a possibility not supported by any realistic appraisal of the material on record but on a mere apprehension, *quja timet*, it would not be proper to saddle the Union of India with the liability to make good the shortfall by imposing an additional term in the settlement without its consent in exercise of power under Art. 142 of the Constitution or any statute or on the premises of its duty as a welfare State. To my mind, therefore, it is impermissible in law to impose the burden of making good the shortfall on the Union of India and thereby saddle the Indian tax-payer with the tort-feasor's liability, if at all. If I had come to the conclusion that the settlement-fund was inadequate, I would have done the only logical thing of reviewing the settlement and would have left the parties to work out a fresh settlement or go to trial in the pending suit. In Sahu's case as pointed out by Mukharji, C.J. the victims had not been able to show any

material which would vitiate the settlement. The voluminous documentary evidence placed on the record of the present proceedings also does not make out a case of inadequacy of the amount, necessitating a review of the settlement. In the circumstances I do not think that the Union of India can be saddled with the liability to make good the deficit, if any, particularly when it is not found to be a tort-feasor. It's liability as a tort-feasor, if at all, would have to be gone into in a separate proceeding and not in the present petitions. These, in brief, are my reasons for my inability to agree with the latter part of conclusion (viii) imposing a liability on the Union of India to make good the deficit, if any.

114. One word about the shifting stand of the Union of India. It entered into a Court assisted settlement but when the review applications came up for hearing it supported the review petitioners without seeking the Court's leave to withdraw from the settlement on permissible grounds or itself filing a review petition. To say the least this conduct is indeed surprising.

115. I would have liked to reason out my view in greater detail but the constraint of time does not permit me to do so. The draft of the main judgement was finalised only yesterday by noon time and since the matter was already listed for judgement today, I had only a few hours to state my views. I had, therefore, no time to write a detailed judgment but just a little time to indicate in brief the crux of some of the reasons for my inability to agree with the view expressed in the judgement of Brother Venkatachaliah, J. on the question of Union of India's liability to make good the deficiency, if any.

Order accordingly.

V. Lakshmipathy v. State of Karnataka
AIR 1992 Karnataka 57
Writ Petition No. 23138 of 1980, D/-9-4-1991
H. G. Balakrishna, J.

Constitution of India, Arts. 226, 21 – Environment - Protection of - Outline Development plan of City earmarking area for residential purpose - Industrialists establishing industries in said area in violation of provisions under various Acts - Persistent pollution thereby detrimental to public health - Authorities neither denying existence of pollution nor explained measures taken to control it - Change of use of land; held, illegal - Operation of industrial units directed to be stopped.

Karnataka Town and Country Planning Act (1961), Ss. 9, 14.

Karnataka Municipal Corporation Act (1976), Ss. 35, 505.

Urban Land (Ceiling and Regulation) Act (1976), Ss. 6, 10.

Bangalore Development Authority Act (1976), S. 32.

Environment - Protection of - Use of earmarked residential area for industries - Pollution thereby - Industries directed to be stopped.

Pollution control - Industries set up in residential area - Directed to be stopped.

(Paras 28, 29, 30)

Cases Referred:	**Chronological Paras**
AIR 1988 SC 1037: (1987) 4 SCC 463	26
AIR 1988 1115: (1988) 1 SCC 471	26
AIR 1987 SC 1086	26
(1966) 1 QB 380: (1965) 3 WLR 426: (1965) All ER 836, R. v. Paddingtan Valuation Officer Ex. P. Peachery Property Corporation Ltd	2
	28
(1957) 55 LGR 129, R. v. Thomes Magistrate's Court Ex. P. Greenbaum	28

ORDER:- The petitioners, who are the residents of Banashankari Extension I Stage, Block-I, which includes a part of N. R. Colony and Ashokanagar, have embarked on public interest litigation actuated by common cause in defence of public interest. The petitioners are aggrieved by the location and operation of industries and industrial enterprises in a residential area in alleged gross violation of the provisions of the Karnataka Town and Country Planning Act. The petitioners are questioning industrial activity in residential locality by establishing and running factories, work-shops, factory sheds, manufacture of greases and lubricating oils by distillation process and also production of inflammable products by respondents-17 to 49. According to the petitioners, these questionable activities are being carried on in the area comprising of Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur Nagasandra village, Bangalore. The land situate in Sy. No. 39/1 is called "Vajapeyam Terrace Gardens" and the land in Sy. Nos. 39/2A and 39/2B are known as 'Kalyani Gardens'. It appears that in respect of these areas, agreements were executed between the erstwhile City Improvement Trust Board (C.I.T.B) and their owners and successors for the purpose of formation of a lay-out in accordance with law, but the agreements were not implemented for reasons best known to the said Board. It is stated that the Health and Municipal Administration Department of the State of Karnataka issued a direction bearing No. HMA 35 MNX 72 dated 4-7-1972 to the erstwhile C.I.T.B. to handover the said areas to the Corporation of the City of Bangalore (Respondent-14 herein). However, it appears that the direction was not acted upon and these areas were not handed over to the Corporation. Nevertheless in spite of the fact that the said areas were not handed over to the Corporation, taxes as being imposed and collected by the Corporation. The petitioners have stated that there are portions which are not converted though they are reserved Kharab land granted in accordance with the Land Grant Rules falling within the jurisdiction of the revenue authorities and strangely enough the revenue authorities have failed to exercise jurisdiction and control over these portions and have not enforced the provisions of relevant law, rules and regulations in respect of these lands. In other words, the entire area falling in Sy. Nos. 39/1, 39/2A and 39/2B became virtually "no man's land" because of alleged inaction and abdication of power and control by the development authority

including the erstwhile C.I.T.B., the Bangalore Development Authority, the Corporation of the City of Bangalore and the revenue authorities of the State Government thereby resulting in betrayal of public interest on account of imperviousness to duty, callousness, non-feasance and utter lack of supervisory, administrative and regulatory control over the area in question. The petitioners have also complained of the serious threat to public health on account of environmental hazards posed by the industries and industrial activity. According to the petitioners, the provisions of the Karnataka Town and Country Planning Act., 1961 have been violated and the establishment and running of the industries in the area are contrary to the Outline Development Plan and zoning of land use as dictated by statute. It is specifically alleged that some of the industries have been floated under licenses said to have been issued by the Village Panchayat of Kathiraguppe even though the said area falls within the village Yediyur Nagasandra beyond the limits of Kathiraguppe village and, therefore, beyond jurisdiction. However, it is pointed out that these industrial units have succeeded in securing public services and utilities such as electricity, water etc., from respondents 12 and 13 to which they are not legally entitled. It is also stated that in the light of Section 14 of the Karnataka Town and Country Planning Act, there could be no change in land use contrary to the Act and no authority could grant any license for use of the land contrary to what the said provision earmarks. In short, the allegation is that the establishment of these industrial units is ab initio illegal. In regard to Sy No. 39/1, the petitioners have impeached that various orders and directions issued by the competent authorities for the purpose of execution of agreements with the erstwhile C.I.T.B. in order to obtain sanction of building plans etc., have been flagrantly flouted and transfer of lands have been effected by the jugglery of dissolution and reconstitution of partnerships from time to time for the purpose of manoeuvring in order to locate industries contrary to law, by devious methods circumventing Outline Development Plan and Comprehensive Development Plan. The petitioners have taken strong exception to extensive area of lands reserved by Government being appropriated for private use and activities not consistent with law without a check. A case on hand is specifically mentioned by the petitioners wherein one Mrs. Seethamma executed an agreement in favour of the erstwhile C.I.T.B. On 22-10-1973 in respect of lands in Sy. Nos. 39/2A and 39/2B based on an alleged sanction of a lay-out for industrial purpose, the sanction being subsequent to 4-7-1972 when the Health and Municipal Administration Department of the Government of Karnataka had directed the erstwhile C.I.T.B. to handover the area vide order No. HMA 35 MNX 72 dated 4-7-1972. The petitioners have pointed out that sanction for industrial purpose is itself ab initio illegal since it was in contravention of the provisions of the Town and Country Planning Act as well as the Outline Development Plan which declared the said area as residential zone. It is also pointed out that none of the conditions incorporated in the aforesaid agreement dated 22-10-1973 were complied with, the conditions being (a) maintenance of open space as required and in accordance with the sanctioned plans; (b) prohibition on use of sites without the approval of the erstwhile C.I.T.B.; (c) prohibition on alteration of the dimensions as approved in the plan; (d) intimation of date of commencement and programme of execution of lay-out work under the supervision of the Engineers of the erstwhile C.I.T.B. and (e) due compliance with the rules, regulations, bye-laws and standing orders regarding obtaining of licences.

2. Non-compliance with the said conditions entail by virtue of a penal clause in the said agreement, withdrawal of the sanction and acquisition of the property and dealing with the same in accordance with rules.

3. It is alleged that in a part of the 'Kalyani Garden' exists a temple dedicated to Sri Raghavendra Swamy Brindavana under a deed of trust dated 29-7-1974 to be run by a trust called "Sathyabhamamma Seethamma Kalyani Raghavendra Ashrama". For the purpose of access to the said temple, the entire area of Sy. No. 39/2B was required to be reserved; but it was encroached upon by various industries thereby preventing access to the residents and devotee. The result is that they have to wend their way through a labyrinth of industries. It is alleged that the onward course for passage running through Sy. No. 39/2B towards 6th Cross Road of Ashokanagar is via 30' road running within Sy. No. 39/1 as set out in the plan approved by the erstwhile C.I.T.B. vide its resolution No. 776 dated 12-2-1969 and resolution No. 492 dated 3-3-1971. But the said road is not properly laid out by the C.I.T.B/B.D.A. nor is it maintained properly by the said bodies and, on the other hand, the passage has been treated as a private road in disregard of the approved plan as well as the resolutions and to cap it all the road is closed on its southern side. It is alleged that constructions have been put up even in the road portion contrary to law and all this has happened with impunity at the hands of the concerned authorities who are enjoined with the responsibility of enforcement of law. This has resulted in detriment to public interest since it is the only road leading to the temple. The petitioners in particular have complained of acute pollution affecting the environment on account of persistent, offensive and unwholesome escape of pollutants such as smoke, vapour and noxious emanations posing danger to health and hygiene of the residents. According to the petitioners, noise pollution is added to the misery of the residents of the locality day in and day out depriving them of a clean environment, quality of life, peace and tranquillity reasonably expected in a residential area.

4. Another grievance articulated is that the decadence contributed by pollution has affected the value of the properties in the entire area.

5. The petitioners assert that the residents of the area have a right to expect strict performance of statutory duties in order to protect public interest by public bodies invested with statutory powers, duties and obligations and that these authorities cannot commit breach of statutory obligations frustrating public interest and public good. It is submitted by the petitioners that in spite of repeated requests and demands, not only the Corporation but also the B.D.A. and the Health Officer of the Corporation have failed to take necessary steps in accordance with law. It is alleged that representations were made to the Commissioner of the Corporation and the Secretary, Housing and Urban Development Department (respondent-2 herein) on 31-7-1979 and also to the Chairman, B.D.A. (respondent-9 herein) on 20-11-1979, in vain and, therefore, the petitioners were constrained to issue a registered notice of demand dated 16-9-1980 addressed to all the 15 authorities concerned vide Annexure-B. It is stated that all the notices have been served on them. However, the petitioners complain that there was no response from any of these authorities and the demands were never met by them and hence they have resorted to public interest litigation and to arouse judicial conscience for securing legal redress.

6. The petitioners have sought for a declaration that the change in land use in Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur Nagasandra Village, Bangalore, from residential to industrial is violative of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and Regulations there under and that all consequential actions relating to such violations in land use are void and illegal; that the licences, permissions and certificates of change in land use issued by the concerned authority especially respondents 9, 14 and 16 for location of industries by respondents-17 to 49 are void and illegal. The petitioners have also sought for a declaration that the recognition or orders passed by the Director of Industries and Commerce granting and conferring benefits on such industries run by respondents-17 to 49 are void and illegal and similarly the power supply sanctioned and granted by the Karnataka Electricity Board as void and illegal. A writ of mandamus is also sought by the petitioners for a direction to the Corporation of the City of Bangalore and its Health Officer to forthwith abate the nuisance in Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur-Nagasandra village and direct the Corporation not to levy taxes or collect the same and to re-fund the taxes already collected. The petitioners have asked for a direction to the B.D.A. to remove the industrial units and to carry out the lay-out work in accordance with the law with due provision of all civic amenities including laying of roads, sewerage, water-supply, street lights and to remove all encroachments in public lands and roads including the road leading from 6th Cross Road, Ashokanagar to Raghavendra Swamy Brindavana in Sy. No. 39/2B and lastly the petitioners have sought for a direction to the Deputy Commissioner, Bangalore Urban District, to take steps regarding the portions of revenue lands in Sy. Nos. 39/1, 39/2A and 39/2B and the portions which are reserved as Kharab and land granted and recover non-agricultural assessment in accordance with the revenue laws.

7. On behalf of respondents 29 to 31, 34, 37 to 42 and 46 to 49, an elaborate statement of objections is purported to have been filed. All these respondents have been running industries in the area in question. Except the Karnataka Electricity Board (respondent-13 herein), the remaining respondents have not filed any statement of objections. The petitioners have also filed a reply to the counters filed by the concerned respondents.

8. The affidavit in support of the statement of objections is signed by respondent-47 and it is not clear from the affidavit that respondent-47 has been authorised to file the statement of objections and to sign the affidavit not only on its behalf, but also on behalf of respondents-29 to 31, 34, 37 to 42, 46, 48 and 49. It would not be unreasonable to presume that the statement of objections is preferred by respondent-47 for itself and only on its own behalf. In other words, the presumption is that the other respondents have not filed the statement of objections. It is no doubt true that in the beginning of the statement of objections of the respondents, it is stated "The Respondents 29, 30, 31, 33, 34, 37, 38, 39, 40, 41, 42, 46, 47, 48 and 49 beg to state as follows".

Barring this statement, I do not find any averment even in the statement of objections that these respondents have authorised respondent-47 to file an affidavit in support of the counter on their behalf. Therefore, I would not be hyper technical in presuming that the

counter is filed only for and on behalf of respondent-47 and the other respondents mentioned in the statement of objections do not subscribe to the counter.

9. In the statement of objections filed by respondent-47, all the allegations made by the petitioners have been categorically denied. It is contended that the petitioners have no legal right to seek relief under Article 226 of the Constitution of India, that the writ petition is barred by laches and that the petitioners have not made out any valid ground for grant of the relief sought under Article 226 of the Constitution of India.

10. Intelligible in the statement of objections of the K.E.B. are the averments that the writ petition is liable to be dismissed for laches, unexplained delay and acquiescence and lack of locus standi of the petitioners while asserting that the power supply sanctioned to the concerned respondents by the K.E.B. is not illegal.

11. The point for consideration is whether the alleged change in land use in Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur-Nagasandra village, Bangalore, from residential to industrial is in contravention of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and regulations thereunder apart from the question whether the writ petition is not maintainable on the ground of laches and want of legal right.

12. Arguments, in extenso, were advanced by Sri M. G. Sathyanarayanamurthy for the petitioners, by Sri S. G. Sundaraswamy for respondent-47, Sri R. C. Castelino for the Bangalore City Corporation and Sri H. Thipperudrappa for the B.D.A.

13. Of contextual relevance is sub-section (3) of Section 9 of the Karnataka Town & Country Planning Act, 1961 ('the Act' for short) which reads as follows:-

> "(3) Notwithstanding anything contained in sub-section (2),—
>
> (i) if any Planning Authority has prepared a plan for the development of the area within its jurisdiction before the date of the coming into force of this Act, it may send the same to the State Government for provisional approval within a period of six months from the said date and the plan so approved shall, notwithstanding anything contained in this Act, be deemed to be the outline development plan for the Planning Area concerned;
>
> (ii) if any Planning Authority is converted into or amalgamated with any other Planning Authority or is sub-divided into two or more Planning Authorities, the outline development plan prepared for the area by the planning authority so converted, amalgamated or sub-divided shall, with such alterations and modifications as the State Government may approve, be deemed to be the outline development plan for the area of the new Planning Authority or authorities into or with which the former Planning Authority was converted, amalgamated or sub-divided."

14. In the instant case, the Planning Authority had prepared a plan for the development of the area within its jurisdiction before the date of the coming into force of the Act and had

sent the same to the Government for provisional approval within the stipulated time and, therefore, the plan which was approved by the Government is to be deemed to be Outline Development Plan for the planning area concerned. It the Outline Development Plan prepared by Madhava Rao Committee applicable to the Bangalore Metropolitan area the use to which the land could be put had been formulated. The land was intended to be used for residential purpose only as is apparent from the entry in the Outline Development Plan.

15. Section 14 of the Act deals with enforcement of the Outline Development Plan and the Regulations and the same reads as follows:—

> "(1) On and from the date of which a declaration of intention to prepare an outline is published under sub-section (1) of Section 10, every land use, every change in land-use and every development in the area covered by the plan shall conform to the provisions of this Act, the Outline Development Plan and the regulations, as finally approved by the State Government under sub-section (3) of Section 13.
>
> (2) No such change in land use or development as is referred to in sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed".

16. From the above provisions, it is crystal clear that before the date on which a declaration of intention to prepare an outline is published in accordance with sub-section (1) of Section 10, every land use, every change in land use and every development in the area covered by the plan must conform to the provisions of the Act, the Outline Development Plan and the regulations as finally approved by the State Government under sub-section (3) of Section 13. This is mandatory in character. Further, by sub-section (2), it is to be understood that change in land use or development referred to in sub-section (1) is permissible only with the written permission of the Planning Authority embodied in a commencement certificate granted by the Planning Authority in the prescribed form.

In the explanation to Section 14, "development" is meant to be the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land. Sub-clause (b) of the explanation narrates the operations or uses of land which do not amount to a development of any building or land.

17. Once an entry is made in the Outline Development Plan earmarking the area for residential purpose or use, the land is bound to be put to such a use only. There is no material on record that any written permission of the Planning Authority contained in a commencement certificate was obtained from the Planning Authority by the concerned respondents for the purpose of putting up buildings for industrial purpose.

18. Since the Outline Development Plan was prepared by Madhava Rao Committee in 1961 and was declared to be applicable to the Metropolitan area of the City of Bangalore, the erstwhile C.I.T.B. had no authority to issue any land use certificate or commencement certificate. Up to 1976, there was a separate statutory body called the Town Planning

Authority for the metropolitan area of City of Bangalore. It is, therefore, justifiable for the petitioners to contend that the permission obtained from the erstwhile C.I.T.B. has no legal warrant. The contention that Annexure-A is only an Official Memorandum and not a conversion certificate stands to reason. The purported permission under Annexures-'A' and 'B' seem to be personal to favour the applicants therein as the registered holders of record of rights. An extent of 25 guntas of Phut Kharab land out of Sy. No. 39/1 of Yediyur-Nagasandra village was ordered to reserve for Government and any encroachment on the land was prohibited. Valid permission was directed to be obtained from the concerned authorities before commencement of lay-out work. It is seen that apart from the fact that there is a violation of law relating to land use, none of the conditions stipulated in the Official Memorandum and purported conversion certificate were complied with. The plan which is said to have been approved in respect of Sy. No. 39/1 of Yediyur-Nagasandra, denotes the existence of only one building in plot No. 32 with open spaces left around it. Factually, up to 1971, all the other 41 plots of land remained vacant and the registered holder of record of rights who had applied for permission demised on 17-5-1970. Respondent-29 commenced petroleum industry in 1975. This is in violation of Section 353 of the Karnataka Municipal Corporations Act, 1976, according to which no place within the limits of the city shall be used for any of the purposes mentioned in Schedule X of the Act without a licence from the Commissioner and except in accordance with the condition specified therein. All the transfers made in Sy. No. 39/1 are not supported by due permission from the competent authority under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, nor under the ordinance which preceded the enactment by Parliament. There is no material to show that returns were filed and notifications issued as contemplated under Sections 6 to 10 of the said Act and, as already pointed out, there was no permission obtained from the competent authority for change of land use to establish numerous industries in the area.

19. Similarly, in respect of Kalyani Gardens, Annexure-3 shows that unauthorised constructions had been put up. The same annexure substantiates that Sy. No. 39/2 of Yediyur-Nagasandra is the property of the presiding deity of Sri Raghavendra Swamy Mata and Madhava Patasala attached to the temple. In fact, there is nothing to disbelieve the contention of the learned Counsel appearing for the petitioners that Smt. Seethamma and Sri Ananda Tirthachar Kalyani had built the temple, performed Pratishtha and Utsarga of Sri Raghavendra Swamygala Brindavana in Sy. No. 39/2 in 1942-43 and thereafter was functioning as Dharma Karthas of the temple. It appears the whole establishment was transferred to one A. V. Krishna Murthy in 1953 and again in 1957 the said A. V. Krishna Murthy re-transferred the temple mutt and Pathasala to Smt. Seethamma Kalyani requesting her to manage the temple poojas and kattales out of the proceeds of the lands in Sy. No. 39/2 of Yediyur-Nagasandra. In turn, it appears she created a Trust Committee under the Chairmanship of Sri Ananda Tirthachar Kalyani. The committee, it is said, consisted of 10 trustees. The construction of industries on those lands belonging to the presiding deity of the temple is described by the petitioners as not only sac-religious but also illegal.

20. On the basis of the Government notifications, it is possible to infer that Kathariguppa village lies beyond the municipal limits of the Corporation of the City of Bangalore in

49th Division, Banashankari Extension Stage-I and Sy. No. 39 of Yediyur Nagasandra is a part of Banashankari Extension Stage-I. It is on this basis the learned Counsel appearing for the petitioners contended that the jurisdiction of Kathariguppa Panchayat in the area is conspicuous by its absence and the alleged licences, permissions etc., said to have been given by the Village Panchayat of Kathariguppa are devoid of authority. The petitioners have also contended that these factories commenced operation only during 1978 and as such there is no delay or acquiescence in preferring the writ petition. It is further contended that it is only after the baneful effect of such location of numerous industries in the residential area that it was felt that the aggrieved petitioners should move this Court after exhausting the remedy by way of representations to the concerned authorities and, therefore, there is no latches on their part. More importantly it is submitted that there are gross violations of substantive provisions of law in Sections 14 to 17 of the Act, Section 32 of the Bangalore Development Authority Act, 1976, Section 505 of the Karnataka Municipal Corporations Act, 1976, Sections 6 to 10 of the Urban Land (Ceiling and Regulation) Act, 1976 and Sections 13 and 17 to 20 of the Karnataka Religious and Charitable Endowments Act, 1927. It is also contended that the writ petition is filed entirely in the interest of the general public for proper implementation of laws which are particularly intended and enacted for peaceful, healthy, clean and pleasant living in decent, well planned, well laid-out, beautiful extensions of the City of Bangalore which had once acquired a good name as the Garden City of India.

21. Out of 49 respondents who are parties to this writ petition, respondents-1 to 12, 14 to 46, 48 and 49 have not chosen to file any statement of objections. The only respondents who have filed the counter are respondents-13 and 47. Respondent-13 is the K.E.B. and respondent-47 is Quality Engineering Company. Allegations of serious nature have been made by the petitioners complaining about gross violations of Sections 14 and 17 of the Act, Section 32 of the B.D.A. Act, Section 505 of the Karnataka Municipal Corporations Act, Sections 6 to 10 of the Urban Land (Ceiling and Regulation) Act as well as Sections 13 and 17 to 20 of the Karnataka Religious and Charitable Endowments Act. The concerned authorities who are charged with the responsibility of administering and enforcing the law and who have been impleaded as necessary and proper parties in this writ petition have not chosen to file any statement of objections to meet the allegations made by the petitioners. The State of Karnataka, the Housing & Urban Development Department, the Public Health and Family Welfare Department, the Department of Commerce and Industries, the Director of Industries and Commerce, the Director of Town Planning, the Director of Health Services, the Deputy Commissioner of Bangalore District (Urban), the B.D.A., the Engineer Member of the B.D.A., the Town Planning Member of the B.D.A., the Bangalore Water Supply and Sewerage Board, the Corporation of the City of Bangalore, the Health Officer of the Corporation and the Kathariguppa Village Panchayat are the prominent respondents in this writ petition who were called upon to meet the allegations and averments made by the petitioners. None of these public authorities and public officials has rebutted the allegations and averments of the petitioners. In these circumstances, the course open to me is to hold that the allegations and averments made against these authorities by the petitioners are not disputed, but admitted. The industrialists who have been arraigned before the Court

commencing from respondent-17 and ending up with respondent-49 also have not chosen to rebut the allegations made against them with the sole exception of respondent-47 which is Quality Engineering Company. I, therefore, hold that the allegations made against the said respondents have gone without question and have to be presumed to be true. Respondent-47 has filed a detailed statement of objections, apart from the technical objections raised by the K.E.B. in its counter. Hence, the pleadings of respondents-13 and 47 are left to contend with.

22. Since there is no denial either from the public authorities or from the public officials as well as the concerned industrialists with the exception of respondents-13 and 47, I hold that the petitioners have established their case against these authorities and establishments.

23. According to Section 505 of the Karnataka Municipal Corporations Act, 1976, a corporation or any officer or other authority required by or under the Karnataka Municipal Corporations Act to exercise any power or perform any function or discharge any duty with regard to any matter relating to land use or development as defined in the explanation to Section 14 of the Karnataka Town and Country Planning Act, 1961, shall exercise such power, or perform such function or discharge such duty with regard to such land use or development plan or where there is no development plan, with the concurrence of the Planning Authority. It is further provided under Section 505 of the said Act that the said officer or other authority shall not grant any permission, approval or sanction required by or under the said Act to any person if it relates to any matter in respect of which compliance with the provisions of the Karnataka Town and Country Planning Act, 1961 is necessary unless evidence in support of having complied with the provisions of the said Act is produced by such person to the satisfaction of the corporation or the officer or other authority, as the case may be. There is no material to hold that even the requirements of Section 505 are complied with by the respondents who set up factory buildings in the area in question.

It is necessary to point out that the Karnataka Town and Country Planning Act came into force on 15-1-1965 and the Outline Development Plan came into force on 13-7-1972 whereas the Comprehensive Development Plan came into force on 12-10-1984. Before the Comprehensive Development Plan was finally brought into force, in accordance with the procedure, the B.D.A. issued a Notification No. BDA/TPM/CDP 1/80-81 dated 1-7-1980 inviting objections to the Comprehensive Development Plan from the members of the public. No objections were preferred and no efforts were made by anyone including the industrialists for change in land use in spite of the said notification. In short, the concerned respondents settled down with smug complacence making no efforts either to prefer objections or have regularisation. The copy of the notification dated 1-7-1980 published in Indian Express dated 9-7-1980 has been filed by the learned Counsel appearing for the petitioners under memo dated 22-8-1990.

24. According to Section 32 of the B.D.A. Act, notwithstanding anything to the contrary in any law for the time being in force, no person shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the Authority and except in accordance with such conditions as the

Authority may specify and where any such extension or layout lies within the local limits of the Corporation, the Authority shall not sanction the formation of such extension or layout without the concurrence of the Corporation. There is no material to substantiate that there is due compliance with the requirements of this provision.

25. Even in the matter of transfer of land to the industrialists who are respondent herein, there is no proof of satisfaction of the requirements of Ss. 6 to 10 of the Urban Land (Ceiling and Regulation) Act, 1976, nor the fulfilment of the requirements of Ss. 13 and 17 to 20 of the Karnataka Religious and Charitable Endowments Act, 1927.

The last Act referred to above is in relation to the temple lands of which encroachment has been committed and industries set up. In these circumstances, I am of the opinion that the writ petition deserves to be allowed.

The petitioners have made out a strong case in regard to the preservation of environment which calls for consideration.

26. The movement for restoration and maintenance of a liveable environment requires curbing the power of narrowly oriented administrative agencies in the appropriation of the dwindling acreage of land and water not already irrevocably appropriated. There have been several proposed and discussed means of easing of burdens and handicaps of the substantial evidence—rational basis rule in environmental cases involving judicial review of administrative agency determinations. Some are based upon concepts found in environmental cases and other cases and also explained and analysed by the acknowledged critical authorities. Others are based not upon authorities but on the sheer importance of the interests affected, for e.g. as documented in the National Environment Policy of India.

In a sense the problem is a part of a larger problem - that of rendering big Government more responsive to the needs of the individuals whom it governs.

The remarks of Justice Felix Frankfurter addressed to the problems of the thirties are relevant to 20th century India which is still in a developing stage.

> "It is idle to feel either blind resentment against 'Government of Commission' or sterile longing for the golden past that never was. Profound new forces call for new social inventions or fresh adaptations of old experience. The 'great society' with its permeating influence of technology, large scale industry and progressive urbanisation, presses its problems; the history of political and social liberty admonishes us of its lessons. Nothing less is our task than fashioning instruments and processes at once adequate for social needs and the protection of individual freedom."
>
> (see "The Task of Administrative law" - Frankfurter)

The explosion of grave concern for environment at any private and Government level is the great political phenomenon of recent times. The sporadic and unorganised struggle of environment stragglers, the wild life and bird lovers, wilderness wanderers have

identified the conservation movement of the environment and are focussing their attention on denuded forests, balding hills, disappearing prairie, extinct species of rare fish, thinning wild life, and vanishing birds. The movement has become the crusade of anyone almost everywhere for a "liveable environment". There is an increasing awareness that in cleansing up our environment, if not in wilderness, lies the preservation of the world.

At the moment we are looking into a decade in which most of the people are living in metropolitan or urban areas chocked by traffic, poisoned by water, suffocated by smog, deafened by noise and terrorised by crime.

Restoring nature to the natural state is a cause beyond party and beyond factions. It has become a common cause of all the people. It is a cause of particular concern to young Indians because, they more than us, will reap the grim consequences of our failure to act on the programmes which are needed now if we are to prevent disaster later. An onerous obligation which we owe to posterity is clean air, clean water, greenery and open spaces. These ought to be elevated to the status of birth rights of every citizen.

Commenting on Business Corporations and environment protection, Robert Reinow a Professor of Political Science at the State University of New York, Albany observed :—

> "But worse than Corporation funding is the subversion of Government agencies to the role of environmental exploiter. The public interest which should be championed by the agencies with their regulations is ignored or perverted, as the 'iron triangle' of special interests, bureaucrats and committee chairperson from their unholy alliance. This means that the public conscience is interested to volunteers in public interest groups, a sacrificial burden of weighty dimensions .....
>
> The outstanding feature of modern political life is the shifting of the burden of defence of public interest to civic volunteers. Organised, they must dig into their pockets to hold their groups together; they must respond to calls for protests, launch petition drives, simulate letter writing campaigns, conduct rallies, attend hearings and in general, mortgage the time of their personal lives to an unprecedented extent. Keepers of the social conscience, they express themselves openly and aggressively. When the record of the environmental movement is finally registered, the emphasis will be on the new breed of citizenship it fostered. And it will contrast mightily with the sordid strategy of the Corporate Board rooms where they scoff at do-gooders and belittle nobility of purpose."

He added:

> "What is becoming clear is that the restructuring of the democratic process has altered the pattern of citizenship. Where once the public official as in the days of Washington or Jefforson had a deep and honest sense of public sacrifice, we are today witnessing the close collaboration of special interest with governmental agencies and elected officials. In the environmental field, Government too often emerges and the advocate of exploitation. This is in large part due to the subtle private and usually corporate pressures. Pressure has become a science that destroys

the Governmental shield the citizens have erected to protect themselves. It is necessary for the Government to guard against such pit-falls. The choice is between technological progress which proceeds without adequate regard of its consequences and technological change that is influenced by a deeper concern for the interaction between man's tools and the human environment in which they do their work."

Inserted by the Constitution 42nd Amendment Act 1976, Art. 48-A lays down that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 15-A (g) exhorts the citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Part IV-A on Fundamental duties has been added by the Constitution (42nd Amendment) Act, 1976 in accordance with the recommendations of the Swaran Singh Committee bringing the Constitution in line with Art. 29 (1) of the Universal Declaration of Human Rights and the Constitutions of China, Japan and U.S.S.R.

The mandate of our Constitution is to build a welfare society and legislations made in that behalf to give effect to Directive Principles of State Policy have to be respected. If the constitutional obligations are not discharged by due enforcement by the administrative agencies, the Court cannot turn a Nelson's eye. The fundamental duties are intended to promote peoples participation in restructuring and building a welfare society and the Directive Principles under Part IV are intended to build the edifice of welfare state. Environment and its preservation is a subject matter of both, thus emphasising the importance given to it by our Constitution. Protection of environment is a matter of constitutional priority. Neglect of it is an invitation to disaster. The problem is the concern of every citizen and action brought cannot be dismissed on the ground of locus standi. The right to sue in this regard is inherent in the petitioners. When administrators do not mend their ways, the Courts become the battle ground of social upheaval. The paradigm of bureaucracy conducive to public welfare features standard operating procedures, humane outlook, hierarchical authority, prompt law enforcement besides job specialisation and personnel rules among others. If the administrators show indifference to the principle of accountability, law will become a dead-letter on the statute book, and public interest will be the casualty. Entitlement to a clean environment is one of the recognised basic human rights and human rights jurisprudence cannot be permitted to be thwarted by status quoism on the basis of unfounded apprehensions.

Article 226 of the Constitution enables the citizens to move the High Court to enforce the performance of statutory obligations of any authority coming within the sweep of Art. 21 of the Constitution in particular, or for e.g., under the anti-pollution laws of the land like the Pollution Control Act etc. Hence, it has to be regarded as a constitutional right of the petitioners responded by constitutional remedies of a wide repertoire under Art. 226.

In M. C. Mehta v. Union of India (1988) 1 SCC 471: (AIR 1988 SC 1115), the Supreme Court posited (at p. 1126, para 16 or AIR):—

> "He (petitioner) is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed."

In another decision in M.C. Mehta v. Union of India (1987) 4 SCC 463: (AIR 1988 SC 1037), delivered subsequent to the earlier ruling referred to above, the Court observed:—

> "Life, public health and ecology have priority over unemployment and loss of revenue problem."

In another landmark judgment, a Bench of five Judges of the Supreme Court held in M.C. Mehta v. Union of India (AIR 1987 SC 1086), familiarly known as Sriram Mills case of oleum gas leakage from the Fertiliser and Chemical factory run by a private enterprise, that a creative and innovative interpretation in consonance with our constitutional jurisprudence is commended. The Court observed (at p. 1097, para 29 of AIR): -

> "However, the principle behind the doctrine of state aid, control, and regulation so impregnating a private activity as to give it the colour of state action can be applied to the limited extent to which it can be Indianised and harmoniously blended with our constitutional jurisprudence."

Even assuming that one of the petitioners is actuated by an oblique motive, the grievance of other petitioners cannot be discarded.

The facts of the case bring to focus the need for a change of administrative culture to put an end to the tendency towards regression in social order and institutionalisation of administrative deviance.

James B. White in "When words lose their meaning" observed:-

> "Behind all the theoretical talk of Government and legitimacy, behind the systems and projects, behind even the forms of Government itself there is a culture, a living organisation of mankind upon which all the talk of system and mechanism depends, both for its intelligibility and for its effects .... In all its complexity and interconnectedness, it is our substantive and actual constitution."
>
> (see "Constitutional cultures" - The Mentality and Consequences of Judicial Review" - Robert F. Nagel)

Even otherwise, the Court would not be unjustified in exercising its power of equity in the realm of epistolary jurisdiction under three critical principles of equity which are: -

1. Where there is a right, there is a remedy;

2. Equity Court is a Court of conscience;

3. Judges in equity rule act according to conscience.

Professor Abraham Chayes of Harvard Law School has this to say: -

"The characteristic features of the public law model are very different from those of the traditional models. The party structure is sprawling and amorphous and subject to change over the course of litigation. The traditional adversary relationship is suffused and intermixed with negotiating and mediating process at every point. The Judge is the dominant figure in organising and guiding the case and he draws for support not only on the parties and their counsel but on a wide range of outsiders - masters, experts and oversight personnel. Most important, the trial Judge has increasingly become the creator and manager of complex forms of ongoing relief which have wide spread effects on persons not before the Court and require the Judge's continuing involvement in administration and implementation."

(see "The Role of the Judge in Public Law Litigation" 87 Har Law Rev 1281 (1284) 1976. Chayes)

Equity jurisprudence is based on hardship, accident, trust and fraud.

27. The onus is on the authorities concerned to establish by demonstrable evidence and not by undisclosed measures that action has been taken to control and hold pollution within reasonable limits. The pollution alleged by the petitioners consists of both air pollution and noise pollution. Desecration of the quality of environment is impermissible as is evident from a series of legislations enacted by the Parliament from time to time in the interest of clean air and clean environment in general. As already pointed out, none of the authorities concerned who have been impleaded as respondents in this writ petition have either denied the existence of pollution or have come forward with any explanation as to what measures have been taken in order to curtail the pollution. In these circumstances, there is sufficient basis to hold that the grievance of the petitioners as to the existence of air pollution and noise pollution affecting the environment to the detriment of the members of the public is substantiated. I am, therefore, of the opinion that, on that score also, the writ petition is to be allowed.

28. Often cited decision of the British Courts which are of persuasive value call for consideration.

In R. v. Tomes Magistrate's Court ex. p. Greenbaum (1957) 55 LGR 129: -

"Any body can apply for it - a member of the public who has been inconvenienced or a particular party to person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies ex debito justitiae." - Parker L.J.

In R. v. Paddingtom Valuation Officer Ex. p. Peachey Property Corporation Limited (1966) 1 QB 380 (400): -

"Every citizen has standing to invite the Court to prevent some abuse of power and in doing so, he may claim to be regarded not as a meddlesome busy body but as a public benefactor.

A rate-payer, likewise, has a particular grievance if the rating list is invalidly made, even though the defects will make no difference to him financially."

Lord Denning M. R. observed: -

"if he has not sufficient interest, no other citizen has.

Unless any citizen has standing, therefore, there is often no means of keeping public authorities within the law unless the Attorney-General will act - which frequently he will not. That private persons should be able to obtain some remedy was therefore 'a matter of high constitutional principle.'

The Court will not listen, of course, to a mere busy body who was interfering in things which did not concern him. But it will listen to any one whose interests are affected by what has been done".

Lord Diplock affirmed the principle when he said: -

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited tax-payer were prevented by out-dated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped."

As enunciated by Lord Diplock: -

"The Court has not only the power but also the duty to weigh the public interest of justice to litigants against the public interest asserted by the public authority contrary to its actual conduct. Considering the duty which such bodies owe to the members of the public, it would not be unjust to observe that no public interest immunity could be attached to such bodies."

Lord Denning M. R. reiterated: -

"I regard to it as a matter of high constitutional principle that if there is a good ground for supposing that a Government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the Court of law and seek to have the law enforced, and the Courts in their discretion can grant whatever remedy is appropriate."

By judicial inactivism, the dice will be loaded heavily against the citizen who challenges state action or inaction of the public authorities and there is a fear that Courts may in the process become cheer-leaders for the Government in the dock, rather than guardians of public interest and individual's right. The real thrust stems from a jurisprudence of public duties and the faith that the rule of law is used as a formula for expressing the fact that the laws of the Constitution are not the source but the consequences of the rights of the individuals as defined and expressed by Courts.

According to Dr. Vern O. Khudsen, a Physicist and former founder of the Acoustical Society of America and also a former Chancellor of the University of California:

> "Noise is a slow agent of death."

Another expert in the field Dr. Fabian Rouke of U.S. reporting to the New York Committee for a Quiet City said:

> "One of the insidious aspects of excessive noise is the fact that an individual may be unconsciously building up nervous tension due to noise exposures. This may cause a person thus exposed to noise suddenly to be catapulted into an act of violence of mental collapse by some seemingly minor sounds which drive him beyond the point of endurance. Many persons who are using tranquilisers may be treating the symptoms rather than the disease."

The continuing deterioration of man's habitual demands a revaluation of the present approach to eco-management. Dr. Wagner who is an authority on the subject of Air Pollution while referring to the adverse effects of air pollution said:

> "We are experiencing diseases today from hazards we didn't control yesterday. What we don't take care of today will be there for our children to handle tomorrow. It would not be inappropriate in the context of Human Rights to reproduce an illustration given by Shue 1979: 72-5 in regard to the consequences of inaction: -
>
> "A man is stranded on an out-of-the-way desert island with neither food nor water. A sailor from a passing ship comes ashore, but leaves the man to die (an act of omission). This is as serious as violation of his rights as strangling him (an act of commission). It is killing him, plain and simple - indirectly, through 'inaction', but just as surely; perhaps even more cruelly."

We are on a larger issue of community interest which concerns the preservation of environment against pollution hazards posed by deleterious sources of nuisance. The broad question of containment of pollution cannot be oversimplified and dismissed as routine nuisance of which no person of ordinary sense and temper would complain or because rightly or wrongly industries have been permitted to be set up. In the case on hand, the public authorities most closely associated with the issue have chosen to maintain silence and mysterious aloofness failing to meet the allegations made by the petitioners, for reasons best known to them. The State of these authorities who are the concerned respondents in this case, presents a baffling enigma. They do not respond to the grievances of the petitioners and do not lay bare before the Court information either denying or admitting the existence of pollution and the extent of pollution such as emission of noxious gases, toxic wastes, assault on the senses by noise pollution and the like which are imputed by the petitioners in the way they could express. Terminological in exactitude cannot bar legal redress.

What is alleged in substance is persistent pollution which is offensive and detrimental to public health. These allegations have gone without repudiation by the public authorities.

Environment protection is not a preoccupation of the educated and the affluent. It has socio-political dimensions. The disposal and control of toxic waste and governmental regulation of polluting industries is public interest oriented. The effective implementation of environmental legislation is a social learning process which could fundamentally change the character of public administration in the country. From a global perspective, the struggle to preserve a 'liveable environment' is a part of a broader struggle to create a more just Global society both within and between nations. The impact of the human dimensions on the economically and educationally disadvantaged who inhabit the developing areas cannot be underscored.

Examples are not wanting of valiant efforts made by public spirited individuals and groups around the world, to repair and restore the damaged natural resources that are crucial to the present and future well being of the nationals relating to essentials such as water, land, wild-life and environment in general, as well as quality of life in particular in cities and towns. In the United States of America, mentioned by Berger, John. J in his book "Restoring the Earth" is illuminating instances: -

(a) A house-wife who led a crusade to clean up a river in Massachusettes;
(b) A California Pharmacist who saved a Red-Wood forest;
(c) A Pennsylvania Mine-Inspector who repaired a strip-mined land;
(d) A Wisconsin architect who saved a town affected by floods and redesigned it as a flood-proof solar village;
(e) A plumber from Cape Cod who transformed a brush-choked ditch into a Trout stream.

He observes that their yeoman services have made human settlements more econo-logical sound as well as more enjoyable places to live in and that environmentalism is a truly popular movement. I am of the view that it would be incongruous to stifle the present public interest action by applying truncated standards.

The right to life inherent in Art. 21 of the Constitution of India do not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Specific guarantees in Art. 21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance. In the circumstantial context and factual back-drop, judicial intervention is warranted especially since the Supreme Court of India has already laid the foundation of juristic activism in unmistakable language of certainty and deep concern.

By allowing the writ petition, if calamitous consequences visit the concerned respondents as a result of non-feasance or malfeasance or misfeasance on the part of public authorities or public officials, the doors of justice are open to them to sue the public authorities for pecuniary relief by enforcing the principle of accountability.

29. In the light of the above discussion, I hold that the change in land use in Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur Nagasandra village, Bangalore, from residential to industrial is in contravention of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan, and Regulations thereunder and that the writ petition is maintainable.

30. For the reasons stated above, the writ petition succeeds and is, therefore, allowed. It is hereby declared that the change in land use in Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur-Nagasandra Village, Bangalore, from residential to industrial is violative of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and the Regulations thereunder and that all consequential actions relating to such violation in land use are void and illegal. It is further declared that the licences, permissions and certificates of change in land use issued by respondents 9, 14 and 16 for location of industries by respondents 17 to 49 are also void and illegal. A mandamus is issued hereby with a direction to the Corporation of the City of Bangalore and its Health Officer to abate the pollution in Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur-Nagasandra village and also a direction to the Bangalore Development Authority to stop operation of the industrial units and to carry out the lay-out work in accordance with law and remove all encroachments in public lands and roads in the area in question and in particular the road leading from 6th Cross Road, Ashokanagar to Raghavendra Swamy Brindavana in Sy. No. 39/2B.

31. Action should be taken by the concerned authorities to implement the order of this Court within sixty days from the date of receipt of a copy of this order.

32. The petitioners are entitled to costs of Rs. 3,000/- (Rupees three thousand only) from the respondents.

Petition allowed.

A. Lakshmisagar v. State of Karnataka
AIR 1993 Karnataka 121
Writ Petition No. 2285 of 1992 c/w Writ Petitions Nos. 23470 and 24877 of 1991, D/- 24-4-1992
M. Rama Jois and R. Ramakrishna, JJ.

(A) Karnataka Land Revenue Act (12 of 1964), Ss. 95, 6 - Conversion of agricultural land - Purpose of construction of housing scheme - Order by Special Deputy Commissioner - Writ petition and appeal against - High Court while quashing order of conversion permitted Govt. to look into matter and take fresh decision - Subsequent permission of conversion by Govt. by nullifying order of High Court - Non compliance with provisions of Act - Order of Govt. held, was illegal.

Conversion of land - Non agriculture user - Order by Govt. by nullifying order of High Court - Non compliance with provisions of Revenue Act - Govt. order held, illegal.

Housing scheme - Conversion of agricultural land - Govt. order nullifying orders of High Court - Non compliance with provisions of Revenue Act - Govt. order held, illegal.

(Paras 10, 12, 18, 19, 40)

(B) Karnataka Land Revenue Act (12 of 1964), Ss. 95, 3,49 - Conversion of agricultural land - Power is conferred on Deputy Commissioner - Govt. cannot as chief controlling authority under S. 3, exercise such power.

(Para 12)

(C) Karnataka Land Revenue Act (12 of 1964), S.8 - Power of Deputy Commissioner under - He is bound to follow only such instruction given by State Government as Chief Controlling Authority on matters which are not specifically provided for - Government cannot supplant provisions of Act and Rules by issuing instructions.

(Para 12)

(D) Constitution of India, Art. 226 - Locus Standi - Agricultural land near water reservoir - Water at reservoir supplied to City would be affected - It can not be said that residence have no locus standi to challenge legality of conversion of land on ground of violation of provisions of Karnataka Land Revenue Act (12 0f 1964), S. 95.

(Paras 30, 32, 40)

(E) Constitution of India, Art. 226 – Costs - Conversion of agricultural land - Govt. order nullifying orders passed by High Court - Petition against - Petitioners espousing public cause - Exemplary costs Rs. 10,000 awarded to them.

Civil P. C. (5 of 1908), S. 35.

(Para-41)

Rama Jois, J. :- The State Government has nullified the order of this Court in the order impugned in these petitions, is the most extraordinary feature disclosed in that case, in the impugned order the State Government has directed that several orders made by the Special Deputy Commissioner, Bangalore Rural District under S. 95 of the Karnataka Land Revenue Act according permission for conversion of 414 acres of agricultural land for non-agricultural use, to wit, for establishing a housing colony on the banks of Arkavati River near Thippagondanahalli Water Reservoir, one of the sources of supply of drinking water to the City of Bangalore, which were quashed by this Court in writ petitions Nos. 19919 to 19954 and 21172 to 21177/1982 presented by the Bangalore Water Supply and Sewerage Board, which order was confirmed in Writ Appeals Nos. 744 to 785 of 1987, shall continue.

2. The above ground urged by the petitioners against the impugned order causes consternation to us, as it was beyond our comprehension that the Government has done so, but after hearing. We are amazed to find that the Government has actually done so.

.....**3.** The brief and und facts of this case are these:- .....

4. The substance of the pleading in all the three petitions may be summarized thus:-

(i) The Water Reservoir constructed at Thippagondanahalli across the river Arkavati is one of the main sources for supply of water to the City of Bangalore with a population of 60 lakhs. By allowing a township to come up on the Banks of Arkavati river by construction of 270 country villas, both quality and quantity of water in the river and reservoir would be adversely affected which is injurious to the interest of millions of people residing in the City of Bangalore. Not only there would be depletion of water but also there is every chance of pollution of water and, in fact, that has been the stand of the Water Board in the Writ Petitions filed by it in which it had succeeded. Granting permission for establishing of township in such a sensitive locality was wholly arbitrary as it only favours DLF, which is a financially powerful company engaged in profit making venture of land development and a few affluent individuals, who lone could purchase such sites and construct country villas, and is totally injurious to public interest. The State Government had acted totally without jurisdiction in passing the impugned order and it had done so only on collateral considerations yielding to the influence brought to bear on it by DLF. In spite of the orders of this Court quashing the orders of conversion, in the impugned order, the Government has directed that the very orders which were quashed by this Court shall continue and thereby setting at naught the orders of this Court, which is not only high-handed, arbitrary and without jurisdiction, but also amounted to committing contempt of this Court. By the impugned order, the State Government has in fact and in truth permitted establishment of a new township consisting of 270 houses and this could not have been done by the State Government without complying with the mandatory provisions of the Land Revenue Act and the Planning Act. In any event, the State Government had no power to grant conversion of agricultural land for non-agricultural use as the said power is vested in the Deputy Commissioner under S. 95 of the Land Revenue Act.

(ii) The purchase of lands by 42 individuals who were not agriculturists and who had more than Rs. 12000/- income was void in view of S. 79-A of the Karnataka land Reforms Act and therefore the lands stood vested in the Government as provided in that Section. Further, under S. 79B of the Act, no Company could own agricultural lands and therefore the DLF could not have purchased 414 acres of agricultural land and therefore in view of S. 79B of the Act action should have been taken by the revenue officers to forfeit all the lands to the State Government as provided in that Section.

5. In this order, for convenience, we are referring to the respondents as in Writ Petition No. 2285/1992. The first respondent State Government, the 4th respondent - DLF Company and the 3rd respondent - Pollution Control Board have filed Statement of Objections refuting the material allegations and averments in the petitions. The Water Board the 2nd respondent, has not filed statement of objections or any statement.

6. Learned Counsel for the petitioners urged the following contentions:-

(1) The impugned order which directs that permission for conversion of agriculture lands for non-agricultural use which were quashed by this Court shall continue is high handed, arbitrary, illegal, destructive of Rule of Law and also amounts to committing contempt of this Court.

(2) Under the Land Revenue Act the Government had no power to grant permission for conversion of agricultural land for non agricultural use as that power under S. 95 thereof is concerted only on the Deputy Commissioner and therefore the order is without authority of law.

(3) Though the clear pronouncement of this Court in the Writ Petition filed by the Board and in the Writ Appeal arising there from was unless a new Township is established after following the procedure prescribed under the Land Revenue Act, and the Karnataka Town and Country Planning Act, question of exercise of power under S. 95, would not arise, the Government has passed the impugned order allowing a new Township and therefore not only it is violative of the Land Revenue Act but also a clear case of louting the decision of this Court.

(4) The impugned order is totally arbitrary and violative of Arts. 14 and 21 of the Constitution, as it adversely affects the quality and quantity of drinking water to the City and it is passed for collateral consideration, namely, the influence brought to bear on the Government by the DLF and which would benefit only the DLF to make profit and a few affluent individuals to put country villas which would be at the cost of the interests of millions of residents of the City of Bangalore.

(5) Though by the force of S. 79-A and Section 79-B of the Land Reforms Act the 414 acres of land has to be forfeited to Government, the Government has chosen to pass the impugned order and therefore, it is illegal.

7. Though the pleadings are long, the records are voluminous and the argument were elaborate, in our opinion, the matter is within a narrow compass, in that, the decision in the case depends upon our answer to the three questions of law which arise for consideration, on the first three contentions urged by the learned counsel for the petitioners. They are:-

(1) Whether the Government order is not invalid as it directs that the orders of the Special Deputy Commissioner granting permission for conversion of

agricultural lands in question for non-agricultural use, which were quashed by this Court, shall continue?

(2) Even if the impugned order were to be understood as an order granting fresh permission for conversion of the lands in question .for non-agricultural use, whether the State Government had the power to pass the same, and if not whether it is not illegal and without authority of law?

(3) Whether the impugned order accords permission for establishing a new township and if the answer to the question is in the affirmative, whether the Government Order is not invalid for not following the mandatory provisions of the Karnataka Land Revenue Act?

(4) Before considering the three questions it has become necessary to consider as 'to what is the scope of the liberty given by the Division bench of this Court to the Government by making the following observations:-

'Our judgment will not come in the way of the Government independently considering the matter and coming to any conclusion on merits'.

The learned counsel for respondents 1 and 4 heavily relied on the said observation as authorising the Government to pass the impugned order and therefore was a complete answer to the aforesaid three questions.

(5) A reading of the judgement of Swami, J. would show that the ground on which the order of the Special Deputy Commissioner giving permission for conversion was quashed was that in the first instance the State Government had to take a decision as to whether a new township should be permitted on the 414 acres of land situated near Thippagondanahalli reservoir and it was only after the Government took a decision, if the decision were to be for establishing a township and such a township was brought into existence after following the procedure prescribed under the Karnataka land Revenue Act and the Planning Act, the question of the Deputy Commissioner entertaining application under S. 95 of the Land Revenue Act would arise. This view of the learned Judge was affirmed by the Division Bench, Relevant portion of the judgement of the Division Bench reads :-

> *"In other words, only when a township is proposed to be established the question of such conversion would arse. Granting permission for such conversion without even their being a proposal to establish a township, will amount to circumventing the provisions of S. 148 of the Land Revenue Act. It is not the case of the appellant that already a township exists and it is proposed to be extended and for such extension the agricultural lands in question required to be converted into non-agricultural purposes. If the records produced before the Court do not disclose any decision taken by*

the State Government to establish a new township, the question of conversion of lands would not arise.

XXX XXX XXX

Thus, as rghtly concluded by the learned single Judge, the preliminany requirement for establishing a new township as required under the provisions of the Town Planning Act as well been complied with, there is no scope for invoking S. 95 of the Land Revenue Act."

It is common ground that the Authority con under the Land Revenue Act to take a decision as to whether a new township should be established and to issue a statutory notification is the State Government and according to the decision of the Division Bench, such a decision was a condition precedent for invoking the powers of the Deputy Commissioner under S. 95 of the Land Revenue Act. Therefore, it is crystal clear that the liberty given by the Division Bench was, that the government could proceed to consider as to whether a new township should be allowed to come into existence on the lands in - question. Therefore, the only course that was open to the Government, in view of the liberty given by the Division Bench was to consider whether a new Township according to the modified proposal which was pending before it at the time of disposal of the Writ Appeals, should be allowed to be established on the lands in question. If its tentative decision was in favour of establishing a new Township, then it should have followed the procedure prescribed under S. 6 of the Land Revenue Act and it was only after a notification in terms of S. 5 read with S. 6 of the Land Revenue Act was issued the 4th respondent could file application before the Special Deputy Commissioner under S. 95 of the Act, for, the power to grant permission for conversion of agricultural land for non-agricultural use is conferred under S. 95 of the Land Revenue Act only on the Deputy Commissioner and no other authority. Therefore, we are unable to agree with the submission made on behalf of respondents 1 and 4 that the observations made in the last part of the Judgement of the Division Bench conferred any extra power on the Government which was not given to it under the provisions of any of the Acts. Our conclusion on this aspect of the matter is that,

(1) The Government was given liberty to take a decision in accordance with law on the question as to whether a new township should be established on the lands in question.

(2) If the Government's decision was in favour of establishing a new Township in the locality, it could implement it by complying with the mandatory - procedure prescribed under- the provisions of the Land Revenue Act, but itself could not proceed to pass orders without complying with the provisions of the Land Revenue Act.

(3) This Court did not give liberty to the -Government to pass orders under S. 95 of the Land Revenue Act, which power under that Section is conferred only on the Deputy Commissioner.

(4) The Government was not given the liberty to nullify the writ issued by this Court and to restore the orders quashed by this Court. Having clearly explained the scope of the observations made by the Division Bench which is by itself very clear, we now, proceed to consider the validity of the three questions one after another. .....

10. On the first question, the learned Counsel for the petitioners submitted that when the orders passed or deemed to have been passed by the Special Deputy Commissioner under 5. 95 of the Act according conversion have been quashed by this Court the said order was binding on the Government arid the Government did not have the power to pass an order stating that the orders which have been quashed by this Court shall continue to be in force. He submitted that jury's order, apart from being totally without jurisdiction, amounted to contempt of Court.

(i) Learned Senior Counsel appearing for the 4th respondent and the learned Advocate General appearing for the State per contra contended that the Government proceeded to pass the order because the Division Bench of this Court while disposing off the appeal had permitted the Government to look into the matter and take a fresh decision.

(ii) We have pointed out earlier as to what is the scope of the liberty given. It is amazing that the Government has abused the liberty given by taking liberty to pass an order directing that the permission given under the orders which were quashed by this Court shall continue. It is high handed and arbitrary. The Government thereby has arrogated to itself power to overrule the orders passed by the High Court, which power under the Constitution is only vested in the Supreme Court. The executive Government should have taken the liberty of nullifying the order of the High Court is most shocking and unfortunate. To put it in a nutshell no argument is necessary to make out a case for quashing the impugned order and no amount of arguments can save it. It is astonishing that after four decades of the functioning of the Government under Constitution, such a thing has happened. In this regard, it is necessary to set out the request made by the 4th respondent to the Government in their letter dated 20th March 1991 (Enclosure VS to the synopsis of the case filed by 2nd respondent). Relevant portion reads:-

Ref - DLF Arkavati Green Valley Retreat Scheme.

In continuation of our letter dated 17th April 1991 addressed to you, while hoping that the Government is actively considering our fresh proposal we would like to bring the following to ydur study and incorporation in the Government order when a G.O. is being issued approving our proposal.

The Government may kindly issue an order for the continuance of the permission and conversion given by the Revenue Department in 1979-82 for conversion to non-agricultural purposes (Residential) (notwithstanding the orders passed by (the

Divisional Bench of the High Court WA. No. 744 to 785 of 1987 c/w W.P. 13014/89 dated 28th Nov 1990, but read in conjunction with Para 14 of the judgement).

The 4th respondent could not have made such request before the Government, and even if the Government could not have granted. But the Government conceded the request and has nullified the orders which were set aside by the Court. The Constitutional discipline demands that the Government must implicitly and give effect to the orders of this Court. This is the essence of Rule of Law. In this regard the conduct of the highest administrative authority i.e. the Government must be an ideal on which should be worthy emulation by the lower authorities. It is very sad that the Government has set a very bad example by exceeding its power in a blatant manner, by going to the extent of nullifying the writs issued by this Court by ordering the continuance of the permission giving the Revenue Authorities in 1979-82 using these agricultural lands for non-agricultural purpose (residential), which were quashed by this Court. Another facet of the arbitrariness of the order in its favour and against the 4th respondent at the hands of this Court, for the benefit of the residents of the City, and now the 4th respondent has obtained the Impugned order from the Government, the effect of which is the order of this court which had become final stands sabotaged and the Board is left in the lurch. In our opinion, this one ground is sufficient and justifies the allowing of the petitions with exemplary costs. We strongly deprecate the action of the government in passing such an order. As regards the submission of the learned counsel that the Government has committed contempt of this court by passing such an order, we do not consider it appropriate to express any opinion in these cases.

11. Coming to the second question, it should be pointed out that the pomer to accord permission for putting agricultural, land or non agricultural use has been designedly conferred by the Legislature on the Deputy Commissioner of the respective district, which expression includes the Special Deputy Commissioner and on no other authority higher or lower Section 95 of the Act reads: .....

> As reading of the Section itself would indicate the nature of the power conferred on the Deputy Commissioner and the precautions he has to take before according permission for conversion of agricultural lands for non-agricultural use. Sub- sec. (3) of S. 95 provides that the Deputy Commissioner has the power to refuse permission if it is not in public interest. Even in cases where permission is granted sub-sec. (4) of S. 95 authorises the Deputy Commissioner to impose stringent conditions to safeguard the interests of the general public. Under S. 49 of the Act, as held by this Court, any person genuinely aggrieved by the granting of permission for conversion to any other person is entitled to prefer an appeal to the Appellate Tribunal. Therefore, it is clear that the Government had no power to consider any request by the 4th respondent for according permission for conversion of agricultural land for non-agricultural use by passing the provisions of S.95 and 49 of the Act.

12(1). The only defence strongly put forward by the learned Counsel for the 2nd respondent was that the Government could exercise the power under S. 95 of the Act in view of S.3 of the Act, under which the Government is declared as the Chief Controlling Authority in all revenue matters. Section 3 reads:-

"3. Chief Controlling Authority in Revenue Matters:- The State Government shall be the Chief Controlling Authority in all matters connected with land and land revenue adininist ration under this Act.

The learned counsel submitted that as the State Government was the Chief Controlling Authority under the Act, it could pass an order which the Deputy Commissioner could pass under 5. 95 of the Act. The learned counsel for the petitioners submitted that the above stand of the respondents is totally untenable. In support of this, the learned counsel relied on the judgement of the Supreme Court in *State of Punjab Vs. Harikishan, AIR 1966 SC 1081*. That was a case which arose under the Pynjab Cinema Regulation Act. Under S.5 of that Act, the District Magistrate was empowered to issue Cinema licence and the State Government was only the Controlling Authority. In the guise of exercising the controlling power State Government itself exercised the power of the licensing authority. The question for consideration before the Supreme Court was whether the Government could do so. The Supreme Court held it could not. Relevant portion of the judgement reads:-

"12. The question which we have to decide in the present appeal lies within a very narrow compass. What appellant No. I has done is to require the licensing authority to forward to it all applications received for grant of licenses, and it has assumed power and authority to deal with the said applications on the merits for itself in (he first instance. Is Appellant No. I justified in assuming jurisdiction which has been conferred on the licensing authority by S. 5(1) and (2) of the Act? It is plain that S. 5(1) and (2) have conferred jurisdiction on the licensing authority to deal with applications for licences and either grant them or reject them. In other words, the scheme of the statute is that when an application for licence is made, it has to be considered by the licensing authority and dealt with under S. 5(1) and (2) of the Act. S. 5(3) provides for an appeal to appellant No. I where the licensing authority has refused to grant a licence and this provision clearly shows that appellant No. I is constituted into an• appellate authority in cases where an application for licence is rejected by the licensing authority. The course adopted by appellant No. I in requiring all applications for licences to be forwarded to it for disposal, has really converted the appellate a into the original authority itself, because S.5(3) clearly allows an appeal to be preferred by a person who is aggrieved by the rejection of his application for a licence by the licensing authority.

13. It is, however, urged by Mr. Bishen Narain for the appellants that S. 5 (2) confers very wide powers of control on appellant No. I and this power can take within its sweep the direction issued by appellant No. 1 that all applications for licences should be forwarded to it for disposal. It is true that S. 5(2) provides that the licensing authority may grant licenses subject to the provisions of S. 5(1) and subject to the control of the Government, and it may be conceded that the control of the Government subject to which the licensing authority has to function while exercising its power under S.5(1) and (2), is very wide; but however wide this control may be, it cannot justify appellant No. I to completely oust the licensing authority and itself usurp his functions. The Legislature contemplates a licensing

authority as distinct from the Government. It no doubt recognises that the licensing authority has to act under the control of the Government; but it is the licensing authority which has to act and not the Government itself. The result of the instructions issued by appellate No. I is to change the statutory provision of S. 5(2) and obliterate the licensing authority from the Statute-book altogether. That, in our opinion is not justified by the provision as to the control of Government prescribed by S. 5(2)."

In our opinion, the ratio of the above decision is a complete answer to the stand taken by the State Government and the 4th respondent. The learned counsel for the 4th respondent relied on the judgement of the Supreme Court in *Kewal Krishan Vs. State of Punjab,* (AIR 1980 SC 1008) in which at paragraph 30 the decisions in *Harinarayan* was distinguished. The question which arose in that case was under S. 23 of the Punjab Agricultural Produce Marketing Act, which expressly provided that subject to the Rules made by the State Government, the Committee could levy fees and therefore Rule 29 which conferred power on the Board was valid. In our opinion, the ratio of the said decision is not apposite to this case, for under S. 95 of the Act, power is conferred on the Deputy Commissioner, and therefore, the Government cannot as Chief Controlling Authority under S. 3 of the Ad exercise the very statutory power which the statute has designedly conferred on the Deputy Commissioner and whose order is appealable to the Appellate Tribunal under S. 49 of the Act and not to the State Government. In this behalf, S.8 of the Act, which provides for appointment of Deputy Commissioner is also significant. It reads:-

"8. Deputy Commissioner (1) The State Government shall by notification appoint for each district a Deputy Commissioner, who shall be subordinate to the Divisional Commissioner.

(2) The Deputy Commissioner shall in his district exercise all the powers and discharge all the duties conferred and imposed on him under this Act or under any law for the time being in force. He may also exercise such powers and discharge such duties as are conferred and imposed on an Assistant Commissioner under this Act or under any other law for the time being in force, and in all matters not specially provided for by law, he shall act according to the instructions of the State Government.

As can be seen from the language of S.8 the Deputy Commissioner is bound to follow only such instructions given by the State Government as the Chief Controlling Authority on matters which are not specifically provided for. This Section clearly indicate that the Government acting as Chief Controlling Authority can only supplement the provisions of the Act and the Rules by issuing instructions, but it cannot issue instructions which supplant the provisions of the Act.

(ii) In its latest decision in Bangalore Medical Trust Vs. B. S. Muddappa, AIR 1991 SC 1902, the Supreme Court has emphatically laid down that a general power conferred on the Government is any enactment to give directions for carrying out the purposes of that Act cannot be understood as

enabling the Government to exercise the specific power conferred on a designated authority..... The ratio of the above decision is a complete answer to the argument of the learned Advocate General and the learned counsel for respondent No. 4, based on S. 3 of the Land Revenue Act.

(iii) Further, as can be seen from the above extracts of the judgement, in the above case, the Supreme Court made a caustic remark against the Government to the effect that by doing so, it threw the law to the winds. But in this case, not only the law is thrown to the winds, but the writs issued by this Court also have been thrown to the winds; also, for a private purpose, namely, to help the 4th respondent and to the detriment of the interests of millions of people of the City of Bangalore. Therefore, the second question also has to be answered in favour of the petitioners and on this ground also the impugned order is liable to be set aside.

13. The third question for consideration is whether by the impugned order, the State Government has permitted the establishment of a new Township and if so, whether it is not invalid for not following the mandatory procedure prescribed under the Land Revenue Act. The learned counsel for the petitioners submitted that an examination of the new proposal would unmistakably indicate that the Government has allowed the formation of a new township. They submitted that there were only two important differences between the old and the new proposals. They are:-

(1) Instead of there being more than 700 houses there would be only 270 houses and,

(2) Instead of there being an underground centralized sewerage system, there would be separate individual septic tanks with soil absorption system which according to the respondents has clearly avoided the hazard of pollution of the water in the river Arkavati by the discharge sewerage water. The learned counsel submitted that even the modified proposal was nothing but a new township, except that number of houses would be less, the fact remains even then the number of houses would be as many as 270. They also submitted once the new township is permitted the large number of construction workers and migrants should come and slums would come up and as necessity number of shops and services would come into existence and there would be heavy movement of trucks carrying building materials and all this would clearly mean an establishment of a new township and that the Government without disclosing this truth has passed the order, though in truth the Government Order permits the establishment of a new township. They maintained that it is illegal and invalid for not complying with the mandatory procedure prescribed under the Land Revenue Act.

14. The learned Counsel for respondents 1 and 2, however, contended that the new proposal would not bring into existence a new township but there would be only 270 individual country villas and each of the villas will be attached to the existing revenue village, on the land on which the villa comes into existence. Learned Counsel, however,

agreed that if the modified plan also brings into existence a new township, the Government ought to have followed the procedure prescribed under the Land Revenue Act. They, however, maintained that new plan does not bring into existence a new township.

15. We shall now, in the first instance proceed to consider as to whether the new proposal brings into existence a new township or no such township comes into existence. In fact, it was the duty of the Government to apply its mind to this aspect of the matter and to state clearly as to whether the modified plan does or does not bring into existence a new township. The Government has failed to do so. In order to find out the truth, all that is necessary is to refer to the modified plan, and the letters addressed by the 4th respondent to the Government. As can be seen from the modified plan, it provides for formation of 270 plots and for construction of 270 country villas. Instead of there being an underground sewerage system as common to all the houses, there would be separate sewage disposal system for each house by way of construction of septic tanks according to the .specification of ISI. But the fact remains it would be a new township. Further, as according to the modified plan, 270 houses are to be constructed as rightly pointed out by the learned counsel for the petitioners. Servants quarters have to be constructed. Large number of construction workers would come in and they would put up sheds in the vicinity. In the circumstances, as of necessity shops, restaurants and other services would be opened. Therefore, the stand of the respondents 1 and 4 that no new township would come into existence is not true. In fact, in the letter dated 20-10-1990 at page. 320 of the Government records the 4th respondent has stated thus:-

"Dear Sir,

Sub:- Formation of Township of DLF Universal Ltd. (DLF Arkavati Scheme Green Belt)

We have submitted the DLF Arkavati Green Valley Retreat Scheme as early as on 12th August 1985. The Government has fully examined the scheme as will be evident from the records and proceedings of the Government. This was in connection with the grant of conversion of agricultural area into non-agricultural i.e. for housing purpose. Thereafter, certain other suggestions were made, but the Government appears to have passed orders and they have not been communicated to us.

In this connection, we request the Government, as the matter is pending for the last several years, to kindly approve the scheme. We are prepared to abide by any conditions which the Government may deem fit to impose for approval of the Scheme and to see that there is no pollution of any kind. Our earlier letters and assurances contained therein, clearly prove the same.

Early orders are requested as we would be in position to submit the same to the Hon'ble High Court in the matter.

If necessary, we request that a personal hearing may kindly be given to us.

Again as on 20th May 1991 the 4th respondent in the letter addressed to the State Government (enclosure VS) stated thus :-

"(d) Town Planning :- Our proposal submitted is in outline only, regarding the layout, roads and other facilities but with a firm commitment on 270 country villas being not exceeded. Therefore, any modifications to the layout, if found necessary may be permitted in consultation with the Town Planning Authorities."

In the face of the contents of the modified plan and the above two letters, there is no merit in the submission made for the 1st and 4th respondents that no new township was being permitted.

We may also point out that the Special Duty Commissioner, whose opinion with reference to the modified proposal was sought for by the Government also clearly understood that it was also for the establishing of a new township. this is evident from the said letter in which he has described the subject matter.

Relevant portion of the letter of the Deputy Commissioner reads:- .....

From the contents of the letter, it is clear that the Deputy Commissioner also understood that the modified proposal was for establishing a new Town-ship and therefore he wanted the Government to take a decision as whether a new township should be established and if the Government approved sanctioned the revised proposal, then he would review the earlier orders of conversion. It is true that there was no question of the Deputy Commissioner reviewing the earlier orders of conversion as they were quashed by this Court, and that he could consider only fresh applications if made under S. 95 of the Act. Whatever that may be, the letter indicates that the Deputy Commissioner was clearly of the view that question as to whether permission for conversion of agricultural land for residential purpose would have to be considered by him, after the

Government gave sanction for the establishment of a new Township on the lines of the modified proposal. This view of the Deputy Commissioners in accordance with the provisions of the Land Revenue Act and the decision of this Court in the petition filed by the Water Board.

Therefore, on careful consideration of the material placed before us, we are of the view that the conclusion which is inevitable is that according to the modified plan also a new township would come into existence and that the plea of the 1st and the 4th respondents that according to the modified plan, there will be only 270 country villas on the land in question and it would not be a township, is more ingenuous than convincing, intended to circumvent the provisions of the Land Revenue Act, to which we will be making reference in the succeeding paragraph.

16. Now, we proceed to examine as to whether the Government could have passed the order in the manner in which it has done. The definition of the word 'village' is found in S. 2(38) of the Land Revenue Act. It reads:-

"(38) "Village" means a local area which is recognised in the lend records as a village for purpose of revenue administration and includes a town or city and all the land comprised within the limits of a village, town or city."

Sections 4, 5 and 6 of the Act which, inter alia, provides for division of the area of the State into villages and towns and the procedure for their alternation and for forming new village read :-

.....

As can be seen from these sections, the power to form a new village is vested in the State Government. Section 6 prescribes the mandatory procedure for declaring/forming a new village i.e. proposal should be published, objections should be invited and objections received to the proposal should be considered while taking a final decision. In the grounds though the petitioners have pleaded that the provisions of the Land Revenue Act were not complied with, Ss. 4, 5 and 6 are not relied upon. When the Sections were noticed at the time of hearing, the learned Counsel for the petitioners admitted that it was a lapse on his part in not specifically relying on these three Sections and in particular on Section 6. In the circumstances, we asked the learned Counsel for the respondents to make their submissions with reference to Section 6 of the Act. The learned Counsel could not and did not say that S. 6 would not be attracted even if by the impugned order a new village/township was being brought into existence. Their argument, however, was that the modified proposal would not amount to formation of a new township. As found by us earlier on the basis of the material on record, the Government by granting approval to the modified proposal has permitted the formation of New Township and therefore it is liable to be struck down, for not following the mandatory procedure prescribed under S. 6 of the Act.

17. (i) It is significant to note that the impugned order does not even purport to be a notification u/S. 5 of the Act and it does not say under what provision of law the order was made. The Government could not do so because there is no provision of law under which the Government could pass the impugned order.

(ii) Moreover, in the judgement rendered by the learned Judge on the Writ Petition filed by the Water Board, this Court had emphatically laid down that, establishing of a township after following the mandatory provisions of the Land Revenue Act, was a condition precedent for invoking S. 95 of the Act. Despite this clear law laid down by this Court to which the Government was also a party, the State Government has flouted the decision of this Court, and has passed the impugned order. It is a settled position in law that flouting the law declared by the High Court or the Supreme Court, is more injurious to rule of law, than even disobedience of a specified order by the person to whom It is directed. On this aspect, the Supreme Court in the case of *Barada Kanta Mishra Vs. B. Dixit, AIR 1972 SC 2466 has* observed as follows (at p. 2469 of AIR):

"..... Just as the disobedience to a specified order of the Court under-mines the authority and dignity of the Court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on limited number of persons, the later conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law"

18. In the present case the government has done both. it has flouted the order made in the case to which it and the Special Deputy Commissioner, Bangalore were parties by directing that orders which were quashed shall continue. It has also flouted the law declared by this Court to the effect that establishment of a Township after following the mandatory provisions of the Land Revenue Act was a condition precedent for fhe exercise of power under S. 95 of the Act. It is the deliberate and arbitrary action which has pained us most.

19. For the aforesaid reasons, we answer the third question also in favour of the petitioners. However, the glaring fact that the Government has thrown away the mandatory provisions of the Land Revenue Act including the orders of this Court, in which the mandatory requirements of the Law for establishing a new Township were expounded to the winds, raises an important question relating to the functioning of our Constitutional system viz. whither we are leading to?

20. We shall now consider the fourth and the fifth contentions urged by the learned counsel for the petitioners. Elaborating the fourth contention, the learned counsel for the petitioners submitted as follows:-

The injurious effect of the bringing into existence of the new township near Thippagundanahalli reservoir would be two fold; (1) depletion of water supply to the City of Bangalore as a consequence of the establishment of the 270 houses and the living of population of at least about 2000-3000 who have to depend for their water either on the Arkavati river or they have to draw water from the open or bore wells to be dug by them. As a consequence there will be depletion of water in the river. By drawing underground water from lower levels, the flow in the river gets adversely affected and there will be short supply of water to the reservoir. As far as this points concerned, they rely upon the statement filed by the Water Board in the earlier order the relevant portion of which is submitted in the Judgement in *BWSSB Vs. Chandra (AIR 1989 Kant I atp. 4*) of this Court. It reads:

".....The specific case of the Board/s that by reason of the establishment of a township on the Banks of the river Arkavathi close to T. G. Halli reservoir the water will be polluted and it will also be depleted as bore wells are proposed to be drilled in the area over which new township is proposed. Consequently the quality and quantity of water supply to Ban galore City will be adversely affected. The further case of the Board is that it is statutorily bound to supply

water not only free from pollution but it is also bound to ensure sufficient supply of water to the residents of Ban galore; that in order to fulfill these statutory obligations, it is necessary for the Board to see that the source of water supply to T. G. Halli Reservoir is not affected in any manner that as the Arkavathi river is the main source of water to T. G. Halli Reservoir and as it/s going to be polluted by reason of establishment of a township on the Banks of Arkavathi river, the Board is adversely affected by the permission granted or deemed to have been granted to respondent-I in each one of these petitions."

From the above paragraph, it is clear, the Water Board which is the statutory authority for supply of water to the City had taken the stand that the bringing into existence of a township in the locality results in depletion of water to the reservoir and consequently depletion of water supply to the City of Bangalore. In the statement of objections filed on behalf of the State and the 4th respondent no doubt the allegation is denied. But it should be pointed out that the Water Board who filed earlier writ petition and succeeded, is a party respondent to these petitions and it has not filed any statement of objection. The learned Counsel for the petitioners submitted that the Water Board has not given consent for even the new colony and actually they were opposed to it, but as a decision has been taken by the State Government at the highest level to accord permission for the new colony, the Board is feeling helpless and thereby keeping quiet without placing and facts before this Court.

21. Having regard to the stand taken by the Water Board in the earlier case, it appears to us, the silence of the Board in not filing the statement is more eloquent. Their silence means they accept the case put forward by the petitioner. As the Water Board is the authority who is in possession of all the correct facts and it is silent, we have to proceed on the basis that the plea of the petitioner that there is bound to be depletion of water supply to the City of Bangalore, as result of bringing into existence of the new township in the vicinity of Thippagondanahalli reserv is true. Further, it may be seen from the impugned order, the Government has not at all discussed the question raised by the Water Board i.e., that by the coming into existence of a new Township there would be depletion of water in the river and reservoir. In the circumstances, we have gone through the original records produced by the learned Advocate General. The records disclose that before taking decision a Committee was constituted by the Government under the Chairmanship of S. Hanumantha Rao to consider the feasibility of according permission to the modified plan. Before the Committee the Water Board has expressed its opinion, which is extracted in the report of the Committee. It reads:

"The views of the BWS & SB and the DLF were also obtained at the meetings held. The main objection of BWS & SB to the proposed development were as follows:

(1) It would be humanly impossible to prevent the effluents from the septic tank after disposal on land for gardening, percolation in view of continuous application of effluents on the limited land at the disposal of the society.

(2) When a township is formed, it is likely that slums will come tip the vicinity of the Township which will also be a source of contamination. This cannot be prevented as necessary amenities are not provided by the Township to these slum dewilers.

(3) The growth of the Township cannot be restricted and the Sub division of the plots also cannot be prevented. These will naturally increase the effluents and the possibilities of polluting the River cannot be ruled out.

(4) The T. G. Halli Reservoir is one of the sources of water supply to Bangalore city covering a large population in the northern parts of the City and during acute scarcity condition of water supply any contamination of T.G. Halli Reseivoir would further worsen the city water supply.'

This opinion was given in June, 1986 as the report was prepared in June, 1986 (found at p. 87 of the records). Thus it may be seen even with reference to the modified proposal the Board expressed against according permission. The Committee however made the following recommendation:

(1) "Finally, after detailed deliberations on the issues mentioned above, the recommendations of the committee are as follows:-

(2) That the development on the southern side in plots of not less than I acre restricting the total number of plots to 139 Nos. with the stipulation that each plot shall not have more than one house may be considered.

(3) The appropriate authorities may insist on correctly designed septic tanks followed by anaerobic contract filters and dispersion system like soak pits, absorption trenches and got corn plied with.

(4) Open shallow test wells of 3 to 4 Nos. may be constructed immediately adjoining the proposed development of monitor the leachings from underground sources to observe the quality of the ground water.

(5) That the proposed development should consist of only the number of plots as per para 1 and should not include any further development in future.

(6) The northern development of houses is not favoured by the committee on account of the terrain and the location lay-out as now proposed and any decision to be taken on the development on the northern side may be deferred till the development on the southern side completed and closely observed.

(7) On the question of sub division of the plots at a later stage and any development that may take place consequently, other statutory authorities may look into and appropriate action may be taken, as this is strictly beyond the terms of reference to this committee."

But the fact remains the Water Board opposed the grant of permission and its specific stand was that there would be depletion of water is not contradicted in the report and the committee considered only from the pollution point of view, as it was constituted only to consider the pollution aspect.

22. Again after the judgement of the learned Judge, Chairman of the Water Board addressed a letter to the Secretary to Government, Urban Development Department on 1-6-87. In the first paragraph of the letter the chairman mid as follows:

> "The Thippagondanahally reservoir constructed across the River Arkaathi was supplying drinking water to rho city of Ban galore till the implementation of the Cauvery Water Supply Scheme in the year 1975. Even now, this reservoir is supplying water to the 40% of the area, as the supply from the River Cauvery is wholly inadequate to meet the City needs. This reservoir was constructed and commissioned in the year 1983 and it is under the control of the Bangalore Water Supply & Sewerage Board from the year 1964 after formation of the Board. Though the lake, and the appertain thereto, all the pipelines come under the control of the Board, the catchment area is beyond its control."

23. Thereafter, the Chairman referred to the plans of the Society for formation of township and the filing of the W.P. by the Board and the decision given by this Court in the W.P. The Chairman concluded the letter as follows

.....

Thus t may be seen, the Water Board, the Statutory Authority constituted under an Act of legislative for securing water supply to the city was totally against any township or conversion of land in the Iocal Further, it was of the view that up to a distance of 5 miles (8 kilometres) from the foreshore of Thippagondanahalli reservoir no township should be permitted. But the impugned order permits Township at a distance of two Kilometres. Therefore, we find considerable force in the contention of the petitioners that no permission should have been accorded to the 2nd respondent to form a new townshjp on the 414 acres of land in question, consisting of 270 country villas, which would serve private interests and which carries with it considerable risk to public interest as depletion of drinking water supply of the City would certainly occur, whatever be its extent.

24. As far as the pollution aspect is concerned, respondents 1 to 3 pointed out that number of houses were drastically reduced from 700 to 270 and further the earlier plan of having a centralised underground sewerage system has been given up and separate septic tanks have been provided for to each of the houses, in accordance with the ISI, standard, and therefore there would be no chance of any pollution of water in the river. Further, the 4th respondent has plans to plant trees and convert the area into a green belt, which would improve the environment and rainfall. They also pointed out that the Pollution Control Board has after due consideration given clearance imposing stringent conditions which have been incorporated in the impugned order.

25. The material placed before us indicate that the Government has applied its mind to the water pollution aspect and' has imposed conditions to ensure protection against

pollution. Learned counsel for the petitioner, however, submitted that the decision on the pollution aspect was arbitrary and not on a thorough study of all aspects relating to pollution. On this point, learned counsel for the petitioner submitted that the Cabinet Sub-Committee constituted for the purpose had decided on 8-7-1987 to refer the matter to National Environmental Engineering Research Institute, Nagpur (NEERI) for its opinion but it was given up and it secured the consent of the State Pollution Control Board and passed the impugned order. Learned Counsel for the 1st and 4th respondents submitted that the Director and Scientist of NEERI visited T.G. Halli in July, August, 1988, and thereafter as by letter 22-8- 1988 they wanted 18 months to study and Rs. 20 lakhs for that purpose and they wanted to inake a study at all other sources of water supply to the City, taking their opinion was considered impracticable and unnecessary.

26. In our opinion, both on the question of depletion of water as also pollution aspect, it is unnecessary for us to pursue the matter as in our opinion, these are matters with reference to which the petitioners and others are entitled to put forward their views of and when Government proposes to establish a new Township and invites objection to such proposal as required under S. 6 of the Land Revenue Act. When such a proposal is published the public are entitled to oppose on any ground. Therefore, we do not consider it necessary to pronounce upon this contention.

27. As part of the fourth contention the lerned counsel for the petitioners submitted that:

(i) the magnitude of violation of law;

(ii) the nullifying of the order of this Court;

(iii) flouting of the law declared by this Court;

indulgence by the State Government in passing the impugned order coupled with the circumstance that all this has been done not for any public purpose, but only to benefit the 4th respondent in its commercial venture, and a few affluent individuals who alone would be in a position to purchase sites of note less than one acre in extent and construct villas, are sufficient to prove that the impugned order has been made on collateral consideration, namely, the influence brought to bear, on the Government by the 4th respondent. As we have come to the conclusion, that what the Government has done is wholly illegal and therefore the impugned order is liable to be set aside, which is the relief sought for in the petitions, we consider it unnecessary to decide as to why the Government had done so.

28. As regards the various conditiods imposed in the impugned Government Order calling upon the 4th respondent to impose those conditions in the documents by which the different plots would be sold to different individuals, the learned counsel submitted that those would be conditions which would be binding interprets and was not sufficient to protect the interest of the general public. The learned Counsel submitted that the only way of ensuring that public interest is not adversely affected; even if the township is brought into existence in such a locality was that the conditions should be statutorily imposed either under the Planning Act or under any other special law and unless such conditions are imposed by law, the conditions in the order or in the sale deeds between

the 4th respondent and the purchasers, would be of no consequence. We see considerable force in the contention, but again it is unnecessary for us to examine the same in detail, for the reason, the impugned order is liable to be quashed on the first three contentions urged by the learned Counsel for the petitioners.

29. Sri Ashok Desai, learned counsel for the 4th respondent questioned the *locus standi* of the petitioners to challenge.the legality of the order of the Government in sq far as it relates of S. 95 of the Land Revenue Act. The learned counsel did not dispute that the petitioners being residents of the City of Bangalore are vitally interested in ensuring that water in Thippagondanahalli was neither depleted nor polluted and therefore they were entitled to question the legality of the order. But he submitted they could do so only on the ground of depletion or pollution, but, they had no right to challenge the legality of the order on other grounds. In support of this, the learned counsel relied on the Judgment of the Supreme Court in *(S.N. Rao Vs. State of Maharashtra, AIR 1988 SC 712)* in which the Supreme Court at paragraph 19 has said thus :-

> *"19. The above ground of challenge to the order of exemption granted to respondent have all been Considered by the High Court in its judgment disposing of the review applications. The petitioners have not challenged the judgment on review applications. The petitioners are only interested in seeing that sufficient area is kept reserved for a park or recreation ground for the benefit of the members of the public. They are not, in our opinion concerned with the question as to the legality or otherwise of the exemption granted by the Government to respondent-5 under the Urban Land Ceiling Act."*

Relying on the above observations the learned counsel for respondent-4 submitted that just as a member of the public has the *locus standi* for raising the question of environmental pollution but had no *locus standi* to challenge the exemption given to an individual from the provisions of the Urban Land Ceiling Act, petitioner cannot challenge the orders granting permission for the use of agricultural lands in question for constructing residential houses. He also relied on the Judgement of the Supreme Court in J.M. Desai Vs. Roshan Kumar, AIR 1976 SC 578 in support of the submission that the petitioners have no *locus standi.*

30. We find no merit in the objection. The ratio of the aforesaid decisions is not apposite. in this case. It is now well settled that water is one of the essential requirement for enjoyment of life and therefore covered by the fundamental right under Article 21. Any argument of that right gives a person cause of action as held by the Supreme Court in Subhash Kumar Vs. State of Bihar (1991) 1 SCC 598: (AIR 1991 Sc 420). When it is contended that the petitioners being the resident of the City of Bangalore are vitally interested in ensuring that the water at Thippagondanahalli Reservoir is neither depleted nor polluted and it is their case that the granting permission for formation of a Township nearby coupled with the grant of permission for conversion of agricultural land for construction of as many as 270 houses, would affect the .quality and quantity of water to the City of Bangalore, it cannot be said that the petitioners have no *locus standi* to challenge the legality of the impugned order on the ground of violation of Sections 6 and 95 of the Land Revenue Act. Further, the petitioners is also entitled to challenge the

legality of the order, on the ground that the writ issued by this Court on the petition filed by the Water Board, which ensures to the benefit of the residents of Bangalore, has been sent at naught in the impugned order and thereby Rule of Law is sought to be destroyed. If by any Governmental decision, the magnitude of illegality committed is such as would endanger the faith of the people in Rule of Law, which is a basic structure of our Constitution, it gives a cause of action to a citizen of the State concerned to challenge the legality of such a decision before this Court under Article 226.....

31. It was also contended by the learned Counsel for the respondents that the petitions have been presented with political motive. Elaborating his contention, the learned counsel stated that the petitioner in W.P. No. 2285/1992 and the first petitioner in W.P. No. 23470/1991 were Ministers in the previous regime, when the revised proposal was submitted and they had no objection for the proposal and now they were challenging just because the orders were passed by the present Government. The learned Counsel also submitted that the petitioner in W.P. No. 2285/1982 was also a member of the Sub-Committee constituted for the purpose of examining the revised proposal which had recommended in favour of the proposal and this establishes his lack of bona fides.....

33. After hearing the learned Counsel on both sides, on the point, we find that the allegation of want of bona fides or political move, against the petitioner in W.P. No. 2285/1 992 and the first petitioner in W.P. No. 23470/1991 is without any basis. Having regard to their long record of public service, there is nothing unusual, in their fighting for a cause of such great public importance concerning water, a basic need of the residents of the City. We are satisfied that these two petitioners as well as the other four petitioners have all approached this Court espousing the said public cause. In fact, the trouble taken by them in espousing such a public cause and exposing the arbitrary Governmental action of nullifying the writ issued by this Court, should be commended and not condemned .....

34. The next contention of the petitioners is based on Sections 79-A and 79-B of the Land Reforms Act. Section 79-A of the Act which came into force with effect from 1-3-1974, prohibited purchase of Agricultural Lands by those who were having non-agricultural income of more than Rs. 12000/- and if purchased such purchase shall be null and void and such land shall be forfeited to the Government.

35. The learned Counsel for the 2nd respondent submitted that the purchase by every one of the 42 persons of different bits of lands in question was prior to 1st March 1974, on which date Section 79-A came into force. Though this statement has been specifically made in the statement of objections, the petitioners are not in a position to state anything to the contrary. Therefore, we have to hold that there has been no violation of Section 79A of the Act.

36. The next submission of the learned Counsel for the petitioners was, purchases by Respondent 4, which were on dates subsequent to 1-3-1974 were void.

Section 79-B of the Act reads:

79-B. Prohibition of holding agricultural land by certain persons:

(1) With effect on and from the date of commencement of the Amendment Act, except as otherwise provided in this Act.

(a) no person other than a person cultivating and personally shall be entitled to hold land; and it shall not be lawful for; (i) an educational, religious or charitable institution or society or trust referred to in sub-section (7) of Section 63, capable of ho/ding property; (ii) a company; (iii) an association or other body of individuals not being a joint family, whether incorporated or not; or

(iv) a co-operative society other than a co-operative farm, to hold any land.

(2) Every such institution, society, trust, company, association, body or cooperative society -

(a) Which holds lands on the date of commencement of the Amendment Act and which is disentitled to hold lands under sub-section(1), shall, within ninety days from the said date, furnish to the Tahsildar within whose jurisdiction the greater part of such land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and

(b) Which acquires such land after the said date shall also furnish a similar declaration within the prescribed period.

(3) The Tahsildar shall, on receipt of the declaration under sub-section(2) and after such enquiry as maybe prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner."

Relying on the above Section learned Counsel submitted that the purchase of 414 acres of agricultural land by the 2nd respondent was void and the Revenue Officer ought to have taken steps for the forfeiture of the land to the Government in which event question of granting permission to the 2nd respondent does not arise.

37. Learned Counsel for the 2nd respondent per contra submitted that the 2nd respondent purchased the lands in question only after the Deputy Commissioner had accorded conversion for non-agricultural land and therefore the provisions of S.79-B of the Act was not attracted.

38. On fact, the petitioners have not disputed that the lands were purchased after the Special Deputy Commissioner had accorded permission under Section 95 of the Act and before the said orders were quashed by this Court. The learned Counsel for the petitioners, however, submitted once the order granting conversion for non-agricultural use was set aside, the status of the land became that of agricultural land even as on the date of purchase and therefore the revenue officers were bound to take action as provided in Section 79-B of the Act.

39. There is considerable force in the submission. Obviously this must be the reason for securing an order from the Government that permission continues, so that the 2nd

respondent could take the stand that Section 79B is not attracted. But as held earlier once the orders according permission for conversion were quashed, and it became final, it can no longer be contended that the lands were non-agricultural lands. Though the impugned order purports to continue the permission as held by us it is invalid, as Government has no power to nullify the order of this Court. However, we are of the view the order based on Section 79B, for forfeiting the lands to the Government is not germane to this petition.

40. To sum up, our conclusions are:-

(1) The impugned order is arbitrary and high handed, as by the impugned order, the Government has directed that the very orders of the Deputy Commissioner which were quashed by this Court shall continue.

(2) Even on the basis that by the impugned order the Government accorded fresh permission for conversion of 414 acres of land for non-agricultural use the same is without the authority of law as that power is conferred on the Deputy Commissioner under Section 95 of the Act.

(3) By the impugned order, in truth and in substance the Government has permitted the coming into existence a new village and as the mandatory procedure prescribed under Section 6 of the Land Revenue Act has not been followed, it is liable to be set aside.

41. At paragraph 18 of this order we have strongly deprecated the action of the Government in nullifyin the orders passed by this Court quashing the order of the Special Deputy Commissioner and we have said that this one ground is sufficient to allow the writ petition with exemplary costs. At paragraph 17 we have also pointed out the disastrous effect of the Government flouting the law declared by this Court to the effect that formation of a new Township after following the mandatory procedure prescribed under the Land Revenue Act was condition precedent for the exercise of the power under Section 95 of the Act. Ordinarily we do not award costs in Writ Petition. But these are extraordinary cases justifying the award of exemplary costs. There has been one such precedent. On an earlier occasion, when orders passed by a Division Bench of this Court were not nullified by the persons who failed before this Court by approaching Inams Abolition Deputy Commissioner praying for occupancy rights for the very lands which had been rejected, this Court imposed Rs. 10,000/- as exemplary costs. This order was confirmed by a Division Bench of this Court in Writ Appeal and Special Leave Petitions filed before the Supreme Court were rejected. What happened in that case is set out in the judgement of this Court in *Dharmarayaswamy Tempbe Vs. Chinnathayappa, ILR (1990) Kant 4242 at p. 4258 para 3.....*

We are constrained to say that this is a much more glaring case because *by the impugned order not only the order of this Court is nullified but also the law declared by this Court is flouted*. Further, the aggravating circumstance in this case is the Government was moved to issue an order for the continuance of the permission granted in 1979-82 for residential use of the agricultural land in question, *notwithstanding the order passed by this Court quashing them*, not by any ignorant individual, but by the 4th respondent, a

Company registered under the Companies Act and the order is passed by the Government and not by any Subordinate Officer. The result is the order of this Court is nullified by an executive order and thereby authority and dignity of this Court is undermined and the rule of law is defeated. Therefore, we are of the view that there is every justification to impose exemplary costs and imposed in those cases.

42. In the result, we make the following order:

(i) Writ Petition are allowed with exemplary costs of Rs. 10,000/- in each of the petitions payable to the petitioners by the State Government and the DLF Universal Ltd. in equal proportion.

(ii) The impugned order of the Government dated 29-6-1991 is set aside.

Order accordingly.

D. D. Vyas v. Ghaziabad Development Authority, Ghaziabad
AIR 1993 Allahabad 57
Om Prakash and M. Kantju, JJ.

Om Prakash, J.:- This writ petition is an apt example as to how the statutory object to secure preservation of environment and development of the residential colonies shown in the master plan, sought to be achieved by the State of Uttar Pradesh under the U.P. Urban Planning and Development Act, 1973 ('the Act' briefly) is defeated by the authorities, who lack dynamism, aestheticism and enthusiasm for development, though assigned the development duties.

2. The Act, and the preamble shows, was enacted to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. The growth in Uttar Pradesh before this enactment was quite haphazard and, therefore, the Government felt that in the developing areas of the State of Uttar Pradesh the problems of town planning and urban development need to be tackled resolutely. As existing local bodies and other authorities in spite of their best efforts were inadequate to cope with these problems to the desired extent, the State Government in order to bring about improvement in the hopeless situation considered it advisable that in such developing areas Development Authorities patterned on the Delhi Development Authority, which was then a model Authority, be established. This is how on the pattern of Delhi Development Authority, the Ghaziabad Development Authority (for short, 'the G.D.A.'), a statutory body, was set up under the Act, Section 7 of the Act, states that the object of the Authority shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to do all that what is necessary or expedient for a purpose of such development and for purpose incidental thereto. Section 8(1) of the Act says that the Authority shall, as soon as may be, prepare a master plan for the development area, Section 8(2)(a) mandates that the master plan shall define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in

each zone is proposed to be used. Sub-section (3) of Section 8 states that the master plan may provide for any other matter which may be necessary for the proper development of the development area. Section 9(1) enjoins upon the authority to proceed with the preparation of a zonal development plan for each of the zones into which the development area may be divided simultaneously with the preparation of the master plan or at the earliest thereafter. Section 9(2) describes all that which a zonal development plan may contain. Every plan immediately after its preparation shall be submitted by the authority to the State Government for approval under Section 10(2) and the concerned Government may either approve that with or without modification or reject the same directing the authorities to prepare a fresh plan.

3. In exercise of such powers, the G.D.A. prepared a plan of sector Raj Nagar, Ghaziabad, a copy of which is placed on record as annexure "1" to the writ petition. The said plan refers to proposed public buildings, residential houses and plots of land for the citizens amenities and civic amenities, open spaces including an open space, namely, Adu Park, earmarked for public park, a small plan of which is annexed to the writ petition as annexure "1-A".

4. The short grievance of the petitioners, who belong to the same locality where the open space, namely, Adu Park, as situated in Raj Nagar section, is that though the said area was earmarked for being developed as a public park, but the G.D.A. has taken no steps so far whatsoever to develop the same as a public park. Not only that, the contention of the petitioners is that the respondents are marking time to carve out plots on such open space dedicated for public park in the plan and alienate the same with a view to earning huge profits. It is averred that the G.D.A. cannot alter the plan, duly approved by the State Government, to the detriment of public at large. Once the open space, namely, Adu Park, in Raj Nagar sector is dedicated for public park, the petitioners contend that the respondents cannot keep Adu Park undeveloped for unduly long period with the sinister motive to convert that either wholly or partially into plots of land for being sold at exorbitant rates later depriving the public of the benefit of a park, for which the open space was earmarked. It is contended that the petitioners approached the respondents several times requesting them to expedite development of the area, namely, Adu Park, but their efforts failed. Apprehending that the respondents would never develop Adu Park as a park for the benefit of the public since their goal is to carve out plots and transfer them with profit earning motive, the hapless petitioners have approached this Court by means of this petition praying:

(i) that the respondents be restrained from using the open space, namely, Adu Park, earmarked for the purpose of a public park under the master plan in any other manner except the park for the benefit of the general public;

(ii) that the respondents be restrained from plotting any portion of the Adu Park or alienating the same in any manner whatsoever;

(iii) that the respondents be directed to produce the lay out/blue prints, if any prepared, for developing the Adu Park as park or any other record relating to

development activities contemplated/ undertaken by them for developing the Adu Park as park; and

(iv) that a writ in the nature of mandamus be issued directing the respondents to complete the entire development process of the Adu Park to make it as a park within a reasonable time.

5. By order dated 16-9-1991, Sri Shitla Prasad, Counsel for the respondents, was given one month's time, as prayed by him, to file counter-affidavit clearly stating as to what steps the respondent have taken for the development of Adu Park as per the master plan lay out. No counter-affidavit has been filed, though five months have gone. The case was listed for hearing on 18-2-1992. Sri Shitla Prasad then prayed that the case be taken up the next following day for his arguments, which he wanted to make after seeking instructions from the respondents. Sri Shitla Prasad then argued the matter on 19-2-1992, though no counter-affidavit was filed.

6. No counter-affidavit having been filed, the averments of the petitioners that the open space, namely, Adu Park, as shown in the plans (Annexures "1" and "1-A" to the petition) was earmarked for development of a public park, that no steps whatsoever have been taken so far by the respondents to develop the said area as a park for the benefit of general public and that the said plan (Annexure "1" to the petition) was duly approved by the State Government under Section10(2) of the Act, remain uncontroverted.

7. In the course of his argument Sri Shitla Prasad, learned counsel for the respondents, could not assail the fact that the open space, namely, Adu Park as shown in the plan (Annexure "1" to the petition), was earmarked for a public park. Also he did not assert that any steps for development of the said area were ever contemplated or undertaken by the respondents and that any lay out/blue print was ever prepared by the respondents in connection with the development of the Adu Park as a park. His only submission is that the G.D.A. is empowered to amend the master plan or zonal development plan under Section13(1) of the Act, 1973, and therefore, no mandamus, as prayed by the petitioners that the respondents be directed to complete the development process of Adu Park within a reasonable time can issue, as the respondents are at liberty to amend the plan and to use the open space, namely, the Adu Park, initially earmarked for a public park in the plan, for any other purpose. We will take up this submission later.

8. First, we deal with the submission of the learned counsel for the petitioners. From the uncontroverted pleadings of the petitioners it is manifest that the open space, namely, Adu Park, was earmarked in the plan (Annexure "1" to the petition) for a public park. It is also uncontroverted that the G.D.A. never started development process thereon. Raj Nagar is said to be an almost developed colony, in as much as substantial residential houses and public buildings have been completed. That being so, there was ample time with the respondents to develop the Adu Park as a park. The sole object to the legislation constituting Development Authorities was to ensure the fast and planned development of the development areas, which being an enormous work could not have been accomplished by the local bodies or other authorities, which existed prior to the Act, 1973. A plan is said to have been executed when the entire works are done strictly in

accordance with the plan. The plan (Annexure "1" to the writ petition), as already pointed out, referred to several things including the open space reserved for development of public parks. Unless an open space reserved for a public park is developed as such, the executing of the plan will remain incomplete. Buildings, as proposed in the plan, may have come up, amenities and civic amenities may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been fully executed, if an open space meant for a park is not developed as such. Due to inactivity of the respondents, the dream and ambition of the State that the areas covered by the plan would be developed strictly in accordance with the plan, remained unfulfilled. The duty of the respondents was to implement the plan in its entirety making the town beautiful with attractive public parks. But the respondents, it appears, thought that their job was over when Raj Nagar sector became habitable. It, in our opinion, is a delusion. Habitability and completion of the construction work in the entire area according to the plan is one thing and the development in entirety of the area strictly in accordance with the plan is another thing. Implementation of the plan cannot be measured by the fact that the entire locality became habitable or functional. The plan remains partially executed until the open space reserved for a public park is developed.

9. It is a matter of great regret that the fond object for which the G.D.A. was constituted remained unaccomplished. The Raj Nagar scheme is meant for the reasonable accomplishment of the statutory object, which is to promote the orderly development of the town Ghaziabad and to preserve open spaces by reserving public parks with a view to protecting the residents from the ill effect of urbanisation. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the town. No town is known for sky-scrapers, for myriad industries, for big commercial centres, for big monumental building, but for the attractive lay out of the town, for good landscapes, for beautiful parks and lawns, for expansive verdant cover, and for perfect social ecology. **Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity**. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A Public Park is a gift of modern civilisation, and is a significant factor for the improvement of the quality of life. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surrounding was a privilege of few, but now in a democratic set up, it is gift from the people to themselves. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology.

10. A benefit which one can get from the developed, well maintained and well manicured lawns in a big park, cannot be secured from undeveloped, morbid and

shabby, open space. Whereas the former attract and invite the people to come, sit and rest, the latter is always stinky, dirty and abhorrent.

11. It was the duty of the respondents to develop Adu Park as an attractive public park in the beginning itself to improve the environment and to enable to general public to benefit therefrom. Not only did they fail on their own, but, as contended by the petitioners, they did not pay any heed to their request also, which they made repeatedly to the respondents to develop Adu Park as a beautiful park.

12. What is a park? It has not been defined in the Act. In the Uttar Pradesh Parks, Play-grounds and Open Spaces (Preservation and Regulation) Act, 1975 (for short, 'the 1975 Act') the word 'Park' is defined meaning a piece of land on which there are no building or of which not more than 1/20th part is covered with building and the whole or the remainder of which is laid out as gardens with trees, plant or flower beds or as a lawn or as meadows and maintained as a place for the resort of the public of recreation, air or light. Though this definition in view of Section 2 of the 1975 Act, shall apply only to the areas included in every Nagar *Mahapalika,* every Municipality or Noted Area and every Town Area and to such other areas to which it is extended by the State Government by notification in the Gazette, there will be no violation of law if we resort to this definition to the case in hand. No doubt, a definition given in a particular enactment cannot be read down into another enactment. But this rule is not invariable. Since the word park' is used conceptually and contextually in the 1973 Act, the same way as it is used in the 1975 Act, defining the 'park', the same may be extended to 1973 Act, also. Parks owned and maintained by Nagar *Mahapalika,* Notified Area or Town Area are no more different from the parks belonging to the Development Authority which is nothing but a local authority constituted under the Act, 1973. A park must have considerable area covered by garden with trees, plants or flower beds or lawn, and should have been maintained as a place for the resort of the public for recreation, air or light. Wholly undeveloped open space can never be said to have a beautiful garden with a lot of trees on its periphery to preserve and protect the environment and from aesthetic point of view, it must have beautiful plants or flower beds and well maintained lawns.

13. Article 48A Part IV of the Constitution enjoins upon the State to endeavour, protect and improve the environment of the country. To effectuate the directive principles there has been a spate legislation aiming at preservation and protection of the environment the respondents having failed to develop the Adu Park as Park for several years have belied all the cherished hopes of the State and citizens. The underlying idea behind the constitution of the G.D.A. was to accelerate the pace of development and make the town of Ghaziabad as attractive as possible. It is unfortunate that the respondents sat tight over the development of Adu Park as a park and remained absolutely inactive for years. But for the vigilant eye of the public spirited persons, who filed this petition, the State of Adu Park would have remained unnoticed. The petitioners rendering yeoman's services have to be appreciated, and their locus standi to file a petition cannot be doubted.

14. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be detrimental to the quality of life. A petition under Article 32 of the Constitution for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists See *Subhash Kumar Vs. State of Bihar, AIR 1991 SC 420: (1991 AIR SCW 121).*

15. When a petition can be brought under Article 32 for the prevention of pollution by a group of social workers or journalists, a writ petition under Article 226 of the Constitution for the preservation of free air and for the protection of environment can always be filed by the environmental activists either living in the same locality or outside.

16. Article 51-A clause (g) in Part IVA introduced by the Constitution (42nd Amendment) Act, 1976, with effect from 3rd January, 1977, enshrines a fundamental duty and mandates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion of living creatures. The last clause (j) of Article 51-A of the Constitution further mandates that it shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. **It is lamentable that the respondents being the State instrumentality have failed to discharge both the fundamental duties. Unless an open space is developed into a full-fledged park having gardens, trees, flower beds, plants, lawn, promenade etc., the environment will not improve and therefore the functionaries of the G.D.A. have remained grossly negligent in discharging their fundamental duty enjoined upon them by clause (g) to Article 5-A of the Constitution. Equally they failed to discharge their duty enshrined by Article5-A(j)-AU). If the functionaries of the State instrumentalities show their averseness to the developmental activities, which are assigned to them, then the nation can never grow to the cherished heights. An ornamental park with well manicured lawns is not only a source of comfort to the public, but adds to the beauty of a town, as jewellery studded with pearls or diamonds add to the beauty of the person who wears it.**

17. The respondents will do better if they concentrate on the development of Adu Park.

18. Undeveloped space is often occupied unauthorisedly by the people who have little regard to law. Adu Park once developed by the G.D.A. will make it free from the encroachers.

19. Then we deal with the submission of the Standing Counsel that the G.D.A. is entitled to alter the master plan under Section 13 of the Act, 1973. Section 13(1) and (2), which are relevant in this connection, are reproduced below

> ***"13(1). The Authority may make any amendments in the master plan or the zonal development plan as it thinks fit, being amendments which, in its opinion do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards or population density.***
>
> *(2) The State Government may make amendments in the* master *plan or the zonal development plan whether such amendments are of the nature specified in sub-section (1) or otherwise."*

From Section 13(1), it is manifest that the authority may make only those amendments which do not affect material alterations in the character of the plan. It means the respondents do not have an absolute right of amending the master plan or the zonal development plan. The basic characteristic of such a plan cannot be altered by the authority. Only that amendment is permissible under Section 13(1) which does not affect the basic character of the plan. An open space lying for park in the plan forms a basic feature of the plan and that cannot be amended. A plan cannot be amended so as to denude the plan of such a basic feature. Section 13(1) can in no circumstances be interpreted so as to clothe the G.D.A. to utilise the open space reserved for a park either to construct building or use it in any other manner, which is foreign to the concept of a park. In *Bangalore Medical Trust Vs. B.S. Mudappa, 1991 (3) JT 172 AIR 1991 SC 1902)* the Supreme Court struck down the order of the Bangalore Development Authority (for short 'B.D.A.), allotting areas reserved for public park and play grounds, to private persons and permitting construction of building for hospital thereon by them.....

22. Applying the *dictim* of the Supreme Court *in Bangalore Medical Trust* (supra), it must be held that the Authority cannot amend the plan under Section 13(1) so as to deprive the public of a public park. Not only the G.D.A. even the State Government cannot alter the plan under-section 13(1) carries several limitations, Section 13(2) gives the State Government unlimited powers to make amendments in the plan of the nature specified in sub-section () or otherwise. The words "or otherwise" occurring in Section 13(2) cannot be interpreted to mean that the State Government has a right to alter the plan so as to enable the G.D.A. to use the open space, reserved for a park, for the purposes having no semblance of a park. In **Bangalore *Medical* Trust** (supra), the Supreme Court reiterated that once an open space is dedicated for a park that cannot be converted into any other purpose.

23. We, therefore, hold that under Section 13, neither the Authority nor can the State Government amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for public parks.

24. It is a fit case to issue a writ of mandamus as prayed by the petitioners. Since the development of Adu Park is inordinately delayed, directions have to be issued elaborately so as to expedite its development.

25. The petition is, therefore, allowed with the following directions:.....

.....Though it is a fit case to award costs, but we think that the petitioners will feel more satisfied if Adu Park is developed into a park by the respondents earnestly within the aforesaid time limit and hence we make no order as to costs.

Petition Allowed.

Dhirendra Agarawal v. State of Bihar
AIR 1993 Patna 109
C.W.J.C. No. 1005 of 1992, D/-8-7-1992
Narbdeshwar Pandey and Choudhary S.N. Mishra, JJ.

Forest (Conservation) Act (1980), S. 2 – Mining lease – Renewal of, in Reserved Forest Area – Prior permission of Central Govt. not obtained by State Govt. – Mining operations stopped by Forest Department – Direction issued to Mining Department to determine whether mining operations could be allowed to continue, after giving opportunity to license.

Executive Engineer Attapaddy Valley Irrigation Project v. Environmental & Ecological Protection Samithy
AIR 1993 Kerala 320
Writ Application Nos. 1045 of 1991 and 25 of 1993C (O.P. No. 9711 of 1989-F), D/-31-3-1993
M. Jagannadha Rao, C.J. and K. Sreedharan, J.

Constitution of India, Arts. 226, 48A, 51A(g) – Environmental protection – Public interest litigation – Interference in writ jurisdiction – Scope – Writ petition prohibiting contractor from cutting bamboo in forest – Expert Committee appointed – Report of Committee defective as no findings given regarding relevant questions – Matter remitted back to Govt. for decision in light of further expert opinion and to work out equities in favour of contractor who had spent huge amount in cutting bamboo.

Forests – Environmental protection – Interference in writ jurisdiction – Scope.

Public interest litigation – Environmental protection – Interference in writ jurisdiction – Scope.

Environmental protection – Interference in writ jurisdiction – Scope.

Decision of single Judge (Kerala), Reversed.

General Public of Saproon Valley v. State of Himachal Pradesh
AIR 1993 Himachal Pradesh 52
Civil Writ Petition Nos. 567 of 1988 with 598 to 601 of 1989, D/-24-4-1991
V.K. Malhrotra, Actg. C.J. and Bhawani Singh, J.

Constitution of India, Arts. 48A, 51A (g), 226 – Environment protection – Public interest litigation – Mining of lime stone - Damage to the vegetation and environment alleged – Reports made to the High Court differing with each other – High Court constituted committee of experts - Committee prescribing stoppage of mining operations of a specified category of mines – Bona fides of members of Committee, not assailed – Report of the "Committee" upheld.

Environment protection – Damage to environment, vegetation etc. alleged – Strict proof about the fact – Not necessary – Procedure to be followed in such cases.

In the instant case by way of public interest litigation it was alleged that the mining of lime stone in the Saproon Valley caused great damage to the fields below, the environment and it lead to pollution of water and soil erosion of surrounding land and ecological imbalance. The reports made to the Court were found to be differing each other and it was on that account that, eventually, the Committee with Secretary (Industries) to the Government of Himachal Pradesh, as Chairman, was directed to be constituted to make an in-depth study of the problem. This Committee, as detailed earlier, included experts like the Directors of Geological Survey of India, of Mines Safety and Professors of Forestry and Geology. The Committee drew up a detailed report. It set before itself certain guidelines and then proceeded to classify the mines into two categories A and B. The Committee observed that mines in Category B should be stopped. The lessees of said mines pleaded that Category B mines also deserved to be permitted to work irrespective of the recommendations of the Committee appointed by High Court and further that total stoppage of mining operations in the Saproon area was not called for. They also canvassed that curative steps to protect the environment could be taken without stopping the mining.

(Paras 21, 28)

Held, it is true that on proceedings in the nature of public interest litigation insistence on strict proof about a fact asserted by a party may not be expected from it as in an adversary litigation, yet proceedings under Article 226 of the Constitution are basically summary in character. The Court makes out its own modalities for ascertaining the essential facts to make up its mind about the nature of direction which it should make.

(Para 32)

In the present case, High Court appointment of an expert Committee was considered to be the best way for ascertaining necessary facts. It was further held that Committee consisted of responsible people whose bona fides could neither be nor has been assailed, therefore, the recommendations of the Committee should be given effect. The Court further directed constant supervision of the mining operation and permitted mines of Category A to continue in terms of the recommendations made by the Committee.

(Paras 32, 33)

Murali Purushothaman v. Union of India
AIR 1993 Kerala 297
O.P. No. 13530/92-I., D/-7-1-1993
K. T. Thomas, J.

Air (Prevention and Control of Pollution) Act (14 of 1981), S. 20 – Central Motor Vehicles Rules, 1989, Rr. 116, 115 – Air pollution – Emission of air pollutions from automobiles – R. 116 providing for testing smoke emission level and for taking action against drivers of vehicles – Its implementation cannot be delayed on expectation of some modification contemplated by Central Government in respect of said rule – State Government directed to give instruction to authorities for ensuring compliance with provisions of S. 20 and to make expeditious and effective implementation of R. 116.

Constitution of India, Art. 226.

Air Pollution – Smoke emission level test of motor vehicles – State directed to implement it.

(Paras 9, 10, 11)

JUDGMENT: - Sri Murali Purushothaman is an advocate practising in the High Court of Kerala. He filed original petition for espousing a public cause of great moment. It is an undeniable reality that the air on and around most of the public roads in Kerala is saturated with carbon monoxide emitted from fuel propelled automobiles. Petitioner has focused attention on the consequences of air pollution created through uncontrolled and unmitigated automobile spitting and hence prays for appropriate directions to be issued to the officials concerned for enforcing the statutory measures to reduce the gravity of the problem.

2. According to the petitioner, the gaseous pollutants emitted by vehicles plying through the streets of Kerala are highly harmful and hazardous to living creatures, particularly human-beings. Petitioner contends that inhalation of such pollutants leads to diseases like cancer and tuberculosis and points out that statutory provision for reducing the density of such hazardous substances emitted by automobiles have not been implemented by the authorities.

3. Automobiles can be ranked as one of the chief sources of air pollution. Vehicles pump out billows of carbon monoxide, hydrocarbons, and nitrogen oxides into the air by burning gasoline. Problem of air pollution through automobiles plying on the roads in Kerala has been gradually snowballing into a dimension threat to life, though such problem is not peculiar this State. I am told that some other State Governments have adopted measures to contain the problem to a great extent in cities like Bombay and Bangalore.

4. In United States, Environmental Protection Agency (EPA) was formed which has set some standards for restricting the amount of pollution produced by new vehicles. The federal Clean Air Amendments Act of 1970 was passed requiring reduction of the carbon monoxide emission. In 1976 United States achieved reduction in carbon monoxide

saturation in the air by a substantial degree. Automakers were compelled to install devices called "Catalytic Converters" on the exhaust system of new cars for converting gases to harmless carbon dioxide and water. Later European automakers also adopted Catalytic Converters and fitted them with automobiles. But unfortunately, the progress achieved in India remained by and large poor.

5. Rules have been incorporated in the Central Motor Vehicles Rules, 1989 (for short 'the Rules') taking cue from S. 20 of Air (Prevention and Control of Pollution) Act, 1981 (for short Air Pollution Act). R. 115 of the Rules provides for fixation of a standard for emission of smoke, vapour etc., from motor vehicles and directs that every motor vehicles shall be manufactured and maintained in such condition and shall be so driven that smoke, visible vapour, grit, sparks, ashes, cinders or oily substance do not emit there-from", R. 116 of the Rules provides for adoption of tests for smoke as well as carbon monoxide level emitted from motor vehicles. The Rule also empowers officers not below the rank of Sub-Inspector of Police or Inspectors of motor vehicles to take action against drivers of those vehicles which emit smoke and/or other substances in excess of the emission limit.

6. Rule 115(2) of the Rules says that on and from the date of commencement of the rule every motor vehicles shall comply with the standards laid down therein.

7. Under S. 20 of the Air Pollution Act State Government is under an obligation to give such instructions to the authorities in charge of registration of motor vehicles as are necessary to ensure compliance with the standards fixed by State Pollution Control Board regarding emission of air pollutants from automobiles. R. 116 of the Rules deals with other duties of State Government in that regard. It is appropriate to extract the said rule in this context. It reads thus:

> "116. Test for smoke emission level and carbon monoxide level for motor vehicles.
>
> (1) Any officer not below the rank of a Sub-Inspector of Police or an Inspector of motor vehicles, who has reason to believe that a motor, is, by virtue of the smoke emitted from it, or other pollutants like carbon monoxide emitted from it, is likely to cause environmental pollution endangering the health or safety of any other user of the road or the public, may direct the driver or any person in charge of the vehicle to submit the vehicle for undergoing a test to measure the standard of black smoke or the standard of any of the other pollutants.
>
> (2) The driver or any person incharge of the vehicles shall, upon demand by any officer referred to in sub-rule (1) submit the vehicle for testing for the purpose of measuring the standard of smoks or the leves of others pollutants or both.
>
> (3) The measurement of standard of smoke shall be done with smoke meter of a type approved by the State Government and the measurement of other pollutants like carbon monoxide, shall be done with instruments of a type approved by the State Government".

8. Learned Advocate-General promptly reciprocated to the demand made by the petitioner through this public interest litigation. He offered at the initial stage itself that a statement would be filed regarding the steps which Government have already taken or proposed to be taken towards solution of the problem highlighted in this original petition. Subsequently, a statement was filed under instructions from Government. It is pointed out in the statement that as per Government Order (G.O.Rt. No. 1160/91/PW&T dated 28-10-1991) an Expert Committee has been constituted by the State Government constituting of Transport Commissioner, Chairman of the State Committee on Science, Secretary of the Kerala State Pollution Control Board, Senior Deputy Transport Commissioner, Secretary of the State Transport Authority and Technical Advisor of the Motor Vehicles Department. The committee made some recommendations for acquisition of equipment such as "gas analysers and smoke meters" for measuring smoke density. Administrative sanction has been at a cost of Rs. 16 lakhs (vide G.O. Rt. No. 1320/92/PW & T dated 12-11-1992).

9. But one snag which the State Government now feel is the proposal for a further amendment to Rr. 115 and 116 of the Rules contemplated by the Central Government. It does not think that the State Government can afford to delay the implementation of the present R. 116 merely on the expectation of some modification contemplated by the Central Government in respect of such rules. No functionary can abdicate its functions merely on the premises of a proposal being mooted for modification of the statutory requirements. It is not certain that the proposal for amendment would crystallise into legislation. Even if it does, the action taken now can be suitably adjusted in consonance therewith. Expeditiousness cannot be slackened in this matter on some excuse or other, for, the problem is growing day by day to monstrous levels. R. 116 came into force on 1-7-1989 and hence there is no justification for waiting further for effectively implementing the provisions of the Rule even after four long years. Even during this period of four years automobiles proliferated alarmingly and consequently air pollution has grown with galloping pace. The limited role of the State Government in the implementation of R. 116 is (1) to approve the type of the "smoke meter" for measuring the standard of smoke and (2) approve the instrument for measuring pollutants like carbon monoxide emitted by the vehicles.

10. Human life is far more important than vehicular traffic. The pristine adage that "Rules are for men and not men are for rules" assumes contemporary relevance particularly in the area of environmental cleanliness. No authority nor even the state can be permitted to bide time without enforcing whatever provision is available and without exercising whatever power is commandable to protect humn life. Petitioner really deserves credit for bringing this all important problem to this Court.

11. For the aforesaid reasons, I issue the following direction:

1. The State Government of Kerala shall provide, at least, one smoke meter and gas analyser (or any other approved instrument to measure carbon monoxide and other pollutants emitted by automobiles) each at all the major District Centres (Kozhikode, Palakkad. Thrissur, Ernakulam, Kottayam, Alapuzha, Kollam and Thiruvananthapuram) within three months from today.

2. The State Government shall expedite steps to provide such equipment at other places also as early as possible.

3. The State Government shall issue such instructions as are necessary to all authorities in charge of registration of motor vehicles within three months in order to comply with the legislative mandate contained in S. 20 of the Air Pollution Act.

4. Second respondent and Director General of Police, Kerala shall issue necessary instructions to their subordinate officers (falling within the purview of R. 116 (1)) within three months from today to effectively carry out their functions envisaged in R. 116 of the Central Motor Vehicles Rules.

5. Learned Advocate-General will obtain a report from the Chief Secretary as well as the Transport Commissioner and Director General of Police (Kerala) regarding the implementation of R. 116 in accordance with the above directions, on the expiry of three months from today and submit the same in this Court.

I express my admiration to Shri. N. Nandakumara Menon, Advocate, who argued the case for the petitioner and my gratitude to Shri. M. B. Kurup, learned Advocate-General for promptly reciprocating to this demand of moment and need.

Original Petition is disposed of in the above terms.

Issue photocopy on usual terms.

Order accordingly.

National Federation of Blind v. Union Public Service Commission
AIR 1993 Supreme Court 1916
Writ Petition (Civil) No. 655 of 1991, D/-23-3-1993
Kuldip Singh and N.M Kasliwal, JJ.

Constitution of India, Arts. 32, 226 and 311- Recruitment of blind and partially blind to Government posts- Government of India appointing Committee to identify posts suitable for them-Posts in I.A.S and allied services require to be filled in by competitive examinations to be conducted by U.P.S.C. identified as suitable – Demand by blind for being permitted to write examination in Braille script or with help of scribe- After identifying said posts as suitable for visually handicapped, there can be no reason not to permit such persons to sit and write the examinations in question- Direction issued to Government of India and U.P.S.C to grant demand of such handicapped persons – Recruitment to lowest post in service of such persons- They will not be entitled to claim promotion to higher posts irrespective of physical requirements of jobs.

Physically handicapped blind- Entitlement of, to recruitment to Government posts.

Appointment- Government posts- Blind and partially blind person, eligible.

(Paras 11, 13)

KULDIP SINGH, J.:- National Federation of Blind- a representative body of filed this petition under Art. 32 of the Constitution of India seeking a writ in the nature of mandamus directing the Union of India and the Union Public Service Commission to permit the blind candidates to compete for the Indian Administrative Service and the Allied Services and further tom provide them the facility of writing the civil services examination either in Braille- script or with the help of a Scribe. Braille is a system of writing for the blind in which the characters consist of raised dots to be ready by the fingers. Further relief sought in the petition is that Group A and B posts in Government and public sector under takings which have already been identified for the visually handicapped persons be offered to them on preferential basis.

2. The visually handicapped constitute a significant section of our society and as such it is necessary to encourage their participation in every walk of life. The Ministry of Welfare, Government of India has been undertaking various measures to utilize the potentialities of the visually handicapped persons. The Central as well as the State Government have lunched several schemes to educate, train and provide useful employment to the handicapped. The Central Government has provided reservations to the extent of 3% vacancies in Group C and D posts for the physically handicapped including blind and partially blind.

3. There has been a growing demand from the visually handicapped persons to provide reservations for them in Group A and B posts under the Central Government. The Ministry of Welfare, Government of India has a Standing Committee for identification of jobs in various Ministries/ Departments and public undertakings for the physically handicapped. By an order dated December 30. 1985 the Government of India directed the Standing Committee to undertake the identification of jobs for the handicapped in Group A and B Services under the Government and public sector undertakings.

4. The Committee submitted its report which was published on October 31. 1986. Copy of the report has been placed on the record of this petition. In the introduction to the report given by Mr. M.C. Narasimhan, Joint Secretary to Government of India and Chairman, Standing Committee on identification of jobs for handicapped, it has been stated as under:-

> "A Sub Committee, which was set up to assist the Standing Committee visited a large number of Public Secretary Undertakings and observed people actually working in a variety of jobs and the working conditions in which these jobs are performed. The Sub Committee had detailed discussions with the Chiefs and Senior Officers of the Public Sector Undertaking as also with offers of the Central Government Departments. A list of the public sector undertaking and the list of the officers of the undertakings with whom the Sub Committee had discussions is annexed to the report. The Committee after detailed discussion and on-the-spot study has prepared a comprehensive list of 416 categories in Group A and B posts in Government Offices and Public Sector Undertakings, with their jobs descriptions, the physical requirement of each group of job and matched them with various categories of disabilities."

5. The Committee devoted special attention to the visually handicapped. Para 8 of the report which relates to the blind is as under:-

> "However, in the case of the blind the position is somewhat different. Seeing, reading, writing and movement are essential ingredients of most Government jobs. Therefore, a similar approach in respect of blind person may be difficult. It would not be possible to generalise that blind persons can do most jobs as we have found for those with loco motor and hearing disabilities. The Committee found that in higher posts is Government the help of a personal assistant or a stenographer is generally available. But this facility is not available even in higher posts in public sector undertakings. Whenever this facility is available a blind person may not find it difficult, in certain groups of posts, to handle the job. It is also possible, in relation to other posts where stenographic assistance is not available that some other facilities can be provided to a blind employee. To compensate 'reading deficiency' readers' allowance can be provided to blind employees to enable them to engage a reader. Similarly, to compensate for 'writing deficiency', he blind employee should be required to know typing. Adequate knowledge of typing should be prescribed as essential qualification for blind employees for public employment. Where mobility may also be one of the main ingredients of job it is difficult to compensate to blind employees for this "deficiency". The Committee would also emphasis that the blind employee should be fully responsible for the duties assigned to them, despite the provision of reader's allowance and typing skill. The Committee would also suggest that the maximum reader's allowance should be limited to Rs. 200/- p.m. to blind employees recruited to Group A and B post."

6. The Committee has identified about 416 categories of Group A and B which are suitable for he handicapped. The Committee has further specified that the visually handicapped (blind and partially blind) are suitable for appointment to the following categories of Group A and B posts:-

No. in the List Annexed to the Report	Category of post	Group
178 to 187	Hindi Officers	A & B
191 to 192	Job Analyst	A & B
193 to 199	Labour welfare officers	A & B
200 to 209	Law Officers	A & B
237 to 242	Personal Assistants	A & B
243 to 256	Personal Officers	A & B
279 to 291	Public Relations Officers	A & B
295 to 317	Research Officers	A & B
354 to 363	Training Officers	A & B
364 to 376	Administrative Officer (Non Secretarial)	A
377 to 384	Administrative Officers (Secretarial-Sr)	A
385 to 401	Administrative Officers (Secretarial-Junior)	A &B
409	Asstt. Admin. Officer	

7. We have only quoted the list of categories from the report to illustrate the point that the Committee appointed by the Government has in its report identified certain categories of posts to which the blind and the partially-blind can be appointed.

8. Government of India through Ministry of Personnel issued office memorandum date November 25, 1986 wherein it accepted the report of the Committee and took a policy decisions that in respect of the posts identified by the Committee the handicapped persons shall be given preference in the matter of recruitment to those posts. The office memorandum is re-produced hereunder:

No. F.36034/4/86-Estt. (SCT)
Government of India
Ministry of Personnel, Public
Grievances & Personnel & Training
……
New Delhi, the 25th November,
1986

OFFICE MEMONARDUM

Subject: - Identification of jobs for the physically handicapped persons in Groups 'A' and 'B' posts filled by direct recruitment in the Central Government services and Public Sector Undertakings.
……..

The undersigned is directed to say that with a view to effecting optimum utilisation of the potentialities of physically handicapped which constitutes a significant section of the population in the country, the Ministry of Welfare constituted a Standing Committee for identification of jobs for the physically handicapped in the Central Government services and Public Sector Undertakings. The Standing Committee of Identification on identification of jobs set up a sub- committee for on-the-spot identification of jobs for the physically handicapped persons in Group `A' and 'B' posts after making an in-depth study for Undertaking as well as in consultation with the concerned authorities. This sub-Committee in its Report ( submitted to the parent Committee) identified 420 jobs in Group 'A` and Group 'B` posts/ services along with the physical requirements and functional classifications of disabilities indicating what jobs can be held by each category of disabled people and with what disability.

It has been decided that in respect of identified posts which can be held by physically handicapped persons preferences to physically handicapped persons will be given in the matter of recruitment to those posts. A copy of the report of the Committee referred to in para 1 is enclosed for information guidance and necessary action. The list of jobs identified by the Committee on suitable for being held by physically handicapped persons is not exhaustive. The Ministries/ Departments can further supplement the list based on their knowledge for jobs requirements, essential qualifications etc.

The Ministries/Departments after identifying all the posts which can be held by physically handicapped persons may inform the UPSC at the time of sending their

requisitions for filling vacancies in respect of those posts, that preference is to be given to physically handicapped persons in the matter of recruitment. The UPSC have agreed in principle to give preference to physically handicapped persons in filling the identified posts. The Department of Personnel and Training will be issuing general instructions to enable preference being given to the physically handicapped persons in such cases.

The Ministry of Finance etc. are requested to bring these instructions to the notice of all concerned.
Sd/-
(B ATA K. DEY)
DIRECTOR (JCA) "

From the office memorandum quoted above it is obvious that the Government of India has taken the following policy decisions to implement the Committee report:-

1. The Government of India has taken cognizance of the fact that the Standing Committee on identification of jobs through its Sub-Committee has identified 420 jobs in Group A and Group B posts / services along with the physical requirements and functional classifications of disabilities indicating what jobs can be held by each category of disabled people and with what disability.

2. The decision has been taken that in respect of identified posts which can be held by physically handicapped persons preference to physically handicapped persons will be given in the matter of recruitment to those posts.

3. The list of jobs identified by the Committee is not exhaustive, the Ministries/ Departments can further supplement the list based on their knowledge of job requirements, essential qualifications etc.

4. The Ministries/ Department after identifying all the posts which can be held by physically handicapped persons may informs the Union Public Service Commission at the time of sending their requisitions for filling vacancies in respect of those posts, that preference is to be given to physically handicapped persons in the matter of recruitment.

5. The Union Public Service Commission has agreed in principle to give preference to physically handicapped persons in filling identified posts.

6. The Department of personnel and Training will be issuing general instructions to enable preference being given to the physically handicapped persons in such cases.

9. Mr. S.K. Rungta, learned counsel for the petitioner has contended that the memorandum dated November 25, 1986 was issued more than seven years back but so far the decisions taken therein has not been implemented. Mr. Rungta – (himself visually handicapped) has argued his case with utmost clarity). Mr. Rungta was fully conversant with all the relevant annexures to the petition. He referred to the relevant pages in the bulky paper book with perfect ease. We did not feel even for a moment that the case being argued by a visually handicapped lawyer. Mr. Rungta's performance before us

amply proves the point that the visually handicapped persons can perform the jobs entrusted to them with equal efficiency.

10. The question of giving preference to the handicapped in the matter of requirement to the identified posts is a matter for the Government of India to decide. The matter is pending for decision with the Government of India for the last several years. While appreciating various measures undertaken by the Government to provide useful employment to the handicapped persons we commend the Government of India to decide the question of providing preference/ reservation to the handicapped in Group A and B posts as expeditiously as possible.

11. So far as the claim of visually handicapped for writing the civil services examinations, in Braille script or with the help of Scribe, is concerned, we are of the view that their demand is legally justified.

12. The list of category A and B posts, identified as suitable for the visually handicapped by the Committee, includes number of posts which are filled as a result of the civil service examinations. When there are posts to which blind and partially-blind can be appointed, we see no ground to deprive them of their right to compete for those posts along with other candidates belonging to general category.

13. Mr. V. K. Cherian, Under-Secretary to Government of India, Ministry of Personnel in his affidavit dated March 10, 1992 filed before this Court has stated as stated as under:-

> "If there were Group 'A' and 'B' jobs, which could be filled up by the blind, the same should also be identified. Once the jobs were identified, they could be filled up from among the blind and also other handicapped persons such as deaf and orthopaedically handicapped.....Going by the Report of the Committee and the posts identified by it, the Union Public Service Commission made the observation that the posts identified as suitable to be held by physically handicapped persons, particularly those identified for the blind are not such which are required to be filled on the basis of competitive examination conducted by the Commission."

The observations of the Union Public Service Commission as projected by Mr. V.K.

Cherian in his above quoted affidavit do not seem to be correct. After going through the list of the posts identified as suitable for visually handicapped (blind and partially blind) it is obvious that there are number of posts which are required to be filled through the civil service examination and other competitive examinations conducted by the Commission. Group A and B posts in the category of Administration Officers (Secretarial-Senior) and Administrative Officer (Secretarial-Junior) are necessarily to be filled as a result of civil service examination by the Union Public Service Commission. If some of the posts in the Indian Administrative Service and other Allied Services, as identified by the Committee can be filled from amongst the visually handicapped persons shall not be entitled to claim promotion to the higher posts in the service irrespective of the physical requirements of the jobs. If in the hierarchy of promotional- posts it is found by the Government that a particular post is not suitable for the visually handicapped person he shall not have any right to claim the said post.

14. In the light of the above discussion we partly allow the writ petition and direct the Government of India and the Union Public Service Commission. We further direct that they shall be permitted to write the examination in Braille script or with the help of a Scribe. There shall be no orders as to costs.

Petition allowed.

Niyamavedi v. State of Kerala
AIR 1993 Kerala 262
O.P. Nos. 752 and 2865 of 1992-N and 9741 and 8905 of 1992-I, D/-16-3-1993
M.M. Pareed Pillay, J.

(A) Forest Conservation Act (69 of 1980), S. 2 - Biological park - Establishment of - Disputed area was highly degraded forest - Essential idea of project is conservation of flora and fauna of western ghats of Kerala and development area into model biological park - Fact that wildlife tourism was also one of objectives of Biological Park - Not sufficient to term whole scheme as intended to promote tourism to detriment of very existence of natural forest in region.

Forests - Establishment of biological park - Wildlife tourism one of the objective - Not sufficient to term whole scheme as intended to promote tourism.

Biological Park - One of objective and wildlife tourism - Scheme not in valid on that ground.

Ecology - Establishment of Biological Park - One of objective was wildlife tourism - Would not make it invalid.

(Paras 11, 12)

(B) Land Acquisition Act (1 of 1894), Ss. 4, 6 - Public purpose - Establishment of biological park in forests by Govt. - Acquisition of nearby land of petitioners for construction of administrative office and staff quarters - Was for public purpose - No colorable exercise of power - Acquisition proceedings cannot be quashed.

Constitution of India, Art. 14

(Para 22)

(C) Constitution of India, Art. 226 - Govt. policy - Interference - Establishment of biological park - Policy decision by State Govt. on consideration of opinion of experts and scientists - No infringement of any statute or constitutional provisions - No interference.

Biological Park - Establishment - Policy decision by Govt. - Not interference.

Forests - Establishment of Biological Park - Policy decision of Govt. - No interference.

(Paras 26, 27, 30)

P. A. Jacob v. The Superintendent of Police, Kottayam
AIR 1993 Kerala 1
O.P. No. 10459 of 1991 – T, D/27-7-1992
Chettur Sankaran Nair, J.

(A) Constitution of India, Art. 19(1)(a) – Freedom of speech – Does not include freedom to use loud speakers or sound amplifiers.

AIR 1963 Guj 259, Dissented from.

Use of loud speakers – Is not a fundamental right.

Freedom of speech – Does not include use of loud speakers.

The right to speech implies, the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. Free speech is not to be treated as a promise to everyone with opinions and beliefs, to gather at any place and at any time and express their views in any manner. The right is subordinate to peace and order. A person can decline to read a publication, or switch off a radio or a television set. But, he cannot prevent the sound from a loud speaker reaching him. He could be forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. A loud speaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But, he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine, is not intervention with, or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Art. 19 (though they may be useful to man to express his faculties). No more, a loud speaker. The use of a loud speaker may be incidental to the exercise of the right. But, its use is not a matter of right, or part of the right.

(Paras 11, 12, 17, 22)

(B) Constitution of India, Art. 14 – Public meeting – Grant of permission to hold, with use of loud speakers – Cancellation, in absence of any valid ground – Is arbitrary.

Kerala Police Act (5 of 1961), Ss. 19, 23.

Criminal P.C. (2 of 1974), S. 133

By reason of Art 14, the State and its agencies cannot act arbitrarily. They must adhere to fair play in action. For instance, even when a person may not have a fundamental right to enter into a contract with the State, the State cannot act arbitrarily in the matter of

awarding a contract. Likewise, in the matter of denying the use of a loud speaker, Police cannot act arbitrarily. All State action is amenable to Art. 14. If the authority charged with the power to regulate use of loud speakers under the Kerala Police Act, acts beyond the authority law confers upon him, his action is liable to be interdicted.

(Para 26)

Where Sub-Inspector of Police had granted permission to the petitioner to hold public meeting with use of loud speaker but withdrew the permission later, apprehending that holding of meeting with use of loud speaker would lead to law and order situation, the cancellation of the permission would be arbitrary in the absence of any valid ground. While petitioner had no fundamental right to use a loud speaker, he would be free to avail of the amenity of using a loud speaker in a reasonable manner.

(Para 27)

(C) Constitution of India, Art. 21 – Right to life – Public meeting – Use of loud speaker – Exposure of unwilling persons to dangerous and disastrous levels of noise – Amounts to infringement of right to life.

Right to life - Noise pollution – Exposure of unwilling persons to dangerous and disastrous levels of noise – Infringes right to life.

Compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee of right to life under Art. 21. Right to life, comprehends right to a safe environment, including safe air quality, safe from noise.

(Para 24)

Apart from the right to be let alone, freedom from aural aggression – Art. 21 guarantees freedom from tormenting sounds. What is negatively the right to be let alone, is positively the right to be free from noise. Exposure to high noise, is a known risk and it is proved to cause bio-chemical changes in man, elevating levels of blood catecholamine, cholesterol, white cell counts and lymphocytes. Noise causes contraction of the flexor muscles of the limbs and the spine, and is reckoned as an environmental stress that could lead to non-specific health disorders. Exposure to high noise in every day life may contribute to eventual loss of hearing (socioacusis), and this in turn can affect speech communication. Vasoconstriction or vasodilation of blood vessels also is induced by high levels of noise during acute exposures (Rosecrans et al (1966). Complaints of nystagmus (rapid involuntary side to side movements), Vertigo (Dizziness) and balance problems have also been reported due to noise exposure.

(Para 23)

People United for Better Living in Calcutta v. State of West Bengal
AIR 1993 Calcutta 215
Matter No. 2851 of 1992, D/-24-9-1992
Umesh Chandra Banerjee, J.

(A) Constitution of India, Art. 226 – Environment and development – Court should strike balance, so that both co-exist.

Environment – Protection of – Court's duty is to find balance between development program and environment.

Developing countries – Balance between environment and development – Court's duty to find.

(B) Constitution of India, Art. 226 – Environment – Wetland – Importance of and part played in proper maintenance of environmental equilibrium – Reclamation of wetland – Injunction against granted in facts and circumstances of instant case.

Wetland – Importance in maintenance of environmental equilibrium and necessity to preserve Environment – Wetland – Importance of.

Salehbhai Mulla Mohmadali v. State of Gujarat
AIR 1993 Supreme Court 335 (From: Gujarat)
Civil Appeal No. 1865 of 1975, D/-25-10-1991
B.C. Ray and N.M. Kasliwal, JJ.

(A) Forest Act (16 of 1927), Ss. 4, 30 – Felling of trees – Permission – Sale of land by Jagirdars to Contractor – Merger of State – Declaration of Reserve Forest – Trees, on land were part of reserve forest as declared under Forest Rules of erstwhile State – No evidence to show that Jagirdars were cutting such trees – Jagirdars could not be said to have given better title to Contractor than they possess – Trees in question were teak and mahuda trees prohibited from being cut – Claim for cutting and removing trees by Contractor – Not sustainable.

(B) Constitution of India, Arts. 14, 133 – Discrimination – Plea of – Not taken in plaint nor any facts or material were placed on record during trial of suit or before High Court – Cannot be considered by Supreme Court for first time in appeal specially when defendants were not given any opportunity to meet the same.

Shaibya Shukla v. State of Uttar Pradesh
AIR 1993 Allahabad 171
Writ Petition No. 978 of 1991, D/-13-3-1992
S. Saghir Ahmad and H.N. Tilhari, JJ.

Constitution of India, Arts. 21, 47, 48, 37 and 51-A - Right to life - Auction of chemically treated soyabean, unfit for human consumption, for sale in general and not to particular individuals who deal in such chemically treated article – Auction offer to intended purchasers only on basis of higher bid by them – Tender notice as well as auction invalid been violative of Arts. 21, 47, 48, and 51-A of Constitution.

Right to life - Auction of chemically treated article, unfit for human consumption, for sale in general and not to particular individuals, who deal in such chemically treated article – violative of Arts. 21, 47 and 48 of Constitution.

Smt. Satyavani v. A.P. Pollution Control Board
AIR 1993 Andhra Pradesh 257
Writ Petition No. 13062 of 1992, D/-6-4-1993
Sivaraman Nair and Ms. S.V. Maruhti, JJ.

(A) Constitution of India, Arts. 19, 48A, 51A(g) – Scope – Establishment of meat processing unit – Grant of letters of intent and licence by Central Govt., State Govt. and Pollution Control Board after taking into account relevant considerations – Sentimental aversion of a group of persons regarding environment pollution cannot be only criterion to judge correctness of decisions affecting fundamental rights of others – Possible violation of Act – Not a ground for depriving fundamental rights of persons engaged in said business.

Food processing – Establishment of meat processing unit – Grant of licence – Possible violation of Act – Not a ground to deprive fundamental right of persons engaged in said business.

Environment – Pollution – Establishment of meat processing unit – Grant of licence – Possible violation of Act – Effect.

AIR 1958 SC 731, Foll.

(Paras 39, 40, 54)

(B) Constitution of India, Art. 226 – Public interest litigation – Establishment of meat processing unit – Petition against – Project can make significant contributions to national interest by providing employment and earning much needed foreign exchange as also providing staple food to those needy and poor – Petitioners, the powerful organizations, cannot resort to public interest litigation to vindicate sentimental objections to legitimate industrial activities.

Public interest litigation – Establishment of meat processing unit – Petition against by powerful organizations to vindicate sentimental objections – Not maintainable.

(Paras 63, 67)

(C) Penal Code (45 of 1860), S. 191 – Perjury – Writ Petition – Affidavit – False assertion by one of the petitioners that, earlier to instant petition neither any proceedings were initiated before Tribunal nor writ petition was filed for challenging action of authorities – May amount to perjury – High Court directed Registrar (Judicial) to file complaint against petitioner under S. 195, Cr. P.C.

Constitution of India, Art. 226.

Criminal P.C. (2 of 1974), S. 195.

(Paras 70)

Ambala Urban Estate Welfare Society v. Haryana Urban Development Authority
AIR 1994 Punjab & Haryana 288
Jawahar Lal Gupta, J.

0RDER:- The Ambala Urban Estates Welfare Society is the petitioner. It alleges that even though the respondent had promised that the Sector 7, Urban Estate, Ambala city shall be developed as a residential areas with all the modern amenities,' it does not have even an underground sullage and storm water drainage system. According to the petitioner, the roads with big pot-holes are virtual death-traps. On account of lack of drainage and sewerage facilities, the cesspools which exist all around are a health hazard. The Haryana Urban Development Authority disputes this. It claims that the plot holders have already been given more than what was legitimately due to them. Is it so? A few facts as emanating from the pleadings of the parties may be briefly noticed.

2. In 1973, the Department of Urban Estates, Haryans gave out that it is "developing residential areas with all the modern amenities at Ambala." It offered plots "for sale on full ownership basis." Various persons who are the members of the petitioner Society applied for these plots. They were given letters of allotment during the years 1973 and 1974. They paid prices as mentioned in the advertisement. They were given possession of these plots in the year 1980-1981. Most of them have constructed houses on these plots. **In spite of the fact that more than 2 decades have elapsed, the petitioners alleged that the respondents have not provided even basis facilities like "underground drainage for storm and sullage water with the necessary provision for the treatment and healthy disposal....." As a result, the groundwater level has risen which has caused extensive damage to the buildings.** Because of lack of drainage facilities, the area remains water-logged resulting in spread of malaria and jaundice etc. The petitioner also complaints that potable water is not available and various facilities, for which payment had been made by the plot holders, have not been provided. Further, it is alleged that the Haryana Urban Development Authority (hereinafter referred to as 'the Authority') to avoid honouring its obligations, passed an order on November 4, 1988

transferring the ownership of public roads, parks and sewerage etc. to the Municipal Committee, Ambala. Faced with this situation, the petitioner has approached this Court through the present writ petition. It challenges the order dated November 4, 1988 and prays that the 'authority' be directed to provide all the facilities.

3. In response to the notice of motion issued by the Court on May 31, 1989, the Haryana Urban Development Authority had filed a written statement on March 12, 1990. It was *inter alia* stated on its behalf that "there was no provision for underground storm water drainage in the approved rough estimate of Sector 7, Ambala" and that "the sullage water sewerage is being disposed of regularly and properly. There is no problem of over flowing or choking of sewer at present. The disposal machinery is working properly and smoothly." It further stated that "there is no problem of drinking water and sufficient quantity of good quality potable water is being supplied daily to the residents of Urban Estates, Ambala City." It was also stated that "the averments that locality remains water logged are (is) not correct and thus there is no question of becoming prone to any infectious disease for these reasons." It was submitted that "the basis amenities as per provision in the approved rough cost estimate to exist." On the basis, it was averred that the decision of the authority to transfer the ownership of roads etc. to the Municipal Committee was legal and valid.

4. The petitioner controverted the claim of the authority by filling a replication. Along with, the petitioner produced a copy of the letter dated April 15, 1988 written by the Deputy Commissioner, Ambala to the Chief Administrator of the respondent-authority and Director, Town and Country planning and Urban Estates, Haryana which clearly believed the assertions in the written statement and in which it was categorically stated that "accumulation of water is at present creating a problem of high water table and consequent damage to buildings." The petitioner also produced the proceedings of a meeting held on January 10, 1990 under the chairmanship of the Administrator of the authority which shows that "the grass sown in these parks is destroyed due to collection of water in the rainy season owning to low level; "the water supply from Tube well No.3 was 'brackish'; the roads needed to be repaired; without the storm water drainage, the sewerage system is also chocked during the rainy season; the conservation of land use of a plot measuring 1000sq.mt. into a community hall was already under consideration; a pump station is also required in the Sector and that no provision had been made for disposal of the sullage water and that "at present the effluent is not discharged anywhere."

5. After the filling of this affidavit, the motion Bench called upon the authority to **"show what amenities have been provided for the existence of the locality."** Ultimately, vide order dated August 1, 1990, the Bench appointed Mr. D.D. Bansal, Advocate as the Local Commissioner to go to Sector 7 and "inspect the place in the presence of the parties of their authorised representatives and to report to the Court about the exact situation and the facilities provided for the proper drainage of storm and sewerage water". The local Commissioner for had to submit his report by August 18, 1990. Along with it, he filed an inspection note given by Mr. T.S. Tuli, Consultant Civil Engineer. He also produced 25 photographs. In a nut shell, he found that "although Sewerage has been provided by the

authorities but the same is not functioning properly and drainage of storm water has not at all been provided to the owners of houses in Sector 7, Urban State, Ambala as rain water was found standing on the roads of the locality." On august 22, 1990, the Bench directed the chief Administrator, HUDA to take notice of the report of the Local Commissioner and report by September 3, 1990 as to what action had been taken to provide all possible civic amenities which a HUDA Colony should have.

6. In pursuance to these directions, Mr. Dhanpat Singh, Administrator, HUDA, submitted a report to the Court regarding the various remedial measures which were taken in pursuance to the report of the local Commissioner. It was mentioned that "a portable Diesel Engine Pumping Set has been arranged and is being utilised for pumping out the standing water collected during rains from the low-lying pickets of this sector viz. roads and parks. A gang of 10 labourers has been provided to drain out rain water from the roads manually where water cannot be pumped out by the diesel pumping set..." Standing water from the parks has been pumped out. Two to four feet width of roads beams on both sides have been cleared to allow free flow of surface water during rains. So, far as providing of storm sewer is concerned, it was mentioned that in the 'cost calculation' of the price of plots in sector 7, Urban Estate, Ambala City, the cost of providing underground storm water had not been included. Therefore, storm water is being drained out through road surface. The use of the water which has gone 'brackish' has been discontinued. In order to overcome the shortage of drinking water, alternative arrangement has been made through the State Public Health Department for the time being.

7. Then, after getting various adjournments for filling a detailed written statement, a short affidavit of Mr. Ranjit Singh, Administrator of the Authority which has not even been attested by an Oath Commissioner or anyone else, was filed. In this affidavit, it was *inter alia* averred that the respondents have carved out 68 plots in Sector 7 which is a low lying area. On sympathetic consideration of the representations, it was decided that alternative plots be allotted to the allottees of this plots in sector 9. The options were invited. Some of the allottees have given only conditional options. As a result, final result could not be taken. It was further averred that the estimate for providing storm water drainage in Sector 7 had been sanctions for Rs. 29.88 lacs. The calculations of amount to be recovered from the allottees were produced as annexure R.1. According to this document, it was found that every allottee was liable to pay Rs. 5.6 7 per square yard to the authority to enable it to provide the drainage facility. The petitioner filed an affidavit pointing out various discrepancies and to show that the respondent - authority had filed to carry out its obligations. The respondent-authority then filed an application under Section 151 to place the relevant facts on record "pertaining to expenses incurred.....on the development of amenities in Sector 7." An effort was made to show that while the plot-holders had paid an amount of Rs. 58 lacs only, the authority had incurred an expenditure of Rs. 117.95 lacks on the development, cost of roads etc. and the provision of public health and other facilities. Along with this application, an affidavit of the Executive Engineer was filed. It was also averred that "there was no understanding given or commitment made that all the facilities indicated in the estimates would be developed except the broad assurance that modern amenities will be provided for the township,

which include provision of roads, electrification, water supply drainage etc. These have been provided by spending money far beyond the amount recovered from the plot-holders." The petitioner filed an reply to this application by way of an affidavit of Mr. Ashok Kumar, the secretary of the Society. It pointed out that the expenditure incurred in connection with the provision of facilities for shopping centre could not be debited to the account of the plot-holders in the residential area and that the claim regarding the provision of facilities was wholly false and baseless. This was followed by an affidavit of the Executive Engineer, Mr. D.K. Soni. In this affidavit, it was *inter alia* averred that the authority had proposed the construction of storm water project for Sector 7 which "envisages open drains on internal roads and underground drains on main roads. If the necessary contribution as stated in the affidavit of Mr. Ranjit Singh, Administrator, Huda dated 18-9-1991 from the residential plot holders, Sector 7 is available, then the necessary works for the storm water drainage would be completed within one year thereafter." It was further averred that "as regards the sewerage facilities necessary underground collecting system as envisaged at the time of original estimates has already been laid down. Unfortunately, because of the non-completion of the-Master Sewerage System for Ambala City, which was to be developed by the Municipal Committee but has not been developed to which the existing Sewerage system of Sector 7 was to be linked. Haryana Urban Development Authority has had to provide alternative arrangement for Sewerage system which includes construction of collecting tank and a pumping station to pump the sewerage water into an open Nala. Technically at this point if time, consideration the location of the Sector 7, there is no possible alternative because Sector 7, is surrounded on the south by Railway track and all other sides by a thick population where there are open drains...There is no technical way by which the disposal of this sewerage underground as in places like Chandigarh can be constructed in the surrounded (sic) area, to which it can be connected. Explanation regarding the financial aspect of the matter has also been given.

8. The petitioner has filed reply even to this affidavit. It has been inter alia averred that the authority had recovered the cost for provision underground storm water drainage at the time of sale of this plots. It did not provide the facility at the relevant time. The escalation in expenditure is only on account of the delay for which the plot-holders cannot be made to pay. Similarly with regard to the sewerage system, it has been averred that at the time of the planning of the Sector, there was no population in the nearby areas and if the authorities had taken adequate steps at the right time, no difficulty would have arisen. The figures as given on behalf of the Authority have also been disputed.

9. These are the pleadings of the parties.

10. Learned counsel for the parties have been heard. Mr. Ashok Agarwal, learned counsel for the petitioner has contended that the respondent-authority is under a statutory obligation to provide all facilities to the plot-holders and that its action in not doing so is arbitrary and unfair. Learned counsel has made repeated reference to the statement showing calculation regarding the computation of sale price of the plots in Urban Estate, Ambala in support of his contention.

11. It is not clear from the various orders passed by different motion Benches as to how this document came on record. However, its authenticity has not been questioned by the counsel for the Authority. It is consequently taken on record as Mark 'A'.

12. On the other hand, Mr. J.K. Sibal, learned counsel appearing for the respondent-authority has submitted that all possible facilities have been adequately provided and that in the circumstances of the case, nothing more can be done. So far as respondent No. 2 viz. the State of Haryana is concerned, it has not even filed a written statement to controvert or answer the averments made by the petitioner.

13. Before considering the respective contentions of the parties, a few provisions relevant for the decision of this case may be noticed. The Legislature had originally promulgated the Punjab Urban Estates (Development and Regulation) Act, 1964. In exercise of the powers conferred under the Act, the rules called 'The Punjab Urban Estate (Sale of Sites) Rules, 1965 had been framed. These rules were adopted by the State of Haryana. Under these rules, the plots could be sold by auction' or 'allotment'. Further more, the sale price could be either 'fixed' or 'tentative'. In case, the price was tentative it could be revised if there was enhancement of compensation by the Court and additional price could be demanded.

14. The 1964 Act was repealed and replaced by the Haryana Urban Development Authority Act (Act No. 13 of 1977). S.58 (the Repeal and Saving provision) of the Act saved not only the acts done or actions taken under the old Act but also any "notification, order, scheme or rule made, granted or issued under" the 1964 Act "so far as it is not inconsistent with the provisions" of the 1977 Act. A few provisions of the 1977 Act deserve to be noticed:- .....

16. A perusal of the above provisions shows that roads, water supply, sewerage, public works, tourist spots, open spaces, parks, landscaping and play fields besides such other conveniences as that State Government may be notification specify, are the amenities contemplated under the Act. Similarly, the Engineering operations include the providing of water supply, drainage and sewerage, etc. Further more, the provision for disposal of land has been made in S.15. Under S.58, the obligations and liabilities incurred by the State Government under the 1964 Act are deemed to have been incurred by the 'Authority'. It is in the background of these provisions that the respective contentions raised by counsel for the parties have to be considered.

17. It deserves notice at the outset that in the advertisement issued by the Director, Urban Estates, Haryana in the year 1973, price ranging from Rs. 31/- per square yard to Rs. 35/per square yard was fixed. It was *inter alia* provided that a person who paid the full price with the application "will be allowed a big concession in the price as well as the facility of choosing his own plot on the spot on the basis of 'First come First Served'." It was also stipulated that the Department was developing "residential areas with all the modern amenities at Ambala." The application had to be submitted upto March 23, 1973. It was in pursuance to this representation made by the Government that the various persons had submitted their application and purchased the plots at the rates fixed by the Government. It is also established on the **record that even though**

the allotment had been made in the years 1973 and 1974, the actual possession was handed over after a lapse of about 7 years, in the year 1980-81. The entire controversy in the present case centres around the question - **What were the modern amenities' promised by the respondents and are the plot-holders liable to pay anything beyond the price which was demanded at the time of the allotment of the plots?**

18. It is in this context that the reference of the learned counsel for the petitioner to the statement at Mark 'A' becomes relevant. This statement may be reproduced in *extenso*. It reads as under:-

> ***"Statement showing calculation regarding the fixation of sale price of the plots or. Urban Estate, Ambala.... When this total cost is spread over the plot-table area of 54 acres, it gives the rate of sale price at Rs. 29.32 per sq. yard."***

19. A perusal of the above statement shows that while working out the cost of plots, **the expenditure on the development of public health works like water supply, sewerage, construction of community buildings and electrification/street lighting etc. had been taken into consideration.** After taking into consideration various items of expenditure, the sale price was fixed at Rs. 29.32 per square yard. In the advertisement, the sale price was shown to be ranging from Rs. 31/- to Rs. 35/- per square yard. A perusal of the document clearly shows that the respondents had fixed the price of the plots after taking into consideration the expenditure on various amenities. Have these been provided?

20. The first two-items of expenditure in the above-noted statement relate to the provision of roads, landscaping, levelling works, public health works like water supply and sewerage etc. It is the petitioner's claim that in spite of the cost having been included in the price of the plots, the facilities have not been provided.

21. In this behalf, **the report of the local Commissioner deserves to be noticed. A perusal thereof shows that rain water was found to be standing almost everywhere. It further appears that at certain points, water had collected to an extent that even the foundation of a house (No. 374-P) was submerged.** In case of certain six marla plots which had been allotted in the year 1973, the possession had not been delivered to the alottees and the area under the plots was "being used by the respondents-authority as Pond for the disposal of rain water." The road between Plot Nos. 251 P-264 P and 265 P-278 P had been constructed but "the entire road was filled with bushes on both sides of the road despite the fact that the plots were sold in the year 1973, the land is being used as Pond for the disposal of rain water." Similarly, the area of certain other plots is submerged in water. Still further it has been reported that there is a sewerage point in the middle of the road in front of House No. 427 P. This road had been dug up by the authority for the purpose of providing a channel for the rain water. Similarly, a sewerage point is available on the main road I front of House Nos. 985 P-995 P which had been used by the respondent-authority for disposal of rain water. It has been observed **that people of the said locality came out of their houses and told him that this act of the**

respondent-authority was dangerous to the residents of the locality. It was also told that a child had fallen in the said pit and was saved with great difficulty. The Local Commissioner also reports that the open space (Park) near House No. 384 is filled with rain water arid lots of snakes were coming out of it. It further appears that one of the areas reserved for a park had been converted into a residence for the executive engineer. It further appears that even the site reserved for a school was found to be full of rain water and shrubs. The road was "in a dirty condition. **In a nut shell, all open spaces were found to be full of water and shrubs leading to unhygienic conditions**. This position is clearly borne out from the photographs as -also the inspection report given by Mr. Tuli.

22. The report of the Local Commissioner thus clearly belies the claim made on behalf of the respondent-authority in the written statement dated March 12, 1990. **It is clear that there is accumulation of water on the roads, in parks and as a result, unhygienic conditions develop in the entire sector during rains. It is also clear from the report that the land wherein plots for construction of residential houses had been carved out, has developed into a pond where sullage is collected.** It has not been shown that adequate arrangements for pumping out the water have been made. In such a situation, unhygienic conditions are bound to exist. **The complaint of the petitioners is thus well-founded and the plea raised on behalf of the respondents cannot be accepted.**

23. A perusal of the record of the case also shows that the cost of public health works for providing water supply and sewerage had been assessed at Rs. 30,07,000/-. Even the cost of constructing community buildings had been assessed at Rs. 8.00 lacs. Neither a proper functioning sewerage nor the community buildings have been provided. The respondents have thus failed to carry out their obligations towards the petitioners. Further more, on account of the faulty planning and execution of works, even the over-land drainage is not satisfactory. Similar is the position with regard to the parks. Instead of providing **open spaces which may act as lungs and provide fresh air to the body of residents, these abound in snakes and threaten the very lives of residents. One of the open spaces has been converted into a residential area and a house for the Executive Engineer has been constructed thereon.** These are the facts on the spot.

24. It is no doubt true that sale and purchase of land or plots are primarily matters of contract. An aggrieved party is normally relegated to its remedy before the civil Court. **However, in a case where a statutory authority is constituted to serve public interest and the law enjoins upon it to provide amenities, the writ court would be failing in its duty if it relegates a party to the long drawn proceedings before a Civil Court**. The importance of protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents and other conveniences or amenities in a development scheme has been emphasised by their Lordships of the Supreme Court in *Bangalore Medical Trust Vs. B.S. Muddappa,* Air 1991 SC 1902: (1991 AIR SCW 2082). **Similarly, the right of "inhabitants of a local city.....whose**

park was converted into a nursing home.....to invoke equity jurisdiction of the High Court" was specifically upheld. It was observed that "in fact, public spirited citizens having faith in rule of law are rendering social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss of injury. Present day development of this branch of jurisprudence is towards free movement both in nature of litigation and approach of the courts. Residents of Locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise..... **Violation of rule of law either by ignoring of affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such consideration."** It was further observed as under at Page 1916 of AIR:

> *"Public Park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier, it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now, it is a, 'gift' from people to themselves. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its moto but eaming is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue' print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the BF Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in a development scheme for public parks and play grounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."*

25. Still further in *Subhash Kumar Vs. State of Bihar* AIR 1991 SC 420: (1991 AIR SCW 121), **"the right of enjoyment of pollution free water and air for full enjoyment of life"**

has been held to be included in Article 21 of the Constitution. It has been held that "if anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

26. In view of the above, it is clear that in a case like the present one, where the residents of the locality have approached this court for compelling the respondent-authority to honour its promise of providing modern amenities, the court cannot deny the relief to the citizens on the basis of any technical objection. This is all the more so as it has been clearly established on the record that the authority has failed to provide proper roads, 'sewerage, community buildings, parks and hygienic conditions. These can hardly be considered to be modern amenities. These are basic for the life and health of the residents of the locality.

27. In the present case, respondents had promised the prospective buyers that modern amenities (sic) 'amenity' *inter alia* includes "road, drainage, sewerage, open spaces, parks, landscaping and play-fields". There was thus an obligation to provide all these amenities. Still further, under Section 15, the authority is competent to dispose of the land without carrying out any development or after such development as it thinks fit. The Statute defines 'development' to include 'Engineering Operations'. This expression has been defined in Section 2(j) to include "laying out of means of access to a road or the laying out of means of water supply, drainage sewerage or....." In the present case, though the plots were transferred in the year 1973, the respondents did not hand over possession for about seven or more years thereafter. Apparently, this time was spent in the development of the area. It is also clear that before fixing the price of the plots, the cost of carrying out of kinds of development works has been worked out and taken into account. The allottees of the plots have paid more than the assessed price and yet they have not been provided most of the amenities which were not only promised but are basic in any civilised society which guarantees rights to life as a fundamental right.

28. The Haryana Urban Development Authority was established "for undertaking urban development". Its inaction in spite of repeated requests from the residents of Sector 7 and failure to provide the promised amenities is not only arbitrary but even wholly illegal. The Authority has failed to carry out its obligations under the Act. It has turned a deaf ear to the loud cries of the residents and shut its eyes to the needs of its customers. In this situation, the Authority may well earn the dubious distinction of being dubbed as the 'Haryana urban Destruction Authority.'

29. It also deserves mention that under Section 30 of the Act, the State Government has been provided with effective control over the Authority. It can issue directions, modify the orders and depute officers to inspect or examine the office of the Authority or its development works and take action on the reports submitted to it. It has thus the power to remedy any injustice. In the present case, the State Government has failed to carry out its functions under Section 30 of the Act. Even when the matter was brought before this Court, the State has maintained a studied silence. It has not even filed a reply to the writ petition. One can only lament this indifference on the part of the State.

30. After taking all the facts into consideration, **it appears that the respondent Authority has not provided the amenities contemplated under the Act. In particular, it has failed to provide the basic amenities like (i) Drainage; (ii) Sewerage; (iii) Adequate potable water; and (iv) parks. All these have resulted in pollution of environment. It must, therefore, provide all these. amenities within one year from the date of the receipt of this order so that the 'right to life' as guaranteed under the Constitution does not become illusory.**

31. Before parting with the judgement, it may be mentioned that the plea raised on behalf - of the respondent-authority that the plot-holders are liable to contribute towards the construction of open and internal drains at the rate of Rs. 5.67 per square yard is untenable. Initially, the expenditure on account of development cost of public health works which includes sewerage as also towards the building and roads works which include levelling etc. was included in the price of the plots. This having been paid, there was no provision for raising any further demand. The price was not tentative. It was full and final. This having been paid, the respondents are bound to provide all the promised amenities.

32. Accordingly, it is held that the respondents are bound to provide all the facilities as mentioned above and till this is done, they cannot be permitted to transfer the ownership of roads, parks and sewerage etc. to the Municipal Committee. Accordingly, the order at annexure P-4 is quashed. The respondents are directed to provide the requisite facilities within one year from the date of receipt of a copy of this order. The petitioner shall also be entitled to its costs which are assessed at Rs. 2000/

Order accordingly.

Law Society of India v. Fertilizers and Chemicals Travancore Ltd.
AIR 1994 Kerala 308
O. P. No. 4635/1989 B, D/-14-2-1994
Varghese Kalliath and K.J. Joseph, JJ.

(A) Evidence Act (1872), S. 45 – Expert opinion – Court not bound to follow it blindly – Expert cannot act as a judge or jury – Final decision is to be made by judge.

(B) Constitution of India, Arts. 21, 51(g) – Right to life – Includes right to environment adequate for human health and well being – Hazardous industry – High potency danger to human life in vicinity involved due to Ammonia Storage Tank – Its decommissioning ordered.

Hazardous industry – Safety of human life is important.

Pollution – Hazardous industry.

Environment – Adequate for human health – Right to – Is included in right to life.

State of Kerala v. Joseph Antony
(1994) 1 Supreme Court Cases 301
P.B. Sawant and R.M. Sahai, JJ.

SAWANT, J.: - The dispute in the present case is essentially between the fishermen in the State of Kerala who use traditional fishing crafts such as catamarans, country crafts and canoes which are manually operated traditional nets and those who use mechanised crafts which mechanically separate sophisticated nets like purse seine, ring seine, pelagic trawl and mid-water trawl gears for fishing in the territorial waters of the State. .....

10. In the present case, we are mainly concerned with the provisions of sub-section (2)(a), (b) and (c) of the said section. In exercise of the powers conferred by Section 4, the Government issued two notifications on November 29, 1980. By one of the notifications, the specified area was defined as the territorial waters of the State while by the other notification (i) fishing by mechanised vessels was prohibited in the territorial waters except for small specified zones, (ii) use of gears like purse seine, ring seine, pelagic trawl and mid-water trawls was prohibited fishing, by way of exemption, in parts of the prohibited area. These notifications were challenged by the operators of the mechanised vessels using purse seine by writ petitions, in the High Court and they were struck down by the High Court in *Babu Joseph Vs. State of Kerala* on the ground that they represented an arbitrary exercise of power under the Act and imposed restrictions on the fundamental rights of the writ petitioners. The Court, however, upheld the validity of the Act which was also challenged in the petition. .....

12. These notifications again came to be challenged before the High Court by the users of purse seine boats and nets, and the High Court by the decision under appeal held that the material on record did not justify the impugned notifications, insofar as they totally prohibited the use of purse seine nets beyond 10 kms from the base line from which the breadth of the territorial sea is measured. The High Court, therefore, declared unenforceable the said notifications so far as they imposed a ban on the use of purse seine net beyond the said 10 kms as being unreasonable restriction on the fundamental right guaranteed under Article 19(1)(g) of the Constitution. The High Court also held that they could be enforced only within the limit of the said 10 kms. Accordingly, the High Court allowed the writ petition to the extent that the notifications operated beyond 10 kms in the territorial waters of the State.

13. It is against this order that the present two appeals are filed – one, i.e., C.A. No. 3531 of 1986, by State of Kerala and the other, i.e., C.A. No. 3532 of 1986 by the original 3rd respondent who is the President of the Kerala Swathanthra Matsya Thozhilai Federation representing the fishermen using the traditional fishing crafts. The grievance of appellants in both the appeals is the same. It is contended that the High Court erred in law in holding that the restriction placed on the users of purse seine boats and nets by the said notifications was unreasonable and, therefore, violative of their fundamental right guaranteed by Article 19(1)(g). It is contended that the High Court has also erred in holding that the old material which was before the High Court when it decided the earlier writ petition, viz., *Babu Joseph Vs. State of Kerala* could not be taken into consideration by the State Government while issuing the present notifications. The High Court, it is

contended, as further erred in its view that no new material was before the State Government while it issued that said notifications sand since the new notifications are based on the same material on which the earlier notifications were based which were struck down by it in *Babu Joseph case* the present notifications were also liable to be struck down on the very said ground.....

30. We are thus more than satisfied that the High Court was not justified in confirming the operation of the said notification only to 10 kms from the base coastal line. In the circumstances, we set aside the impugned decision of the High Court and hold that the two impugned notifications dated November 30, 1984 are valid and operative throughout the territorial waters of the State. The appeals are allowed accordingly with cost.

Consumer Education and Research Centre v. Union of India
AIR 1995 Supreme Court 922
Writ Petition (Civil) No. 206 of 1986, D/-27-1-1995
A. M. Ahmadi, C.J.I., Madan Mohan Janchhi and K. Ramasw Amy, JJ.

(A) Constitution of India, Pre. Arts. 38, 21 - Social Justice - A device to ensure life to be meaningful and livable with human dignity - State obliged to provide to workmen facilities to reach minimum standard of health, economic security and civilized living.

Social Justice - Is a mean to ensure life to be meaningful and liveable.

The preamble and Article 38 of the Constitution of India - the supreme law, envisions social justice as its arch to ensure life to be meaningful and livable with human dignity. The constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are corner stones of social democracy. The concept 'social justice' which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of "justice" in generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, Tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex of social change to relieve the poor etc. from handicaps, penury to ward off distress, and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality which is the legitimate expectations. Social security, just and humane conditions of work and leisure to workman are part of this meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to

them to reach at least minimum standard of health, economic security and civilized living while sharing according to the capacity, social and cultural heritage.

(Para 20)

The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing to secure dignity of their person. The Constitution, therefore, mandates the State of accord justice to all members of the society in all facets of human activity. The concept of social justice imbeds equality to flavour and enliven practical content of 'life'. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

(Para 21)

(B) Constitution of India, Art. 21 - Right to life - Expression 'life' - Does not connote mere animal existence or continued drudgery through life - Includes right to livelihood, better standard of life, hygienic conditions in work place and leisure - Expanded connotation of life would mean tradition and cultural heritage of the persons concerned.

Workman - Hygienic conditions in work place and leisure - Are his fundamental rights -Right to life - Includes hygienic conditions in work place and leisure to workman.

Right to life - Includes traditional and cultural heritage of a person.

(Para 24)

(C) Constitution of India, Arts. 21, 39 (e), 41, 43, 48A - Right to life - Ensures to workman right to health and medical care - All employers are enjoined to take all actions to promote health, strength and vigour of workman during employment and leisure and health even after retirement.

Right of life - Ensures to workman health and medical care.

Workman - Has right to health and medical care - Both during and after service.

Right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39 (e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

(Para 27)

The right to health to a worker is an integral fate of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependants, should not be at the cost of the health and vigour

of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Art. 21 read with Article 39 (e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Art. 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts. 38 and 39 of the Constitution. Facilities for medical care and health against sickness ensure stable manpower for economic development and would generate devotion to duty and dedication to give the workers best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

(Para 26)

In an appropriate case, the Court would give appropriate directions to the employer, be it the State or its undertaking private employer to make the right to life meaningful; to prevent pollution of work place; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by the Supreme Court under Article 32 and Article 142 of the Constitution.

(Para 30)

(D) Constitution of India, Arts. 21, 226, 32 - Fundamental rights - Enforcement and protection - Remedy of award of compensation available under Arts. 226, 32 - Defence of sovereign immunity - Not applicable.

In public law claim for compensation is a remedy available under Article 32 or 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence

issued under the statute or for the enforcement of any right or duty under the constitution of the law.

1983 (3) SCR 508; (1993) 2 SCC 746, Foll.

(Para 31)

(E) Constitution of India, Art. 21 - Occupational diseases - Employer is vicariously liable to pay damages - Workman affected by asbestosis - Death after cessation of employment - Employer liable to pay liquidated damages.

Factories Act (63 of 1948) S. 89, Sch. 1

The employer is vicariously liable to pay damages in case of occupational diseases, here in this case asbestosis. The Employees State Insurance Act and the Workmen's Compensation Act provide for payment of mandatory compensation for the injury or death caused to the workman while in employment. The Act does not provide for payment of compensation after cessation of employment, it therefore becomes, necessary to protect such persons from the respective dates of cessation of their employment. Liquidated damages by way of compensation are accepted principles of compensation. The respective asbestos factories or companies shall be bound to compensate the workmen for the health hazards which are the cause for the disease with which the workmen are suffering from or had suffered pending the writ petitions. Therefore, the factory or establishment shall be responsible to pay liquidated damages to the concerned workmen.

(Paras 31, 32)

(F) Factories Act (63 of 1948), S. 112, 113 - Model Rule 123A - Asbestos industry - Bound by Rules regarding "safety in the use of asbestos" issued by International Labour Organisation.

(Para 32)

(G) Constitution of India, Art. 32 - Asbestos industries - Control of occupational health hazard and diseases to workman - Various directions in that regard issued.

Factories Act (63 of 1948), S. 89.

All the asbestos industries are directed (1) To maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever is later; (2) The Membrane Filter test, to detect asbestos fibre should be adopted by all the factories or establishments as per with the Metalliferrous Mines Regulations, 1961; and Vienna Convention and Rules issued thereunder; (3) All the factories whether covered by the Employees State Insurance Act or Workmen's Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (4) The Union and the State Governments are directed to review the standards of permissible exposure limit value of fiber/cc in tune with the international standards reducing the permissible content as prayed in the writ petition referred to at the beginning. The review shall be continued after every 10 years and also as and when the I.L.O. gives directions in this behalf

consistent with its recommendations or any conventions; (5) The Union and all the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products.

(Para 33)

Cases Referred:	**Chronological Paras**
1993 AIR SCW 863: (1993) 1 SCC 645: AIR 1993 SC 2178	25
1993 AIR SCW 2366: (1993) 2 SCC 746: AIR 1993 SC 1960: 1993 Cri LJ 2899 (Foll.)	31
1992 AIR SCW 202: (1992) 1 SCC 441: 1992 Lab IC 332: AIR 1992 SC 573	25
1992 AIR SCW 1378: (1992) 3 SCC 336	29
1991 AIR SCW 879: (1991) 1 SCC 716	25
AIR 1989 SC 549: 1989 Supp (1) SCC 251	25
AIR 1989 SC 2039: (1989) 4 SCC 286: 1989 All LJ 1111	28
AIR 1988 SC 1037: (1987) 4 SCC 463	28
AIR 1988 SC 1782: 1988 Supp SCC 734	25
AIR 1986 SC 180: (1985) 3 SCC 545	24
AIR 1986 SC 847: (1986) 2 SCC 68	24
AIR 1984 SC 802: (1984) 3 SCC 161: 1984 Lab IC 560	25
AIR 1983 SC 109: (1983) 1 SCC 124: 1983 Lab IC 419	25
AIR 1983 SC 759: (1983) 1 SCR 922: 1983 Cri LJ 1102	28
AIR 1983 SC 1086: (1983) 3 SCR 508: 1983 Cri LJ 1644 (Foll.)	
(1982) 684 Federal 2nd 111	31
Blannie S. Wilson v. Johns Manville Sales Corp. Ltd.	18
AIR 1981 SC 928: (1981) 1 SCC 627: 1981 Cri LJ 470	25
AIR 1978 SC 1514: 1978 Cri LJ 1534	25
AIR 1978 SC 1675: (1978) 4 SCC 494: 1978 Cri LJ 1741(1949)	
93 Law Ed 1282: 337 US 163, William T. Urie v. Guy A. Thompson	25

K. RAMASWAMY, J.: - Occupational accidents and diseases remain the most appalling human tragedy of modern industry and one of its most serious forms of economic waste. Occupational health hazards and diseases to the workmen employed in asbestos industries are of our concern in this writ petition filed under Article 32 of the Constitution by way of public interest litigation at the behest of the petitioner, and accredited organisation. At the inception of filing the writ petition in the year 1986, though it highlighted the lacuna in diverse provisions of law applicable to the asbestos industry, due to orders of this Court passed from time to time, though wide gaps have been bridged by subordinate legislation, yet lot more need to be done. So the petitioner seeks to fill in the yearning gaps and remedial measures for the protection of the health of the workers engaged in mines and asbestos industries with adequate mechanism for and diagnosis and control of the silent killer disease "asbestosis" with amended prayers as under: -

(a) Directions to all the industries and the official respondents to maintain compulsorily and keep preserved health records of each workman for a period

of 40 years from the date of beginning of the employment or 10 years after the cessation of the employment, whichever is later;

(b) To direct all the factories to adopt “THE MEMBERANE FILTER TEST”;

(c) To direct all industries to compulsorily insure the employees working in their respective industries, excluding those already covered by the Employees State Insurance Act and the Workmen Compensation Act so as to entitle the workmen to get adequate compensation for occupational hazards or diseases or death;

(d) To direct the authorities to appoint a committee of experts to determine the standard of permissible exposure limit value or 2 fibre/cc and to reduce to 1-fibre/cc for Crystallite type of asbestos, 0-5-fibre/cc for Amortise type of asbestos and for the time being 0-2-fibre/cc for Crocodile type of asbestos at par with the international standards;

(e) To direct the appropriate Governments to cover the workmen and to extend them Factories Act or by suitable regulatory provisions contained therein to all small scale sectors which are not covered under the Factories Act;

(f) To direct re-examination of such of those persons who are found suffering from Asbestosis by National Institute of Occupational Health but not the E.S.I. hospitals; and in particular the Inspector of factories, Gujarat, be directed to have re-examined all those workmen, examined by ESI by N.G.D.H. and to award compensation; and

(g) To direct the Central Government to appoint a committee to recommend whether dry process can be completely replaced by wet process.

2. It would appear from the record that in Karnataka, Andhra Pradesh and Rajasthan, there exists about thirty mines and the workmen employed therein are about 1061. There are about 74 asbestos industries in nine States, namely Haryana, Delhi, Andhra Pradesh, Karnataka, Rajasthan, Maharashtra, Kerala, Gujarat and Madhya Pradesh. It would also appear that as on August 1986 there are about 11,000 workmen employed in those industries. Basing on Biswas Committee report, the petitioner filed the writ petition. The Central Govt. accepting the said report framed model Rule 123A of Factories Act and on its model relevant laws and Rules were amended and are now brought into force. We are not referring to the findings and recommendations of Biswas Committee as the "Asbestos Convention, 1986" covered the whole ground.

3. In Convention 162 of the International Labour Conference (ILC) held in June, 1986, it had adopted on 24th June, 1986 the Convention called “the Asbestos Convention, 1986”. India is one of the signatories to the Convention and it played a commendable role suggesting suitable amendments in the preparatory conferences. It has come into force from June 16, 1989, after its ratification by the Member-States. Article 2(a) defines "asbestos" to mean the fibrous form of mineral silicates belonging to rock-forming minerals of the serpentine group, i.e. chrysotile (white asbestos), and of the amphibole

group, i.e. actinolite, amortise (brown asbestos, cummingtonite'grunerite), anthophyllite, crocodile (blue asbestos), tremolite, or any mixture containing one or more of these. "Asbestos dust" is defined as "airborne particles of asbestos or settled particles of asbestos" which may become airborne in the working environment. "Restorable asbestos fibre" is defined as a particle of asbestos with a diameter of less than 3 um and of which the length is at least three times the diameter; "Workers" cover all employed persons; "Workplace" covers all places where workers need to be or need to go by reason of their work and which are under the direct or indirect control of the employer.

4. Article 5 (2) provides that "National laws or regulations shall provide for the necessary measures, including appropriate penalties, to ensure effective enforcement of and compliance with the provisions of the Convention." Article 8 provides that "employers and workers or their representatives shall co-operate as closely as possible at all levels in the undertaking in the application of the measures prescribed pursuant to this Convention." Article 9 in Part III prescribes Protective and Preventive Measures, regulating that the national laws or regulations shall provide that exposure to asbestos shall be prevented or controlled by one or more of the following measures-- (a) making work in which exposure to asbestos may occur subject to regulations prescribing adequate engineering controls and work practices, including workplace hygiene; (b) prescribing special rules and procedures including authorisation, for the use of asbestos or of certain types of asbestos or products containing asbestos or for certain work processes." Article 15 postulates that (1) "the competent authority shall prescribe limits for the exposure of workers to asbestos or other exposure criteria for the evaluation of the working environment, (2) the exposure limits or other exposure criteria shall be fixed and periodically reviewed and updated in the light of technological progress and advances in technological and scientific knowledge (emphasis supplied), (3) in all work places where workers are exposed to asbestos, the employer shall take all appropriate measures to prevent or control the release of asbestos, dust into the air, to ensure that the exposure limits or other exposure criteria are complied with and also to reduce exposure as to low a level as is reasonably practicable." Clause (4) provides that on its failure to carry out the above direction to the industry to maintain and replace, as necessary, at no cost to the workers, adequate respiratory protective equipment and special protective clothing as appropriate. Respiratory protective equipment should comply with standards set by the competent authority and be used only as a supplementary, temporary, emergency or exceptional measure and not as an alternative to technical control.

5. Article 16 mandates that "each employer shall be made responsible for the establishment and implementation of practical measures for the prevention and control of the exposure of the workers he employs to asbestos and for their protection against the hazards due to asbestos." (emphasis supplied). Article 17 provides demolition of plants or structures containing friable asbestos insulation etc., the details whereof are not necessary. Article 18 obligates the employer to provide clothing to the workers, maintenance, handling and cleaning thereof etc. etc. Article 19 deals with the disposal of the waste containing asbestos. Part IV consisting of Articles 20 and 21, deals with surveillance of the working environment and workers health. Article 20 (1) provides that "where it is necessary for the protection of the health of workers, the employer shall

measure the concentrations of airborne asbestos dust in work places, and shall monitor the exposure of workers to asbestos at intervals and using methods specified by the competent authority." Sub-Article (2) of Article 20 envisages maintenance of the records:- "the records of the monitoring of the working environment and of the exposure of workers to asbestos shall be kept for a period prescribed by the competent authority" (emphasis supplied). Clause (3) - "the workers concerned, their representatives and the inspection services shall have access to these records." Clause (4) - "the workers or their representatives shall have the right to request the monitoring of the working environment and to appeal to the competent authority concerning the results of the monitoring." Article 21 (1) envisages that "workers who are or have been exposed to asbestos shall be provided in accordance with national law and practice with such medical examinations as are necessary to supervise their health in relation to the occupational hazard, and to diagnose occupational diseases caused by exposure to asbestos." Clause (2) adumbrates that such monitoring shall be free of the charge of the workers and shall take place as far as possible during the working hours. Clause (3) accords to the workers of the right to information, in that behalf, of the results of their medical examination (emphasis supplied) "shall be informed in an adequate and appropriate manner of the results of their medical examinations and receive individual advice concerning their health in relation to their work". Clause (4) is not material for the purpose of this case, hence omitted. Clause (5) postulates that the competent authority shall develop a system of notification of occupational diseases caused by asbestos.

6. Article 22, in part V, relating to information and education is not relevant for the purpose of this case, hence omitted. In Part VI-Final Provisions, Article 24 is relevant for the purpose of this case and Clause (1) thereof states that, "this Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General". The other Articles 23, 25 to 30 are not relevant.

7. International Labour Office, Geneva, has provided the Rules regarding "safety in the use of asbestos." In Rule 1.12 (Possible health consequences of exposure to asbestos dust), it is stated that there are three main health consequences associated with exposure to airborne asbestos- (a) asbestosis: fibrosis (thickening and scarring) of the lung tissue; (b) lung cancer: cancer of the bronchial tubes; (c) mesothelioma: cancer of the pleura or peritoneum. In asbestos workers, other consequences of asbestos exposure can be the development of diffuse pleural thickening and circumscribed pleural plaques that may become calcified. These are regarded as no more than evidence of exposure to asbestos dust. Other types of cancer (e.g. of the gastro-intestinal tract) have been attributed to asbestos exposure though the evidence at present is inconclusive. In Rule 1.3 definitions of asbestos, asbestos dust, restorable asbestos fibres have been defined thus:-

(a) **asbestos** is defined as the fibrous form of mineral silicates belonging to the serpentine and amphibole group of rock-forming minerals, including; actinolite, amortise (brown asbestos, cummingtonite, grunnerite), anthophyllite, chrysolite (white asbestos), crocodile (blue asbestos), tremolite, or any mixture containing one or more of these;

(b) **asbestos dust** is defined as airborne particles of asbestos or settled particles of asbestos which may become airborne in the working environment;

(c) **restorable asbestos** fibre is defined as a particle of asbestos with a diameter of less than 3 um and of which the length is at least three times the diameter;

8. In Chapter 3, Exposure limits have been defined thus:-

3.1.1 The concentrations of airborne asbestos in the working environment should not exceed the exposure limits approved by the competent authority after consultation with recognised scientific bodies and with the most representative organisations of the employers and workers concerned.

3.1.2 The aim of such exposure limits should be to eliminate or to reduce, as far as practicable, hazards to the health of workers exposed to airborne asbestos fibres.

3.1.3. The exposure level of airborne asbestos in the working environment should be established by: (a) by legislation; or (b) by collective agreement or by any other agreements drawn up between employers and workers; or (c) by any other channel approved by the competent authority after consultation with the most representative employers' and workers' organisations.

3.1.4. It provides periodical review in the light of technological progress and advances in technical and medical knowledge concerning the health hazards associated with exposure to asbestos dust and particularly in the light of results of work place monitoring.

9. In Chapter 4, under Monitoring in the workplace, Rule 4.4.4 is relevant for the purpose of this case which adumbrates that the measures of airborne asbestos fibres concentrations in fibres per millilitre in the workplace air should be made by the membrane filter method using phase contrast light microscopy as described in Appendix B of the Rules. All restorable fibres over 5 um in length should be counted by this method. Rule 4.4.5 provides that the measurement of airborne dust concentrations (mg/m3) in the workplace air should be made by gravimetric method as described in Appendix C to the Rules. The mass of the collected total dust should be determined and by analysis the type of asbestos and its mass percentage.

10. Rule 4.5- Monitoring Strategy, and Rule 4.6 Record keeping have been adumbrated as under: -

4.6.1 - Record should be kept by the employer on aspects of asbestos dust exposure. Such records should be clearly marked by date, work area and plant location etc, etc.

11. In **General preventive methods** in Chapter V. Rule 5.2.1. - All appropriate and practicable measures of engineering, work practice and administrative control should be taken to eliminate or to reduce the exposure of workers to asbestos dust in the working environment to the lowest possible level. Rule 5.2.2 provides that "engineering controls should include mechanical handling, ventilation and redesign of the process to eliminate, contain or collect asbestos dust emissions by such means as- (a) process separation,

automation or enclosure: (b) bonding asbestos fibres with other materials to prevent dust generation: (c) general ventilation of the working areas with clean air, etc. etc.

12. Chapter VI deals with personal protection of the respiratory equipment etc., the details whereof are not necessary. Chapter VII deals with the cleaning of the premises of the plant. Detailed instructions as to the manner in which work premises are maintained in a clean state, free of asbestos waste, have been provided and it is not necessary to enumerate all the details. Suffice it to say that every industry shall scrupulously adhere to the instructions contained in Chapter VII and IX. Chapter X deals with the supervisions of the health of workers.

13. Part B deals with control of asbestos exposure in specific activities, mining and milling, asbestos cement, Textiles. In Chapter 15, Encapsulation or removal of friable thermal and acoustic insulation provides the procedure for repairs or removal of asbestos insulations. In Rule 15.10 dry stripping and Rule 15.10.1 provides that dry stripping is associated with very high levels of asbestos dust which should, therefore, be used only (a) where wet methods cannot be used: (b) where live electrical apparatus might be made dangerous by contact with water, (c) where hot metal is to be stripped and the use of water may be damaging. Rules 15.10.2 provides that where dry stripping is employed, as effective a standard of separation as possible should be preserved between the work site and the adjacent areas to prevent the escape of asbestos dust. Rule 15, 10, 3 envisages that all workers within the separated area should be provided with, and should use, suitable respiratory equipment and protective clothing. All other guidelines are not necessary, hence omitted. In Rule 15.11, wet stripping provides procedure thus:-

> "15.11.1. Areas in which wet stripping is being carried out should be separated from other work areas.
>
> 15.11.2. All workers within the separated area should use suitable respiratory protective equipment and protective clothing.
>
> 15.11.3 Electrical equipment in the area should be isolated from the entry of water.
>
> 15.11.4 At the end of the work a competent person should ensure that it is safe for the electrical supply to be restored.
>
> 15.11.5 Before removal is started, care should be taken that the asbestos material is saturated with water. This may be made easier by the addition of a water-wetting agent.
>
> 15.11.6 (1) Where cladding has to be removed, it should first, where practicable, be punctured and the asbestos containing material within the cladding should be thoroughly wetted.
>
> (2) The cladding should then be removed carefully within the enclosure and all surfaces should be vacuumed or sprayed with water.

15.11.7 The water-saturated material should be removed in small sections and placed immediately in labelled containers which should then be sealed.

15.11.8 Any slurry produced should be contained and not discharged into drains without adequate filtration, etc.

14. Rule 15.12 provides stripping by high pressure water jets - the details whereof are not material but suffice it to emphasise that specialised method should be carried out only by trained personnel and all precautions relevant to the operation should be taken. Special safety precautions, including those given in this section of Code are required, since they are very high-pressure spraying or dangerous, displaying at the proper place in addition to other stripping warning notices. Other guidelines are not relevant for the purpose of this case but suffice to state that every industry should adopt adhere to and strictly follow the Rules provided for the safety in the use of asbestos.

15. In the "Encyclopaedia of Occupational Health and Safety." Vol-I, published by International Labour Office, Geneva, the latest 4th Edition, 1991, provides definition of asbestos as has been found hereinbefore and, therefore, it is not necessary to its reiteration. Its Pathology has been stated at page 188 in Vol-I, which is as follows:-

"The retained fibres in the alveolar region are 3 um or less in diameter but may be up to 200 um long. Animal experiments strongly point to the longer fibres, 5 um and over, as being much more fibrogenic than shorter fibres. A proportion of the longer fibres, especially amphiboles, become coated with an iron protein complex producing the drumstick appearance of asbestos bodies. All types of asbestos cause similar fibrosis. The fibrosis starts in the respiratory bronchioles with collections of macrophages containing fibres, and other lying free. These deposits organise, collagen replacing the initial reticulum web. Initially only a few respiratory bronchioles are affected, but the fibrosis spreads centrally to the terminal bronchioles and peripherally to the acinus's. The areas increase in size and coalesce causing diffuse interstitial fibrosis with shrinkage. The process starts in the bases spreading upwards as the disease progresses; in advanced disease the whole lung structure is distorted and replaced by dense fibrosis, cysts, and some areas of emphysema.

The pleura, both visceral and parietal surfaces, are affected by the fibrosis and to a degree which is much greater than in other types of pneumoconiosis. The visceral surface may be scleroses up to 1 cm thick. In the parietal pleura thickening starts as a basket weave pattern of fibroblasts, the sheets of fibrosis lying along the line of the ribs especially in the lower thorax and posterioly. The edges become rolled and created and, after many years, calcified.

The parietal thickening may be extensive and thick with little or no parenchyma fibrosis. The reasons for this are not fully understood but indicate the need to separate, if possible, parietal and visceral pleural thickening in life.

Diagnosis and types:

Table 1 lists the types of fibrosis in the lung caused by asbestos that can be partially or well separated clinically. Recent epidemiological research indicates that asbestosis and pleural plaque may have differing aetiologies, natural histories, and significance in terms of morbidity and mortality.

Table 1. Types of lung fibrosis caused by Asbestos

Parenchyma	
Pleural:	
Visceral: Acute Chronic	Asbestosis
Parietal: Hyaline Calcified	Plural plaques

16. The Asbestosis has been signified at page 188 which is as follows:-

Asbestosis - The signs and symptoms of asbestosis are similar to those caused by other diffuse interstitial fibroses of the lung. Increased breathlessness on exertion is usually the first symptom, sometimes associated with aching or transient sharp pains in the chest. A cough is not usually present except in the late stages when distressing paroxysm occurs. Increased sputum is not present unless there is bronchitis, the result of smoking. The onset of symptoms (except following very heavy exposure) is usually slow and the subject may have forgotten having any contact with asbestos. Persistent dull chest pain and haemoptysis indicate the need to investigate further the diagnosis of bronchial or mesothelial cancer.

The most important physical sign is the presence of high-pitched fine crepitations (crackles) at full inspiration and persisting after coughing. They occur initially in the lower axially and extend more widely later. Agreement between skilled observers on detecting this sign is good but it may vary from day to day in the early stages. It may also be present as an isolated sign in 2-3% of otherwise normal individuals. There are now means of recording this sign on tape. Other sounds - wheezes and rhonchi - are of no help in diagnosis, but indicate associated bronchitis. Clubbing of the fingers and toes was formerly regarded as an important physical sign. There is an impression that it is now less frequently seen. Its severity does not relate well to other aspects of the diagnosis. There is poor agreement between observers except when the clubbing is very pronounced. It is possible that its presence relates to the rapidity of progression of the disease.

The chest radiograph remains the most important single piece of evidence, even though the appearances are similar to other types of interstitial fibrosis. When the radiography is classified by three or more skilled readers using the ILO 1971 scheme independently, it is found that virtually all cases of asbestosis are picked up by one or more of the readers as Category 1/0 or above. The radiographic appearances are well illustrated in the set of standard films of the ILO 1980 Classification of the radiographic appearances of the pneumoconiosis (see PNEUMOCONIONSES, INTERNATIONAL CLASSIFICATION OF). The classification provides a means of recording the continuum from normality to the most advanced stages on a 12

point scale of severity (profusion) and of extent (zones) affected. The earliest changes usually occur at the bases with the appearance of small irregular (liner) opacities superimposed on the normal branching architecture of the lung. As the disease advances the extent increases and the profusion of irregular opacities progressively obscures the normal structures. Shrinkage of the lung occurs, with elevation of the diaphragm. In advanced cases distortion of the lung with cysts (honeycomb lung) and bulge occur. The hilar glands are not enlarged or calcified unless exposure has been to mixtures of siliceous dusts. This may occur, for example, in making asbestos roofing shingles or pressure pipes, and in mining. The small opacities may then be rounded rather than irregular.

The pattern of lung function provides the important third component in diagnosis.

The functional changes are the result of a shrunken and non-homogeneous lung, without obstruction of the larger airways (restrictive syndrome). The total lung volume is reduced and especially the forced vital capacity (FVC), but the ventilator capacity (FEV1.0) is only reduced in proportion to the FVC, so the ratio FEV 1.0/FVC is normal or even raised. The transfer factor carbon monoxide is reduced in later stages, but in the early stage an increase of ventilation on a standard exercise test may be the only alteration indicating impairment of gas exchange. Although the restrictive syndrome is the commonest, pattern (about 40%) in about 10% of cases airway obstructions is the main feature and in the remainder a mixed pattern is seen. This is though to be largely due to the confounding effects of cigarette smoking.

Visceral pleurisy: chronic and acute - This occurs in two forms - chronic and acute.

The former is the commoner and is a usual accompaniment of parenchyma disease, but its severity does not run parallel with the parenchyma disease. The diagnosis is radiographic. In some cases on or both of the costophrenic angels are filled in but the more specific feature is the appearance of well defined shadow running parallel to the line of the lateral chest wall and separated from it by a narrow (1-2 mm) clear zone. This is due to the thickened pleura seen "edge on." It is illustrated in the ILO 1980 standard set of films. The thickening is best seen in the middle and lower third of the lateral chest wall, the apices are usually spared. It is common in those only lightly exposed to find this pleural thickening as the only radiographic feature. It is readily missed when present only over a short length of the wall and if the radiographic technique does not give a clear picture of the periphery of the lung. When the visceral pleura are greatly thickened it causes veiling of the lung field, obscuring both the normal structure and parenchyma changes. This probably the basis of the "shaggy heart" and the "ground glass" appearance described in the early accounts of asbestosis. The wide recognition that small areas of pleural thickening may be the only sign of past exposure to asbestos is recent, and it seems to be a feature of the effects of low exposure to the dust. It is likely to remain an important observation for monitoring exposure to improved conditions in the future.

Acute pleurisy affecting the base and costophrenic angles, with effusions, sometimes bloodstained, is now a recognised sequel to asbestos dust exposure. It is associated

with pain, fever, leucocytosis and a raised blood sedimentation rate. It settles in a few weeks but leaves the costophrenic angles obscured. No precipitating factors have been identified. Its recognition is important. Firstly, the cause may be missed unless an adequate occupational history is taken; secondly not all effusions in asbestos workers signify the onset of an asbestos-related cancer. A few weeks of observation may be necessary to confirm the aetiology.

Summary of diagnosis - The diagnosis of asbestosis therefore depends upon-

(a) a history of significant exposure to asbestos dust rarely starting less than 10 years before examination;
(b) radiological features consistent with basel fibrosis (Category 1/0 and over, ILO 1980);
(c) characteristic bilateral crepitations;
(d) Lung function changes consistent with at least some features of the restrictive syndrome.

Not all the criteria need to be met in all cases but (a) is essential, (b) should be given greater weight than (c) or (d); however, occasionally (c) may be sole sign. Other investigations are not of much help. Asbestos bodies in the sputum indicate past exposure to asbestos but are not diagnostic of asbestosis. Their absence when there is much sputum and marked radiological changes of fibrosis suggest an alternative cause for the fibrosis.

Immunological tests may be positive but do not help in consistent separation of asbestosis from other types of fibrosis. Lung function results must be assessed in relation to appropriate standards allowing for ethnic, sex and age differences and for cigarette smoking.

Asbestos corns on the fingers-area of thickening skin surrounding implanted fibres are now much less common because much of the asbestos fibre is packed mechanically and gloves are worn. Corns do not lead to skin tumours and disappear on removal of the fibres.

17. Pleural plaques and sources of exposure to asbestos have been stated at pages 189-191, thus:-

Pleural plaques-Parietal pleural plaques alone rarely cause symptoms. They may occur alone or with asbestosis. The diagnosis in life is radiological and the appearances are more specific than in the case of parenchyma fibrosis. PA films will detect most cases, but because they are frequently thickest posteriorly their full extent is best seen using oblique views. The ILO 1980 standard films show their appearance and the scheme provides, for the first time, a separation of parietal (circumscribed) and visceral (diffuse) pleural thickening. The plaques lie along the line of the ribs, and when thick cast a well defined shadow over the lung field extending in from the lateral chest wall, where they may also be seen "edge on."

Separation from visceral thickening depends largely on a defined edge to the shadow. Both types may occur together. Dependent mostly on the length of time since first exposure, and age patchy calcification occurs in the edges. This produces a bizarre pattern of dense shadows likened to "glittering candle wax" or a "holly leaf." The onset of calcification reveals many small plaques not previously visible. When calcification occurs in a crater-shaped plaque on the dome of the diaphragm a diagnosis of past exposure to asbestos or related minerals can be made with confidence.

Sources of exposure to asbestos - Formerly it was though easy to establish past exposure to asbestos by inquiry about work in manufacturing plants, or the application of the fibre for insulation. Now it is realised that only the most detailed history of all jobs, residences and occupations of the family will reveal possible exposures to asbestos. The reasons for this change are-

(a) the much wider use of asbestos in thousands of products especially since the Second World War (see ASBESTOS) :

(b) the recognition that significant exposure to asbestos occurred around mines and manufacturing plants in the past:

(c) the discovery of family exposure to the dust brought home on clothing, and also that those working in an area where lagging is in progress may be affected, even though they are engaged in lagging;

(d) the finding that calcified pleural plaques, indistinguishable from those occupationally exposed, also occur in the general population in localised areas in several countries (Finland, Czechoslovakia, Bulgaria, Turkey and others).

With the discovery of such diversity of sources of possible exposure, but virtually no quantitative information about its severity, and few long-term follow up studies of those exposed, it is not surprising that there is controversy about the health hazards. However, some conclusions emerge which must be subject to revision in the future.

(1) Asbestosis is primarily occupational in origin, the result of mining, milling, manufacturing, applying, removing or transporting asbestos fibre. Exposure is much less when the fibre is bound in the product (asbestos cement and asbestos plastic and paper product). Also exposure in the past was much greater than it is today with the use of the best working practices.

(2) Asbestosis may have been caused by home exposure from dusty clothing at a time when there was no dust or hygiene control in the factories.

(3) Asbestosis does not result from the very limited exposure to which the general public is or has been subject, even though asbestos fibbers are detectable in the lungs of a high proportion of adults' industrialised areas. The median numbers of fibres so detectable are two to three orders of magnitude less than that found in those occupationally exposed.

(4) There are and have been important differences between countries in the use of asbestos, so that exposure for the same occupation varies widely. For example, dry wall fillers (sparkling) contain asbestos in the United States but not the United Kingdom; thus standing of internal walls during construction and maintenance is a source of exposure in the former but not in the latter. On the other hand, spraying of crocodile was much more widespread in the 1940s in the United Kingdom than elsewhere.

(5) Pleural plaques can arise at levels of exposure probably much lower than required to produce asbestosis. In addition it is probable that other minerals can cause plaques. For example, among chryosotile miners in Quebec calcified plaques are limited to those who have worked in two out of the eight mines. The minerals causing the plaques in general population have not been fully established. Tremolite, an amphibole often present in deposits of asbestos may be important.

(6) Whether chrysotile and the amphiboles differ in fibrogenicity in man is uncertain, but some evidence indicates that the amphiboles may be more fibrogenic. In animals there is little difference but the amphiboles remain in the lung much longer than the chrysotile.

The relation of asbestosis to dose of dust. In only a few instances are there records of past dust sampling to relate to the prevalence or incidence of asbestosis. But the information has been exhaustively analysed for miners and millers in Quebec, a group of asbestos cement workers in the United States and asbestos textile workers in the United Kingdom, because of its relevance to setting hygiene standards. In North America the dust was measured in millions of particles/ft3, in the United Kingdom in fibres/cm3 the measurement now internationally used. All the data show a clear relation between estimated dose of dust (concentration x time of exposure) and the incidence or severity of disease, but are insufficiently precise to determine whether there is a threshold level below which asbestosis will not occur. A cautious conclusion from the North American studies is that at about 100 million particles/ft3/yr there might be a threshold or that the risk of developing asbestosis would be as low as 1% of men after 40 years exposure could be as high as 1.1 fibres/cm3 or may have to be as low as 0.3 fibres/cm3. More precise information will only become available when the dust sampling introduced widely after the mid-1960s is related to the incidence of disease in the future.

The relation of asbestosis to lung cancer. The important question here is: firstly, is there an excess risk of bronchial cancer only in those who also have some degree of asbestosis? Secondly, if the dust exposures are low enough to eliminate asbestosis, will the excess lung cancer risk also be reduced to and acceptably low level? Neither question can be answered at present, nor so is disagreement likely. It is known that there is a close association between asbestosis and lung cancer, about 50% of those dying from or with asbestosis have a lung cancer at post mortem. Among those knowledgeable about details of the dose-response data there would probably be agreement that dust exposures low enough to eliminate asbestosis will also reduce

the excess bronchial cancer risk to a very low value. This does not extend to the risk to a very low value. This nearly so closely related to that of asbestosis (see ASBESTOS MESOTHELIMO and LUNG CANCER).

PREVENTION -

This depends on successful control of dust exposure and medical surveillance to protect the individual, as far as is possible, and for the detection of health trends in the group.

Engineering control - Replacement of asbestos by other material believed to be safer has been widespread since the mid-1970s. Man-made mineral fibres and other insulating materials are rapidly replacing asbestos for heat insulation. But for other uses, for example, asbestos cement, friction material and some felts and gaskets, substitution is not at present practicable.

Dust control has been gradually improved by partial or complete enclosure of plants and the wide use of well designed local exhaust ventilation. In the textile section a completely new wet process of forming the thread has greatly reduced dust level, previously difficult to control. During maintenance work on old insulation much stricter control of exposures is possible by isolation of the working areas, and by training in the use of good working practices to reduce the dust, for example damping of the insulation before removal, and the use of vacuum cleaning in place of sweeping. But removal of old insulation is likely to remain for many years a major potential source of high exposure (see also DUST CONTROL INDUSTIAL).

Medical surveillance - The insidious onset of asbestosis and the lack of highly specific features indicate the need for well recorded and systematic, initial, and periodic examinations of asbestos workers. This ensures the best chance of detecting the earliest signs. Physical examination of the chest, full-sized, high technical quality chest cardiograph (sic) are the minimum required, the interval will vary from annually up to four times yearly, with more frequent visits when there are clinical reasons. There is increasing evidence that the radiological features of asbestosis are in part cigarette-smoking dependent which requires the recording of smoking histories. This and the multiplicative effects of asbestos dust and cigarette smoking on the risk of bronchial cancer provide the strongest possible grounds for stopping cigarette smoking in those potentially exposed to asbestos. Personal advice on the special dangers of smoking and limiting opportunities for smoking at work is essential steps in prevention. Full personal protective equipment will be required where dust levels cannot be lowered to the hygiene standard. The system of periodic examinations also provides, if properly analysed, essential information about the effectiveness or failure of the engineering control of the dust. Tabulation, by age and years of exposure, of the results of classifying the chest films on the ILO 1980 scheme-preferably by independent readers - gives early evidence of trends in the prevalence of asbestosis. This valuable information will be missed if the group findings are not examined in detail.

Treatment: -

There is no specific treatment for asbestosis. Where the rate of progression appears unusually rapid further special investigations, including lung biopsy, may be justified if it is likely to assist in the differential diagnosis, and influence treatment - for example the use of steroids, but these are not of proved value. The severity of past exposure is the only factor known to influence progression rate. Thus, those with some evidence of asbestosis, if young or middle-aged, should be removed from further exposure. In cases where exposure has not been heavy and asbestosis is only detected late in life, progression may be very slow and the grounds for removal from work with asbestos, under good conditions, are less compelling.

The widespread and often misleading publicity given to the hazards of exposure to asbestos may cause much anxiety to those with asbestosis, both for their own health and for that of their family. Reassurance, and the putting of the likely prognosis in true perspective, is an important part of good treatment. The special risks of continuing cigarette smoking need emphasis. Mesotheliomas are a rare complication in those exposed only to chrysotile.

Compensation:-

The conventions on the awarding of compensation of asbestosis vary in different countries. Unusual breathlessness on exertion, as a cause of disability, may be required, even though it is not essential for a confident diagnosis of asbestosis. Compensation may be limited to those with evidence of parenchyma disease; pleural fibrosis - parietal or visceral - alone may not be accepted. Lung (bronchial) cancer is usually accepted as part of the disease provided there is at least some evidence of parenchyma fibrosis, but may be rejected if there is no radiological evidence of pleural or parenchyma fibrosis. There is plenty of opportunity for disagreement, especially when a factory for uncertainty of prognosis is included. It is now established that asbestos dust alone may cause lung cancer although the absolute risk is very small compared with that from the combined effects of cigarette smoking and asbestos dust. It has not been established that pleural plaques alone result in an increased risk of bronchial or mesothelial tumours, above that for similar exposures to asbestos dust without these pleural changes. The considerable uncertainty about the likely rate of progression of the fibrosis makes assessment on first diagnosis especially difficult. Lung biopsy is not justifiable solely for compensation assessment.

ASBESTOS (mesothelioma and lung cancer):-

While pulmonary fibrosis due to exposure to asbestos (asbestosis) has been known for decades, the first reports of individual cases of asbestosis combined with pulmonary cancer which appeared from time to time in various countries were accepted more as a curiosity. They did not attract much attention until in 1947 a British Chief Inspector of Factories, E.R.A. Merewether reported that lung cancer was found to be the cause of death in 13.2% of persons known to have asbestosis

who had died and been autopsied between 1923 and 1946. A similar high proportion of cancer deaths in asbestosis were found by other pathologists and the probability of a role of asbestos in pulmonary carcinogenesis was definitely established by an epidemiological study by Doll in 1955, and confirmed by further studies.

Soon afterwards a new surprising discovery was made in South Africa. An accumulation of cases of an otherwise very rare tumour of the pleura and peritoneum, the malignant mesothelioma, was reported by Wagner in 1959 and related to exposure to the locally mined type of asbestos, crocodile. Soon afterwards cases were identified in non-mining occupational exposures to asbestos in England, in the United States and elsewhere. In contrast with asbestosis, and in contrast with asbestos related pulmonary cancer, mesothelioma was found also in persons whose exposure was not necessarily occupational.

Bronchogenic carcinoma related to asbestos:-

Bronchogenic carcinoma of the lung. There is a disease very common in the general population. While in many countries the total mortality from cancer slowly declines, the incidence and mortality from lung cancer increases and stands as the most frequent cause of death from cancer, particularly in cigarette smokers. It begins with transformation of the mucous membrane lining the inside of the bronchus at various level and such foci of transformation may remain at their initial spot for some time shedding at times a typical; or metaplastic cells into the sputum without causing other symptoms. This is the period in which we sometimes may succeed in discovering these pre-cancerous, or the earliest cancerous changes by sputum cytology sooner than by other diagnostic methods. Some of such early alterations of cells is reversible and may spontaneously heal when the cause disappears, e.g. when the person stops smoking. When the original focus develops definite cancer cells, the focus begins to grow, to bleed and slowly to obstruct the way, a growing malignant tumour becomes visible on the radiogram, and unless it can be surgically removed as soon as confirmed, it tends to spread through growth and through dissemination by blood and by lymph and to lead eventually to death. Supporting treatment by chemotherapy and radiation successfully prolongs life and radical surgery can provide complete healing.

The various components of the bronchial lining may undergo malignant transformation and consequently the carcinoma may be composed of various cells and have various histological appearances such as adenocar-cinoma or squamous, or oat-cell carcinoma.

There are no histological or other characteristics which would specify the individual lung cancer as cancer caused by asbestos.

In many cases of asbestos-linked pulmonary cancers the lungs also show pulmonary fibrosis asbestosis microscopically, and often macroscopically, and on X-ray examination. Some scientists believe that so-called “asbestos lung cancer” can only develop on a pathologically changed terrain of asbestosis fibrosis. There is evidence

of such a possibility in human pathology; the scar-carcinoma. Others believe that exposure to asbestos alone, particularly in a smoker, may provoke cancerous growth without also causing asbestosis. The decision between the two opinions is difficult to reach because in individual clinical cases of bronchogenic carcinoma we cannot distinguish what is an “asbestos cancer”, a “cigarette cancer” or lung cancer form yet another cause. Thus, in most countries bronchogenic carcinoma is considered an occupational disease due to asbestos, e.g. for workmen’s compensation only in the presence of coexisting asbestosis. If pulmonary fibrosis were a prerequisite for development of asbestos-linked lung cancer, it would follow that lowering exposures to asbestos to levels which effectively prevent asbestosis would automatically eliminate “asbestos lung cancer”.

Epidemiological data:-

In man the link of lung cancer with asbestos has been mainly epidemiological. While asbestosis cannot occur without exposure to asbestos and consequently every case of asbestosis must be linked with such exposure, with pulmonary cancer the situation is quite different. It is a rather common disease in the general population. The link with exposure to asbestos is based on finding whether in those exposed to asbestos lung cancer occurs more frequently than in those unexposed, i.e. whether in those exposed there is an excess incidence of lung cancers.

Since Doll’s study a number of other epidemiological studies, of various levels of excellence, have been carried out which confirm that indeed there is an excess of bronchogenic carcinoma in persons exposed to asbestos, under certain circumstances and thus that asbestos must be considered one of manifest a number of carcinogenic substance.

What are the circumstances of a risk of cancer in asbestos exposure? It has been established that smoking cigarettes greatly increases this risk. In fact the large majority of lung cancers attributed to asbestos exposure have occurred in smokers. A lung cancer in an asbestos-exposed non-smoker has been a rarity. Table 1 shows the effect of both exposures; together while each of the two exposures also carries a risk by itself. A particular exposure to asbestos in the reported group of workers increased the basic risk of pulmonary cancer in non smokers. However, since the risk in non-smokers was very small, its further increase still meant only very few cases if any at all.

Table 1

Asbestos exposure

	Little	Moderate	Heavy
Non-smoker	1.0	2.0	6.9
Moderate smoker	6.3	7.5	12.9
Heavy smoker	11.8	13.3	25.0

From: McDonald, J.C. “Asbestos-related diseases: an epidemiological review” (587-601). Biological effects of mineral fibers. Wagner, J.C. (Ed) IARC scientific publications No. 30 (Lyons, International Agency for Research on Cancer, 1980) Vol. 2)

On the other hand, when the basic risk of exposure to asbestos was combined with the 11.8 times higher risk of a smoker, this combination necessarily produced a serious risk leading to an excess of incidence of pulmonary cancer. This experience has an important practical implication: most “asbestos cancers of the lungs” could be prevented if the worker did not smoke. In fact it was found that the risk for the asbestos workers who had stopped smoking declined after 10 years to the low level existing for non-smokers.

The bronchogenic carcinoma has a long latent period, usually 20 years or more.

Consequently, what excesses of incidence of pulmonary carcinoma linked with asbestos have been found to date must be linked with exposures 20 years or more before development of the tumour. It is known that exposures in those days were generally very high. But we usually do not have any precise measurements. Thus in most existing epidemiological studies it has not been easy, and in some not possible, to establish a relation between the incidence of cancer and a certain quantitative level of exposure, other than that the exposure had been high. (See table on pre. page)

One quantitative measure commonly used is the duration of exposure in years. In other studies the period since first exposure and the duration of exposure. Only a few investigations have had the additional benefit of actually measured data on past levels of exposure. An example of the latter is the series of epidemiological studies of workers of the chrysotile mines of Quebec carried out by J.C. McDonald and his collaborators. This and some other studies showed a dose-response relationship, i.e. the higher was the dose, in terms of level of exposure, or of periods of exposure, or of both of them combined, the higher was the excess incidence of bronchogenic cancer. In fact the excess incidence of lung cancer and statistically significantly increased relative risk was usually found only in groups of persons most severally exposed (see Table 2)

Table 2. Relative risks of lung cancer in relation to accumulated dust or fibre exposure, before and after correction of work histories, with controls matched for smoking.

Accumulated dust exposure (millions of particles per cubic foot x years)					
	<30	30< 300	300 <1000	>1000	All
Before correction					
Cases	89	73	56	27	245

Accumulated dust exposure (millions of particles per cubic foot x years)					
Controls	108	87	42	8	245
Relative risk	1	1.02	1.62	4.10	-
After correction					
Cases	85	73	59	27	244
Controls	101	89	44	10	244
Relative risk	1	0.97	1.59	3.21	-
	Accumulated fibre exposure (fibres per ml x years)				
	<100	100	1000	>3000	All
		<1000	<3000		
After correction					
Cases	86	76	56	26	244
Controls	110	87	35	12	244
Relative risk	1	1.12	2.05	2.77	-

From: McDonald J.C.: Gibbs, G. W., Liddell, F.D.K. "Chrysotile fibre concentration and lung cancer mortality: a preliminary report" (811-817). Biological effects of mineral fibres. Wagner, J.C. (Ed). IARC scientific publication No. 30 (Lyons, International Agency for Research on Cancer, 1980), Vol.

18. In Asbestos Medical and Legal Aspects by Barry I. Castleman at p. 10 had stated that Dr. Merewether following the diagnosis by Homburter in his co-incidence of Primary Carcinoma at the Lungs and Pulmonary Asbestos 1943 stated that fibrosis of the lungs as it occurs among asbestos workers as the slow growth of fibrous tissue (scar tissue) between the air cells of the lungs whenever the inhaled dust comes to rest. While new fibrous tissue is being laid down like a spider's web, that deposited earlier gradually contract. This fibrous tissue is not only useless as a substitute for the air cells, but with continued inhalation of the causative dust, by its invasion of new territory and consolidation of that already occupied, it gradually, and literally strangles the essential tissues of the lungs. In Malignant Mesothelioma in Norway by Gunnar Mowe, 1986 Ed., he stated at p. 8 on Aetiology of malignant mesothelioma that in 1943, Dr. Wedler reviewed malignancies in 30 asbestosis cases in Germany, and suggested a casual association between asbestosis and both bronchial cancer and malignant mesothelioma. At p. 9, he stated that in 1969, Wagner and Berry reported that all the main types of asbestos fibres were capable of producing mesotheliomas in rats after intrapleural or intraperitoneal installation. In the same page in para 2.2, he stated that the importance of asbestos fibre size in explaining the biological effects of asbestos was first emphasised by Timbrell in 1965. At p. 14 in para 3.2, caption-lung fibre burden, he stated that lung fibre burden, which is defined as the total content of mineral fibres in the lungs, depends on external asbestos exposure. At p. 15 in Table 5, Biological effects of natural mineral fibres (asbestos related disease), he stated that long latency time from first exposure until onset of disease is a typical feature of all the asbestos related diseases. At p. 16 in para 3.4 he stated that among 948 patients with malignant mesothelioma, 65% were pleural, 24% peritoneal and 11% pericardial. At p. 21, lung fibre analysis under the caption

material and methods, para 3, he stated that the lung tissue samples for fibre analysis were obtained from twelve pathology departments. The analysis samples from 85 men and 13 women disclosed the malignant mesotheloma. At p. 25 summary of his results of Paper V, he stated that the median latency time from the first year of exposure until death was 35 years (range: 18-53), and the median time interval from last year of exposure until death was 14 years (range: up to 40 years). At p. 32, he stated that the estimated proportion of men with at least possible occupational asbestos exposure were 82%. At p. 40, he stated that strict regulations and effective control of such work are vital in order to prevent asbestos related cancers in the future. At p. 41 in para 4, he stated that high amphibole concentration in lung tissue increases the risk of malignant mesothelioma considerably. Asbestos exposure corresponding to only one million fibres per g. of dried lung tissue is also associated with increased risk. In Blannie S. Wilson v. Johns Manville Sales Corp. Ltd., (1982) 684 Federal 2nd 111, the United States Court of Appeal, District of Columbia Circuit, Ginsburg, J., as a Judge in the Court of Appeal deciding the question of limitation of 3 years from the date of diagnosis of mild asbestos held that the period of 3 years should be computed from the date of discovery and the asbestos, which is not a cancerous process, has a latent period of 10 to 25 years between initial exposure and apparent effect. Even longer periods of time may pass before mesothelioma manifests itself. In William T. Urie v. Guy A. Thompson, 93 L Ed.: 337 US 163, the Supreme Court of the United States of America laid that the limitation of three years prescribed by the statute of limitation starts from the time when the employee discovers the disease and the cause of action accrues only when diagnosis of the disease is accomplished, and not when the employee unwittingly contracts it; nor is each inhalation of silica dust a separate torn giving rise to a fresh cause of action.

19. It would thus be clear that disease occurs wherever the exposure to the toxic or carcinogenic agent occurs, regardless of the country, the type of industry, job title, job assignment, or location of exposure. The disease will follow the trail of the exposure, and extend the chain of carcinogenic risk beyond the workplace. It is the exposure and the nature of that exposure to asbestos that determines the risk and the disease which subsequently result. The development of the carcinogenic risk due to asbestos or any other carcinogenic agent does not require a continuous exposure. The cancer risk does not cease when the exposure to the carcinogenic agent ceases, but rather the individual carries the increased risk for the remaining years of life. The exposure to asbestos and the resultant long tragic chain of adverse medical, legal and societal consequences remind the legal and social responsibility of the employer or the producer not to endanger the workmen or the community of the society. He or it is not absolved of the inherent responsibility to the exposed workmen or the society at large. They have the responsibility, legal, moral and social to provide protective measures to the workmen and to the public or all those who are exposed to the harmful consequences of their products. Mere adoption of regulations for the enforcement has no real meaning and efficacy without the professional, industrial and governmental resources and legal and moral determination to implement such regulations.

20. The preamble and Article 38 of the Constitution of India - the supreme law envisions social justice as its arch to ensure life to be meaningful and liveable with human dignity.

Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. The concept 'social justice' which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of "justice" in generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, Tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of society but is an essential part of complex of social change to relieve the poor etc. from handicaps, penury to ward off distress, and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which are the legitimate expectations. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to them to reach at least minimum standard of health, economic security and civilised living while sharing according to the capacity, social and cultural heritage.

21. In a developing society like ours steeped with unbridgeable and ever widening gaps of inequality in status and of opportunity, law is catalyst, rubicund to the poor etc, to reach the ladder of social justice. Justice K. Subba Rao, the former Chief Justice of this Court, in his "Social Justice and Law" at page 2, had stated that "Social Justice is one of the disciplines of justice and the discipline of justice relates to the society." What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstances. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice imbeds equality to flavour and enliven practical content of 'life'. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

22. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Charter of the United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of the human person envisaged in the directive principles of State policy as part of the Constitution. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21,

enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of person and to live a life with dignity and equality.

23. Article 38 (1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art 46 directs the State to protect the poor from social injustice and all forms of exploitation. Article 39 (e) charges that the policy of the State shall be to secure "the health and strength of the workers". Article 42 mandates that the State shall make provision, statutory or executive "to secure just and humane conditions of work". Article 43 directs that the State shall "endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers". Article 40-A enjoins the State to protect and improve the environment. As human resources are valuable national assets for peace, industrial or material production, national wealth, progress, social stability, descent standard of life of worker is an input. Art. 25 (2) of the universal declaration of human rights ensures right to standard of adequate living for health and well being of the individual including medical care, sickness and disability, Article 2 (b) of the International Convention on Political, Social and Cultural Rights protects the right of worker to enjoy just and favourable conditions of work ensuring safe and healthy working conditions.

24. The expression 'life' assured in Art. 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure. In Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545: (AIR 1986 SC 180), this Court held that no person can live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, 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 of meaningfulness but it would make life impossible to live, leave aside what makes life liveable. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilisation which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In State of H.P. v. Umed Ram Sharma, (1986) 2 SCC 68: (AIR 1986 SC 847), this Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the constitution. Access to road was held to be access to life itself in that state.

25. In Sunil Batra v. Delhi Administration, (1978) 4 SCC 494: (AIR 1978 SC 1675), considering the effect of solitary confinement of a prisoner sentenced to death and the meaning of the word 'life' enshrined under Article 21, the Constitution Bench held that the quality of life covered by Article 21 is something more than the dynamic meaning attached to life and liberty. The same view was reiterated in Board of Trustees of the port of Bombay v. D. R. Nadkarni, (1983) 1 SCC 124 : (AIR 1983 SC 109); Vikram Deo

Singh Tomar v. State of Bihar, (1988) Suppl SCC 734 : (AIR 1988 SC 1782); R . Autyanuprasi v. Union of India, (1989) 1 Suppl (i) SCC 251: (AIR 1989 SC 549). In Charles Sobraj v. Supdt. Central Jail, Tihar, AIR 1978 SC 1514, this Court held that the right to life includes right to human dignity. The right against torture, cruel or unusual punishment or degraded treatment was held to violate the right to life. In Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 at 183-84: (AIR 1984 SC 802 at pp 811-812), this Court held that the right to live with human dignity, enshrined in Article 21, derives its life-breath from the directive principles of the State policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42. In C.E.S.C. Ltd. v. Subhash Chandra Bose, (1992) 1 SCC 441 : (1992 AIR SCW 202), considered the gamut of operational efficacy of Human Rights and the constitutional rights, the right to medical aid and health and held that the right to social justice are fundamental rights. Right to free legal aid to the poor and indigent worker was held to be a fundamental right in Khatri (II) v. State of Bihar, (1981) 1 SCC 627 : (AIR 1981 SC 928). Right to education was held to be a fundamental right vide Maharashtra State B.O.S. & H.S. Education v. K.S. Gandhi, (1991) 2 SCC 716 : (1991 AIR SCW 879), and Unni Krishnan v. State of A.P., (1993) 1 SCC 645 : (1993 AIR SCW 863).

26. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependants should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39 (c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Art. 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts. 38 and 39 of the Constitution. Facilities for medical care and health against sickness ensure stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alter for leading a successful life, economically, socially and

culturally. Medical facilities to protect the health of the workers are therefore, the fundamental and human rights to the workmen.

27. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39 (e), 41, 48A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

28. In M.C. Mehta v. Union of India, (1987) 4 SCC 463 : (AIR 1988 SC 1037), when tanneries were discharging effluents into the river Ganges, this Court, in a public interest litigation, while directing to implement Water (Prevention and Control of Pollution) Act or Environment (Protection) Act, prevented the tanneries etc. by appropriate direction from discharging effluents into the river Ganga, directed establishment of primary treatment plants etc. and such of these industries that did not comply with the directions were ordered to be closed. When ecological balance was getting upset by destroying forest due to working the mines, this Court directed closer of the mines. In Pt. Parmanand Katara v. Union of India, (1989) 4 SCC 286 : (AIR 1989 SC 2039), this Court directed even private doctors or hospitals to extend services to protect the life of the patient, be an innocent or a criminal liable for punishment in accordance with law in National Textile Workers Union v. P. R. Ramakrishnan, (1983) 1 SCR 922 : (AIR 1983 SC 759), the Constitution Bench, per majority, held that the role of a company in modern economy and their increasing impact of individuals and groups through the ramifications of their activities began to be increasingly recognised. The socio-economic objectives set out in Part IV of the Constitution guide and shape the new corporation philosophy. "Today social scientists and thinkers regard a company as a living vital and dynamic social organism with firm and deep rooted affiliation with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders." It was further held that "it is not only the share-holders who have supplied capital who are interested in the enterprise which is being run by a company but the workers who supply labour are also equally, if not, more, interested because what is produced by the enterprise is the result of labour as well as capital. In fact, the owners of capital bear only limited financial risk and otherwise contribute nothing to production while labour contributes a major share of the product. While the former invest only a part of their moneys, the latter invest their sweat and toil, in fact their life itself. The workers, therefore, have a special place in a socialist pattern of society. They are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital may very much more. They supply labour without which capital would be impotent and they, at the least, equal partners with capital in the enterprise. Our Constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the Preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant with meaning and hope for millions of peasants and workers that India shall be a socialist democratic republic where social and economic justice will inform all the institutions of national life and there will be equality of status and opportunity for all the every endeavour shall be made to promote fraternity ensuring the dignity of the individual." In that case, the question was whether the labour is entitled

to be heard before a company is closed and liquidator is appointed. In considering that question vis-a-vis Art. 43-A of the Constitution, this Court, per majority, held that they are entitled to be heard before appointing a liquidator in a winding up proceedings of the company.

29. In Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd., (1992) 3 SCC 336: (1992 AIR SCW 1378), a Bench of three Judges considered the vires of S. 25-N of the Industrial Disputes Act on the anvil of Article 19 (1) (f) of the Constitution. It was held that the right of the Management under Article 19 (1) (f) is subject to the mandates contained in Articles 38, 39-A, 41 and 43. Accordingly, the fundamental right, under Art. 19 (1) (g) was held to be subject to the directive principles and S. 25-N does not suffer from the vice of unconstitutionality.

30. It would thus be clear that in an appropriate case, the Court would give appropriate directions to the employer, be it the State or its undertaking or private employer to make the right to life meaningful; to prevent pollution of work place; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by this Court under Article 32 and Article 142 of the Constitution.

31. Yet another contention of the petitioners is that the workmen affected by asbestosis are suffering from lung cancer and related ailments and they were not properly diagnosed. They be sent to national institute and such of those found suffering from diseases developed due to asbestos, proper compensation be paid. It is needless to reiterate that they need to be re-examined and cause for the disease and the nature of the disease diagnosed. Thereon each one of them whether entitled to damages? The employer is vicariously liable to pay damages is unquestionable. The award of compensation in proceedings under Article 32 or 226 is a remedy available in public law. In Rudual Sah v. State of Bihar, 1983 (3) SCR 508: (AIR 1983 SC 1086), it was held that this Court under Article 32 can grant compensation for the deprivation of personal liberty, though ordinary process of court, may be available to enforce the right and money claim could be granted by this Court. Accordingly compensation was awarded. This view was reiterated in Nilabati Behera v. State of Orissa, (1993) 2 SCC 746: (1993 AIR SCW 2366) and awarded monetary compensation for custodial death lifting the State immunity from the purview of public law. It is, therefore, settled law that in public law claim for compensation is a remedy available under Article 32 or 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law.

32. The Government of India issued model Rule 123-A under the Factories Act for adoption. Under the directions issued by this Court form time to time, all the State Government have by now amended their respective rules and adopted the same as part of it but still there are yawning gaps in their effective implementation in that behalf. It is, therefore, necessary to issue appropriate directions. In the light of the rules "All Safety in the Use of Asbestos" issued by the ILO, the same shall be binding on all the industries. As a fact, the 13th respondent-Ferdo Ltd. admitted in its written submissions that all the major industries in India have formed an association called the "Asbestos Information Centre" (AIC) affiliated to the Asbestos International Association (AIA), London. The AIA has been publishing a code of conduct for its members in accordance with the international practice and all the members of AIC have been following the same. In view of that admission, they are bound by the directions issued by the ILO referred to in the body of the judgement. In that view, it is not necessary to issue any direction to Union or Sate Governments to constitute a committee to convert the dry process of manufacturing into wet process but they are bound by the rules not only specifically referred to in the judgement but all the rules in that behalf in the above ILO rules. The Employees State Insurance Act and the Workmen's Compensation Act provide for payment to mandatory compensation for the injury or death caused to the workman while in employment. Since the Act does not provide for payment of compensation after cessation of employment, it becomes necessary to protect such persons from the respective dates of cessation of their employment till date. Liquidated damages by way of compensation are accepted principles of compensation. In the light of the law above laid down and also on the doctrine of tortuous liability, the respective factories or companies shall be bound to compensate the workmen for the health hazards which is the cause for the disease with which the workmen are suffering from or had suffered pending the writ petitions. Therefore, the factory or establishment shall be responsible to pay liquidated damages to the concerned workmen.

33. The writ petition is therefore, allowed. All the industries are directed (1) To maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment whichever is later; (2) The Membrane Filter test, to detect asbestos fibre should be adopted by all the factories or establishments at par with the Metalliferrous mines Regulations 1961; and Vienna Convention and Rules issued thereunder, (3) All the factories whether covered by the Employees State Insurance Act or Workmen's Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (4) The Union and the State Governments are directed to review the standards of permissible exposure limit value of fibre/cc in tune with the international standards reducing the permissible content as prayed in the writ petition referred to at the beginning. The review shall be continued after every 10 years and also as and when the I.L.O gives directions in this behalf consistent with its recommendations or any Conventions; (5) The Union and all the State Governments are directed to consider inclusion of such of those small scale factory or factories industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products; (6) The appropriate Inspector of Factories in particular of the State of Gujarat, is directed to send all the workers, examined by the concerned ESI hospital, for

re-examination by National Institute of Occupational Health to detect whether all or any of them are suffering from asbestosis. In case of the positive finding that all or any of them are suffering from the occupational health hazards, each such worker shall be entitled to compensation in a sum of rupees one lakh payable by the concerned factory or industry or establishment within a period of three months from the date of certification by the National Institute of Occupational Health.

34. The writ petitions are accordingly allowed. No costs.

Petitions allowed.

Dr. Ajay Singh Rawat v. Union of India
1995 Supreme Court Cases (3) 266
A.M. Amhadi, C.J. and B.L. Hansaria and S.C. Sen, JJ.

HANSARIA, J. - Nainital, a beautiful butterfly, is said to be turning into an ugly caterpillar. According to the petitioner, this is due to: (1) water pollution; (2) air pollution; (3) noise pollution; and (4) "VIP pollution". This has naturally caused concern to all nature lovers and environmentalists, apart from the enlightened residents of Nainital. The concern has been felt to such an extent that a "Save Nainital Workshop" was organised by none else than the Department of Tourism and Environment of the U.P. Government in September 1989. In this workshop many papers were presented on different aspects highlighting sudden rise in vehicular traffic, illegal construction, encroachment and squatting, clustering, noise pollution, vanishing greenery resulting in landslides on Cheena Peak, maintenance of drains and pollution in the lake which has virtually become a dumping ground for rubble and public sewage. Despite organising of such a workshop, nothing much seems to have been done to preserve the pristine beauty of Nainital. Hence, by this petition Dr. Rawat, who is a member of social action group called "Nainital Bachao Samiti", has approached this Court seeking its assistance to pass such orders and give such directions as would prevent further pollution of already suffocating Nainital.

2. The environmental degradation has taken place, *inter* alia, because of increase in pollution, overgrazing, lopping and hacking of oak forests, forest fires, landslides, quarrying etc. The pollution in the lake is because of both inorganic and organic causes. The nearby minerals, namely, manganese, lead salts, copper, cobalt and zinc make the lake toxic for life-forms. The discharge of waste water into the lake is another polluting factor. But the most potent source of pollution is, as mentioned in the booklet "One Hundred and Fifty Years of Nainital", whose co-author is none else than the petitioner (the other author being one Deepak Singhal, who at the relevant time was District Magistrate, Nainital) "human faeces from -leaking, sewers" . The throwing of plastic bags and dumping of other materials have added to the throes of the lake.

The growing traffic, with the growth of the town and big turnout of tourists, has contributed much to the environmental pollution. The increased traffic has in its wake brought noise pollution. The petitioner -has said something about "VIP pollution" also.

3. By an order dated 14-7-1994, this Court had felt it fit, after having gone through the petition, to appoint a Commissioner for local inspection and to give report on the following points:

"(i) Whether construction of building in catchment area of Nainital lake is still going on.

(ii) *Whether Ballia Ravine through which the outflow of the Nainital lake water passes during the rains is in a dilapidated condition and on a fragile base.*

(iii) Whether hill cutting and destruction of forest is going on in catchment area of lake and in Naini Hill especially due to construction of buildings.

(iv) Whether water of lake is being polluted by human waste, horse dung and other wastes.

(v) Whether heavy vehicles ply on the Mall Road, bridle paths on the hill sides and other vehicles ply on Bara Bazar and Talli Tal Bazar. "

4. The District Judge, Nainital, was directed to appoint an advocate of that court as a Commissioner. He appointed Shri P.C. Pande, who submitted his report on 2-9-1994. A perusal of that report shows that on local inspection it was found that the lake has turned dark green with an oily surface and is now full of dirt, human faeces, horse dung, paper-polythene bags and all sorts of other waste. Most of the sewer lines which leak ultimately disgorge the faecal matter into the lake through the drains which open into it. The Commissioner also found that wherever the drains open at the shores of the lake, big heaps of rubble used in construction of the buildings are collected and these materials ultimately settle down on the shores of the lake thereby reducing the length, depth and width of the lake, besides polluting the water to a great extent. It has been mentioned in the report that ecologists feel that if nothing was done to prevent this siltation then the lake will dry up.

5. On the five questions required to be examined by the Commissioner, which has been noted above, his findings are as below:

(i) Construction of buildings is going on unathorisedly and in a big way. The Commissioner has mentioned above illegal construction of office even by Kumaon Mandal Vikas Nigam of the State Government and Lake Development Authority, which constructed several triple-storied fiats which have been declared as dangerous.

(ii) The Ballia Ravine was found to be in a very dilapidated condition. The importance of the Ravine from ecological point of view is that the overflow of the water from the lake passes through it. But the revetment walls of the Nala have either given way or cracked at several places because of which the water seeps in the rocky wall endangering its existence. The point where Ballia Nala enters Ballia Ravine was found to be in shambles, as large cracks had developed owing to landslides and continuous soil erosion. In the year 1989 there was a big landslide causing death of 28 persons. The main cause of the

landslides has been attributed to the blasting and felling of trees which was done to construct a motorable road. Plying of heavy vehicles is said to be endangering the fragile hill slopes.

(iii) Hill-cutting and destruction of forests have been confirmed. The collusion of Forest Department officers has been mentioned as one of the causes of the illegal felling of trees. It has been stated that the forest offence is compoundable and the maximum compounding penalty is Rs. 5000, whereas the approximate value of the illegally cut trees varies between Rs. 10,000 and Rs. 25,000, of the tree after payment of the penalty, this has increased tree felling.

(iv) The lake water was found of human waste and horse dung and other wastes, as already noted. The horse-stand having been allowed to be erected near the lake and trotting around the lake being permissible, the report states horse dung in abundance enters and reaches the lake. The tourists who enjoy boating in the lake throw left over edibles and polythene-bags in the lake.

(v) The report states about plying of heavy vehicles like buses on the Mall Road and the bridge paths. They also enter Malli Tal and Talli Tal Bazars.

6. The Commissioner has made certain recommendations, of which the following deserve to be noted:

(i) Group housing and commercial complexes should be banned absolutely with immediate effect. Only small houses in flat areas, where there is no hill-cutting or felling of trees, should be allowed for residential purposes.

(ii) Heavy vehicles must be banned on the Mall Road and bridle paths.

(iii) Immediate steps must be taken on a war footing to stabilise the Ballia Ravine and Ballia Nala.

(iv) The lake must be cleaned and prevented from further pollution, for which purposes drains entering the lake must be maintained and the horses must not be permitted to go around the lake.

(v) Felling of trees should be made a cognisable offence.

(vi) Vehicular traffic on the mall has to be reduced. Heavy vehicles may not be permitted to ply on the mall.

7. We have duly considered the findings of the Commissioner and his recommendations. According to us, there cannot be two opinions about some preventive and remedial measures to be taken on war footing, as any delay would cause further degradation and complicate the matters. In our considered view, the following steps deserve to be taken urgently:

(i) Sewage water has to be prevented at any cost from entering the lake.

(ii) So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent siltation of the lake.

(iii) Care has been taken to see that horse dung does not reach the lake. It for this purpose the horse-stand has to be shifted somewhere, the same would be done. The authorities would examine whether trotting of horses the lake is also required to be prevented.

(iv) Multi-storeyed group housing and commercial complexes have to be banned in the town area of Nainital. Building of small residential houses on flat areas could, however, be permitted.

(v) The offence of illegal felling of trees is required to be made cognisable.

(vii) The fragile nature of Ballia Ravine has to be taken care of. The cracks in the revetment of Ballia Nala have to be repaired urgently.

8. We do hope that all concerned would take concerted steps. For this purpose, a monitoring -committee, with one highly placed official of each of the authorities/department concerned, may be constituted. Two or three leading men of the public having interest in the matter, like the petitioner, may be co-opted in the Committee. The Committee may hold its meeting, to start with every month, and then every two months.

9. The petition is disposed of with the aforesaid directions and observations.

10. We pat with the hope that the butterfly would regain its beauty and would attract tourists not only in present but in future as well, which would happen if the beauty would remain unsoiled. Given the will, it is not a difficult task to be achieved; the way would lay itself out. Let all concerned try and try hard. Today is the time to act; tomorrow may be late.

M/s. Narula Dyeing & Printing Works v. Union of India
AIR 1995 Gujarat 185
Special Civil Applications Nos. 12136, 12357 and 12165 of 1994, D/-10-1-1995
R. K. Abichandani, J.

(A) Water (Prevention and Control of Pollution) Act (1974), S. 25 - Establishment of industry - Industry likely to discharge trade effluent into stream - Conditional consent granted by State Board - Non compliance of condition - Consent would lapse.

A mere consent order issued by the State Board under S. 25(2) does not entitle the applicant to comply with the conditions mentioned in the consent order, as also to put up the effluent treatment plants within the time prescribed in the consent order. Failure to

comply with the requirement of putting up effluent treatment plant results in lapse of the consent.

(Para 13)

(B) Constitution of India, Arts. 226 and 227 - Jurisdiction under – Scope -Water Pollution by industry - Industry effluent exceeding tolerance limit - Opinion formed by water pollution Board - Based on analysis report - cannot be interfered with.

Water (Prevention and Control of Pollution) Act (1974), S. 25.

(Para 21)

(C) Environment (Protection) Act, (1986), S. 5 - Powers of Central Govt. under - Exercise of - Guidelines for - It has to be drawn from nature of power conferred and nature of function of Central Govt.

(Para 22)

(D) Environment Protection Act (1986), S.5 - Environment Protection Rules (1986), R.4 (5) - Direction to close industry - Dispensation of opportunity of hearing – Validity - Industry discharging effluent into irrigation canal causing damage to crops and fertile land - Direction not vitiated.

Constitution of India, Art. 14.

If the State Government become aware of its duties and take action for preventing further damage to the crops and the agriculture lands, because of the discharge of effluent into irrigation canal by an industry, it cannot be said that there is no justification for the State Govt. to direct closure of the industry because such action was not taken earlier. The gravity of the situation in the present case was in the extent of damage which was resulting due to discharge of such effluent. The Government is fully empowered to dispense with the opportunity being given for filing objections against the proposed directions in such cases of grave injury to the environment. The provisions of R. 4(5) are intended to safeguard the environment from any grave injury to it.

(Para 23)

ORDER:- In this group of matters, the petitioners- Industrial units have challenged the action of the State Government taken under S.5 of the Environment (Protection) Act, 1986 (hereinafter referred to as "the said Act"), giving directions to them to stop production activities and take necessary steps to make the waste water being discharged by the units to conform to the standards specified by the Gujarat Pollution Control Board and not to restart the production activities without the permission of the State Government and Forest and Environment Department. The directions were issued by the Forest and Environment Department of the Government to these three industrial units under the impugned orders dt. 19th October, 1994.

2. The petitioner in Special Civil Application No. 12136/94 is a partnership firm carrying on business in textile processing and having its unit in the G.I.D.C. Estate zone at Handa, Ahmedabad. The said petitioner had applied for consent of the Gujarat Pollution Control Board (hereinafter referred to as the State Board) under S. 25(2) of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Water Act"). A consent letter was issued in its favour on 26th Nov. 1981 by the State Board as per Annexure "B" to the petition. According to this petitioner, it had constructed "water treatment plant" which was functional. It is contended that, however, the drainage provided by the G.I.D.C was not of sufficient capacity and due to overflow, the water discharged by other factories entered the premises of the factory of this petitioner. This petitioner had filed a suit being Civil Suit No. 5391/ 93 in the City Civil Court at Ahmedabad. On receiving a notice from the G.I.D.C. that action would be taken for disconnecting the water supply. The said suit is pending. According to the petitioner, samples were taken by the State Board for analysis of the effluent and a report dt. 13th Oct. 1993 of the State Board showed PH factor at 6.06 which was within the tolerance limits. It is contended that no notice was issued to the petitioner before making the impugned order dt. 19th Oct. 1994 . It is also contended that the action was taken by on the basis of letter dt. 10th Oct., 1994 of the State Board, a copy of which was not supplied to the petitioner.

3. In Special Civil Application No. 12357/ 94, the petitioner Company is engaged in the manufacture of dye intermediates and has its factory in the G.I.D.C. Estate, Vatva, Ahmedabad. According to this petitioner, it had installed a primary effluent plant which was working satisfactorily. However, the State of Gujarat issued order dt. 19th Oct, 1994 directing the petitioner company to stop its production activities to take all necessary steps to make the waste water being discharged by the company to conform to the standards specified by the State Board and not to restart production without prior permission of the State. It is contended that this order has been made without giving opportunity of being heard to the petitioner. It is also contended that the powers were exercised by the State Government under the provisions of S.5 of the said Act read with R. 4(5) of the Rules framed thereunder, though these powers are vested in the Central Government and it was not shown whether they were delegated to the State Government.

4. In Special Civil Application No. 12165/ 94, the petitioner private limited company carries on business of processing manmade fibre at the G.I.D.C. Estate, Vatva, Ahmedabad. According to this petitioner, officers of the State Government inspected the factory of the petitioner on 13th Sept. 1994 and the sample of water was collected for analysis. A report was made on 27th Sept. 1994 showing that the trade effluent discharged by the petitioner's factory did not conform to the standard prescribed by the respondent. It is contended that it had installed machinery and plant for the purpose of purifying the trade effluent. After the plant was constructed, it collapsed when it was started. This happened on account of very poor quality of work done by the contractor. It is further

contended that during the monsoon season of 1994 there were unprecedented heavy rains in the city of Ahmedabad and, therefore, until the sub-soil water receded. it was not possible to reconstruct the effluent treatment plant. The petitioner thereafter received the impugned order dt. 19th Oct. 1994 directing to the stop the manufacturing activities and to take necessary precaution for discharge of waste water. According to the petitioner, it is ready and willing to comply with all the norms, but requires four months time to make the effluent plant functional again.

5. In all these cases, directions have been issued under S.5 of the Act in view of the fact that the discharge of trade effluents and polluted waste water entered the Khari-cut Canal and polluted the underground strata resulting in damage to the crops and to the fertile lands in Kheda District. It is recorded in the impugned orders that the State Government had received many complaints regarding damage to the crop and the land due to such discharge of effluent. In case of all these petitioners, it was stated in the orders issued on them that they were not operating any effluent treatment plant and were discharging their effluents without treatment.

6. It has been contended by the learned counsel appearing for the petitioners in these three matters that the impugned action of giving directions under S.5 of the Act has been taken without giving any opportunity of being heard to these petitioners. It was contended that the State Government could not have dispensed with the hearing before issuing the impugned order. It was also contended that the PH factor was within the tolerance limit.

7. On behalf of the State Government and other respondents, it was contended that these units were not having an operative effluent treatment plant and that they had not abided by the terms of the consent letters given by the State Board under S.25 (2) of the Water Act. The petitioner's had not fulfilled the conditions of the consent letters. In the affidavits-in-reply filed on behalf of the respondents, it is stated that these petitioners were discharging polluted waste water without treatment and this resulted in an extensive damage to the crops and fertile lands in Hatar Taluka of Kheda District. Taking into account the extensive damage which was resulting due to the discharge of untreated effluents by these petitioners and other similar industrial units, closure orders were issued under S.5 of the said Act against as many as thirteen units which admittedly were discharging untreated effluents in the Khari-cut Canal. It has been stated that having taken into consideration the various aspects of the matter and after satisfying itself about the urgency, the impugned action was taken by the authority by dispensing with the issuance of notice of hearing as provided under R.4 (5) of the Rules framed under the said Act. After considering several representations received by the Department as well as by the Hon'ble Chief Minister, from agriculturists, farmers and other citizens, the impugned action was taken against these industrial units.

8. In case of the petitioner in Special Civil Application No. 12136/94, it has been stated that though consent was granted by the State Board with condition to provide effluent treatment plant within six months, it was found that the industry was discharging effluent not conforming to the standards and, therefore, three complaints were filed under the provisions of the Water Act on 4-1-1988, 19-1-1988 and 10-11-1989. It is also stated that

inspection of the said industry was also carried on, on 27-5-1990, 23-5- 1991, 14-5-1992 and 19-7-1993 and it was found that the industry was not operating effluent treatment plant and was discharging effluents not conforming to the standards. Based on the inspection reports on 3-9-1993 the Board requested G.I.D.C. to disconnect the water supply of this industry. Again on 22-1-1993 and 18-1-1994 this industry was required to upgrade effluent treatment plant and to submit a time bound programme in respect thereof. On 29-7-1994 the State Board carried out inspection of this industry and found that the effluent was being by passed and the effluent treatment plant was not being operated.

9. In Special Civil Application No. 12357/ 94, it has been brought on record that the petitioner unit was operating without having taking consent of the State Board and it was engaged in manufacture of reactive turquoise blue. In July 1979 it was issued notice under the Water Act for operating an out-let for the discharge of the effluent without obtaining consent of the Board. In Aug., 1979 it applied for the consent and in Oct., 1980 result in inspection of samples showed highly acidic effluent being discharged. In 1981 the said petitioner was directed to provide effluent treatment plant. In Aug., 1981 the State Board granted consent with conditions to provide effluent treatment plant within six months. In 1982-83, the inspection of this industry showed that it had stopped production of reactive turquoise blue and had started manufacture of lubricating oil without obtaining consent of the State Board. In 1983, this industry applied for consent for the manufacture of sulpho phenyl carboxyl pyrazolone, but the State Board rejected the application for consent on the ground that the conditions of the earlier consent order of 1981 were not complied with. In 1986-87, the State board found that the industry was discharging acidic effluent. In July 1987, case was filed against this petitioner for violation of the provisions of Water Act. In Sept., 1994 inspection of this industry revealed that effluent treatment plant had collapsed and was not in use.

10. In Special Civil Application No. 12165/94 it is brought on record by an affidavit-in-reply filed on behalf of the State that this petitioner who had obtained consent of the State Board in Oct., 1981 with a condition to provide effluent treatment plant within six months had not put up the plant and was, therefore, required to be issued a show cause notice by the Board in 1983. Thereafter in 1984, the industry had provided some effluent treatment plant but it was required by the Board to operate the same efficiently to treat the effluent to (sic) specified by the State Board. In 1985, this industry was directly to upgrade the effluent treatment plant as it was found that it did not conform to the standards prescribed. In 1991, the Board on inspection found that this industry was discharging acidic effluent. In November 1990 a complaint was filed against this industry by the State Board under the provisions of the Water Act for violation of the conditions of the consent order. In June 1993, on inspection the State Board found that the industry was discharging effluent. In Feb./March 1994, the State Board again found that the said industry was discharging acidic effluent and therefore the State Board refused to give consent under S. 25 (2) of the Water Act.

11. It has been also brought on record that based on the representations received by the Hon'ble Chief Minister regarding problem of water pollution due to discharge of effluent

of G.I.D.C. Estate at Naroda, Odhav and Vatva into river Khari, a meeting was arranged with the Hon'ble Chief Minister and it was decided to take strict action against units which were causing pollution. The State Board was asked to submit the list of defaulting industries and the State Board on 10th Oct., 1994 identified thirteen units which were causing such pollution and on the basis of material placed before the authority, action was taken under S. 5 of the said Act by issuing orders on these units on 19th Oct., 1994.

12. The facts which have been brought on record by the State Government are also reflected from the original files which were shown in the Court. A copy of the Letter of the State Board written on 10th Oct., 1994 was supplied to the learned counsel appearing for these petitioners. Since the State Government had taken up a plea that notice was dispensed with in view of the urgency, it appeared to this Court that it was necessary to ascertain whether there was relevant material on record before the concerned authority which could warrant issuance of the impugned orders without giving notice to the concerned party. The State of Gujarat was therefore directed on 8-12-1994 to file separate affidavits in each of these writ petitions showing material on the basis of which it had passed the impugned orders. Accordingly the aforesaid material was placed on the record of this case and there has not been any dispute as to its authenticity.

13. Section 25 of the Water Act prescribes restrictions on new out-lets and new discharges. It inter alia provides that no person shall, without the previous consent of the State Board, establish any industry or process which is likely to discharge sewerage or trade effluent into the stream or well or sewer or on land. The consent of the State Board can be obtained by an application made under S. 25(2) of the Water Act. Under sub-sec. (4) of Section 25 the State Board may grant its consent subject to conditions as it may impose. The State Board may impose conditions including conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the premises from which the discharge is to be made. In the consent orders issued by the State Board the tolerance limits of the effluent were indicated and they constituted conditions for granting consent. The consent letters which were issued by the State Board have been placed on record along with the affidavit-in-reply filed by the State Government. These units were required to observe the tolerance limits and for that purpose they were required to put up the treatment plants which could achieve the quality of the effluent according to the tolerance limits. One of the conditions of the consent letters issued by the State Board to these units was that the consent granted shall lapse after the expiry of time limit prescribed in paragraph 3(i)(c) thereof in which it was provided that all units of the treatment plant required to achieve the quality of the effluent according to the tolerance limits prescribed in the consent letter, shall be completed within six months from the date of consent order. In Clause 7 of the consent order, it was provided that if the applicant fails to comply with the conditions and other directives issued by the State Board as laid down in the consent order within the prescribed time limit, the applicant would be liable for prosecution under Ss.43 and 44 of the Water Act. Thus, a mere consent order issued by the State Board under S. 25(2) did not entitle the application to discharge trade effluents and it was incumbent upon the applicants to comply with the conditions mentioned in the consent order, as also to put up the effluent treatment plants within the time prescribed in the consent order. Failure of complying with the

requirement of putting up effluent treatment plant resulted in lapse of the consent. Therefore, mere fact that consent orders were obtained by the petitioners cannot insulate them against the requirement of putting up the effluent treatment plants and complying with the standards of tolerance limits prescribed.

14. During the course of hearing of these petitions, it was demonstrated that certain characteristics of the trade effluent exceeded the tolerance limits in case of the discharge of effluents affected by these petitioners in the Khari-Cut Canal.

15. Rule 3 of the Environmental (Protection) Rules, 1986 provides for standards for emission or discharge of environmental pollutants and these are specified in the schedule. On behalf of the petitioners of Special Civil Application Nos. 12136/94 and 12165/94 who were running textile industry, their counsel referred to item 6 of Schedule I under R. 3 of the said Rules, which reads as under:

.....
.....

Sr. No.	Industry	Parameter	Standards
6.	Cotton textile industries (composite and processing)		Concentration not to exceed Milligram per litre (except for PH and bio-assay)
		Common PH Suspended solids Bio - chemical oxygen demand, 5-day 20 degree C.	 5.5 to 9 100 150
		Oil and grease Bio- assay test Special: Total chromium (as Cr) Sulphide (as S) Phenelic compounds (as C6 H5 OH)	10 90% survival of fish after 96 hrs. 2 2 5

16. For the petitioner of Special Civil Application No. 12357/94 which deals business of dye-intermediates, its Counsel relied upon item No. 8 of the said schedule which reads as under:-

.....

Sr. No.	Industry	Parameter	Standards
8.		Dye and Dye inter mediate industries	Concentration not to exceed milligrams per Litres (except for Ph. temperature and bio-assay)
		Suspended Solids PH Temperature	100 6 to 8.5 shall not exceed 5 degree C. above the ambient temperature of receiving body.
		Mercury (as Hg) Hexavalent (as Cr) Chromium Total Chromium (as Cr.) Copper (as Cu) Zinc (as Zn) Nickel (as Ni) Cadmium (as Cd) Chloride (as Cl) Sulphate (as SO4) Phenolic compounds (as C6 H5 OH) Oil and Grease Bio-assay Test (with 1:8 dilution of effluents)	0.01 0.1 2.0 3.0 5.0 3.0 2.0 1000 1000 1.0 1.0 90% survival of test animals after 96 hrs.

The standards of chlorides and sulphates are applicable for discharge into inland and surface watercourses. However, when discharge on land for irrigation, the limit for chloride shall not be more than 600 milligrams per litre and the sodium absorption ratio shall not exceed 26.

17. In Special Civil Application No. 12136/ 94, the analysis report dt. 31st July 1993 showed excess of total suspended solids, which were 295 as against the prescribed 100. It also showed excess over tolerance limits in case of Bio- chemical Oxygen demand which was 206 as against the prescribed 150 in the scheduled item and 30 in the consent letter

of the Board, the Chemical Oxygen demand was 520 which was in excess of the tolerance limit of 250 prescribed in the consent order of the Board. Similarly, the analysis report dt. 13th October, 1993 showed suspended solids at 526 as against 100, dissolved solids at 3823 against the tolerance limit of 2500 and the bio- chemical oxygen demand 1622 as against 30 prescribed in the consent order. The analysis report dt 29th July, 1994 also showed excess of suspended solids which was 204 and excess of biochemical oxygen which was 196. The chemical oxygen demand was 5.15 as against the prescribed tolerance limit of 250 in the consent letter of the State Board.

18. In Special Civil Application No. 12165/ 94 the analysis report dt. 27th Sept., 1994 showed that the sample which was collected on 13th Sept., 1994 showed excess of biochemical oxygen demand, the result showing 250 as against the prescribed 30 in the consent order. The chemical oxygen demand was 607 as against the prescribed tolerance limit of 250. The oil and grease was 30 as against the tolerance limit of 10.

19. In Civil Application No. 12357/94, the inspection report under Section 23 of the Water Act made on 26-9-1994 showed that waste water was discharged in the G.I.D.C. drain without any treatment and this unit had not taken consent from the State Board. It also showed that there was no provision for compositing the final effluent immediately before discharging it.

20. In the letter dt. October 10, 1994 of the State Board to the Government, there is reference to the discussion which took place in the meeting convened by the Hon'ble the Chief Minister on Oct., 3, 1994 and the subsequent discussion which took place in the chamber of the Secretary to the Government, Forest and Environment Department on 4th Oct, 1994 and in the context a list of industries which were defaulters was submitted. At item 5 was Messrs. Caffil Pvt. Ltd. (petitioner of Spl. C.A. No. 12357/ 94). The Board has remarked that during recent inspection it was observed that the effluent treatment plant of this petitioner was not being operated and the untreated effluent was being by passed. At item No. 7 of this letter, the name of Messrs. Narula Dyeing and Printing Works (petitioner of Spl. C. A. No. 12136/ 94) is mentioned and the remark of the State Board is that during the inspection it was found that effluent treatment plant was not being operated and the untreated effluent was being by passed. As regards Messrs Jyoti Processors (petitioner of Spl. C. A. No. 12165/ 94) referred to at item No.10 of the letter, the Board has remarked that the primary effluent treatment plant provided by the industry was found in a broken condition and it was not functioning and the waste water was discharged without any treatment.

21. The object of referring to the above materiel is to indicate that their was material on record before the competent authority along with the letter of the Board dated 10-10-1994 to show that these petitioners were discharging effluents without 4 proper treatment plant. The State Board is a specialized agency created under the Water Act and when on the basis of the analysis report and other reports it opines that there is no requisite effluent treatment plant put up or that the tolerance limits are exceeded, ordinarily this Court will not sit in appeal over it's views. The material disclosed shows that the State Government had a valid reason to take action to prevent these units from discharging the trade

effluents in the Khari-Cut Canal. It is not disputed that Khari-cut Canal provides for irrigation to vast areas in Kheda District.

22. The Environmental (Protection) Act, 1986 was enacted with a view to provide for the protection and improvement of environment and for matters connected therewith. India had participated in the decisions taken at United Nations Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. For implementing these decisions in so far as they related to protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and properties, the said Act was enacted. An urgent need was felt for the enactment of a general legislation on Environmental protection, which should enable inter alia speedy response in the event of accidents threatening environment. The fundamental directive of State Policy enshrined under Art.48A of the Constitution of India enjoined a duty on the State to protect and improve the environment and to safeguard the forests and the wildlife of the country. The fundamental duties of every citizen enumerated in Art. 51A of the Constitution includes duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Keeping these laudable objects in view. Section 5 of the Act provides as under: -

> "5. Power to give directions:-
>
> Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.
>
> Explanation:- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-
>
> (a) the closure, prohibition or regulation or any industry, operation or process; or
>
> (b) stoppage or regulation of the supply of electricity or water or any other service."

The power under section 5 is to be exercised by the Central Government and the directions issued thereunder are required to be complied with by the person, officer or authority on whom they are issued. Such directions are required to be issued subject to the provisions of the said Act and in exercise of the powers and performance of the functions of the Central Government under the Act. Therefore, the guidelines for exercise of power under the said provision of issuing directions are to be drawn from the nature of powers conferred on the Central Government and the nature of it's functions as prescribed under the Act. Under section 6 of the said Act, Central Government is empowered to make Rules in respect of all or any of the matters referred to in S.3. Section 3 provides for power of the Central Government to take measures to protect and improve environment. The Central Government has power to take measures as it deems necessary or expedient for the purpose of protecting and improving the quality of

environment and preventing, controlling and abating environmental pollution and this power includes taking up measures for laying down standards for emission or discharge of environmental pollutants from various sources whatsoever. In the process, it may lay down different standards for emission or discharge from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources. Section 23 of the said Act confers power on the Central Government to delegate its functions and accordingly, the Central Government may by notification in the official gazette, delegate subject to conditions and limitations as may be specified in the notification its power and functions under the Act as it may deem necessary or expedient to an officer, State Government or other authority except the power to constitute an authority and the power to make Rules. The powers vested in the Central Government under S.5 of the said Act have been delegated to the State of Gujarat by Notification dt. 10th Feb., 1988 issued by the Government of India, Ministry of Environment and Forests, Department of Environment, Forests and Wild Life issued under the signature of the then Secretary to Government of India Mr. T.N. Seshan. The Notification was published in Gazette of India, Extraordinary Part II, Section 3, sub-section (ii). In view of this notification issued in exercise of powers conferred under S. 23 of the said Act delegating the powers vested in the Central Government under Section 5 of the said Act to the State Government the contention of the petitioners that the impugned orders are issued by the State Government under S.5 without the authority of law has no substance.

23. Rule 4 of the Rules framed under the said Act has a bearing on the directions issued under S.5 of the said Act. The directions issued under S.5 are required to be in writing as provided under R. 4(1). By R.4 (3-a), a copy of the proposed direction is required to be served on the concerned person who is to be given opportunity of not less than 15 days from the date of service of a notice to file objections, if any, to the issue of the proposed direction. The Central Government is required to consider these objections and for reasons to be recorded, confirm, modify or decide not to issue the proposed direction as provided in R. 4(4). Then comes the material sub-rule 4(5) on which reliance is placed by the State Government for justifying the issuance of directions without affording an opportunity to file objections. Rule 4(5) reads as follows:-

> "4(5). In a case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity."

The requirement of giving opportunity to file objections against the proposed directions which can be issued under S. 5 of the Act can be dispensed with only when the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment, it is not expedient to provide such opportunity. As noted above, the powers

of the Central Government have been delegated to the State by Notification dt. 10-2-1988. The State Government in its deliberations on 3rd and 4th Oct., 1994 took into account the gravity of the situation and it was decided to issue directions as are contained in the impugned orders dt. 19th Oct., 1994 directing closure of these units. It was decided to take action without giving any show cause notice under R. 4(5) of the said Rules in view of the grave and serious pollution caused to the irrigation canal because of discharge of effluent by thirteen industries which had caused severe damage to the crops and fertile land and environment at large. The material on record clearly shows that the State Government was of the opinion that grave injury was being caused by discharge of such effluent into the irrigation canal resulting in severe damage to crops and fertile lands. The biochemical oxygen demand tests applied to these petitioners showed that the tolerance limits were exceeded. The Biochemical oxygen demand test is widely used to determine the pollutional strength of domestic and industrial wastes in terms of oxygen that they will require if discharged into natural water courses in which aerobic conditions exist. The test is one of the most important in stream-pollution-control activities. Similarly, chemical oxygen demand test is widely used for measuring pollutional strength of domestic and industrial wastes. This test allows measurement of waste in terms of the total quantity of oxygen required for oxidation to carbon-dioxide and water. The trade effluents which contained various characteristics in excess of tolerance limits would undoubtedly ruin the fertility of the soil of which they come to be released. The release of such trade effluents in Khari-cut canal which is meant for irrigation of lands obviously would result in damage to the crops and the fields to which the polluted water was being carried. When applied to a plant - soil system, oils and grease constituent of industrial wastes can affect seed germination or crop growth and yield. (See Design of Land Treatment Systems for Industrial Waste: Theory and Practice by Michasel Ray Overcash and Dhilaj Pal, 1979 Edition at page 200). There were several complaints received by the Hon'ble Chief Minister and the concerned Department regarding the pollution caused due to release of untreated effluents in river Khari. This naturally called for immediate action, and the record shows that urgent action was overdue. Therefore, if the State Government became suddenly aware of its' duties and took action for preventing further damage to the crops and the agricultural lands, it cannot be said that there was justification for such action because it was not taken earlier. The gravity of the situation was in the extent of damage which was resulting due to discharge of such effluents. The Government was fully empowered to dispense with the opportunity being given for filling objections against the proposed direction in such cases of grave injury to the environment. The provisions of R.4(5) are intended to safeguard the environment from any grave injury to it and in the present case it has been amply borne out that the release of the effluents by the petitioner units was resulting in pollution of the irrigation canal causing vast damage to the crops and the agricultural fields. This fact has been recorded in writing in the impugned orders dt. 19th October 1994. The petitioners did not operate effluent treatment to plant and could not be allowed to release untreated effluents resulting in damage to the

fertile lands of Kheda District. The State Government was, therefore, fully justified in proceeding under R.4(5) of the said Rule while exercising its delegated powers for issuing direction under S.5 of the Act as in the impugned orders. These petitions are therefore without any substance and are rejected. Rule discharged in each of these matters with no order as to costs. Ad-interim stay granted in each petition stands vacated.

At this stage there is a request by the learned counsel appearing for the petitioners to extend the stay for a period of four weeks. Having regard to the nature of the proceedings and the magnitude of harm that would be caused to the environment if stay is extended, this request is rejected.

Petitions dismissed.

Pyarelal v. The State (Delhi Administration)

Air 1995 Supreme Court 1159
Criminal Appeal No. 622 of 1988, D/-18-1-1995
M. M. Punchhi and K. Jayachandra Reddy, JJ.

(A) Wild Life (Protection) Act (53 of 1972), Ss. 44, 49 - Conviction under - Wild Life Inspector on information conducting search of premises of accused and found lion shaped trophies of chinkara skin meant for sale - Evidence establishing that accused was found in possession of trophies - Conviction, proper.

(Para 3)

(B) Wild Life (Protection) Act (53 of 1972), S. 51 – Sentence - Accused convicted for possession of trophies of chinkara skin without license - No evidence whatsoever when accused came into possession - Proviso to S. 51 providing minimum sentence of six months' imprisonment, not attracted - Accused already in jail for about tow months - Sentence of imprisonment of six months' - Sentence of imprisonment of six months' R.I. reduced to period already undergone.

(Paras 3, 4)

JUDGEMENT: - The appellant who has been found guilty under Section 51 of the Wild Life (Protection) Act, 1972 was owner of M/s. Haryana Novelty Emporium, Delhi. On 1-9-1979, the Wild Life Inspector, PW-1 on information conducted a search of the premises and found lion shaped trophies of Chinkara skins meant for sale. A complaint was lodged stating that the provision of Sections 44 and 49 punishable under Section 51 have been contravened. Plea of the accused has been that those trophies were made out of goat skin, after being painted and that the skins were not that of wild animals mentioned in the Schedule of the Act.

2. The trial Court accepted the prosecution case mainly relying on the evidence of PW-1, and convicted the appellant and sentenced him to undergo 6 months' R.I. and to pay a

fine to Rs. 50/- (sic) in default to undergo 2 months', R. I. His appeal and further revision were dismissed. Hence the present appeal.

3. From the above stated facts, it can be seen that the contravention is that of provisions of Section 44 and 49 of the Act. The evidence of PW-1 establishes that the appellant was found in possession of trophies. Section 44 prohibits any dealing in such trophies without a licence and Section 49 of the Act lays down that no person shall purchase, receive or acquire any captive animal, wild animal other than vermin or any animal article, trophy, uncured trophy, or meat derived therefrom otherwise than from a dealer or from a person authorized to sell or otherwise transfer the same under this Act. PW-1 is an experienced and specially trained officer. His evidence thus establishes that the accused was in possession of those trophies and all the Courts below have accepted the same.

4. Now coming to the sentence, we are of the view that only the first part of sub-section (1) of Section 51 is attracted and not the proviso. There is no evidence whatsoever when the accused came into possession. No doubt it was for the accused to have given an explanation, but what is clear from the evidence is that there is only a contravention, namely that a declaration as required under Section 40 was not made and that the act of dealing in the trophies by the appellant was without a license. Under these special facts and circumstances obtaining in the case, the minimum sentence of 6 months as provided under the proviso is not attracted. It is stated that the appellant has been in jail for about 2 months. We think that the ends of justice will be met if the sentence of imprisonment is reduced to the period already undergone. His sentence of fine and default clause shall however remain as it was. The appeal is allowed subject to the modification of sentence.

Order accordingly.

Virender Gaur v. State of Haryana
1995(2) Supreme Court Cases 577
K. Ramaswamy and N. Venkatachala. JJ.

... 10. ...This Court held that the scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from ill effects or urbanisation.

..... this Court further held that **the reservation of open spaces for parks and playgrounds are universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.**

... 11. ....The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any others purpose.

Yashwant Trimbak Oke v. State of Maharashtra
Writ Petition No. 1732 of 1995
M. B. Shah, C.J. & J.N. Patel, J.

In this Public Interest Litigation the State Government has taken out this notice of motion for permitting it to grant permission to various applicants for holding Navratri festival with the use of loudspeakers in greater Mumbai from 13th to 21st October 1996 upto 1:00 a.m. It is pointed out that the authorities of State Government under the Rules called "the Rules for Licensing, Controlling and Prohibiting the use of Loudspeaker in or near all public entertainment place in Greater Bombay Rule, 1994" empowers them to grant exemption in certain cases....

7. It should not be forgotten that Environment (Protection) Act, 1986 enacted by Parliament and the Rules framed thereunder are meant for enforcement and are nor for their violation. It is the duty of the State Government to enforce it rigourously and not to find out excuses for not implementing it. Effective control of noise disturbance is for the well being of the society. The adverse effect of noise pollutin is now scientifically examined and is well known as it adversely affects the health of the citizens.

8. While dealing with a similar application during the Ganesh festival, we have rejected ti by our order dated 10th September, 1996 by observing that religious ceremony nowhere provides that on religious festival days loudspeaker is a must without which festivals cannot be observed. For us, it would be difficult to distinguish Ganesh festival from Navratri festival.

In any case, there is no question or granting any permission by us or putting an imprint or seal to do something which is in violation of the Environment Act and the Rule. It is for the State Government to implement the said Act and the Rules and prohibit certain activities which adversely affect the lives of persons who cannot oppose the noise pollution for various restraints. **It is the duty of the State Government not to encourage the activities which will lead to violation of law.**

9. Hence, the State Government would take appropriate steps to control noise pollution created by loudspeakers during these festivals and protect the silent sufferers, may be students, old, infirm or others not interested. It is for the State to implement the law as it is.

B.L. Wadhera v. Union of India
(1996) 2 Supreme Court Cases 594
Kuldip Singh and S. Saghir Ahmad, JJ.

KULDIP SINGH, J. - Historic city of Delhi - the capital of India - is one of the most polluted cities in the world. The authorities, responsible for pollution control and environment protection, has not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more Delhities are suffering from respiratory diseases and throat infections. River Yamuna - the main source of drinking water supply - is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. The Municipal Corporation of Delhi (the MCD) constituted under the Delhi Municipal Act, 1957 (Delhi Act) and the New Delhi Municipal Council (the NDMC) constituted under the New Delhi Municipal Council Act, 1994 (New Delhi Act) are wholly remiss in the discharge of their duties under law.....

2. In this petition under Article 32 of the Constitution of India, the petitioner - an advocate of this Court - has sought directions to the MCD and the NDMC to perform their statutory duties in particular the collection, removal and disposal of garbage and other waste.

3. This Court on 16-12-1994 passed the following order in the writ petition:

> *"We direct the Municipal Corporation of Delhi, Delhi Administration and Delhi Development Authority to place on record the list of all garbage dumping places and city garbage collection centres within six weeks from today. It shall also be stated as to what steps are being taken by these Authorities to keep these places clean and tidy. These Authorities shall also consider the possibility of making it mandatory that the garbage etc. should be dumped at these places in plastic/jute bags to be supplied by the Corporation at subsidised rates."*

4. Mr. H.K. Handa, Executive Engineer, MCD, filed a short affidavit dated 30-1-1995 indicating that three statutory bodies function within their respective territories in the Union Territory of Delhi, covering following areas:

(1) Municipal Corporation of Delhi	1399.26 Sq. Km.
(2) New Delhi Municipal Committee	42.40 Sq. Km.
(3) Delhi Cantonment Board	40.80 Sq. Km.
	1484.46 Sq. Km.

5. At present about 4000 metric tons (MT) of garbage is collected daily by the MCD. The disposal of the garbage is done mainly by "Land Fill Method". It is stated in the affidavit that at present the total number of garbage collection centres are 1804 (337 dhalaos, 1284 dustbins, 176 open sites and 7 steelbins). The garbage collection trucks collect the garbage from the collection centres and take it to the nearest Sanitary Land Fill (SLF). 19

hospitals, 156 dispensaries, 160 maternity and child welfare centres, 5 primary health centres and 14 clinics are functioning under the control of MCD. Except RBTB Hospital, no other hospital etc. has installed incinerator to burn the hospital waste. It is highlighted in the affidavit that about 45% of the total population of Delhi is living in slums, unauthorised colonies and clusters. There are about 4,80,000 jhuggies in Delhi. According to a rough estimate about 6 persons stay in each jhuggi. They throw their garbage on the road or nearby dustbins.

6. Mr. S.C. Kumar, Executive Engineer has filed further affidavit dated 13-7-1995 on behalf of the MCD. The collection and disposal of the garbage is done by the "Solid Waste Department" of the MCD ... .

8. Mr. Kumar has further stated in his affidavit that composting is one of the solutions for disposal of garbage and getting soil conditioner through the process. According to him the MCD compost plant at Okhla had to be closed few years back since its running was not financially viable.

There is a proposal to revive the same. The Jagmohan Committee has recommended for installation of 4 additional compost plants in Delhi. Regarding privatisation, it is stated as under:

> *"As an effort to explore the alternative method, privatisation of sanitation work is also being considered to be adopted on trial basis. However final decision in this regard is yet to be taken."*

9. It is stated in the affidavit that orders for purchase of 200 trucks have been placed with M/s Ordnance Factory, Jabalpur. Tenders for purchase of 35 suction machines, 50 front-end-loaders have been received and are under process. It is stated that 11 more bulldozers are required. It is further stated that 4 compactors of different capacities, 4 Nos. of poclain on chain/tyre and some more tipper trucks are required.

10. Medical Officer of Health has filed affidavit dated 12-5-1995 on behalf of NDMC. Regarding "door to door garbage collection" the affidavit indicates as under:

> *"NDMC has introduced a scheme of door to door collection of garbage on experimental basis in few colonies. Under this scheme, introduced on 1-5-1994, NDMC is supplying 25 polythene garbage bags of 19" x 25" capable of holding about 10-12 kgs per month at the subsidised price of Rs. 15 per house per month in the following areas:*
>
> 1. North Avenue
> 2. South Avenue
> 3. D-I and D-II flats, Vinay Marg
> 4. C-I and C-II flats, Tilak Marg
> 5. Delhi Administration flats, Bhagwan Das Road
> 6. Pandara Road and Pandara Park
> 7. Ravinder Nagar and Bharti Nagar

The said garbage bags are collected on daily basis by our staff deployed and then deposited in the nearby dustbins for the purpose for further transporting them by our staff to the dumping ground maintained by Municipal Corporation of Delhi. It is stated that not more than 40% of the residents under the scheme avail the benefit of the scheme. It is specifically stated that NDMC does not have any dumping ground within its jurisdiction."

11. It is stated in the affidavit that average of 300-350 tons of garbage is generated everyday in the NDMC area. For the purpose of collection and disposal of garbage the area is divided into 13 parts (circles). There are 49 jhuggi-jhompri clusters having 12,500 jhuggies in the NDMC area. There are 944 garbage collecting places (550 trollies and 394 dustbins). The task is undertaken by a fleet of 1423 permanent Safai Karamcharis, 600 Muster Roll workers and 149 part-time Safai Karamcharis.

12. This Court on 15-9-1995 passed the following order:

".....It cannot be disputed that the collection and disposal of garbage in the city of Delhi is causing serious problem. Statutory authorities like MCD and NDMC have been created to control this problem. It is not for this Court to keep on monitoring these problems. The officers who are manning these institutions must realise their responsibilities and show the end result....."

13. Pursuant to the above-quoted order, Commander Mukesh Paul, Medical Officer of Health, NDMC has filed an affidavit dated 10-10-1995. It is stated in the affidavit that lack of civic sense, lack of dustbins, absenteeism among the staff, logistics problems, multiplicity of authorities, disposal of household garbage by the servants, problems of jhuggi-jhompri clusters, floating population and for various other reasons, it is not possible to give the time schedule regarding the cleaning of Delhi as directed by this Court. Various steps taken by the NDMC to improve sanitation/ garbage disposal have also been indicated. An additional affidavit filed by Shri Anshu Prakash on behalf of NDMC indicates that the following measures for speedy removal of garbage and for maintenance of effective sanitation have been undertaken:

(a) Strengthening of Safai Karmachari workforce.
(b) Lifting and removal of garbage
(c) Regular inspection by Nodal Officers
(d) Manning of Dhalaos
(e) Door to door collection and NGO participation.

14. Mr. C.P. Gupta filed affidavit dated 17-10-1995 on behalf of MCD wherein he stated as under:

"It is, therefore, submitted that no specific date for making Delhi 'absolutely garbage free' every morning can be given at this stage. Nevertheless, the endeavours of MCD would be to achieve the spirit of the orders passed by this Hon'ble Court."

15. Under Secretary, Ministry of Health, Government of India in his affidavit has stated that Safdarjung Hospital, Ram Manohar Lohia Hospital and Sucheta Kripalani Hospital are under the control and supervision of the Ministry of Health, Government of India. Safdarjung Hospital has installed incinerator with waste disposal capacity of 230 kgs per hour. The said hospital generates about 2000-2500 kgs of waste everyday. It is stated that the incinerator functions in two shifts for 10 hours for 7 days a week. It is not clear from the affidavit whether the incinerator is in working condition or out of order. The affidavit states that three vertical type incinerators have also been installed by the Safdarjung Hospital. Incinerators have not been installed in the other hospitals. It is stated that proposal to install incinerators in RML Hospital and Lady Hardinge Medical College is under consideration.

16. According to the affidavit filed by Mrs. Satbir Silas, Joint Secretary (Medical and Public Health), Government of National Capital Territory of Delhi, there are 13 hospitals which are functioning under the control of the said Government. Lok Nayak Jayaprakash Narayan Hospital has no incinerator of its own. It is using the incinerator located in G.B. Pant Hospital. There is an incinerator in Guru Tegh Bahadur Hospital with capacity of 125 kgs per hour. The incinerator is not enough to burn the entire hospital waste. It is stated that a second incinerator at the cost of Rs. 44 lakhs is likely to be installed. Deen Dayal Upadhyay Hospital has installed an incinerator with capacity of burning 85 kgs of waste per hour. It is stated that the incinerator is meeting the need of the hospital. G.B. Pant Hospital has two incinerators with capacity of 60 kgs each. There are no incinerators in Civil Hospital, Nehru Memorial Medical College, Guru Nanak Eye Centre, Lal Bahadur Shastri Hospital, Rao Tula Ram Memorial Hospital and Dr. N.C. Joshi Memorial Hospital. The three remaining hospitals, namely, Babu Jagjivan Ram Memorial Hospital, Sanjay Gandhi Memorial Hospital and Maulana Azad Medical College have installed incinerators.

17. Mr. C.P. Gupta has filed further affidavit (second) dated 6-11-1995 on behalf of MCD wherein it is stated that on experimental basis, initially MCD proposes to introduce the scheme of supplying plastic bags to the residents of Janakpuri, Shalimar Bagh, Jangpura Extension, Preet Vihar, Sarita Vihar, Derawal Nagar and Jain Colony. It is stated by the learned counsel appearing for the MCD that the administration is more than willing to take up the challenge of cleaning the city in the right earnest.

18. The NDMC has also filed a proposed scheme which is in the following terms:

> *"That the NDMC as per the directions of this Hon'ble Court intends to improve sanitation in a stepwise manner. Step I shall comprise of sweeping the roads/ streets, collection of garbage and its storage at designated and identified places. Step II shall comprise of lifting of the garbage and its transportation to the MCD dumping site at Gazipur. NDMC is also utilising part of its garbage and horticulture waste for conversion into manure at the compost plant at Okh1a.*
>
> *Regarding Step I, as directed by the Hon'ble Court, the NDMC has selected for intensive sanitation the following compact area consisting of the area around*

Parliament/Supreme Court, Central Vista Lawns and Circle No. 6 starting from the entire Rajpath up to National Stadium, Hexagon Road, Sher Shah Road cutting the Mathura Road upto Subramaniam Bharti Marg upto South End Road, Aurangzeb Road, Motilal Nehru Marg including Maulana Azad Road, Sunehri Masjid. On the other hand, site from National Stadium to part of C-Hexagon, Central Vista Lawn and also two important markets, i.e., Connaught Place and Sarojini Nagar located in NDMC area. Besides the important buildings as mentioned above, there are 1076 houses in Pandara Road and Pandara Park including MS flats. Ravinder Nagar has got 124 flats. Bapa Nagar has got 102 flats. Rest big bungalows are there. Circle No. 6 also includes the JJ clusters at Humayun Road and Darbhanga House and also the Khan Market, Lok Nayak Bhawan, Pandara Road Market, Prithvi Raj Market.....

It is proposed to deploy the workforce in night shift also for effective garbage removal in the area. Each and every household will be given polythene bag for garbage collection and each household will be expected to place the bags filled with garbage at designated collection points. In JJ clusters, the garbage will be collected at collection points designated for this purpose. It may not be feasible to give polythene bags for each jhuggi. Additional collection points will be made wherever necessary to suit the convenience of the public. All the collection points in the aforesaid areas will be effectively supervised by NDMC staff to ensure that garbage is not littered around the collection points.

Initially the polythene bags will be given free of cost to the residents of aforesaid areas for one month by NDMC on experimental basis. Thereafter the supply of bags at subsidised cost may also be considered by the NDMC. NDMC has started door to door collection of garbage in polythene bags supplied by NDMC in certain colonies in the aforesaid areas. It will be gradually extended to other colonies also in consultation with the resident associations. The NDMC will also make efforts to find out if any better alternative to the polythene bags could be provided for this purpose. Other State Governments, Ministry of Environment, etc. will be contacted in this regard."

19. It would be useful to mention that the MCD has a very large force of Karamcharis working for it. There are 38,311 Safai Karamcharis. The MCD has more than 1400 Sanitary Inspectors and other officials in that category. The total area which the MCD is supposed to keep clean and tidy is 1399.26 sq. km. The simple arithmetic shows that there are 27 Safai Karamcharis and one Sanitary Inspector for one sq. km. of area. We are of the view that with such a large manpower at its disposal there can be no excuse with the MCD for not controlling the disposal of garbage and keeping the city clean. The NDMC is still in a better position. It has 2172 Safai Karamcharis and the area under its control of 42.40 sq. km. which means that it has 50 Karamcharis to man one sq. km. There is no reason whatsoever why with such a huge manpower at their command the MCD and NDMC cannot present a neat and clean Delhi to its residents.

20. The MCD and NDMC have already started door to door collection of garbage on experimental basis. It is stated that polythene bags are also being distributed in the

selected areas. We make it clear that the modalities in our interim orders from time to time have been in the nature of suggestions. We, however, reiterate that the MCD and the NDMC must keep the city clean by deploying all the means at their disposal. We are issuing binding directions in this respect in the operative part of the judgment.

21. It would be useful at this stage to examine the relevant provisions of the Delhi Act.

"42. Obligatory functions of the Corporation - Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent on the Corporation to make adequate provisions by any means or measures which it may lawfully use or take, for each of the following matters, namely:

(a) the construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences;
* * *

(c) the scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters;
* * *

(e) the reclamation of unhealthy localities, the removal of noxious vegetation and generally the abatement of all nuisances;
* * *

(o) the lighting watering and cleansing of public streets and other public places;
* * *

(t) the laying out or the maintenance of public parks, gardens or recreation grounds;
* * *

(wa) the preparation of plans for economic development and social justice.....

353. Duty of owners and occupiers to collect and deposit rubbish, etc. - It shall be the duty of the owners and occupiers of all premises -

(a) to have the premises swept and cleaned;

(b) to cause all filth, rubbish and other polluted and obnoxious matter to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice prescribes, in public receptacles, depots or places provided or appointed under Section 352 for the temporary deposit or final disposal thereof,

(c) to provide receptacles of the type and in the manner prescribed by the Commissioner for the collection therein of all filth, rubbish and other polluted and obnoxious matter from such premises and to keep such receptacles in good condition and repair.

354. Collection and removal of filth and polluted matter. - It shall be the duty of the owner and occupier of every premises situated in any portion of Delhi in which there is not a latrine, or urinal connected by a drain with a municipal drain, to

cause all filth and polluted and obnoxious matter accumulating upon such premises to be collected and removed to the nearest receptacle or depot provided for this purpose under Section 352 at such times, in such vehicle or vessel by such route and with such precautions as the Commissioner may by public notice prescribe.

357. Prohibition against accumulation of rubbish, etc. - No owner or occupier of any premises shall keep or allow to be kept for more than twenty-four hours or otherwise than in a receptacle approved by the Commissioner, any rubbish, filth and other polluted and obnoxious matter on such premises or any place belonging thereto or neglect to employ proper means to remove such rubbish, filth and other polluted and obnoxious matter from, or to cleanse, such receptacle and to dispose of such rubbish, filth and other polluted and obnoxious matter in the manner directed by the Commissioner, or fail to comply with any requisition of the Commissioner as to construction, repair, pavement or cleansing of any latrine, or urinal on or belonging to the premises.

* * *

465. General penalty. - Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to one hundred rupees, and in case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.....

22. Similarly, NDMC is governed by the New Delhi Act. Section 11, 12, 53, 261, 263, 264, 265, 266, 267 and 375 are some of the provisions of the New Delhi Act which are pari materia to the relevant provisions of the Delhi Act. It is clear from various provisions of the Delhi Act and the New Delhi Act that the MCD and the NDMC are under a statutory obligation to scavenge and clean the city of Delhi. It is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city. **We have no hesitation in observing that the MCD and the NDMC have been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in a clean city. The courts are justified in directing the MCD and NDMC to perform their duties under the law. Non-availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.**

23. In *Municipal Council, Ratlam Vs. Vardichan*[1] the question before this Court was whether the order of the trial Court as upheld by the High Court directing the Ratlam Municipality to draft a plan within six months for the removal of nuisance caused by the open drains and public excretion by the nearby slum-dwellers could be sustained ... .

24. In the light of the facts and circumstances noticed above and also keeping in view the suggestions made by the learned counsel assisting us in the petition, we issue the following directions:

(1) We approve the experimental schemes placed before this Court by MCD and NDMC whereunder certain localities have been selected for distribution of polythene bags, door to door collection of garbage and its disposal.

We direct the MCD through Commissioner appointed under Section 54 of the Delhi Act and all other officers of the MCD (particularly Mr. Narang and Mr. Tirath Raj, Joint Directors) to have the city of Delhi scavenged and cleaned everyday. The garbage/ waste shall be lifted from collection centres every day and transported to the designated place for disposal.

All receptacles/collection centres shall be kept clean and tidy everyday. The garbage/rubbish shall not be found spread around the collection centres and on the roads.

We issue similar directions to the NDMC through S/Shri Baleshwar Raj, Administrator, Lal Chand, Chief Sanitary Inspector, Dr. G.S. Thind, Deputy Medical Officer of Health and Dr. V.N. Reu, Chief Medical Officer.

(2) We direct Government of India, through Secretary, Ministry of Health, Government of National Capital Territory of Delhi through Secretary, Medical and Public Health, MCD through its Commissioner and NDMC through its Administrator to construct and install incinerators in all the hospitals/nursing homes, with 50 beds and above, under their administrative control. This may be done preferably within nine months. A responsible officer of each of these authorities shall file an affidavit in this Court within two months indicating the progress made in this respect.

(3) We direct the All India Institute of Medical Sciences, New Delhi through its Director to install sufficient number of incinerators, or an equally effective alternate, to dispose of the hospital waste. The Director shall file an affidavit within two months to indicate the progress made in this respect.

(4) We direct the MCD and NDMC to issue notices to all the private hospitals/nursing homes in Delhi to make their own arrangements for the disposal of their garbage and hospital waste. They be asked to construct their own incinerators. In case these hospitals are permitted to use facilities (for collection, transportation and disposal garbage) provided by the MCD and NDMC then they may be asked to pay suitable charges for the service rendered in accordance with law.

(5) We direct the Central Pollution Control Board and the Delhi Pollution Committee to regularly send its inspection teams in different areas of Delhi/New Delhi to ascertain that the collection, transportation and disposal of garbage/waste is carried out satisfactorily. The Board and the Committee shall

file the reports in this Court by way of an affidavit after every two months for a period of two years.

(6) We direct the Government of the National Capital Territory of Delhi to appoint Municipal Magistrates (Metropolitan Magistrates) under Section 469 of the Delhi Act and Section 375 of the New Delhi Act for the trial of offence under these Acts. Residents of Delhi be educated through Doordarshan and by way of announcements in the localities that they shall be liable for penalty in case they violate any provisions of the Act in the matter of collecting and disposal of garbage and other wastes.

(7) We direct Doordarshan through its Director General to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and the New Delhi Act. This shall be done by making appropriate announcements, displays on the television. The residents of Delhi shall be educated regarding their duties under Sections 354, 356 and 357 of the Delhi Act and similar duties under the New Delhi Act. They shall also be informed about the penalties which can be imposed under Section 465 of the Delhi Act and similar provisions under the New Delhi Act. The MCD and the NDMC shall also have announcements made by way of public address system in various areas in Delhi informing residents of their duties and obligations under the Delhi Act and the New Delhi Act.

(8) The MCD has placed order for the supply of about 200 tippers with the Ordinance Vehicle Factory, Jabalpur (Government of India) in May 1995. The tippers have not as yet been supplied. We direct Secretary, Ministry of Defence Production, Government of India to have the tippers supplied to the MCD as expeditiously as possible and preferably within three months. The Secretary shall file an affidavit in this Court within six weeks indicating the progress made in this respect.

(9) The MCD has indicated that three SLF sites have already been approved by the Technical Committee of the DDA but the same have not been handed over to the MCD by the Development Commissioner, Government of NCT of Delhi. Since Bhatti mines are situated within the ridge area, we do not permit the same to be utilised for the disposal of the solid waste as at present. We, however, direct the Development Commissioner, Government of NCT, Delhi to hand over the two sites, near Badarpur on Jaitpur/ Tejpur quarry pits and Mandi village near Jaunpur quarry pits. The sites shall be handed over to the MCD within three months. The Development Commissioner shall file an affidavit in this Court before 31-3-1996 indicating the progress made in this respect.

(10) The compost plant at Okhla be revived and put into operation. The MCD shall start operating the plant, if not already operating, with effect from 1-6-1996. The MCD shall also, examine the construction of four additional compost plants as recommended by Jagmohan Committee. The MCD shall file an affidavit in this Court within six weeks indicating the progress made in restarting the Okhla compost plant and in the construction of four new plants.

(11) The MCD shall not use the filed-up SLFs for any other purpose except forestry. There are twelve such sites including Rajiv Gandhi Smriti Van. We direct the MCD to develop forests and gardens on these 12 sites. The work of afforestation shall be undertaken by the MCD with effect from 1-4-1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

(12) The MCD and NDMC shall construct/install additional garbage collection centres in the form of dhalaos/trolleys/steelbins within four months. An affidavit in this respect shall be filed by a responsible officer of each of these authorities within two months indicating the progress.

(13) We direct the Union of India and NCT, Delhi Administration through their respective appropriate Secretaries to consider the requests from MCD and NDMC for financial assistance in a just and fair manner. These Governments shall consider the grant of financial assistance to the MCD and NDMC by way of subvention or any other manner to enable these authorities to fulfil their obligations under law as directed by us.

(14) After some time it may not be possible to dispose of garbage and solid waste by 'SLF' method due to non-availability of sites. We direct the NCT, Delhi Administration through its Chief Secretary and also the MCD and NDMC to join hands and engage an expert body like NEERI to find out alternate method/methods of garbage and solid waste disposal. The NCT, Delhi Administration shall file affidavit in this Court within two months indicating progress made in this respect.

Indian Council for Enviro-Legal Action v. Union of India
(1996) 5 Supreme Court Cases 281
Kuldip Singh, S. Saghir Ahmad and B.N. Kirpal, JJ.

ORDER

1. Concern for the protection of ecology and for preventing irreversible ecological damage to the coastal areas of the country has led to the filling of the present petition under Article 32 of the Constitution of India as a public interest litigation.

2. The main grievance in this petition is that a notification dated 19/2/1991 declaring coastal stretches as Coastal Regulation Zones (hereinafter referred to as 'the Regulation Zones') which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. There is also a challenge to the validity of the notification dated 18/8/1994 whereby the first notification dated 19/2/1991 has been amended, resulting in further relaxation of the provisions of the 1991 Notification and such relaxation, it is alleged, will help in defeating the intent of the main Notification itself.

3. The petitioner is a registered voluntary organization working for the cause of environment protection in India. India has a coastline running into 6000 kms which has abundance of natural endowments, geographic attractions and natural beauty. According to the petitioner, these coastal areas are highly complex and have dynamic ecosystems, sensitive to development pressures. The stresses and pressure of high population growth, non-restrained development, lack of adequate infrastructure facilities for the resident population are stated to be some of the factors responsible for the decline in environmental quality in these areas. The developmental activities in the coastal areas are stated to cause short-term physical, chemical and biological changes that will and has caused damage to flora and fauna, public health and environment. It is further alleged that as a consequences of indiscriminate industrialization and urbanization, without the requisite pollution control system, the coastal wasters are highly polluted.

4. It is further the case of the petitioner that some of the coastal areas contained extensive groundwater resources and sometimes mineral resources, while in other areas, there are iron ore, oil and gas resources and mangrove forests. As a result of the impact of tidal waves and cyclones, mangrove forests are being increasingly destroyed, while some of the major fishing areas in some of the coastal areas of the country are undergoing serious damage consequent to ecologically unsound development. Over-exploitation of groundwater in the coastal areas in places likes Madras and Vishakhapatnam is stated to have resulted in growing intrusion of salt water from the sea to inland areas and fresh water aquifers previously used for from the sea to intent areas and fresh water aquifers previously used for drinking, agriculture and horticulture are getting highly damaged. Unplanned urbanisation and industrialization in the coastal belts is stated to be causing fast disappearance of fertile agricultural lands, fruit gardens and energy plantations like casuarinas trees, that serve as windbreakers and project inland habitations from the cyclonic damages.

5. With a view to protect the ecological balance in the coastal areas, the then Prime Minister is stated to have written a letter in November 1981 to the Chief Minister of coastal States in which she stated as under:-

> *"The degradation and misutlization of beaches in the coastal states is worrying as the beaches have aesthetic and environmental value as well as other values. They have to be kept clear of all activities at leas up to 500 metres from the water at the maximum high tide. I the area is vulnerable to erosion, suitable trees and plants have to be planted on the beaches without marring their beauty. Beaches must be kept free from all kinds of artificial development. Pollution from industrial and town wastes must also be avoided totally."*

Working groups were set up by the Ministry of Environment and Forests in 1982 to prepare environmental guidelines for development of beaches and coastal areas. In July 1983 environmental guidelines for beaches were promulgated which, inter alia, stated:

> *"The traditional use of sea water as a dump site from our land-derived wastes has increased the polluted loads of sea and reduced its development potentials including the economic support it provides to people living nearby. Degradation and*

misutilization of beaches are affecting the aesthetic and environmental loss. These could be avoided through prudent coastal development and management based on assessment of ecological values and potential damages from coastal developments."

These guidelines further stated that "adverse direct impact" of development activities was possible within 500 metres from the high watermark or beyond two kilometres from it. The example which was given was that the sand-dunes and vegetation clearing, high density construction etc. along the coast could later the ecological system of the area.

6. The environment guidelines for the development of beaches, *inter alia*, required the State Governments to prepare a status report on the obtaining situation of the coastal areas, as a pre requisite to environmental management of the area. Such a status report was required to be followed by a master plan identifying the areas required for conservation, preservation and development and other activities. A master plan so prepared would ensure a scientific assessment and development of the coastline and this would ultimately ensure the preservation and enforcement of the coastal eco-system.

7. The Ministry of Environment and Forests, undertook an exercise with regard to the protection and development of the coastal areas. It invited objections against the declaration of the coastal stretches as Regulation Zones and imposing restrictions on industries, operation and processes in the Regulation Zones.

8. After considering all the objections, the Central Government issued a notification dated 19/2/1991 (hereinafter referred to as 'the main Notification') in exercise of the powers conferred on it by clause (d) of sub-rule (3) of Rule 5 of the Environmental Protection Rules, 1986. By this notification, it declared the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which were influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line (hereinafter referred to as HTL') and the land between Low Tide Line (hereinafter referred to as 'LTL') and HTL as Regulation Zones. With regard to this area, it imposed, with effect from the date of the said notification, various restrictions on the setting up and expansion of industries, operation or processes etc. ion the said Regulation Zones. It was clarified that for the purposes of the main Notification, HTL was defined as the line up to which the highest high tide reaches at springtime.

9. The salient features of the main Notification are that a number of activities were declared as prohibited in the Regulation Zones, which are as follow:

"(i) setting up of new industries and expansion of existing industries, except those directly related to waterfront or directly needing foreshore facilities;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the notifications of the Government of India the Ministry of Environment and Forest No SO 594(E) dated 28/7/1989, SO 966(E) dated 27/11/1989 and GSR 1037 (E) dated 5/12/1989;

(iii) setting up and expansion of units mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the

watercourse with approval under the Water (Prevention and Control of Pollution) Act, 1974 except for storm water drains;

(iv) setting up and expansion of units mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the watercourse with approval under the Water (Prevention and Control of Pollution) Act, 1974 except for storm water drains;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements; schemes shall be implemented by the authorities concerned for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;

(vi) dumping of city or town wastes for the purposes of land filling or otherwise; the existing practice, if any, shall be phased out with in a restorable time not exceeding three years from the date of this notification;

(vii) dumping of ash or any wastes thermal power stations;

(viii) land reclamation, bundling or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains ad structures for prevention of salinity ingress and for sweet water recharge;

(ix) mining of sands, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas;

(x) harvesting or drawal of groundwater and construction of mechanisms therefore, within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries;

(xi) construction activities in ecologically sensitive areas as specified in Annexure I of this notification;

(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; and

(xiii) dressing or altering of sand-dunes, hill, natural features including landscape changes, 50 per cent of the plot size and the total height of construction shall not exceed 9 metres."

Secondly, the main Notification provided for regulation of permissible activities. Furthermore, the coastal States and union Territory Administrations were required to prepare, within one year from the date of the main Notification, Coastal Zone management Plans (hereinafter referred to a as 'the Management Plans') identifying and

clarifying the Regulation Zones areas within their respective territories in accordance with the guidelines contained in the main Notification and those plans were required to be approved, with or without modification, by the Central Government, Ministry of Environment and Forests. The main Notification also stipulated that within the framework of the approved Management Plans, all developments and activities within the Regulation Zones, except the prohibited activities and those which required environment clearance from ministry of Environment and Forests, Government of India, were to be regulated by the State Government, Union Territory Administration or the local Authority, as the case may be, in accordance with the guidelines contained in Annexures I and II of the main notification

10. Anticipating that it will take time till the Management Plans are prepared and approved, the main Notification Provided that till the approval of the Management Plans, "all development and activities within CRZ shall not violate the provisions of this Notification". The State Governments and Union Territory Administrations were required to ensure adherence to the provisions of the main Notification and it was provided that any violation thereof, shall be subject to the provisions of the Environment Protection Act, 1986 (hereinafter referred to as 'the Act').

11. It was also provided in clause 4 of the main notification that the ministry of Environment and Forests and the State Government or union Territory, and such other authorities at the State or union Territory levels, as may be designated for the purpose, shall be responsible for the monitoring and enforcement of the main notification within their respective jurisdictions.

12. As already noticed, there are two Annexures, namely Annexure I and Annexure II to the main Notification. While Annexure I contains the Coastal Area Classification and Development Regulations which are for general application, Annexure II is the specific provision which contains the guidelines for development of beach resort/hotels in the designated areas of CRZ III for temporary occupation of tourists/visitors with prior of the Ministry of Environment and Forests.

13. Annexure I consists of clause 6(1) which relates to the classification of Coastal Regulation Zones. The norms for regulation activities in the said zones are provided by clause 6(2) for regulating development activities. The coastal stretches within 500 metres of HTL of the landward side are classified under clause 6(1) into four categories, which are as under:

(a) Category I (CRZ I) includes the areas that are ecologically sensitive and important, such as 'national parks/marine parks, sanctuaries etc.' 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 have been declared by the Central Government or the authorities concerned at the State/Union Territory level from time to item. In addition thereto, CRZ I also contains the area between the LTL and the HTL.

(b) Category II (CRZ II) contains the areas that have already been developed up to or close to the shore line. This is the area which is with in the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructure facilities, such as water supply and sewerage mains.

(c) Category III (CRZ III) is the area which was originally undisturbed and includes those areas which do no belong either to Category I or Category II. CRZ III includes coastal zone in the rural areas (developed and undeveloped) and also areas within the municipal limits or in other legally designated urban areas which are not substantially built up.

(d) Category IV (CRZ IV) contains the coastal stretches in the Andaman and Nicobar, Lakshadweep and small islands except those designated as CRZ I, CRZ II or CRZ III.

14. Clause 6(2) of Annexure I provide for norms of regulation of activities in CRZ I, II, III and IV. With regard to CRZ I, the norms for construction within 500 metres of the HTL. Furthermore, practically, no construction actively is allowed between the LTL and HTL. The norms for regulation of activities in CRZ II relate to construction or reconstruction of the buildings within the said zone.

15. With regard to CRZ III, the norms for regulation of activities, *inter alia* provide that the area up to 200 metres from the HTL is to be earmarked as "No Development Zone". The only exception is that there can be repairs of existing authorized structures but, the permissible activity in this zone is for its use for agriculture, horticulture, gardens, pastures etc. The norms further provide for development of vacant plots between 200 and 500 metres of HTL in designated areas of CRZ III with prior approval of the Ministry of Environment and Forests for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines in Annexure II.

16. In CRZ IV also, detailed norms for regulation of activities are provided in the said clause 6(92) of Annexure I

17. As already noticed, Annexure II contains the guidelines for development of beach resorts/hotels in the designated area of CRZ III for temporary occupation of tourists/visitors. The vacant area beyond 200 metres in the landward side, even if it is within 500 metres of the HTL can be used, after obtaining permission, for construction of beach resorts for tourists/visitors. There was no provision for allowing any fresh construction within 200 metres of the HTL or within the LTL and HTL. Clause 7(1) of the main Notification which comes under Annexure II contains various conditions which have to be fulfilled before approval can be granted by the Ministry of Environment and Forests for the construction of beach resorts/hotels in the designated area of CRZ III.

18. In the background of the aforesaid facts, we will now deal with the main contentions raised, namely, the non-implementation of the main Notification and the validity of the notification dated 18/8/1994 (hereinafter referred to as 'the 1994 Notification').

Re: Non-Implementation of the main Notification

19. It is the case of the petitioner that with a view to protect the ecological balance in the coastal areas, the aforesaid notification was issued by the Central Government which contained various provisions for regulating development in the coastal areas. It was contended that there had been a blatant violation of this notification and industries were illegally being set up, thereby causing serious damage to the environment and ecology of the area. It was also submitted that the Ministry of Environment and Forests except for issuing the main Notification, had taken no steps to follow up its own directions contained in the main Notification. The main prayer in the writ petition was that this Court should issue appropriate writ, order or direction to the respondent so as to enforce the main Notification.

20. In the writ petition, specific allegations were also contained to the effect that the Ministry of Environment and Forests, Government of India had issued another notification dated 20/6/1991 under clause (5) of sub-section (2) of Section 3 of the Act declaring Dahanu Taluka, District Thane, Maharashtra as an ecologically fragile area.

21. The main Notification was issued so as to ensure that the development activities are consistent with the environmental guidelines for beaches and coastal areas and to impose restrictions on the setting up of industries which have detrimental effect on the coastal environment. This notification also required the Government of Maharashtra to prepare a master plan or regional plan for the Dahanu Taluka based on the existing land use of Dahanu within a period of one year from the notification and to get the said plan approved by the Ministry of Environment and Forests. The master plan and the regional plan was to demarcate all the existing green areas, orchards, tribal areas and other environmentally sensitive areas in the said Dahanu Taluka. Industries which were using chemical above the limits/quantities prescribed by the Act or by the rules were to be considered hazardous industries. The hazardous waste was required to be disposed of in the identified areas after taking precautionary measures. This notification also required the Government of Maharashtra to constitute a monitoring committee to ensure the compliance or conditions mentioned in the notification in which local representatives may be included. According to the petitioner, the Maharashtra Government has not implemented the directions contained in the said notification and has permitted development activities which have resulted in new polluting industries being established in the coastal area, thereby seriously endangering the ecology. The industries which are operating in Dahanu are stated to be balloon-manufacturing units, buffing and chormium-lating units and chemical units. There has been a failure to make the master plan or the regional plan for the said Dahanu Taluka and indiscriminate licences have been issued and consent given to new industries by the State Government and the predominately agricultural area is slowly being converted into an industrial area in complete disregard of environmental laws, guidelines and notifications. There are other instances stated to be in the writ petition with relation to the Dahanu Taluka but, for the view we are taking, it is not necessary to deal with the same in any great length.

22. Notices were issued by this Court on 3/10/1994 to the respondents including the coastal States, namely, Maharashtra, Kerala, Karnataka, Orissa, West Bengal, Tamil

Nadu, Andhra Pradesh and the union Territory of Pondicherry. On 12/12/1994, while granting time to the respondents to file their counter-affidavits, this Court directed that "the respondent States shall not permit the setting up of any industry or construction of any type on the area at least up to 500 metres from the sea water at the maximum high tide". Notice was also directed to issue to the State of Goa, the Union Territory of Daman ad Diu and the islands of Andaman & Nicobar and Lakshadweep, which were added as respondents. The aforesaid interim order dated 12/12/1994 was slightly modified by this Court by is order dated 9/3/1995 in the following terms: (SSC pp. 77-78, para 1)

> *"We modify our order dated 12/12/1994 and direct that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated 19/2/1991 issued by the Ministry of Environment and Forests, Government of India under clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the States concerned. The activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent-States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure I to the above said notification shall also be strictly followed by the respondent-States".*

23. According to clause 3(1) of the main Notification, the coastal States and union Territory administrations were required to prepare the management Plans within one year from the date of the main Notification. This was essential for the implementation of the said notification. The lack of commitment on the part of these States and administration, towards the protection and regulation of the coastal stretches, is evident from their inaction in complying with the aforesaid statutory directive requiring the preparation of Management Plans within the specified period. In view of the fact that there had been a non-compliance with this provision, this Court on 3/5/1995 directed all the coastal States and union Territory Administrations to frame their plans within a further period of six weeks thereof.

24. A status report was field in court by the Union of India which shows non-compliance of clause 3(1) by practically everyone concerned. While some of the States and union territory Administrations submitted their plans, though belatedly, except in the case of Podicherry, none of the other plans were approved by the Central Government. It appears that some modifications were suggested and those States and Union Territories had to resubmit their plans. Directions will have to be issued to these States and union Territories to resubmit their plans and the Central Government will also be required to approve the resubmitted plans within a specified time. The State of Orissa has only partly complied with this Court's order dated 3/4/1995 inasmuch as the plans submitted by it were only for a small part of a coast. The State of West Bengal only submitted a preliminary concept while the States of Andhra Pradesh, Gujarat, Karnataka and Kerala did not care to submit any plans at all. Therefore, these six States namely, Orissa, West Bengal, Andhra Pradesh, Gujarat, Karnataka and Kerala have to be answerable for non-compliance with the directions issued by this Court on 3/4/1995.

25. Affidavits which have been filed by the respondents clearly show that all the provisions of the main Notification have not been complied with. Explanations for the delay in preparation of the Management Plans and their approval have been offered, but they are far from satisfactory. If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years. Enactment of a laws, relating to protection of environment, usually provides for what activity can or cannot be done by people. If the people were to voluntarily respect such a laws, and abide by it, then it would result in law being able to achieve the object for which it was enacted. Where, however, there is a conflict between the provision of law and personal interest, then it often happens that self-discipline and respect for law disappears.

26. Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued there under contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.

27. The present case also shows that having issued the main Notification, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. The provisions of the main Notification appear to have been ignored and, possibly violated with impunity. The coastal States and union Territory administrations were required to prepare management Plans within a period of one year from the date of the notification but this was not done. The Central Government was to approve the plans

which were to be prepared but it did not appear to have to approve the plans which were to be prepared but it did not appear to have reminded any of the coastal States or the union Territory administrations that the plans had not been received by it. Clause 4 of the main Notification required the Central Government and the State Governments as well as union Territory administrations to monitor and enforce the provisions of the main Notifications, but no effective steps appear to have been taken and this is what led to the filing of the present writ petition.

28. There is no challenge to the validity of the main Notification Counsel for all the parties are agreed that the main Notification is valid and has to be enforced. Instances have been given by the petitioner as well as some of the interveners where in different States, infringement of the main Notification is taking place but no action has been taken by the authorities concerned. The courts are ill-equipped and it is not their function to see day-to-day enforcement of law. This is an executive function which it is bound to discharge. A public interest litigation like the present, would not have been necessary if the authorities, as well as the people concerned, had voluntarily obeyed and/or complied with the main Notification or if the authorities who were entrusted with the responsibility, had enforced the main Notification. It is only the failure of enforcement of this notification which has led to the filing of the present petition. The effort of this Court while dealing with public interest litigation relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of law. As such the court has to pass orders and give directions for the protection of the fundamental rights of the people. Passing of appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the functions of the legislature or the executive. The orders are passed and directions are issued by the court in discharge of its judicial function, namely to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue. It is by keeping the aforesaid in mind that one has to consider as to what directions should be issued to ensure, in the best possible manner, that the provisions of the main Notification which has been issued for preserving the coastal areas are not infringed.

Validity of notification of 1994

29. The notification dated 18/8/1994 made six amendments were made after the receipt of the report of a committee, headed by Mr. B.B.Vohra, which had been set up by the Central Government. The validity of the amended notification was also challenged in IA No. 19 of 1995 which was filed by three environment protection groups, namely, the Goa Foundation, Nirmal Vishwa and Indian Heritage Society (Goa Chapter). In the said application, the applicants gave a table containing the main points of the main Notification, the recommendations made by the Vohra Committee and the amendments made by amended notification of 1994. The said particulars are as follows:

	Main CRZ notification dated 19/2/1991 issues for relaxation	**Vohra Committee recommendation**	**Amending notification dated 18/8/1994**
1	200 metres from HTL is no development zone	Relaxation allowed rocky and hilly areas; no limit specified	Blanket relaxation for all areas up to HTL if Central Government so desires
2	No-development zone for rivers, creeks and backwaters 100 metres	Clarification demanded about limits; on relaxation suggested	No-development zone relaxed to 50 meters
3	No levelling or digging of sand dunes or sand	Allows destruction of sand dunes	No destruction of sand dunes allowed. However, goalposts, net posts, lampposts allowed
4	No-development zone area cannot be used for FSI calculations	Recommendations no-development zone are be permitted for FSI calculations	Relevant section not amended but explanation added as an afterthought in notification permitting no-development zone area to be included for FSI calculations
5	No basements allowed are not to be included in FSI	Basements permitted	Basements allowed
6	No fencing permitted within 200 metres-zone from HTL	Only green fencing permitted, no barbed wire fencing allowed	Allows green and barbed wire fencing"

Contending that the 1994 Notification will adversely affect the environment and would lead to unscientific and unsustainable development and ecological destruction, an application was field by the petitioner being IA No. 16 of 1995, *inter alia*, praying for the quashing of the said notification.

30. A reply was field by the Union of India justifying the amendments and given/reasons for the issuance of the 1994 Notification.

31. While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such notifications are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standards for the entire country. While issuing the notifications like the present, the government has to balance various interest including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other development. 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. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated.

32. The main Notification was issued under Sections 3(1) and 3(2)(v) of the Environment Protection Act, presumably after a lot of study had been undertaken by the Government. That such a study had taken place is evident from the bare perusal of notification itself which shows how coastal areas have been classified into different zones and the activities which are prohibited or permitted to be carried out in certain areas with a view to preserve and maintain the ecological balance.

33. According to the Union of India, while implementing the main Notification, certain practical difficulties were faced by the authorities concerned. There was a need for having sustainable development of tourism in coastal areas and that amendments were effected after giving due considerations to all relevant issues pertaining to environment protection and balancing of the same with the requirement of development. It has been specifically averred that a committee headed by Mr. B. B. Vohra, was set up by the Government in response to the need for examining the issues relating to development of tourism and hotel industry in coastal areas and to regulate the same keeping in view the requirements of sustainable development and the fragile coastal ecology. According to the union of India, the Committee also included three environmentalist members who had expressed their views and that the Government had accepted the recommendations of the Vohra Committee with slight modifications. According to it, there has been no blanket relaxation in any area as alleged and adequate environmental safeguards have been provided in the 1994 Notification.

34. In this background, we now deal with each of these six amendments separately:

(i) According to the main Notification, distance of 200 metres from the HTL was a no-development zone (hereinafter referred to as 'NDZ'). The representation of the Hotel and Tourism Industry was that the existing 200n metres' depth of NDZ constituted a serious handicap to the said industry competing with the beach hotels of other countries where there were no such restriction. It was represented that a reduction of the NDZ would not be ecologically harmful and there was no convincing scientific reason for fixing 200 metres as the appropriate width for the NDZ. It was also stated before the Committee that according to its projection, the Hotel Industry in India would at the most require only about 20-30 kms of coastline for the construction of seaside resort over the next 15 years or so. If this requirement was viewed in the context of the fact that the total coastline of the country was over 6000 kms in length, the industry represented that relaxation with regard to this limited area would not pose any big threat to the country's ecology.

35. The Vohra Committee in its recommendations observed that certain members of the Committee had felt that a blanket provision of 200 metres in the case of sandy beaches would lead to difficulties and there should be provision for relaxation to be made in suitable cases, but the consensus that emerged was that the present regulations should not be disturbed. The Committee, however, recommended that relaxations in 200 metres' rule may be made in a case-to-case basis with regard to such stretches of the coastline which were rocky or hilly, but the relaxations should be made after carrying out necessary impact assessment studies. Furthermore, this relaxation should be made by the Ministry of Environment and Forests and not by the State Governments concerned.

36. In the 1994 Notification, there is a clear departure from the recommendations of the Vohra Committee. The notification now provides that for reasons to be recorded, the Central Government may permit any construction within the said 200 metres NDZ subject to such conditions and restrictions as it may deem fit.

37. In the written submission field by the Union of India in this Court on 29/9/1995, this amendment has been sought to be justified and explained by it in the following words:

> *"As regards the developmental activities up to the High Tie Line, the Central Government may for reason recorded in writing permit construction in any particular case taking into account the geographical features and other relevant aspects.*
>
> *This is necessary as providing of 200 metres of no-development zone all along was not possible in the coastal line in a uniform way on account of wide variations in geographical features, existing human settlements and developmental activities requiring foreshore facilities etc".*

The relaxation with regard to NDZ was sought by the Hotel and Tourism Industry and they desired concession only with regard to 20-30 kms of coastline. By the amended notification, power had been given to the Central Government to make such relaxation with regard to any part of the 6000 kms long coastline of India. The Central Government has, thus, retained the absolute power of relaxation of the entire 6000 kms long coastline and this, in effect, may lead to the causing of serious ecological damage as the said provision gives unbridled power and does not contain any guidelines as to how or when the power is to be exercised. The said provision is capable of abuse. The Central Government also did not confine the relaxation to the extent as specified by the Vohra Committee. No satisfactory reason has been given by the Union of India as to why it departed from the opinion of the Expert Committee and that too in such a manner that the concession which has now been given is far in excess of what was demanded by the Hotel and Tourism Industry.

38. We, accordingly, hold that the newly added provision in Annexure II paragraph 7 in sub-in paragraph (1) (Item I) which gives the Central Government arbitrary, uncanalized and unguided power, the exercise of which may result in serious ecological degradation and may make the NDZ ineffective ultra vires and it hereby quashed. No suitable reason has been given which can persuade us to hold that the enactment of such a proviso was

necessary, in the larger public interest, and the exercise of power under the said proviso will not result in large-scale ecological degradation and violation of Article 21 of the citizen living in those areas.

(ii) The NDZ for rivers, creeks and backwaters which was 100 metres from HTL has, by the amended notification, been relaxed to 50 metres. As already seen the main Notification does not apply to all the rivers. It applies only to tidal rivers which are part of the coastal environment. It was contended that the reduction from 100 metres to 50 metres was arbitrary and was not made on any basis. It was also contended that the Vohra Committee had made no proposal for relaxation along the rivers but it merely asked for a clarification of the limits to which the control would apply since in some areas, tidal ingress could go up to 50 kms from the coastline.

39. Justifying this amendment, it was contended by the Union of India that in case of creek, rivers or backwaters, it is not possible to have a uniform basis for demarcating NDZ. The zone shall be regulated based upon each individual case. It is no doubt true that there can be no uniform basis for demarcating NDZ and it will depend upon the requirements by each State authority concerned in their own Management Plans but no reason has been given why in relation to tidal rivers, there has been a reduction of the ban on construction from 100 metres to 50 metres. Even the Vohra committee which had been set up to look into the demands of Hotel and Tourism Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason. It was submitted, at the time of arguments by the Additional Solicitor General that construction has already taken place along such rivers, creeks etc. at a distance of 50 metres and more, but no such explanation has been given in the reply affidavit. Even if this be so such reduction will permit new construction to take place and this reduction cannot be regarded as a protection only to the existing structures. In the absence of a categorical statement being made in an affidavit that such reduction will not be harmful or result in serious ecological imbalance, we are unable to conclude that the said amendment has been made in the larger public interest and is valid. This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, held to be illegal.

(iii) The man Notification had provided that there would be no levelling of sand-dunes or sand extraction. The Vohra Committee, however, allowed extraction of sand. This recommendation has not been accepted but the amended notification allowed the installation of goalposts or lampposts. Justifying this amendment, it was contended by the Union of India that installing such goalposts or lampposts will not result in flattening of sand-dunes and will also

not have any other undesirable effect with regard to the said sand dunes. No permanent structure for sport facilities is permitted. We do not see any illegality lampposts to be erected. In fact the erection of these would facilitate or lead to more enjoyment of the beaches. Therefore, the challenge to this amendment fails.

(iv) By the amended notification, the NDZ is now to be included for FSI calculations. Justifying this amendment, it was submitted by the Union of India that an explanation had been added to the effect that although no construction is allowed in NDZ, for the purpose of calculation of FSI the area of the entire plot including portions which fall within NDZ shall be taken into account. This modification has been brought in because the area in NDZ will in any case be left vacant and although this land may belong to a private owner, he has to keep it vacant. To compensate for this, he is allowed to construct a building of such FSI as permissible after taking into account the area which falls in NDZ. This, it was submitted, is based upon fair and equitable conditions and as such this would have no effect on the ecological balance in the coastal area.

40. In view of the aforesaid reasons given by the Union of India and also keeping in view the fact that a similar recommendation had also been made by the Vohra Committee, we agree with the principle that some compensation is to be allowed to the private owner whose land falls in the NDZ, but at the same time haphazard and congested construction a pollutant in itself-cannot be permitted in any area of the city. We, therefore, modify the amendment and direct that a private owner of land in NDZ shall be entitled to take into account half of such land for the purpose of permissible FSI in respect of the construction undertaken by him outside the NDZ.

(v) With regard to the amendment which allows construction of the basements, it was contended that the deep foundations and structure could interfere in the coastal areas where there is an intermixture of salt and sweet aquifers. According to the Union of India, this amendment has been made on the recommendation of the Vohra Committee. It was, however, stated that the basements shall be allowed subject to the condition that the other authorities such as State Ground Water Boards will permit such construction and will issue no-objection certificate after confirming that the basement will not hamper free flow of groundwater in that area. It is, therefore, obvious that there will not be any adverse constructed subject to the satisfaction of the authorities concerned that same will not hamper free flow of groundwater.

(vi) The main Notification had not permitted fencing within 200 metres zone from HTL. By the amended notification, green and barbed wire fencing within the said zone has been permitted. Challenging this amendment, it was contended that the effect of such fencing would be to prevent the public from using the beaches. Justifying this amendment, the Union of India had stated that the Vohra Committee had permitted green fencing. By the amended notification barbed fencing, in addition to green fencing, has also been allowed. The reason for this is that green and barbed fencing has been allowed so that private

owners are in a position to stop encroachment on their properties. Furthermore, in the interest of security also, a private owner would like to have some kind of boundary so that his property is safe. The implication, therefore, clearly is that it is not as if public beaches will be encroached upon or fenced. The fencing is being allowed only of the privately-owned property in order to protect the same. We, however, direct that fencing should not be raised in such a manner so as to prevent access of the public to public beaches. In other words, the right of way enjoyed by the general public to those areas which they are fee to enjoy, should in no way be closed, hampered or curtailed. The amendment or curtailed. The amendment as made, does not, in our opinion, call for any interference.

General conclusion

41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not function of the court to see the day-to day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different pats of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater

responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts Concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.

43. There is a likelihood that there will be instances of infringement of the main Notification and also of the Management Plans, as and when framed, taking place in different parts of the country. In our opinion, instead of agitating these questions before this Courts, now that the general principles have been laid down and are well-established, it will be more appropriate that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. We are sure and we expect that each High Court will deal with such issues urgently. Environmental law has now become a specialized field. In the decision which was taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992 in which India had also participated, the States had been called upon to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages.

44. There is 6000 kms long coastline of India. It is the responsibility of the coastal States and union Territories in which these stretches exist to see that both the notifications are complied with and enforced. Management Plans have to be prepared by the States and approved by the Central Government, if the said plans have been approved, the development can take place only in accordance therewith. Till the preparation and approval of the said plans by virtue of the provisions of the main Notification, no development in the coastal areas within the NDZ can take place. Therefore, it is in the interest of all concerned that the Management plans are submitted and approved at the earliest.

45. There has been a complete laxity in the implementation of the Act and other related statutes. Under the said Act, the Central Government has essentially been entrusted with the responsibility to enforce and implement the Act. Section 23 of the Act, however, enables the Central Government, by notification in the Official Gazette, to delegate such of its powers and functions to the State Governments or authorities. Thus, the implementation of the provisions of the Act has now essentially become the function of the State Governments. In an effort to control pollution, State Pollution Boards have also been established but the extent of its effectiveness is yet to be demonstrated. The Environment (Protection) Act, as framed, and Section 5 of the Act in particular, gives the Government extensive powers to issue directions to any person, officer or authority which they are bound to comply. The directions as issued have necessarily to be in accordance with the provisions of law and to give protection to environment.

46. As far as the implementation of the main Notification is concerned, the Vohra Committee has stated it is report that many members of the Committee expressed great concern that sufficient attention was not being paid to the enforcement of regulations. It

also noted that "in the absence of anything like adequate machinery to implement the regulations, a great deal of unauthorized development is taking place on most beaches which it will be difficult if not impossible to remove in the future." The Committee also recommended that the problems relating to the implementation of the regulations should be given high priority by the Ministry, if these are not to become a mockery.

47. With increasing threat to the environmental degradation taking place in different pats of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organization (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them.

Directions

(1) Keeping in view the aforesaid observations in mind, we would direct that if any question arises with regard to the enforcement or implementation or infringement of the main Notification as amended by the notification of 1994, the same should be raised before and dealt with by the respective High Courts. In the present case, there were allegations in infringement having been taking place by allowing the setting up of industries. In Dahanu Taluka in Maharashtra in violation of the provisions of the main Notification and which industries are stated to be causing pollution. Similar, there were allegations of non-compliance with the provisions of law by a unit manufacturing alcohol in Pondicherry; with regard to Goa also a allegations have been made. As we have already observed, it will be more appropriate if the allegations so made are dealt with by the respective High Courts, for they would be in a better position to know about and appreciate the local conditions which are prevailing and the extent of environmental damage which is being caused. We, accordingly, direct that the contentions raised in the petition regarding infringement of the main Notification and of the notification dated 20/6/1991 relating to Dahanu Taluka should be dealt with by the Bombay High Court. The high Court may issue such directions as it may deem fit and proper in order to ensure that the said notifications are effectively implemented and complied with. A copy of the writ petition along with a copy of the judgement should be sent to the High Court by the Registry for appropriate orders. As regards as Nos. 17-18 of 1995 relating to alcohol- manufacturing unit at Pondicherry, the said application is transferred to the Madras High Court for disposal in accordance with law.

(2) Any allegation with regard to the infringement of any of the notifications dated 19/2/1991 and 18/8/1994 field in the High Courts having territorial jurisdiction

over the areas in respect of which the allegations are made. As far as this Court is concerned, this matter stands concluded except to examine the reports which are to be field by all the States with regard to the approval of the Management Plans, or any classification which may be sought.

(3) Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play insofar as it relates to controlling of polluting for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

(4) The Stated which have not field the Management Plans with the Central Government are directed to file the complete plans by 30/6/1996. The Central Government shall finalise and approve the said plans, with or without modifications within three months thereafter. It is possible that the plans as submitted by the respective State Government and Union Territories may not be acceptable to the Ministry of Environment and Forests. Returning the said plans for modifications and then resubmission of the same may become an unnecessary, time consuming and, perhaps, a futile exercise. In order to ensure that these plans are finalized at the very earliest, we direct that the plans as submitted will be examined by the Central Government who will inform the State Government or the Union Territory concerned with regard to any short comings or modifications which the Ministry of Environment and Forests may suggest. It necessary, a discussion among the representatives of the State Government and the Ministry of Environment and Forests should take place and finalized by the Ministry of Environment, if necessary, by carrying out such modifications as may be required. The decision by the Ministry of Environment and Forest in this regard shall be final and binding.

A report with regard to the submission and the finalization of the plans should be filed in this Court and the case will be listed for nothing compliance in September 1996.

(5) Pending finalization of the plans, the interim orders passed by this Court on 12/2/1994 and 9/3/1995 shall continue to operate.

(6) Four States, namely, Andhra Pradesh, Gujarat, Karnataka and Kerala have not yet submitted their Management plans to the Central Government. There is thus a clear non-compliance with the direction issued by this Court on 12/12/1994 and 9/3/1995. We are issue notices to the Chief Secretaries of these States to explain and show cause why further appropriate action be not taken for this non-compliance. The notices are to be returnable after six weeks.

Indian Council for Enviro-Legal Action v. Union of India

AIR 1996 Supreme Court 1446

Writ Petition (Civil) No. 967 of 1989 with Writ Petition (Civil) Nos. 94 of 1990. 824 of 1993 and 76 of 1994, D/-13-2-1996

B. P. Jeevan Reddy and B. N. Kirpal. JJ.

(A) Constitution of India, Arts, 32, 21 – Writ petition - Tenability – Social action litigation on behalf of villagers – Invasion of their right to life because of pollution caused by private companies alleged – Petition directed against Central and State Governments and State Pollution Control Board to compel them to perform their statutory duties – Cannot be said to be not maintainable on ground that private companies are not amenable to writ jurisdiction – Moreover S. C. has power and duty to intervene and protect right to life of citizens.

(Para 55)

(B) Constitution of India, Art. 32 – Practice and procedure – Reports from experts – Use of – Petition alleging invasion of right to life because of pollution caused by private companies – Reports from experts called by Supreme Court – Various orders passed from time to time on basis of reports – Objection to use of reports without opportunity to cross-examine experts – Raised after lapse of several years – Not tenable.

(Para 55)

(C) Constitution of India, Art. 32 – Powers of Supreme Court – Petition complaining of pollution caused by private companies – Supreme Court can direct Central Govt. To recover Costs of remedial measures from companies – Question whether Court under Art. 32 can award damages against private company left open.

Even if it is assumed that Supreme Court cannot award damages against the private companies responsible for causing pollution in proceedings under Art. 32 that does not mean that the Supreme Court cannot direct the Central Government to determine and recover the cost of remedial measures from the private companies. Read with the wide definition of "environment" in S. 2 (a), Ss. 3 and 5 of the Environment (Protection) Act clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case where pollution is caused by sludge created by chemical industries, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures. The Supreme Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case the Court finds that such directions are warranted. It cannot be therefore said that the Supreme Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

(Para 60)

(D) Torts – Negligence – Person carrying on hazardous or inherently dangerous activity – Rule of absolute liability for damage caused laid down in AIR 1987 SC 1086, oleum gas leak case – Is appropriate and binding.

The rule laid down by Supreme Court in oleum gas leak case (AIR 1987 SC 1086), namely that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity is by far the more appropriate one and binding. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not". The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers – and not the person affected and the practical difficulty on the part of the affected person, in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

(Para 65)

(E) Environmental (Protection) Act (29 of 1986), Ss. 3, 4 – Pollution – Remedial measures – Costs for carrying out – Can be levied by Central Govt. on polluter – Such power is implicit in Ss. 3, 4.

(Para 66)

(F) Environmental (Protection) Act (29 of 1986), Ss. 3, 5 – Pollution – Remedial measures – Liability of polluter to defray costs – Is universally accepted as a sound principle – Ss. 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle.

(Para 67)

(G) Environmental (Protection) Act (29 of 1986), Ss. 3, 5 – Constitution of India, Art. 32 – Pollution caused in Bichhri village due to chemical industries producing H acid and sulphuric acid – Direction given to Central Govt. to determine amount required for remedial measures – Amount so determined to be paid by the chemical industries – Supreme court directed attachment of factories, plant, machinery and all other immovable assets of these industries – Also directed their closure.

(Para 70)

(H) Environmental (Protection) Act (29 of 1986), Ss. 3, 5 – Environmental pollution – Chemical industries – Are main culprits – Their establishment and functioning must be scrutinized more rigorously.

Since the chemical industries are the main culprits in the matter of polluting the environment, there is every need for scrutinizing their establishment and functioning

more rigorously. No distinction should be made in this behalf as between a large-scale industry and a small-scale industry or for that matter between a large-scale industry and a medium-scale industry, All chemical industries, whether big or small, should be allowed to be established only after taking into considerations all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them. It appears that most of these industries are water intensive industries. If so the advisability of allowing the establishment of these industries in arid areas may also require examination. Even the existing chemical industries may be subjected to such a study and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under Ss. 3 and 5 of the Environment Act.

(Para 70)

(I) Constitution of India, Art. 32 – Environmental pollution – Creation of Environmental Courts – Need stressed – Central Government directed to consider the advisability of strengthening the environment protection machinery both at the Centre and the states and provide them more teeth – Also Directed to consider the idea of an environmental audit by specialist bodies having power to inspect, cheek and take necessary action not only against erring industries but also against erring officers.

Environmental (Protection) Act (29 of 1986), S.1.

(Para 70)

(J) Constitution of India, Art. 32 – Costs – Petition by environmentalist organization bringing to light pollution hazards caused by chemical industries in Bichhri village – Polluter industries directed to pay costs of Rs. 50,000/- to petitioner organization.

Civil P. C. (5 of 1908), S. 35.

(Para 71)

Cases Referred:	**Chronological Paras**
1995 (5) SCALE 578 (SC)	44,60
(1995) 2 Guj LR 1210	4,47
(1994) 2 WLR 53 (HL), Cambridge Water Company v. Eastern Countries Leather, PL	63
(1994) 68 AUS 331, Burnic Post Authority Vs. General Joners Pvt. Ltd.	64
AIR 1992 SC 248: (1991) 4 SCC 584	47
AIR 1987 SC 1086: (1987) 1 SCC 395	44, 47, 58, 59, 60, 61, 65, 66, 69
(1885) 29 Ch D 115: 52 LT 942: 54 LJ Ch 454, Ballard v. Tomlinson	63
(1868) LR 3 HL 330: 19 LT 220: 37 LJ Ex 161, Rylands v. Fletcher	58, 59, 61, 63, 64

B.P. JEEVAN REDDY, J.:- Writ Petition (C) No. 967 OF 1989: This writ petition filed by an environmentalist organization brings to light the woes of people living in the vicinity of chemical industrial plants in India. It highlights the disregard, any, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialization and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings-for that matter, for any thing else. And the law seems to have been helpless. Systemic defects? It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them particularly, if they are men with means. Strong words indeed – but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us. The facts of the case will bear out this opening remark.

2. Bichhri is a small village in Udaipur district of Rajasthan. To its north is a major industrial establishment, Hindustan Zinc Limited, a public sector concern. That did not affect Bichhri. Its woes began somewhere in 1987 when the fourth respondent herein, Hindustan Agro Chemicals Limited started producing certain chemicals like Oleum (said to be the concentrated form of Sulphuric acid) and Single Super Phosphate. The real calamity occurred when a sister concern, Silver chemicals (Respondents No. 5), commenced production of 'H' acid in a plant located within the same complex. 'H' acid was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents – in particular, iron-based and gypsum-based sludge – Which if not properly treated, pose grave threat to mother Earth. It poisons the earth, the water and everything that comes in contact with it. Jyoti Chemicals (Respondent No. 8) is another unit established to produce 'H' acid, besides some other chemicals. Respondents Nos. 6 and 7 were established to produce fertilizers and a few other products.

3. All the units/factories of Respondents Nos. 4 to 8 are situated in the same complex and are controlled by the same group of individuals. All the units are what may be called "chemical industries". The complex is located within the limits of Bichhri village.

4. Because of the pernicious wastes emerging from the production of 'H' acid, its manufacture is stated to have been banned in the western countries. But the need of 'H' acid continues in the West. That need is catered to by the industries like the Silver Chemicals and Jyoti Chemicals in this part of the world. (A few other units producing 'H' acid have been established in Gujarat, as would be evident from the decision of the Gujarat High court in Pravinbhai Jashbhai v. State of Gujarat, (1995) 2 Guj LR 1210. a decision rendered by one of us, B. N. Kirpal, J. as the chief Justice of that Court, J. Silver Chemicals is stated to have produced 375 MT of 'H' acid. The quantity of 'H' acid produced by Jyoti Chemicals is not known. It says that it produced only 20 MT., as trial production, and no more. Whatever quantity these two units may have produced, it has given birth to about 2400-2500 MT of highly toxic sludge (iron-based sludge and gypsum based sludge) besides other pollutants. Since the toxic untreated waste waters were allowed to flow out freely and because the untreated toxic sludge was thrown in the open in land around the complex, the toxic substances have percolated deep into the bowels of the earth polluting the aquifers and the sub-terranean supply of water. The water in the

wells and the streams has turned dark and dirty rendering it unfit for human consumption. It has become unfit for cattle to drink and for irrigating the land. The soil has become polluted rendering it unfit for cultivation, the main stay of the villagers. The resulting misery to the villagers needs no emphasis. It spread disease, death and disaster in the village and the surrounding areas. This sudden degradation of earth and water had an echo in Parliament too. An Hon'ble Minister said, action was being taken, but nothing meaningful was done on the spot. The villagers then rose in virtual revolt leading to the imposition of Section 144, Cr. P. C. by the District Magistrate in the area and the closure of Silver Chemicals in January, 1989. It is averred by the respondents that both the units, Silver Chemicals and Jyoti Chemicals have stopped manufacturing 'H' acid since January, 1989 and are closed. We may assume it to be so. Yet the consequences of their action remain – the sludge, the long-lasting damage to earth, to underground water, to human beings, to cattle and the village economy. It is with these consequences that we are to content with in this writ petition.

5. The present social action litigation was initiated in August, 1989 complaining precisely of the above situation and requesting for appropriate remedial action. To the writ petition, the petitioner enclosed a number of photographs illustrating the enormous damage done to water, cattle, plants and to the area in general. A good amount of technical data and other material was also produced supporting the averments in the writ petition.

COUNTER-AFFIDAVITS OF THE RESPOSNDENTS:

6. On notice being given, counter-affidavits have been filed by the Government of India, Government of Rajasthan, Rajasthan Pollution Control Board (R.P.C.B.) and Respondents Nos. 4 to 8. Since the earliest counter-affidavit in point of time is that of R.P.C. B we shall refer to it in the first instance. It was filed on October 26, 1989. The following are the averments:

(a) Re.: Hindustan Agro Chemicals Limited [R-4]: The unit obtained 'No-Objection Certificate' from the P.C.B. for manufacturing sulphuric acid and alumina sulphate. The Board granted clearance subject to certain conditions. Later 'No-Objection Certificate' was granted under the Water [Prevention and Control of Pollution] Act, 1974 [Water Act] and Air (Prevention and Control of Pollution) Act, 1981 [Air Act], again subject to certain conditions. However, this unit changed its product without clearance form the Board. Instead of sulphuric acid, it started manufacturing Oleum and Single Super Phosphate [S.S.P]. Accordingly, consent was refused to the unit on February 16, 1987. Directions were also issued to close down the unit.

(b) Re.: Silver Chemicals [R-5]: This unit was promoted by the fourth respondent without obtaining 'No-Objection Certificate' from the Board for the manufacture of 'H' acid. The waste water generated from the manufacture of 'H' acid is highly acidic and contains very high concentration of dissolved solids along with several dangerous pollutants. This unit was commissioned in February, 1988 without obtaining the prior consent of the Board and accordingly notice of closure was served on April 30. 1988. On May 12, 1988,

the unit applied for consent under Water and Air Acts which was refused. The Government was requested to issue directions for cutting off the electricity and water to this unit but no action was taken by the Government. The unit was found closed on the date of inspection, viz., October 2, 1989.

(c) Re.: Rajasthan Multi Fertilizers [R-6]: This unit was installed without obtaining prior 'No-Objection Certificate' from the Board and without even applying for consent under Water and Air Acts. Notice was served on this unit on February 20, 1989. In reply whereto, the Board was informed that the unit was closed since last three years and that electricity has also been cut of since February 12, 1988.

(d) Re.: Phosphates India [R-7]: This unit was also established without obtaining prior 'No-Objection Certificate' from the Board nor did it apply for consent under the Water and Air Acts. When notice dated February 20, 1989 was served upon this unit, the Management replied that this unit was closed for a long time.

(e) Re.: Jyoti Chemicals [R-8] : This unit applied for 'No-Objection Certificate' for producing ferric alum. 'No-Objection Certificate' was issued imposing various conditions on April 8, 1988. The 'No-Objection Certificate' was withdrawn on May 30, 1988 on account of non-compliance with its conditions. The consent applied for under Water and Air Acts by this unit was also refused. Subsequently, on February 9, 1989, the unit applied for fresh consent for manufacturing 'H' acid. The consent was refused on May 30. 1989. The Board has been keeping an eye upon this unit to ensure that it does not start the manufacture of 'H' acid. On October 2, 1989 when the unit was inspected, it was found closed.

7. The Board submitted further [in its counter-affidavit] that the sludge lying in the open in the premises of respondents Nos. 4 to 8 ought to be disposed off in accordance with the provisions contained in the Hazardous Wastes (Management and Handling) Rules, 1989 framed under Environment (Protection) Act. According to the Board the responsibility for creating the said hazardous situation was squarely that of Respondents Nos. 4 to 8, the Board enclosed several documents to its counter in support of the averments contained therein.

8. The Government of Rajasthan filed its counter-affidavit on January 20, 1990. It made a curious statement in Para 3 to the following effect : "(T)hat the State Government is now aware of the pollution of underground water being caused by liquid effluents from the firms arrayed as respondents Nos. 4 to 8 in the writ petition. Therefore, the State Government has initiated action through the Pollution Control Board to check further spread of pollution." The State Government stated that the water in certain wells in Bichhri village and some other surrounding villages has become unfit for drinking by human beings and cattle, though in some other wells, the water remains unaffected.

9. The Ministry of Environment and Forests, Government of India filed its counter on February 8, 1990. In their counter, the Government of India stated that Silver chemicals

were merely granted a Letter of Intent but it never applied for conversion of the letter of intent into industrial license. Commencing production before obtaining industrial license is an offence under Industries [Development and Regulation] Act, 1951. So far as Jyoti Chemicals is concerned, it is stated that it has not approached the Government at any time even for a Letter of Intent. The Government of India stated that in June, 1989, a study of the situation in Bichhri village and some other surrounding villages was conducted by the Centre for Science and Environment. A copy of their report is enclosed to the counter. The report states the consequences emanating from the production of 'H' acid and the manner in which the resulting wastes were dealt with by respondents Nos. 4 to 8 thus:

> "The effluents are very difficult to treat as many of the pollutants present are refractory in nature. Setting up such highly polluting industry in a critical ground water area was essentially ill-conceived. The effluents seriously polluted the nearby drain and overflowed into Udaisagar main canal, severely corroding its cement-concrete lined bed and banks. The polluted waters also seriously degraded some agricultural land and damaged standing crops. On being ordered to contain the effluents, the industry installed an unlined holding pond within its premises and resorted to spraying the effluent on the nearby hill-slope. This only resulted in extensive seepage and percolation of the effluents into ground water and their spread down the aquifer. Currently about 60 wells appear to have been significantly polluted but every week a few new wells, down the aquifer start showing signs of pollution. This has created serious problems for water supply for domestic purposes, cattle watering, crop irrigation and other beneficial uses, and it has also caused human illness and even death, degradation of land and damage to fruit, tress and other vegetation. There are serious apprehensions that the pollution and its harmful effects will spread further after the onset of the monsoon as the water percolating form the higher parts of the basin moves down carrying the pollutants lying on the slopes in the holding pond and those already underground."

10. Each of the respondents Nos. 4 to 8 filed separate counter-affidavits. All the affidavits filed on behalf of these respondents are sworn-to by Lt. Gen. M.L. Yadava, who described himself as the President of each of these units. In the counter-affidavit filed on behalf of the fourth respondent, it is stated that it is in no way responsible for the situation complained of. It is engaged in the manufacture of sulphuric acid and had commenced its operations on January 6, 1987. It has been granted 'No-Objection Certificates' from time to time. The consent obtained from R.P.C.B. is valid up to August 15, 1988. Application for extension of consent has already been filed. This counter-affidavit was filed on January 18, 1990.

11. In the counter-affidavit filed on behalf of the fifth respondent [Silver Chemicals], it is stated that the manufacture of 'H' acid which was commenced in February, 1988 has been completely stopped after January, 1989. The respondent is fully conscious of the need to conserve and protect environment and is prepared fully to cooperate in that behalf. It is ready to comply with any stipulations or directions that may be made for the purpose. It, however, submitted that the real culprit is Hindustan Zinc Limited. The Archaeological Department of the Government of Rajasthan has issued environmental

clearance for its unit [rather surprising statement]. 'No-Objection Certificates' had also been issued by the Executive Engineer [Irrigation], Udaipur Division and the Wild Life warden. So far as the requirement of 'consent' under Water and Air Acts is concerned, it merely stated that it had applied for it. Its closure in January, 1989 was on account of promulgation of an order under Section 144 Cr. P. C. by the District Magistrate in view of wide-spread agitation by the villagers against its functioning.

12. In the counter-affidavit filed on behalf of the sixth respondent [Rajasthan Multi Fertilizers], it is stated that it commenced production on March 14, 1982 and closed down in December, 1985. Electrical connection to it was disconnected on February 13, 1988. It was submitted that since it is a small-scale industry, no consent was asked for from anyone. It denied that it was causing any pollution, either ground, air or water.

13. In the counter-affidavit filed on behalf of the seventh respondent [Phosphates India], it is stated that this unit commenced production on May 15, 1988 but was closed on and with effect from September 1, 1988 for want of support from the Central Government in the form of subsidies. It submitted that it has merged with the fourth respondent in 1987-88.

14. In the counter-affidavit filed on behalf of the eighth respondent [Jyoti Chemicals], it is stated that it has no electrical connection that it had commenced production in April 1987 and closed down completely in January, 1989. It is stated that the unit produced 'H' acid to an extent of 20 mt. as a trial measure for one month with the permission of the Industries Department. It is no longer manufacturing 'H' acid and, therefore, is not responsible for causing any pollution. It is further submitted that it is a small-scale industry and was registered with the District Industry Centre, Udaipur for the manufacture of ferric alum and 'H' acid. It began its operation simultaneously with the fifth respondent, Silver Chemicals, and several of the clearances are common to both, as both of them are located together. The trial production of 'H' acid, it is stated, took place in January, 1987.

15. Hindustan Zinc Limited was imploded as the ninth respondent at the instance of respondents Nos. 4 to 8. It has filed a counter-affidavit denying that it is responsible in any manner for causing any pollution in Bichhri village or the surrounding areas. According to it, its plants are situated downstream, towards north of Bichhri village. We do not think it necessary to refer to this affidavit in any detail inasmuch as we are not concerned, in this writ petition, with the pollution, if any, caused by the ninth respondent in other villages but only with the pollution caused by respondents Nos. 4 to 8 in Bichhri or surrounding villages.

ORDER PASSED AND STEPS TAKEN DURING THE PERIOD 1989-1992.

16. The first considered Order made, after hearing the parties, by this Court is of December 11, 1989. Under this Order, the Court requested the National Environmental Engineering Research Institute [NEERI] to study the situation in and around Bichhri village and submit their report "as to the choice and scale of the available remedial alternatives". NEERI was requested to suggest both short-term and long-term measures

required to combat the hazard already caused. Directions were also made for supply of drinking water to affected villages by the State of Rajasthan. The R.P.C.B. was directed to make available to the court the report it had prepared concerning the situation in Bichhri village.

17. On the next date of hearing, i.e., March 5, 1990, the Court took note of the statements made on behalf of respondents Nos. 4 to 8 that they have completely stopped the manufacture of 'H' acid in their plants and that they did not propose to resume its manufacture. The Court also took note of the petitioner's statement that though the manufacture of 'H' acid may have been stopped, a large quantity of highly dangerous effluent waste/sludge has accumulated in the area and that unless properly treated, stored and removed, it constitutes a serious danger to the environment. Directions were given to the R.P.C.B. to arrange for its transportation, treatment and safe storage according to the technically accepted procedures for disposal of chemical wastes of that kind. All reasonable expenses for the said operation were to be borne by respondents Nos. 4 to 8 [hereinafter referred to in this judgement as the "respondents"]. So far as the polluted water in the wells was concerned, the court noted the offer made by the learned counsel for the respondents that they will themselves undertake the de-watering of the wells. The R.P.C.B. directed to inspect and indicate the number and location of the wells to be de-watered.

18. The matter was next taken up on April 4. 1990. It was brought to the notice of the Court that no meaningful steps were taken for removing the sludge as directed by this Court in its Order dated March 5, 1990. Since the monsoon was about to set in, which would have further damaged the earth and water in the area, the Court directed the respondents to immediately remove the sludge from the open spaces where it was lying and store it in safe places to avoid the risk of seepage of toxic substances into the soil during the rainy season. The respondents were directed to complete the takes within five weeks therefrom.

19. It is not really necessary to refer to the contents of the various Orders passed in 1990 and 1991, i.e., subsequent to the Order dated April 4, 1990 for the present purposes. Suffice it to say that the respondents did not comply with the direction to store the sludge in safe places. The de-watering of wells did not prove possible. There was good amount of bickering between the respondents on one side and the R.P.C.B. and the Ministry of Environment and Forests on the other. They blamed each other for lack of progress in the matter of removal of sludge. Meanwhile, years rolled by and the hazard continued to rise. NEERI submitted an interim report. [We are, however, not referring to the contents of this interim report inasmuch as we would be referring to the contents of the final report presently after referring to a few more relevant orders of this Court.]

20. On February 17, 1992, this Court passed a fairly elaborate order observing that respondents Nos. 5 to 8 are responsible for discharging the hazardous industrial wastes; that the manufacture of 'H' acid has given rise to huge quantities of iron sludge and gypsum sludge – approximately 2268 MT of gypsum-based sludge and about 189mt. of iron-based sludge; that while the respondents blamed respondent No. 9 as the main culprit, respondent No. 9 denied any responsibility therefore. The immediate concern,

said the Court, was the appropriate remedial action. The report of the R.P.C.B. presented a disturbing picture. It stated that the respondents have deliberately spread the hazardous material/sludge all over the place which has only heightened the problem of its removal and that they have failed to carry out the Order of this Court dated April 4, 1990. Accordingly, the Court directed the Ministry of Environment and Forests, Government of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron-based sludge, to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was to be recovered from the respondents.

21. Pursuant to the above Order, a team of experts visited the area and submitted report along with an affidavit dated March 30, 1992. The report presented a highly disturbing picture. It stated that the sludge has found inside a shed and also at four places outside the shed but within the premises of the complex belonging to the respondents. It stated further that sludge has been mixed with soil and at many places it is covered with earth. A good amount of sludge was said to be lying exposed to sun and rain. The report stated: "Above all, the extent of pollution in the ground water seems to be very great and the entire aquifer may be affected due to the pollution caused by the industry. The organic content of the sludge needs to be analyzed to assess the percolation property of the contents from the sludge. It is also possible that the iron content in the sludge may be very high which may cause the reddish coloration. As the mother liquor produced during the process (with pH-1) was highly acidic in nature and was indiscriminately discharged on land by the unit, it is possible that this might have eroded soil and caused the extensive damage. It is also possible that the organic contents of the mother liquor would have gone into soil with water together with the reddish colour." The report also suggested the mode of disposal of sludge and measures for re-conditioning the soil.

22. In view of the above report, the Court made an order on April, 6, 1992 for entombing the sludge under the supervision of the officers of the Ministry of Environment and Forests, Government of India. Regarding revamping of the soil, the Court observed that for this purpose, it might become necessary to stop or suspend the operation of all the units of the respondent but that the Court said, requires to be examined further.

23. The work of entombment of sludge again faced several difficulties. While the respondents blamed the Government officers for the delay, the Government officials blamed the said respondents of non-co-operation. Several Orders were passed by this Court in that behalf and ultimately, the work commenced.

ORDERS PASSED IN 1993, FILING OF WRIT PETITION (C) NO. 76 OF 1994 BY RESPONDENT NO. 4 AND THE ORDERS PASSED THEREON:

24. With a view to find out the connection between the wastes and sludge resulting from the production of 'H' acid and the pollution in the underground water, the Court directed on 20th August, 1993 that samples should be taken of the entombed sludge and also of the water from the affected wells and sent for analysis. Environment experts of the Ministry of Environment and Forests were asked to find out whether the pollution in the well water was on account of the said sludge or not. Accordingly, analysis was conducted

and the experts submitted the report on November 1, 1993. Under the heading "Conclusion", the report stated:

"5.0 CONCLUSION

5.1 On the basis of the observations and analysis results it is concluded beyond doubt that the sludge inside the entombed pit is the contaminated one as evident from the number of parameters analyzed.

5.2 The groundwater is also contaminated due to discharge of H-acid plant effluent as well as H-acid sludge/contaminated soil leakages as shown in the photographs and also supported by the results. The analysis result revealed good correlation between the colour of well water and H-acid content in it. The analysis results show high degree of impurities in sludge/soil and also in well water which is a clear indication of contamination of soil and groundwater due to disposal of H-acid waste."

The report, which is based upon their inspection of the area in September, 1993 revealed many other alarming features. It represents a commentary on the attitude and actions of the respondents. In Para-2, under the heading "Site Observations & Collection of Sludge/Contaminated Soil Samples", the following facts are stated:

"2.1. The Central team, during inspection of the premises of M/s. HACL, observed that H-acid sludge (iron/gypsum) and contaminated soil are still lying at different places, as shown in Fig. i. within the industrial premises (Photograph 1) which are the leftovers. The area, where the solar evaporation pond was existing with H-acid sludge dumped here and there was observed to have been levelled with borrowed soil (Photograph 2). It was difficult to ascertain whether the sludge had been removed before filling. However, there are visual evidences of contaminated soil in the area.

2.2. As reported by the Rajasthan Pollution Control Board (RPCB) representatives, about 720 tonnes out of the total contaminated soil and sludge scraped from the sludge dump sites is disposed off in six lined entombed pits covered by lime/fly ash mix, brick soling and concrete (Photographs 3 & 4). The remaining scraped sludge and contaminated soil was lying near the entombed pits for want of additional disposal facility. However, during the visit, the leftover sludge and contaminated soil could not be traced at site. Inspection of the surrounding area revealed that a huge heap of foreign soil of 5 meter height (Photograph 5) covering a large area, as also indicated in Fig. 1, was raised on the sloppy ground at the foot hill within the industry premises. The storm water run-off pathway over the area showed indication of the heap. Soil in the area was sampled for analysis.

2.3 M/s. HACL has a number of other industrial units which are operating within the same premises without valid consents from the Rajasthan Pollution Control Board (RPCB). These plants are sulphuric acid (H2SO4), fertilizer (SSP) and vegetable oil extraction. The effluents of these units are not properly treated and the untreated effluent particularly from the acid plant is passing through the sludge dump area

playing havoc (Photograph 7). The final effluent was collected at the outlet of the factory premises during operation of these units, at the time of groundwater monitoring in September 1993, by the RBPC. Its quality was observed to be highly acidic (pH: 1.08, Conductivity: 37,100 mg/1,804: 21,000 mg/1, Fe : 392 mg/1, COD : 167 mg/1) which was also revealed in the earlier visits of the Central teams. However, these units were not in operation during the present visit."

Under Para 4.2.1. The report stated inter alia:

"The sludge samples from the surroundings of the (presently non-existent) solar evaporation and the contaminated soil due to seepage from the newly raised dumpsite also exhibited very high values of the above mentioned parameters. This revealed that the contaminated soil is buried under the new dump found by the team."

25. So much for the waste disposal by the respondents and their continuing good conduct! To the same effect is the report of the R.P.C.B. which is dated October 30, 1993.

26. In view of the aforesaid reports, all of which unanimously point out the consequence of the 'H' acid production the manner in which the highly corrosive waste water (mother liquor) and the sludge resulting from the production of 'H' acid was disposed of and the continuing discharge of highly toxic effluents by the remaining units even in the year 1993, the authorities (R.P.C.B.) passed orders closing down, in exercise of their powers under Section 33A of the Water Act, the operation of the Sulphuric Acid Plant and the solvent extraction plant including oil refinery of the fourth respondent with immediate effect. Orders were also passed directing disconnection of electricity supply to the said plants. The fourth respondent filed Writ Petition (C) No. 76 of 1994 in this Court, under Article 32 of the Constitution, questioning the said orders in January, 1994. The main grievance in this writ petition was that without even waiting for the petitioner's [Hindustan Agro Chemicals Limited] reply to this show-cause notice, orders of closure and disconnection of electricity supply were passed and that this was done by the R.P.C.B. with a mala fide intent to cause loss to the industry. It was also submitted that sudden closure of its plants is likely to result in disaster and, may be, an explosion and that this consideration was not taken into account while ordering the closure. In its order dated March 7. 1994, this court found some justification in the contention of the industry that the various counter-affidavits filed by the R.P.C.B. are self-contradictory. The Board was directed to adopt a constructive attitude in the matter. By another order dated March 18, 1994, the R.P.C.B. was directed to examine the issue of grant of permission to restart the industry or to permit any interim arrangement in that behalf. On April 8, 1994, a 'consent' order was passed whereunder the industry was directed to deposit a sum of Rupees sixty thousand with R.P.C.B. before April 11, 1994 and the R.P.C.B. was directed to carry on the construction work of storage tank for storing and retaining ten days effluents from the Sulphuric Acid Plant. The construction of temporary tank was supposed to be an interim measure pending the construction of an E.T.P. on permanent basis. The Order dated April 28, 1994 noted the report of the R.P.C.B. stating that the construction of temporary tank was completed on April 26, 1994 under its supervision.

The industry was directed to comply with such other requirements as may be pointed out by R.P.C.B. for prevention and control of pollution and undertake any works required in that behalf forthwith. Thereafter, the matter went into slumber until October 13, 1995.

NEERI REPORT:

27. At this juncture, it would be appropriate to refer to the report submitted by NEERI on the subject of "Restoration of Environmental Quality of the affected area surrounding village Bichhri due to past Waste Disposal Activities". This report was submitted in April, 1994 and it states that it is based upon the study conducted by it during the period November, 1992 to February, 1994. Having regard to its technical competence and reputation as an expert body on the subject, we may be permitted to refer to its report at some length:

28. At page 7, the report mentions the industrial wastes emerging from the manufacture of 'H' acid. It reads:

"Solid wastes generated from H-acid manufacturing process are:

> Gypsum sludge produced during the neutralization of acidic solution with lime after nitration stage (around 6 tonnes/tonne of H-acid manufactured).
>
> Iron sludge produced during the reduction stage (around 0.5 tonnes/tonne of H-acid manufactured).
>
> Gypsum sludge contains mostly calcium sulphate along with sodium salts and organics. Iron sulphate constitutes unreacted iron powder, besides ferric salts and organics.
>
> It is estimated that, for each tonne of H-acid manufactured, about 20 m3 of highly corrosive wastewater was generated as mother liquor, besides the generation of around 2.0 m3 of wash water. The mother liquor is characterized by low pH (around 2.0) and high concentration of total dissolved solids (80- 280 g/L). High COD of the wastewater (90 g/L) could be attributed to organics formed during various stages of manufacture. These include naphthalene trisulphonic acid, nitro naphthalene sulphuric acid, Koch acid and H-acid, besides several other intermediates."

29. At pages 8 and 9, the report describes the manner in which the sludge and other industrial wastes were disposed off by the respondents. It states inter alia:

> "The total quantities of wastes water and that of sludge generated were around 8250 m3 and 2440 tonnes respectively for production of 375 tonnes by M/s. Silver Chemicals Ltd. and M/s. Jyoti Chemicals Ltd ……
>
> * Majority of sludge brought back from disposal sites located outside the plants was transferred inside a covered shed.
>
> * The sludge lying in the plant premises was entombed in the underground pit by RPCB as per the directions of the Hon'ble Supreme Court. It may be mentioned that

only 720 MT of Sludge out of the estimated quantity of 2440 MT could be entombed as the capacity of the underground tanks provided by the industry for the purpose was only to that extent.

* Remaining sludge and sludge mixed soil were, however, present in the plant premises as these could not be transferred into underground tanks. It has also been observed that only sludge above the soil was removed from the six sites and transferred to the plant site. Subsurface soil of these sites appears to have been contaminated as the soil has reddish colour akin to that of the sludge.

*A fertilizer plant (single super phosphate), a sulphuric acid plant and an oil extraction and oil refining plant were in operation in the same premises where H-acid was earlier manufactured. The acidic wastewater (around pH 1.0) presently generated from these units was flowing over the abandoned dumpsite. This leaches the sludge mixed soil from the abandoned dumpsite and the contaminated water flows by gravity towards east and finds its way into a nallah flowing through the compound and conveys the contaminated water to an irrigation canal which originates from Udaisagar lake (Pate 1.4)".

(Emphasis added)

30. At page 10, the report mentions the six dump sites outside the 'H' acid plant premises where the sludge was lying in the open. At pages 26 and 27, the report states on the basis of V.E.S. investigations that while certain wells were found contaminated others were not. At page 96, the report states thus:

"DAMAGE TO CROPS AND TREES

The field surveys in contaminated fields in Zones I and II showed that no crops were coming in the field particularly in low lying areas. On some elevated areas, crops like jowar, maize were growing; however the growth and yield were very poor.

Further it was also observed that even trees like eucalyptus planted in contaminated fields show leaf burning and stunted growth. Many old trees which were badly affected due to contamination are still growing under stress conditions as a result of soil contamination.

The top soils at the old dump sites outside the plant premises are still contaminated and require decontamination before the land is used for other purposes.

It was observed that even after the operation of hauling the sludge back to the industry premises, some sludge mixed soil was still lying in the premises of a primary school (Table 1.1), which needs decontamination."

31. Chapter-6 of the report mentions the remedial measures. Para 6.1, titled "Introduction" states:

"As could be seen from the data reported in Chapters 4 and 5, the ground water and soils within 2 km from the plant have been contaminated. After critically

scrutinizing the data, it was concluded that there is an urgent need to work out a decontamination strategy for the affected area. This strategy includes the decontamination of the soil, contaminated ground water and abandoned dump sites. This Chapter details the remedial measures that can be considered for implementation to restore the environmental quality of the affected area."

32. The Chapter then sets out the various remedial measures, including land treatment, soil washing, re-vegetation, control over the flow of the contaminated water to adjoining lands through canals, leaching of soluble salts, design of farm to development Agro forestry and/or forestry plantation with salt tolerant crops/plants and ground water decontamination. Inter alia, the report states:

"The entire contaminated area comprising of 350 ha of contaminated land and six abandoned dump sites outside the industrial premises has been found to be ecologically fragile due to reckless past disposal activities practiced by M/s. Sliver Chemicals Ltd, and M/s. Jyoti Chemical Ltd. Accordingly it is suggested that the whole of the contaminated area be developed as a green belt at the expense of M/s. Hindustan Agrochemical Ltd, during the monsoon of 1994."

33. Under para 6.3.2, the report suggests "Decontamination Alternatives for Groundwater" including Bioremediation, Degradation of H-Acid by Azotobacter Vinelandi, Isolation of Bacterial Population from H-acid Contaminated Soil and several other methods.

34. Under para 6,4,2, the report mentions the several decontamination alternatives including containment of contaminated soil, surface control, ground water control, leachate collection and treatment, gas migration control and direct waste treatment.

35. At pages 157 and 158, the report mentions the continuing discharge of effluents in an illegal and dangerous manner. It reports:

"It was also observed by NEERI's team during the current study that the industry has not provided adequate effluent treatment facilities and the waste waters (PH<1.5) from the existing plants (Sulphuric acid, Fertilizer, and Oil extraction) are being discharged, without treatment, on land within the plant premises. This indiscriminate and wilful disposal activity is further aggravating the contamination problem in the area. Acidic effluent leaches the pollutants from the dumped sludge and the contaminated soil and facilitates their penetration through the ground and thereby increasing the concentration of sulphates and dissolved solids in groundwater. What is most serious is the fact that the industry produced chlorosulfonic acid for a few months during late 1992 which is a hazardous and toxic substance as per MEF Notification titled Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and even floated public shares for the manufactures of this obnoxious chemical. The production was however ceased due to the intervention of the Rajasthan Pollution Control Board in December 1992 as the industry was operating without obtaining site clearance. No objection Certificate (NOC/Consent from the concerned appropriate regularity (regulatory?) authorities

and without providing for any pollution control measures. It is therefore, essential for M/s. Hindustan Agrochemical Ltd. to comply with these requirements for carrying out the present industrial activities. The abatement of further contamination warrants the closure of all industrial operations till an appropriate effluent treatment plant is installed, and certified by RPCB for its functionality in keeping with the provisions of Water Act."

36. The Report adds:

"The Industry management in the past (during 1988-89) has shown scant respect for Pollution Control and Environment Protection Acts. Not only this, the management continues industrial activity producing obnoxious waste waters and dumping the same without any treatment, contaminating land and ground water without any concern for ecology and public health. It is necessary that the provisions of relevant legislations are imposed on the industry to avoid environmental damage and harm to public welfare."

(Emphasis added)

37. We do not think that the above Report requires any emphasis at our hands. It speaks for itself and it speaks volumes of the high regards the respondents have for law!

38. At Pages 179 onwards, the Report refers to the damage to the crops and the land and to the psychological and mental torture inflicted upon the villagers by the respondents and suggests that the principles of 'Polluter Pays' should be applied in this case inasmuch as "the incident involved deliberate release of untreated acidic process wastewater and negligent handling of waste sludge knowing fully well the implication of such acts." The Report suggests that compensation should be paid under two heads, viz., (a) for the losses due to damage and (b) towards the cost of restoration of environmental quality. It then works out the total cost of restoration of environmental quality at Rs. 3738.5 Lakhs - i.e., Rs. 37,385 crores.

39. Para 7.4 states the conclusions flowing from the material in Chapter-6 thus:

"The cost of damage to be disbursed to the affected villagers is estimated at Rs. 342.8 lakhs and remediation of impacted well waters and soil at Rs. 3738.5 lakhs. This cost needs to be borne by the management of the industry in keeping with the Polluter Pays principle and the doctrine of Strict/Absolute liability, as applied to Sri Ram Food and Fertilizers Industry in the case of Oleum leak in 1985."

REPORT OF R.P.C.B SUBMITTED IN JANUARY, 1996 DURING THE FINAL HEARING OF THESE MATTERS:

40. When all these matters were posted before the Court on October 13, 1995, we realized that the matter requires to be heard on a priority basis. Having regard to the voluminous data gathered by this Court and the several Orders passed from time to time, the matter was listed for regular hearing. We heard all the parties at length on 10th, 11th, 16th and 17th January, 1996. We have been taken through the voluminous record. Submissions have also been made on the questions of law arising herein.

41. At the end of the first day of regular hearing, we made an Order calling upon the R.P.C.B to send a team of high officials to the spot and report to us the latest position on the following aspects:

(i) Whether the factories of Silver Chemicals, Rajasthan Multi Fertilizers and Jyoti Chemicals are still working and whether the machinery installed in the said plant still exists? [This information was required to check the statement of the respondents that the said units are lying closed since last several years].

(ii) To report whether the factory or factories of Respondent No. 4, Hindustan Agro-Chemicals Limited, are working and if they are working, what are the products being manufactured by them? The Board was also directed to report whether the seventh respondent, Phosphate India, which was said to have merged with the fourth respondent, is having a separate factory and if so, what is being produced therein?

(iii) The approximate quantity of sludge-whether 'iron 'sludge' or gypsum sludge'-lying in the area. The report was to indicate what quantity was entombed pursuant to the Orders of this Court and whether any further sludges was lying in the area or in the premises of the respondents complex, its approximate quality and the time, effort and cost required to remove the same.

(iv) The Board was also to take samples of the water in wells and tanks in the area and have them analyzed and tell us whether it is fit for drinking by cattle and/or fit for irrigation purposes.

42. Accordingly the R.P.C.B. officials visited the site and have filed a Report dated January 16, 1996 along with an affidavit. The Report discloses the following facts:

(1) The two units, Silver Chemicals, Jyoti Chemicals, do not exist now. There is no machinery. A go down and a Ferric Alum plant have been constructed at the site of the said plant. The Ferric Alum plant was not in operation at the time of inspection though plant and machinery for manufacturing it was found installed therein. Certain old stock of Ferric Alum was also found lying within the plant premises.

(2) Hindustan Agro-Chemicals Limited (R-4) has seven industrial plants, viz., Rajasthan Multi Fertilizers [manufacturing Granulated Single Super Phosphate (G.S.S.P)], a Sulphuric Acid Plant, a Chlorosulphonic Acid Plant, Edible Oil Solvent Extraction Plant, Edible Oil Refinery and a Ferric Alum Plant (known as M/s. Jyoti Chemicals), all of which are located within the same premises. All these seven plants were found not operating on the date of inspection by the R.P.C.B. officials though in many cases the machinery and the other equipment was in place. So far as the sludge still remaining in the area is concerned, the report stated:

> "3. Village Bichhri and other adjoining areas were visited by the undersigned officials to know whether gypsum and iron sludge is still

lying in the aforesaid area. In area adjoining the irrigation canal, sludge mixed with soil was found on an area of about 3000 sq. ft. The area was covered with foreign soil. Sample of the sludge mixed soil was collected for the perusal of the Hon'ble Court. Entire premises of M/s. Hindustan Agro Chemicals Ltd. were also inspected and sludge mixed with soil was observed in a large area. It was further observed that fresh soil in the varying depth has been spread over in most of the area. In view of the fact that sludge was mixed with the soil and difficult to separate out of the soil it is very difficult to estimate the exact quantity of the sludge required to be removed. Samples of sludge mixed with soil were collected from different part of this area after serving due notice under Environment protection Act, 1986."

So far as the water in the wells was concerned, the Report mentioned that they took samples from the wells from Bichhri and other surrounding villages, i.e., from thirty two different locations and that water in sixteen locations was found to "contain colour of varying intensities ranging from very dark brown to light pink which apparently shows that these wells/hand pumps are still polluted."

43. Sri K. N. Bhat, learned counsel for the respondents, however, submitted that the R.P.C.B. officials have throughout been hostile to the respondents and that, therefore, the Reports submitted by them should not be acted upon. He also submitted that respondents have had no opportunity to file objections to the said Report or to produce material to contradict the statements made therein. While taking note of these submissions, we may, however, refer to the letter dated January 13, 1996 written by the fourth respondent to the R.P.C.B. In this letter, the particulars of the stocks remaining in each of its seven plants are mentioned along with the date of the last production in each of those plants. The last dates of production are the following: Sulphuric Acid Plant-November 10, 1993, S.S.P. Plant (Phosphate India) - November 11, 1995, G.S.S.P. Plant (Rajasthan Multi Fertilisers)-July 7, 1995, Solvent Extraction Planted Refinery-December 2, 1993, Jyoti Chemicals-October, 1990 and Chlorosulphonic Acid Plant - September 29, 1995. It is worthy of note that these dates are totally at variance with the dates of closure mentioned in the counter-affidavits filed by these units in 1990-91.

CONTENTIONS OF THE PARTIES :

44. Sri M.C. Mehta, learned counsel appearing for the petitioner, brought to our notice the several Reports, orders and other material on record. He submitted that the abundant material on record clearly establishes the culpability of the respondents for the devastation in village Bichhri and surroundings areas and their responsibility and obligation to properly store the remaining sludge, stop discharge of all untreated effluents by taking necessary measures and defray the total cost required for remedial measures as suggested by NEERI (Rupees forty crores and odd). Learned counsel suggested that in view of the saga of repeated and continuous violation of law and lawful orders on the part of the respondents, they must be closed forthwith. So far as the legal propositions are concerned, the learned counsel relied strongly upon the Constitution Bench decision in M.C. Mehta v. Union of India (Oleum Gas Leak Case), (1987) (1) S.C.C. 395 : (AIR

1987 SC 1086) as well as the recent Order of this Court in Indian Council for Enviro-Legal Action v. Union of India, (1995 (5) SCALES 578). Learned counsel also invited our attention to quite a few foreign decisions and text books on the subject of environment. Sri Altaf Ahmed, learned Additional Solicitor General appearing for the Union of India, also stressed the need for urgent appropriate directions to mitigate and remedy the situation on the spot in the light of the expert Reports including the one made by the central team of experts.

45. The learned counsel for the State of Rajasthan, Sri Aruneshwar Gupta, expressed the readiness of the State Government to carry out and enforce such orders as this Court may think fit and proper in the circumstances.

46. Sri K.B. Rohtagi, learned counsel for the R.P.C.B., invited our attention to the various Orders passed, action taken, cases instituted and Reports submitted by the Board in this matter. He submitted that until recently the Board had no power to close down any industry for violation of environmental laws and that after conferment of such power, they did pass orders of closure. He denied the allegations of mala fides or hostile intent on the part of the Board towards the respondents. Learned counsel lamented that despite its best efforts; the Board has not yet been successful in eradicating the pollution in the area and hence asked for stringent orders for remedying the appalling conditions in the village due to the acts of the respondents.

47. Sri K. N. Bhat, learned counsel for the respondents, made the following submissions:

(1) The respondents are private corporate bodies. They are not 'State' within the meaning of Article 32 of the Constitution. A writ petition under Article 32 of the Constitution, therefore, does not lie against them.

(2) The R.P.C.B. has been adopting a hostile attitude towards these respondents from the very beginning. The Reports submitted by it or obtained by it are, therefore, suspect. The respondents had no opportunity to test the veracity of the said Reports. If the matter had been fought out in a properly constituted suit, the respondents would have had an opportunity to cross-examine the experts to establish that their Reports are defective and cannot be relied upon.

(3) Long before the respondents came into existence, Hindustan Zinc Limited was already in existence close to Bichhri village and has been discharging toxic untreated effluents in an unregulated manner. This had affected the water in the wells, streams and aquifers. This is borne out by the several Report made long prior to 1987. Blaming the respondents for the said pollution is incorrect as a fact and unjustified.

(4) The respondents have been co-operating with this Court in all matters and carrying out its directions faithfully. The Report of the R.P.C.B. dated November 13, 1992 shows that the work of entombment of the sludge was almost over. The Report states that the entire sludge would be stored in the prescribed manner within the next two days. In view of this report, the

subsequent Report of the Central team, R.P.C.B. and NEERI cannot be accepted or relied upon. There are about 70 industries in India manufacturing 'H' acid. Only the units of the respondents have been picked up by the Central and State authorities while taking no action against the other units. Even in the matter of disposal of sludge, the directions given for its disposal in the case of other units are not as stringent as have been prescribed in the case of respondents. The decision of the Gujarat High Court in Pravinbhai Jashbhai Patel (1995 (2) Guj LR 1210) shows that the method of disposal prescribed there is different and less elaborate than the one prescribed in this case.

(5) The Report submitted by the various so-called expert committees that sludge is still lying around within and outside the respondent's complex and/or that the toxic wastes from the Sulphuric Acid Plant are flowing through and leaching the sludge and creating a highly dangerous situation is untrue and incorrect. The R.P.C.B. itself had constructed a temporary E.T.P. for the Sulphuric Acid Plant pursuant to the Orders of this Court made in Writ Petition (C) No. 76 of 1994. Subsequently a permanent E.T.P. has also been constructed. There is no question of untreated toxic discharges from this plant leaching with sludge. There is no sludge and there is no toxic discharge from the Sulphuric Acid Plant.

(6) The case put forward by the R.P.C.B. that the respondents units do not have the requisite permits/consents required by the Water Act, Air Act and the Environment (Protection) Act is again unsustainable in law and incorrect as a fact. The respondents units were established before the amendment of Section 25 of the Water Act and, therefore, did not require any prior consent for their establishment.

(7) The proper solution to the present problem lies in ordering a comprehensive judicial enquiry by a sitting Judge of the High Court to find out the causes of pollution in this village and also to recommend remedial measures and to estimate the loss suffered by the public as well as by the respondents. While the respondents are prepared to bear the cost of repairing the damage, if any, caused by them, the R.P.C.B. and other authorities should be made to compensate for the huge losses suffered by the respondents on account of their illegal and obstructionist policy adopted towards them.

(8) The decision in Oleum Gas Leak Case (AIR 1987 SC 1086) has been explained in the opinion of Ranganath Misra, CJ., in the decision in Carbide Corporation v. Union of India (1991) 4 SCC 584: (AIR 1992 SC 248). The law laid down in Oleum Gas Leak Case is at variance with the established legal position in other Commonwealth countries.

48. Sri Bhat suggested that in the larger interest of environment, industry and public, this Court may direct the Government of India to constitute, by proper legislation, environment courts all over the country - which courts alone should be empowered to deal with such cases, to give appropriate directions including orders of closure of

industries wherever necessary, to make necessary technical and scientific investigations, to suggest remedial measures and to oversee their implementation. Proceedings by way of a writ in this Court under Article 32 or in the High Court under Article 226, the learned counsel submitted, are not appropriate to deal with such matters, involve as they do several disputed questions of fact and technical issues.

49. Before we proceed to deal with the submissions of the learned counsel, it would be appropriate to notice the relevant provisions of law.

RELEVANT STATUTORY PROVISIONS:

50. Article 48A is one of the Directive Principles of State Policy. It says that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A sets out the fundamental duties of the citizens. One of them is "(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures .....".

51. The problem of increasing pollution of rivers and streams in the country - says the Statement of Objects and Reasons appended to the Bill which became the Water (Prevention and Control of Pollution) Act, 1974 - attracted the attention of the State Legislatures and the Parliament. They realised the urgency of ensuring that domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment and that pollution of rivers and streams was causing damage to the country's economy. A committee was set up in 1962 to draw a draft enactment for prevention of water pollution. The issue was also considered by the Central Council of Local Self-Government in September, 1963. The Council suggested the desirability of having a single enactment for the purpose. A draft Bill was prepared and sent to various States. Several expert committees also made their recommendations meanwhile. Since an enactment on the subject was relatable to Entry 17 read with Entry 6 of List II in the Seventh Schedule to the Constitution - and, therefore, within the exclusive domain of the States the State Legislatures of Gujarat, Kerala, Haryana and Mysore passed resolutions as contemplated by Article 252 of the Constitution enabling the Parliament to make a law on the subject. On that basis, the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. (The State of Rajasthan too passed the requisite resolution). Section 24 (1) of the Water Act provides that "subject to the provisions of this section, (a) no person, shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well....". Section 25 (1), before it was amended by the Act 53 of 1988, provided that "(1) subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well." As amended by Act 53 of 1988, Section 25 now reads : "25 (1) Subject to the provision of this section, no person shall without the previous consent of the State Board, (a) establish or take any steps to establish any industry, operation or process or any treatment and disposal system or an extension or an addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being

hereafter in this section referred to as discharge of sewage'); or (b) bring into use any new or altered outlets for the discharge of sewage or (c) begin to make any new discharge of sewerage" (It is stated that the Rajasthan Assembly passed resolution under Article 252 of the Constitution adopting the said amendment Act vide Gazette Notification dated May 9, 1990.) Section 33 empowers the Pollution Control Board to apply to the Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, to restrain any person causing pollution if the said pollution is likely to prejudicially affect water in a stream or a well. Section 33A which has been introduced by Amendment Act 53 of 1988, empowers the Board to order the closure of any industry and to stop the electricity, water and any other service to such industry if it finds such a direction necessary for effective implementation of the provision of the Act. Prior to the said amendment Act, the Pollution Control Board had no such power and the course open to it was to make a recommendation to the Government to pass appropriate orders including closure.

52. The Air (Prevention and Control of Pollution) Act, 1981 contains similar provisions.

53. In the year 1986, Parliament enacted a comprehensive legislation, Environment (Protection) Act. The Act defines "environment" to include "water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property." The preamble to the Act recites that the said act was made pursuant to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India also participated. Section 3 empowers the Central Government "to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". Sub-Section (2) elucidates the several powers inhering in Central Government in the matter of protection and promotion of environment. Section 5 empowers the Central Government to issue appropriate directions to any person, officer or authority to further the objects of the enactment. Section 6 confers rule-making power upon the Central Government in respect of matters referred to in Section 3. Section 7 says that "no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards, as may be prescribed".

54. The Central Government has made the Hazardous Wastes (Management and Handling) Rules, 1989 in exercise of the power conferred upon it by Section 6 of the Environment (Protection) Act prescribing the manner in which the hazardous wastes shall be collected, treated, stored and disposed of.

CONSIDERATION OF THE SUBMISSION:

55. Taking up the objections urged by Sri Bhat first, we find it difficult to agree with them. This writ petition is not really for issuance of appropriate writ, order or directions against the respondents but is directed against the Union of India, Government of Rajasthan and R.P.C.B to compel them to perform their statutory duties enjoined by the Acts aforementioned on the ground their failure to carry out their statutory duties is

seriously undermining the right to life (of the residents of Bichhri and the affected area) guaranteed by Article 21 of the Constitution. If this Court finds that the said authorities have not taken the action required of them by law and that their inaction is jeopardising the right to life of the Citizens of this country or of any section thereof, it is the duty of this Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, this court can certainly make appropriate directions to ensure compliance with law and lawful directions made there under. This is a social action litigation on behalf of the villagers of Bichhri whose right to life, as elucidated by this Court in several decisions, is invaded and seriously infringed by the respondents as is established by the various Reports of the experts called for, and filed before, this Court. If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, can it be suggested with any modicum of reasonableness that this Court has no power to intervene and protect the fundamental right to life and liberty of the citizens of this country. The answer, in our opinion, is self-evident. We are also not convinced of the plea of Sri Bhat that R.P.C.B. has been adopting a hostile attitude towards his clients throughout and, therefore, its contentions or the Reports prepared by its officers should not be relied upon. If the respondents establish and operate their plants contrary to law, flouting all safety norms provided by law, the R.P.C.B. was bound to act. On that account, it cannot be said to be acting out of animus or adopting a hostile attitude. Repeated and persistent violations call for repeated orders. That is no proof of hostility. Moreover, the Reports of R.P.C.B. officials are fully corroborated and affirmed by the Report of Central team of experts and of NEERI. We are also not prepared to agree with Sri Bhat that since the Report of NEERI was prepared at the instance of R.P.C.B, it is suspect. This criticism is not only unfair but is also uncharitable to the officials of NEERI who have no reason to be inimical to the respondents. If, however, the actions of the respondents invite the concern of the experts and if they depict the correct situation in their Reports, they cannot be accused of any bias. Indeed, it is this Court that asked NEERI to suggest remedial measures and it is in compliance with those orders that NEERI submitted its interim Report and also the final Report. Similarly, the objection of Sri Bhat that the Reports submitted by the NEERI, by the Central team (experts from the Ministry of Environment and Forests, Government of India) and R.P.C.B. cannot be acted upon is equally unacceptable. These Reports were called by this Court and several Orders passed on the basis of those Reports. It was never suggested on behalf of Respondents Nos. 4 to 8 that unless they are permitted to cross-examine the experts or the persons who made those Reports, their Reports cannot be acted upon. This objection, urged at this late stage of proceedings - after a lapse of several years - is wholly unacceptable. The persons who made the said Report are all experts in their field and under no obligation either to the R.P.C.B. or for that matter to any other person or industry. It is in view of their independence and competence that their Reports were relied upon and made the basis of passing Orders by this Court from time to time.

56. Now coming to the question of alleged pollution by Hindustan Zince Limited (R-9), it may be that Respondent No. 9 is also responsible for discharging untreated effluents at

one or the other point of time but that is not the issue we are concerned with in these writ petitions. These writ petitions are confined to the pollution caused in Bichhri village on account of the activities of the respondent. No Report among the several Reports placed before us in these proceedings says that Hindustan Zinc Limited is responsible for the pollution at Bichhri village. Sri Bhat brought to our notice certain Report stating that the discharges from Hindustan Zince limited were causing pollution in certain villages but they are all down stream, i.e., to the north of Bichhri village and we are not concerned with the pollution in those villages in these proceedings. The bringing in of Hindustan Zinc Limited in these proceedings is, therefore, not relevant. If necessary, the pollution, if any, caused by Hindustan Zinc Limited can be the subject-matter of a separate proceeding.

We may now deal with the contentions of Sri Bhat based upon the affidavit of R.P.C.B. dated November 13, 1992 which has been repeatedly and strongly relied upon by the learned counsel in support of his submission that the entire sludge has been properly stored by or at the expense of his clients. It is on the basis of this affidavit that Sri Bhat says that the subsequent Reports submitted showing the existence of sludge within or outside their complex should not be accepted or acted upon. Let us turn to the affidavit of R.P.C.B. dated November 13, 1992 and see how far it supports Sri Bhat's contention. It is in Para 2(b) that the sentence, strongly relied upon by Sri Bhat occurs, viz., "remaining work is likely to be completed by 15th November, 1992". For a proper appreciation of the purport of the said sentence, it would be appropriate to read the entire Para 2 (b), which is to the following effect: "(b) that all the six tanks have been entombed with brick toppings. Roofing is complete on all tanks which have also been provided with proper outlets for the exit of gases which may form as a result of possible chemical reactions in the sludge mass. The tanks have also been provided with reinforced concrete to prevent brooding of the roof. Remaining work is likely to be completed by 15th November, 1992." We find it difficult to read the said sentence as referring to the Storage of the remaining about 1700 MT of sludge. When the storage of 720 MT itself took up all the six tanks provided by the respondent, where was the remaining 1700 tonnes stored? Except relying upon the said sentence repeatedly, Sri Bhat has not been able to tell us where this 1700 MT has been stored, whether in tanks and if so, who constructed the tanks and when and how were they covered and sealed. He is also not able to tell us on what dates the remaining sludge was stored. It is evident that the aforesaid sentence occurring in clause 2 (b) refers to the proper sealing and completion of the said tanks wherein 720 MT of sludge was stored. If in fact, the said 1700 MT has also been entombed, it was not difficult for the respondents to give the particulars of the said storage. We are, therefore, unable to agree with Sri Bhat that the subsequent Reports which repeatedly and uniformly speak of the presence of sludge within and outside the complex of the respondents should not be accepted. It may be recalled that the Report of the team of Central Experts was submitted on November 1, 1993 based upon the inspection made by them in September/October, 1993. To the same effect is the affidavit of R.P.C.B. dated October 30, 1993 and the further affidavit dated December 1, 1993. These Reports together with the report of NEERI clearly establish that huge quantities of sludge were still lying around either in the form of mounds or placed in depressions, or

spread over the contiguous area and covered with local soil to conceal its existence. It is worth reiterating that the said sludge is only part of the pernicious discharges emanating from the manufacture of 'H' acid. The other part, which is unfortunately not visible now (except in its deleterious effects upon the soil and underground water) is the mother liquor produced in enormous quantities which has either flowed out of percolated into the soil.

57. So far as the responsibility of the respondents for causing the pollution in the wells, soil and the aquifers is concerned, it is clearly established by the analysis Report referred to in the Report of the Central experts team dated November 1, 1993 (page 1026 of Vol. II). Indeed, number of Orders passed by this Court, referred to hereinbefore, are premised upon the finding that the respondents are responsible for the said pollution. It is only because of the said reason that they were asked to defray the cost of removal and storage of sludge. It is precisely for this reason that, at one stage, the respondents had also undertaken the de-watering of polluted wells. Disclaiming the responsibility for the pollution in and around Bichhri village, at this stage of proceedings, is clearly an afterthought. We accordingly held and affirm that the respondents alone are responsible for all the damage to the soil, to the underground water and to the village Bichhri in general, damage which is eloquently portrayed in the several Reports of the experts mentioned hereinabove. NEERI has worked out the cost for repairing the damage at more than Rupees forty crores. Now, the question is whether and to what extent can the respondents be made responsible for defraying the cost of remedial measures in these proceedings under Article 32. Before we advert to this question, it may perhaps be appropriate to clarify that so far as removal of remaining sludge and/or the stoppage of discharge of further toxic wastes are concerned, it is the absolute responsibility of the respondents to store the sludge in a proper manner (in the same manner in which 720 MT of sludge has already been stored) and to stop the discharge of any other or further toxic wastes from its plants including Sulphuric Acid Plant and to ensure that the wastes discharged do not flow into or through the sludge. Now, turning to the question of liability, it would be appropriate to refer to a few decisions of the subject.

58. In Oleum Gas Leak Case, (AIR 1987 SC 1086) a Constitution Bench discussed this question at length and held thus: (At Pp. 1099-1100).

> "We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standard of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity

carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profits, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not ....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortuous principle of strict liability under the rule in Ryland v. Fletcher, (1868) LR 3 HL 330) supra).

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the entire, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise".

59. Sri Bhat, however, points out that in the said decision, the question whether the industry concerned therein was a 'State' within the meaning of Article 12 and, therefore, subject to the discipline of Part-III of the Constitution including Article 21 was left open and that no compensation as such was awarded by this Court to the affected persons. He relies upon the observations in the concurring opinion of Ranganath Misra, C.J., in Union Carbide Corporation, (1991) 4 SCC 584 : (AIR 1992 SC 248). The learned Chief Justice referred, in the first instance, to the propositions enunciated in Oleum Gas Leak Case and made the following observations in Paras 14 and 15:

"14. In M.C. Mehta case (AIR 1987 SC 1086) no compensation was awarded as this Court could not reach the conclusion that Shriram (the delinquent company) came within the meaning of 'State' in Article 12 so as to be liable to the discipline of Article 21 and to be subjected to a proceeding under Article 32 of the Constitution. Thus what was said was essentially obiter.

15. The extracted part of the observations from M.C. Mehta case (AIR 1987 SC 1086) perhaps is a good guideline for working out compensation in the cases to which the ratio is intended to apply. The statement of the law ex-facie makes a departure, from the accepted legal position in Rylands, v. Fletcher, (1868) LR 3 HL

330). We have not been shown any binding precedent from the American Supreme Court where the ratio of M.C. Mehta decision has in terms been applied. In fact Bhagwati, C.J., clearly indicates in the judgement that his view is a departure from the law applicable to western countries."

60. The majority judgement delivered by M.N. Venkatachaliah, J. (on behalf of himself and two other learned Judges) has not expressed any opinion on this issue. We on our part find it difficult to say, with great respect to the learned Chief Justice, that the law declared in Oleum Gas Leak Case is obiter. It does not appear to be unnecessary for the purposes of that case. Having declared the law, the Constitution Bench directed the parties and other organisations to institute actions on the basis of the law so declared.

**Be that as it may, we are of the considered opinion that even if it is assumed (for the sake of argument) that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986.

**A distinction between the Oleum Gas Leak Case and the present case may be noticed. That was not a case where the industry was established or was being operated contrary to law as in the present case. That was also not a case where the orders of lawful authorities and Courts were violated with impunity as in this case. In this case, there is a clear violation of law and disobedience to the orders of this Court apart from the orders of the lawful authorities. The facts stated above and findings recorded by us hereinafter bear it out. This Court has to ensure the observance of law and of its Orders as a part of enforcement of fundamental rights. That power cannot be disputed.

If so, a question may arise why is this Court not competent to make Orders necessary for a full and effective implementation of its Orders - and that includes the imposition and recovery of cost of all measures including remedial measures. Above all, the Central government has the power under the provisions of Sections 3 and 5 of the Environment (Protection) Act, 1986 to levy and recover the cost of remedial measures - as well shall presently point out. IF the Central Government omits to do that duty, this Court can certainly issue appropriate directions to it to take necessary measures. Is it not open to the Court in an appropriate situation, to award damages against private parties as part of relief granted against public authorities. This is a question upon which we do not wish to express any opinion in the absence of a full debate at the Bar.

The Central Government (or its delegate, as the case may be) has the power to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment ....." Section 5 clothes the Central Government (or its delegate) with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2 (a), Sections 32 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called

for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilises the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. We find that similar directions have been made in a recent decision of this Court in Indian Council for Enviro-Legal Action, (1995) (5) SCALE 578) (supra). That was also a writ petition filed under Article 32 of the Constitution. Following is the direction:

> "It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharges of their effluents into Nakkavagu. They were responsible to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers."

It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

61. Sri K. N. Bhat submitted that the rule of absolute liability is not accepted in England or other Commonwealth countries and that the rule evolved by the House of Lords in Rylands v. Fletcher, 1866 (3) HL 330, is the correct rule to be applied in such matters. Firstly, in view of the binding decision of this Court in Oleum Gas Leak Case (AIR 1987 SC 1086), this contention is untenable, for the said decision expressly refers to the rule in Rylands but refuses to apply it saying that it is not suited to the conditions in India. Even so, for the sake of completeness, we may discuss the rule in Rylands and indicate why that rule is inappropriate and unacceptable in this country. The rule was first stated by Blackburn, J. (Court of Exchequer Chamber) in the following words:

> "We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of *vis major*, or the act of God; .... and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property."

62. The House of Lords, however, added a rider to the above statement, viz., that the user by the defendant should be a "non-natural" user to attract the rule. In other words, if the user by the defendant is a natural user of the land, he would not be liable for damages. Thus, the twin tests—apart from the proof of damage to the plaintiff by the act/negligence of the defendants—which must be satisfied to attract this rule are "foreseeability" and "non-natural" user of the land.

63. The rule in Rylands, (1868 LR 3 HL 330) has been approved by the House of Lords in the recent decision in Cambridge Water Company v. Eastern Counties Leather, PLC (1994) (2) W.L.R. 53 the plaintiff, Cambridge Water Company, was a statutory corporation engaged in providing public water supply within a certain area including the City of Cambridge. It was lifting water from a bore well situated at some distance from Sawstyn. The defendant company, Eastern Leather, was having a tannery in Sawstyn. Tanning necessarily involves degreasing of pelts. For that purpose, the defendant was using an organic chlorine called P.C.E. P.C.E. was stored in a tank in the premises of the defendant. The plaintiff's case was that on account of the P.C.E. percolating into the ground, the water in its well became contaminated and unfit for human consumption and that on that account it was obliged to find an alternative source at as substantial cost. It sued the defendant for the resulting damages. The plaintiff based his claim on three alternative grounds, viz., negligence, nuisance and the rule in Rylands. The Trial Judge (High Court) dismissed the action in negligence and nuisance holding that the defendant could not have reasonably foreseen that such damage could occur to the plaintiff. So far as the rule in Rylands was concerned, the Trial Judge held that the user by the defendant was not a non-natural user and hence, it was not liable for damages. On appeal, the Court of Appeal declined to decide the matter on the basis of the rule in Rylands. It relied strongly upon the ratio in Ballard v. Tomlinson, (1885) 29 Ch. D. 115, holding that no person having a right to use a common source is entitled to contaminate that source so as to prevent his neighbour from having a full value of his right of appropriation. The Court of Appeal also opined that the defendant's use of the land was not a natural use. On appeal by the defendant, the House of Lords allowed the appeal holding that foreseeability of the harm of the relevant type by the defendant was a pre-requisite to the right to recover damages both under the heads of nuisance and also under the rule in Rylands and since that was not established by the plaintiff, it has to fail. The House of Lords, no doubt, held that the defendant's use of the land was a non-natural use but dismissed the suit, as stated above, on the ground that the plaintiff has failed to establish that pollution of their water supply by the solvent used by the defendant in his premises was in the circumstances of the case foreseeable by the defendant.

64. The Australian High Court has however, expressed its disinclination to treat the rule in Rylands as an independent head for claiming damages or as a rule rooted in the law governing the law of nuisance in Burnie Port Authority v. General Jones Pvt. Ltd. (1994) 68 Australian Law Journal 331. The respondent, General Jones Limited had stored frozen vegetables in three cold storage rooms in the building owned by the appellant, Burnie Port Authority (Authority). The remaining building remained under the occupation of the Authority. The Authority wanted to extend the building. The extension work was partly done by the Authority itself and partly by an independent contractor (Wildridge and Sinclair Pty. Ltd.). For doing its work, the contractor used a certain insulating material called E.P.S., a highly inflammable substance. On account of negligent handling of E.P.S., there was a fire which inter alia damaged the rooms in which General Jones had stored its vegetables. On an action by General Jones, the Australian High Court held by a majority that the rule in Rylands having attracted many difficulties, uncertainties, qualifications and exceptions, should now be seen, for the purposes of Australian

Common Law, as absorbed by the principles of ordinary Negligence. The Court held further that under the rules governing negligence, if a person in control of a premises, introduces a dangerous substance to carry on a dangerous activity, or allows another to do one of those things, owes a duty of reasonable care to avoid a reasonably foreseeable risk of injury or damage to the person or property of another. In a case where a person or the property of that other is lawfully in a place outside the premises, the duty of care varies in degree according to the magnitude of the risk involved and extends to ensuring that such care is taken. Applying the said principle, the Court held that the Authority allowed the independent contractor to introduce or retain a dangerous substance or to engage in a dangerous activity in its premises which substance and activity caused a fire that destroyed the goods of General Jones. The evidence, the Court held, established that the independent contractor's work was a dangerous activity in that it involved real and foreseeable risk of a serious conflagration unless special precautions were taken. In the circumstances, it was held that the Authority owed a non-delegable duty of care to General Jones to ensure that its contractor took reasonable steps to prevent the occurrence of a fire and the breach of that duty attracted liability pursuant to the ordinary principles of negligence for the damage sustained by the respondent.

65. On a consideration of the two lines of thought (one adopted by the English Courts and the other by the Australian High Court), we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak Case (AIR 1987 SC 1086), is by far the more appropriate one - apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision is obiter). According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the conditions that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not." The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers and not the person affected and the practical difficulty (on the part of the affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

66. Once the law in Oleum Gas Leak Case (AIR 1987 SC 1086) is held to be the law applicable, it follows in the light of our findings recorded hereinbefore, that respondents Nos. 4 to 8 are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area (by affected area, we mean the area of about 350 ha. indicated in the sketch at page 178 of NEERI Report) and also to defray the cost of the remedial measures

required to restore the soil and the underground water sources. Sections 3 and 4 of Environment (Protection) Act confer upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case.

67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle.

> "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'polluter pays' principle was promoted by the Organisation for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.
>
> Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme (1987) O.J.C. 328/1) makes it clear that the cost of preventing and eliminating nuisances must in principle be borne by the polluter, and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 120R (2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventive action; the need for environmental damage to be rectified at source; and that the polluter should pay".

("Historic Pollution - Does the Polluter pay?" By Carolyn Shelbourn - Journal of Planning and Environmental law. Aug. 1974 issue)

Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this Principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out

the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.

68. The next question is what is the amount required for carrying out the necessary remedial measures to repair the damage and to restore the water and soil to the condition it was in before the respondents commenced their operations. The Report of NEERI has worked out the cost at more than Rupees forty crores. The estimate of cost of remedial measures is, however, not a technical matter within the expertise of NEERI officials. Moreover, the estimate was made in the year 1994. Two years have passed by since then. Situation, if at all must have deteriorated further on account of the presence of - and dispersal of the sludge - in and around the complex of the respondents by them. They have been discharging other toxic effluents from their other plants, as reported by NEERI and the central team. It is but appropriate that an estimate of the cost of remedial measures be made now with notice to the respondents, which amount should be paid to Central Government and/or recovered from them by the Central Government. Other directions are also called for in the light of the facts and circumstances mentioned above.

69. CONCLUSIONS:

From the affidavits of the parties, Orders of this Court, technical Reports and other data, referred to above (even keeping aside the latest Report of the R.P.C.B. the following facts emerge :

(I) Silver Chemicals (R-5) and Jyoti Chemicals (R-8) had manufactured about 375MT of 'H' acid during the years 1988-89. This had given rise to about 8250 m3 of waste water and 2440 tonnes of sludge (both iron-based and gypsum-based). The waste water had partly percolated into the earth in and around Bichhri and part of it had flowed out. Out of 2440 tonnes of sludge, about 720 tonnes has been stored in the pits provided by the respondents. The remaining sludge is still there either within the area of the complex of the respondents or outside their complex. With a view to conceal it from the eyes of the inspection teams and other authorities, the respondents have dispersed it all over the area and covered it with earth. In some places, the sludge is lying in mounds. The story of entombing the entire quantity of sludge is untrue.

The units manufacturing 'H' acid - indeed most of the units of the respondents - had started functioning, i.e., started manufacturing various chemicals without obtaining requisite clearances/consents/licences. They did not install any equipment for treatment of highly toxic effluents discharged by them. They continued to function even after and in spite of the closure orders of the R.P.C.B. They did never carry out the Orders of this Court fully, (e.g., entombing the sludge) nor did they fulfil the undertaking given by them to the Court (in the matter of removal of sludge and de-watering of the wells). In spite

of repeated Reports of officials and expert bodies, they persisted in their illegal course of action in a brazen manner, which exhibits their contempt for law, for the lawful authorities and the Courts.

(II) That even after the closure of 'H' acid plant, the fourth respondent had not taken adequate measures for treating the highly toxic waste water and other wastes emanating from the Sulphuric Acid Plant. The untreated highly toxic waste water was found - by NEERI as well as the Central team - flowing through the dumps of iron/gypsum sludge creating a highly potent mix. The letter of the fourth respondent dated January 13, 1996, shows that the Sulphuric Acid Plant was working till November 10, 1995. An assertion is made before us that permanent E.T.P. has also been constructed for the Sulphuric Acid Plant in addition to the temporary tank which was constructed under the Orders of this Court. We express no opinion on this assertion, which even if true, is valid only for the period subsequent to April 1994.

(III) The damage caused by the untreated highly toxic wastes resulting from the production of 'H' acid - and the continued discharge of highly toxic effluent from the Sulphuric Acid Plant, flowing through the sludge (Hacid waste) - is indescribable. It has inflicted untold misery upon the villagers and long lasting damage to the soil, to the underground water and to the environment of that area in general. The Report of NEERI contains a sketch, at Page 178, showing the area that has been adversely affected by the production of 'H' acid by the respondents. The area has been divided into three zones on the basis of the extent of contamination. A total area of 350 ha has become seriously contaminated. The water in the wells in that area is not fit for consumption either by human beings or cattle. It has seriously affected the productivity of the land. According to NEERI Report, Rupees forty crores is required for repairing the damage caused to men, land, water and the flora.

(IV) This Court has repeatedly found and has recorded in its Orders that it is respondents who have caused the said damage. The analysis Reports obtained pursuant to the directions of the Court clearly establish that the pollution of the wells is on account of the waste discharged by Respondents Nos. 4 to 8, i,e., production of 'H' acid, the report of the environment experts dated November, 1993 has already been refereed to hereinbefore. Indeed, several orders of this Court referred to supra are also based upon the said finding.

(V) Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct and/or carry out remedial measures, upon the offending industry. The principle "Polluter Pays" has gained almost universal recognition, apart from the fact that it is stated in absolute terms in Oleum Gas Leak Case

(AIR 1987 SC 1086). The law declared in the said decision is the law governing this case.

70. DIRECTIONS: Accordingly, the following directions are made:

1. The Central Government shall determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of Respondents 4 to 8, in the area affected in village Bichhri and other adjacent villages, on account of the production of 'H' acid and the discharges from the Sulphuric Acid Plant of respondents 4 to 8. Chapters-VI and VII in NEERI report (submitted in 1994) shall be deemed to be the show-cause notice issued by the Central Government proposing the determination of the said amount. Within six weeks from this day, respondents 4 to 8 shall submit their explanation, along with such material as they think appropriate in support of their case, to the Secretary, Ministry of Environment and Forests, Government of India, (M.E.F.). The Secretary shall thereupon determine the amount in consultation with the experts of his Ministry within six weeks of the submission of the explanation by the said respondents. The orders passed by the Secretary, (M.E.F.) shall be communicated to respondents 4 to 8 - and all concerned and shall also be placed before this Court. Subject to the Orders, if any, passed by this Court, the said amount shall represent the amount which respondents 4 to 8 are liable to pay to improve and restore the environment in the area. For the purpose of this proceedings, the secretary, (M.E.F.) and respondents 4 to 8 shall proceed on the assumption that the affected area is 350 ha, as indicated in the sketch at Page 178 of NEERI Report. In case of failure of the said respondents to pay the said amount, the same shall be recovered by the Central Government in accordance with law. The factories plant, machinery and all other immovable assets, of respondents 4 to 8 are attached herewith. The amount so determined and recovered shall be utilised by the M.E.F. for carrying out all necessary remedial measures to restore the soil, water sources and the environment in general of the affected area to its former state.

2. On account of their continuous, persistent and insolent violations of law, their attempts to conceal the sludge, their discharge of toxic effluents from the Sulphuric Acid Plant which was allowed to flow through the sludge, and their non-implementation of the Orders of this Court - all of which are fully borne out by the expert committees Reports and the findings recorded hereinabove - respondents 4 to 8 have earned the dubious distinction of being characterised as "rogue industries." They have inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land, their water sources and their entire environment - all in pursuance of their private profit. They have forfeited all claims for any consideration by this Court. Accordingly, we herewith order the closure of all the plants and factories of respondents 4 to 8 located in Bichhri village. The R.P.C.B. is directed to seal all the factories/units/plants of the said respondents forth with. So far as the Sulphuric Acid Plant is concerned, it will be closed at the end of one week from toady, within which period respondent No. 4

shall wind down its operations so as to avoid risk of any untoward consequences, as asserted by respondent No. 4 in Writ Petition (C) No. 76 of 1994. It is the responsibility of respondent No. 4 to take necessary steps in this behalf. The R.P.C.B. shall seal this unit too at the end of one week from today. The reopening of these plants shall depend upon their compliance with the directions made and obtaining of all requisite permissions and consents from the relevant authorities. Respondents 4 to 8 can apply for directions in this behalf after such compliance.

3. So far as the claim for damages for the loss suffered by the villagers in the affected area is concerned, it is open to them or any organisation on their behalf to institute suits in the appropriate civil Court. If they file the suit or suits in forma pauperise, the State of Rajasthan shall not oppose their applications for leave to sue in forma pauperise.

4. The Central Government shall consider whether it would not be appropriate, in the light of the experience gained, that chemical industries are treated as a category apart. Since the chemical industries are the main culprits in the matter of polluting the environment, there is every need for scrutinising their establishment and functioning more rigorously. No distinction should be made in this behalf as between a large-scale industry and a small-scale industry or for that matter between a large-scale industry and a medium scale industry. All chemical industries, whether big or small, should be allowed to be established only after taking into considerations all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them. It appears that most of these industries are water-intensive industries. If so, the advisability of allowing the establishment of these industries in arid area may also require examination. Even the existing chemical industries may be subjected to such a study and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under Sections 3 and 5 of the Environment Act. The Central Government shall ensure that the directions given by it are implemented forthwith.

5. The Central Government and the R.P.C.B. shall file quarterly reports before this Court with respect to the progress in the implementation of Directions 1 to 4 aforesaid.

6. The suggestion for establishment of environment Courts is a commendable one. The experience shows that the prosecutions lunched in ordinary criminal Courts under the provisions of the Water Act, Air Act and Environment Act never reach their conclusion either because of the work-load in those Courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in Courts. Those proceedings take years and years to reach conclusion. Very often, interim orders are granted meanwhile which effectively disable the authorities from ensuring the implementation of

their orders. All these points to the need for creating environment Court which alone should be empowered to deal with all matters, civil and criminal, relating to environment. These Courts should be manned by legally trained persons/judicial officers and should be allowed to adopt summary procedures. This issue, no doubt, requires to be studied and examined in-depth from all angles before taking any action.

7. The Central Government may also consider the advisability of strengthening the environment protection machinery both at the Centre and the States and provide them more teeth. The head of several units and agencies should be made personally accountable for any lapses and/or negligence on the part of their units and agencies. The idea, of an environmental audit by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers may be considered. The idea of an environmental audit conducted periodically and certified annually, by specialists in the field, duly recognised, can also be considered. The ultimate idea is to integrate and balance the concern for environment with the need for industrialisation and technological progress.

71. Respondents 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this Court within two weeks from today. It shall be paid over to the petitioner.

72. Writ Petition (C) No. 967 of 1989 is allowed with the above directions with costs as specified hereinabove.

WRIT PETITION (C) NO. 76 OF 1994:

73. In view of the decision in Writ Petition (C) No. 967 of 1989, the writ petition is dismissed.

No costs.

WRIT PETITION (C) NO. 94 OF 1990:

74. In view of the decision in Writ Petition (C) No. 967 of 1989, no separate Orders are necessary in this petition. The writ petition is accordingly dismissed.

75. No costs.

WRIT PETITION (C) NO. 824 OF 1993:

76. In view of the decision in Writ Petition (C) No. 967 of 1989, no separate Orders are necessary in this petition. The writ petition is accordingly dismissed.

77. No costs

Order accordingly.

Ishwar Singh v. State of Haryana
AIR 1996 Punjab and Haryana 30
Civil Writ Petition No. 7418 of 1994, D/-10-7-1995
R. P. Sethi and S. S. Sudhalkar, JJ.

(A) Constitution of India, Art. 226 – Public interest litigation – Tenability – Question of locus standi – When becomes immaterial.

Public interest litigation cannot be permitted to be invoked by a person or a body of persons to satisfy his or its personal grudge and enmity. Public interest litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.

The question of locus standi would not be material and the Court would allow litigation in public interest if it is found:-

i) That the impugned action is violative of any of the rights enshrined in part III of the Constitution of India and relief is sought for its enforcement;

ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance of law;

iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the constitutional law;

iv) That such person or group of persons is not a busy body of meddlesome inter-lopper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justifiable in public in such litigation;

vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

vii) That the State action was being tried to be covered under the carpet and intended to be thrown out of technicalities;

viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to blackmailing or considerations extraneous to public interest.

(Para 24)

(B) Constitution of India, Art. 226 – Public interest litigation – Tenability – Stone crushers not situated in earmarked zone – Petition for direction to close down business – Petitioner a owner of land in Zone earmarked for stone crushing – Likely to be benefited by direction to close down and consequential shifting of crushers – Action complained of being of public interest, petition at his instance not rejected – Likelihood of petitioner getting undue advantage of litigation – Can be prevented by issuing appropriate directions while granting relief (restriction on transfer of petitioner's land to ownership of stone crushers placed in this case).

(Paras 28, 44)

(C) Environment Protection Act (29 of 1986), S. 5 – Notification D/-18-12-1992 issued by Govt. of Haryana – Stone crushing units – Location – Restriction placed by notification that they should not be located within specified distance from a city, town, village abadi etc. – Distance specified cannot be measured from center of city or town – Similarly in case of village abadi distance cannot be measured from center of village or from lal lakir (boundary line of village abadi) – Distances if so measured would frustrate object of notification.

(Para 34)

(D) Words and Phrases – Abadi deh – Mean such land which is inhabited by villagers including plots of land in which cattles are penned, manure is stored and straw is staked and other waste attached to the village site which is not assessed to land revenue.

(Para 33)

(E) Words and Phrases – Lal lakir – Means boundary of Abadi deh.

(Para 34)

(F) Words and Phrases – Phirni – Means passages provided for going from one village to the other and the circular roads around the village.

(Para 34)

(G) Constitution of India, Art. 226 – Public interest litigation – Bar of alternative remedy – Stone crushing units located near village abadi causing pollution – Crushers not shifted to safe place despite directions of Supreme Court and issuance of notification by State Govt. to that effect – No action taken by State Govt. – Public

interest petition filed to safeguard health of citizens – Not liable to be dismissed for not approaching State Govt. before filing petition.

(Para 42)

(H) Constitution of India, Art. 226 – Pollution by stone crushers – Compensation to victims – Stone crushers operated near village abadi despite directions by Supreme Court and notification by State Govt. to shift them – Crusher owners made liable to pay compensation to citizens of area who suffered because of pollution at pains of cancellation of stone crushing license.

Environment Protection Act (29 of 1986), S. 7.

(Para 46)

Keshuv Mahindra v. State of Madhya Pradesh
JT 1996 (8) Supreme Court 136
A. M. Ahmadi, C.J. and S.B. Majumdar, JJ.

S.B. MAJUMDAR, J.: ... **2.** In these appeals the concerned appellant-accused have brought in challenge the order dated 8th April 1993 passed by the Court of 9th Additional Sessions Judge, Bhopal in Sessions Trial No. 257 of 1992 whereby the learned Sessions Judge framed charges against the appellants in appeals arising out of S.L.P. (Cri.) Nos. 3900 of 1995, 3901 of 1995 and 3953 of 1995 under Sections 302 Part II, 326, 324 and 429 read with Section 304 Part II, 326, 324 and 309 against the appellants in appeals arising out of S.L.P. (Cri.) Nos. 3900 of 1995, 3901 of 1995 and 3953 of 1995 under sections 302 Part II, 326, 324 and 429 read with sections 304 Part II, 326, 324 and 309 against the appellants in appeal arising out of S.L.P. (Cri.) No. 3932 of 1995. They had also challenged the orders of the High Court of Madhya Pradesh at Jabalpur in Criminal Revision Application Nos. 237/93, 238/93, 312/93 and 311/93 whereby these charges were sustained. Appeal arising out of S.L.P. (Cri.) No. 3900 of 1995 is moved by Shri Keshub Mahindra who is accused No. 2 before the Sessions Court. Appeal arising out of S.L.P. (Cri.) No. 3901 of 1995 is moved by Shri V.P. Gokhale who is accused no. 3 in the same case. Appeal arising out of S.L.P. (Cri.) No 3953 of 1995 is moved by Kishore Kamdar who is accused no. 4 in the said case while the last appeal arising out of S.L.P. (Cri.) No. 3932 of 1995 is moved by six accused being Shri J. Mukund accused no. 5, Dr. R.B. Roy Choudhary accused no. 6, Shri S.P. Choudhary accused no. 7, Shri K.V. Shetty accused no. 8, Shri S.1. Qureshi accused no. 9 and Union Carbide India Limited ('UCIL' for short) accused no. 12 in the same case pending before the Sessions Court at Bhopal. The concerned appellants had moved the High Court of Madhya Pradesh at Jabalpur under Section 397 and 482 of the Code of Criminal Procedure (Cr.P.C) for quashing the aforesaid charges.

3. With a view to highlighting the grievances of appellants a few relevant facts deserve to be noted at the outset.

Introductory Facts

4. A grim tragedy of unprecedented nature occurred at Bhopal on the night intervening 2nd December, 1984 and 3rd December 1984 wherein between 0030 hours and 0045 hours a highly dangerous and toxic gas called MIC escaped from tank no. E610 from the Bhopal factory belonging to accused no. 12 UCIL. As a result of this leakage 3828 human beings lost their lives while permanent injuries were caused to 18922 human beings, temporary disablement was suffered by 7172 human beings, temporary disablement caused by permanent injury was suffered by 1313 persons while permanent partial disablement was suffered by 2680 persons. While 40 human beings suffered from permanent total disablement and the death toll of animals amounted to 2544. This ghastly tragedy has become to be known as Bhopal Gas Tragedy. After the gas leakage Crime Case No. 1104 of 1984 was registered at the Police Station Hanumanganj, Bhopal on 3rd December 1984 by the Station House Officer suo motu. This case was registered under Section 304 A, IPC. In the said case 12 accused were indicated. Accused no. 1 was Shri Warren Anderson who was the Chairman of Union Carbide Corporation. The said concern was also indicated as accused no. 10. Accused no. 2 Keshub Mahindra was the Chairman of UCIL which in its turn was shown as accused no. 12. Accused no. 3 V.P. Gokhale was shown as an accused in his capacity as Managing Director of UCIL. Kishore Kamdar who was the Vice President and in-charge of A.P. division of UCIL was shown as accused No. 4. Shri J. Mukun the Works Manager of the Bhopal Plant was joint as accused no. 5. Dr. R.B. Roy Choudhary who as Assistant Works Manager, A.P. Division, UCIL at Bhopal was joined as accused no. 6, accused no. 7 was Shri S.P. Choudhary, Production Manager of the Bhopal Plant, Shri K.V. Shetty, Plant Superintendent of the Qureshi was shown as accused no. 9. He was Production Assistant at the said Bhopal Pant. Out of the above accused persons accused nos. 5, 6, 7 and 9 were stationed at Bhopal and were in-charge of the Bhopal Plant itself.

5. On the registration of the aforesaid Crime Case the Station House Officer, Bhopal, arrested five employees of the factory, namely accused nos. 5 to 9 and they were kept in police custody. Accursed nos. 1, 2 and 3 were arrested on 7th December 1984. Out of them accused no. 1 Shri Warren Anderson was released on bail the same day. On 6th of December 1984 the case was handed over to the CBI. On completion of investigation the charge sheet was presented by the CBI in the Court of CJM, Bhopal on 1st December 1987.

6. In the present proceedings we are not concerned with the question of compensation payable to the gas disaster victims at Bhopal and the various steps taken by the Government of India in this connection. We, therefore, don not dilate on these aspects. Suffice it is to state that by earlier orders of this Court dated 14th February 1989 and 15th February 1989 all criminal proceedings relating to and arising out of the Bhopal Gas Disaster were quashed by this Court. As a result the proceedings in the present case which were then pending in the Committal Court stood terminated. However the said order was reviewed by this Court on 3rd October 1991 and the above criminal proceedings were restored. After their restoration the case was committed to the Court of Sessions. Commitment was made by order dated 30th April 1992. On the case being committed to the Court of Session it was registered as Session Trial Case No. 237 of 1992 as aforesaid. It appears that trial of the criminal case against accused no. 1 Warren

Anderson, accused no. 10 UCC and accused no. 11 Union Carbide (Eastern) inc., Hong Kong had to be segregated and split up as the concerned accused were absconding. The trial proceeded against remaining accused nos. 2 to 9 and 12. In the light of the supporting material produced by the prosecution before the Session Court along with the charge sheet and its contents the Sessions Court was requested by the prosecution to frame appropriate charges against the concerned accused against whom the trial had to proceed. After hearing the persecution as well as the learned counsel for the concerned accused the learned 9th Additional Sessions Judge. Bhopal passed order dated 8th April 1993 framing charges against the concerned accused. As these charges have been seriously brought into challenge it would be apposite to reproduce the charges as framed by the learned Trial Judge against the concerned accused. So far as accused no. 2 Keshub Mahindra is concerned four charges were framed against him as under :

"Firstly – That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. co-accused persons S/Shri Kishore Kamdar/J. Mukund/R.B. Roy Choudhary/S.B. Choudhary/K.V. Shetty and S.1. Qureshi committed culpable homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank no. 610 of A.P. Division plant of UCIL knowing that it was likely to cause deaths and you sharing this common knowledge with them did not do anything to avoid the said escape of gas thus you thereby committed on each counts an offence punishable under Sec. 304 (II) R/W Sec. 35 of the IPC and within the cognizance of the Court of Sessions.

Secondly- That of the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that it was likely to cause grievous hurts, thus voluntarily (as defined U/S 39 IPC) caused grievous hurts to 21694 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas thus you thereby committed on each count an offence punishable under Section 326 R/W Sec. 35 IPC and within the cognizance of the Court Sessions.

Thirdly- That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas knowing that it was likely to cause hurts, thus voluntarily (as defined under Sec. 39 IPC) caused hurts to 8485 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 324 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

Fourthly – That on the above date and at the above place the above accused persons by allowing MIC gas to escape from the above tank knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50/- and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 429 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions."

Charges framed against accused no. 3 V.P. Gokhale were identical with the charges framed against accused no. 2 Charges framed against accused no. 4 Kishore Kamdar ran as under:

> *"Firstly – That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. co-accused persons S/Shri Kishore Kamdar/J. Mukund/R.B. Roy Choudhary/S.P. Choudhary/ K.V. Shetty and S.I. Qureshi committed culpable homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank no. 610 of A.P. Division Plant of UCIL knowing that it was likely to cause deaths and you sharing this common knowledge with them did not do any thing to avoid the said escape of gas thus you thereby committed on each count an offence punishable U/S 304 (II) R/W Sec. 35 of the IPC and within the cognizance of the Court of Sessions.*
>
> *Secondly-That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that it was likely to cause grievous hurts, thus voluntarily (as defined U/S 39 IPC) caused grievous hurts to 21694 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas thus you thereby committed on each count an offence punishable under Section 326 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.*
>
> *Thirdly-That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas knowing that it was likely to cause hurts, thus voluntarily (as defined under sec. 39 IPC) caused hurts to 8485 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 324 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.*
>
> *Fourthly-That on the above date and at the above place the above accused persons by allowing MIC gas to escape from the above tank knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50/- and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count and offence punishable U/S 429 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions."*

Charges framed against accused no. 5 J. Mukund were as under:

> *"Firstly-That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. committed culpable homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank No. 610 of A.P. Division plant of UCIL knowing that if was likely to cause deaths and you thereby committed on each*

counts an offence punishable under Sec. 304(II) IPC and within the cognizance of the Court of Sessions.

Secondly-That you on the above date and at the above place, by allowing to escape from tank no. 610 of the A.P. Division Plant of UCIL, a corrosive substance known by the name of MIC gas, knowing that it was likely to cause grievous hurts, this voluntarily (as defined U/S 39 IPC) caused grievous hurts to 21694 or more human beings and thereby committed on each count an offence punishable under Section 326 IPC and within the cognizance of the Court of Sessions.

Thirdly-That you on the above date and at the above place, by allowing to escape from tank no. 610 of the A.P. Division Plant of UCIL, a corrosive substance known by the name of MIC gas, knowing that it was likely to hurts, this voluntarily (as defined U/S 39 IPC) caused grievous hurts to 8485 or more human beings and thereby committed on each count an offence punishable under Section 324 IPC and within the cognizance of the Court of Sessions.

Fourthly-That on the above date and at the above place by allowing to escape from tank no. 610 of the A.P. Division Plant of UCIL, knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various description each valuing more that Rs. 50/- and thereby committed on each count an offence punishable U/S 429 IPC and within the cognizance of the Court of Sessions."

Identical charges were framed against accused no. 6 R.B. Roy Choudhary, accused no. 7 S.P. Choudhary, accused no. 8 K.V. Shetty and accused no. 9 S.I. Qureshi while UCIL, Calcutta accused no. 12 had to face the following charges:

"Firstly – That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. co-accused persons S/Shri Kishore Kamdar/J. Mukund/R.B. Roy Choudhary. S.P. Choudhary/K.V. Shetty and S.I. Qureshi committed culpable homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank No. 610 of A.P. Division plant of UCIL knowing that it was likely o cause deaths and you sharing this common knowledge with them did not do anything to avoid the said escape of gas thus you thereby committed on each counts an offence punishable under Sec. 304 (II) R/W Sec. 35 of the IPC and within the cognizance of the Court of Sessions.

Secondly-That of the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that it was likely to cause grievous hurts, thus voluntarily (as defined U/S 39 IPC) caused grievous hurts to 21694 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas thus you thereby committed on each count an offence punishable under Section 326 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

Thirdly-That on the above date and at the above place, above co-amused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas knowing that it was likely to cause hurts, thus voluntarily (as defined under Sec. 39 IPC) caused hurts to 8485 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 324 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

Fourthly- That on the above date and at the above place the above accused persons by allowing MIC gas to escape from the above tank knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50/- and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 429 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions."

7. All these accused being aggrieved by the aforesaid charges framed by the learned aforesaid charges framed by the learned Sessions Judge approached the High Court of Madhya Pradesh at Jabalpur in Criminal Revision Applications moved under Sections 397 and 482 of the Cr. P.C. as noted earlier. The High Court of Madhya Pradesh by common judgment in three Criminal Revision Applications Nos. 237/93, 238/93 and 312/93 moved by accused Nos. 2, 3 and 4 respectively, was pleased to dismiss the same by upholding the charges framed against these accused. Similarly Criminal Revision Application No. 311/93 moved by accused no. 5 J. Mukund, accused no. 6 R.B. Roy Choudhary, accused no. 7 S.P. Choudhary, accused no. 8 K.V. Shetty, accused no. 9 W.I. Qureshi and accused no. 12 UCIL was also dismissed by a separate order of even date. It is under these circumstances that the concerned accused is in appeal before us on special leave.....

Material in support of the prosecution case

13. In the first place we may glance through the relevant recitals in the charge sheet presented by the agency before the court which has resulted into the framing of the impugned charges. The said charge sheet is found at page 1 of the compilation in appeal arising out of S.L.P. (Cri.) No. 3900/95. As noted earlier the charge sheet indicts 12 accused out of which the present 9 appellants in these four appeals are accused nos. 2 to 9 and 12 respectively. In column 5 of the charge sheet are found listed main findings of the investigating agency in connection with this unfortunate tragedy. The relevant recitals therein read as under:

"Union Carbide India Ltd. the Majority share holding in which is held by U.C.C. USA, was running a factory at Bhopal for the manufacture of pesticides. The main chemical from which the pesticide saving was manufactured was Methyl Isocynate (CII3N=C=O) which was also being manufactured in the same factory and was being stored in underground tanks, the factory is presently not functioning.

2. On the night of 2nd/3rd December, 1984 from abut 0030 to 0045 hrs. (on 3rd December, 1984) onwards, MIC started to escape from tank no. 610 in the factory in large quantities causing the death of thousands of human beings and animals... and injury also the health of many thousands of human being and animals.

3. Crime No. 1104/84 was registered at Police Station, Hanumanganj, Bhopal by the S.H.O. Shri Surinder Singh Thakur, Inspector who observed people dying around the factory of Union Carbide India Ltd. Bhopal (UCIL) due to escape of some gas from the factory. He registered the case suo motu under Section 304A IPC. There was no information available at that stage from anyone in the factory. Based on enquiries made by him during the course of the day, five employees of the factory (A5 to A9) were arrested and kept in police custody. Accused No. 1 Shri Warren Anderson was arrested alongwith accused no. 2 & 3 on 7th December, 1984. Shri Warren Anderson was released on bail the same day by the I.O. After completing the required legal formalities C.B.I. (D.P.S.E) registered a case on 6th December, 1984 as RC-3/84-CIU (I) U/S 304A IPC and received the records of the case from the local police on 9th December, 1984 alongwith A2, A3 and A5 to A9 in police custody from the Madhya Pradesh Police.

4. Investigation has revealed that the Union Carbide Corporation is a company with headquarters in U.S.A. having affiliate and subsidiary companies throughout the world. These subsidiaries were supervised by four regional offices which were controlled by UCC, USA, UCIL is a subsidiary of UCC, USA. Union Carbide Eastern Inc. with its office in Hong Kong is the regional office of UCC, USA which controlled UCIL, India besides others, UCC, USA got incorporated in India on 20th June, 1934, a company known as the Eveready Company (India) Ltd. under the Indian Companies Act (Act VII) of 1913 with the Registrar of Joint Stock Companies, Bengal. The Name of the Company was further changed w.e.f. 24th December, 1959 into Union Carbide India Ltd. under the Indian Companies, 1956. The UCC was a majority shareholder (50.9%) in UCIL. UCC was nominating its own Directors to the Board of Directors of the UCIL and was exercising strict financial, administrative and technical control on the Union Carbide India Limited. Thus, all major decisions were taken under the orders of the Union Carbide Corporation of America. The evidence collected during the investigation proves that UCC was in total control of all the activities of UCIL.

5. The investigation of this case was dependent on highly scientific and technical evaluation of the events which led to the escape of MIC gas from the UCIL plant at Bhopal. The Government of India therefore constituted, immediately after the incident a team headed by Dr. S. Vardarajan, then D.G./C.S.I.R. to study all the scientific and technical aspects and submit their report. Dr. M. Sriam, Chief Research and Development Manager, Hindustan Organic Chemicals, Rasayani, District Ralgad (Maharashtra), was a member as well as the co-ordinator of the Scientific Team. Dr. Varadarajan submitted the report in December, 1985. A further-back up report was submitted by the C.S.I.R in May, 1987. These reports furnish, inter alia, the causes that led to the incident.

6. Investigation has revealed that UCIL started importing Savin from the UCC, USA in December, 1960. They were marketing this Sevin after adding dilatants etc. Subsequently, they decided to manufacture Sevin in their plant at Bhopal itself and accordingly created necessary facilities for production of Sevin with MIC as the basic raw material. To start with, they were importing MIC in 200 litres capacity stainless steel drums from the UCC Plant in West Virginia, USA. Subsequently UCC and UCIL decided to manufacture MIC in their factory at Bhopal itself.

7. At the stage on 13th November, 1973, UCC and UCIL entered into an agreement entitled Foreign Collaboration Agreement according to which the best manufacturing information then available from or to Union Carbide had to be provided for the factory in India. This necessitated UCC supplying the design, know how and safety measures for the production, storage and use of MIC which ought to have been an improvement on the factory of UCC at West Virginia based on the experience gained there. Investigation has however disclosed that the factory at Bhopal was deficient in many safety aspects. The design, know-how and safety measures were provided by the Union Carbide Corporation, USA and the erection and commissioning of the plant was done under the strict control of the experts of UCC. The Indians in this pant were only working under their directions.

8. After an initial period of profit, the UCIL factory was running in loss. The loss for the first 10 months of 1984 amounted to Rs. 5,03,39,000/- Due to this, U.C.E. Hong Kong directed UCIL vide their letter dated 26th October, 1984 that the factory at Bhopal should be closed down and sold to any available buyer. As no buyer became available in India, UCE, Hong Kong directed UCIL to prepare an estimate for dismantling the factory and shipping it to Indonesia or Brazil where they probably had some buyers. these estimates were completed towards the end of November, 1984.

9. The investigation conducted by the C.B.I., the report of the scientific team established by Government of India and in particular the literature and manuals etc regarding MIC of Union Carbide Corporation itself prove that MIC is relative, toxic, volatile and flammable. It is a highly hazardous and lethal material by all means of contact and in a poison. Skin contact with MIC can cause severe burns. MIC can also seriously injure the eyes even in its concentration. Exposure to MIC is extremely irritating and would cause chest pain, coughing, choking and even pulmonary edema. On thermal composition, MIC would produce hydrogen cyanide, nitrogen oxide, carbon monoxide and/or carbon dioxide.

10. MIC has to be stored and handled in stainless steel of types 304 or 316 namely, good quality stainless steel. Using any other material could be dangerous. In particular, iron or steel, aluminium, zinc or galvanized iron, copper or tin or their alloys could not be used for purposes of storage, transfer/transmission of MIC. This would mean that even the pipes and valves carrying MIC had also got to be of the prescribed stainless steel. In other words, at no stage should MIC had also got to be of the prescribed stainless steel. In other words, at no stage should MIC be allowed to come into contact with any of the metals mentioned above.

11. The tanks storing MIC, have to be, for reasons of safety, twice the volume of the MIC to be stored. It was also advised by UCC itself that an empty tank should also be kept available at all times of transferring MIC from its storage tank to the stand by tank on occasions of emergency. MIC has to be stored in the tanks under pressure by using nitrogen which does not react with MIC has to be maintained below 15 degree Celsius and preferably at about 0 degree Celsius. The storage system and the transfer lines have to be free of any contaminants as even trace quantities of contaminants are sufficient to initiate reaction which could become runaway reaction. On reaction setting in, there could be dangerous and rapid timerization. The induction period could vary from several hours to several days. The heat generated could cause reaction of explosive violence. In particular, water reacts exothermically to produce heat and carbon dioxide. consequently, the pressure in the tank will rise rapidly if MIC is contaminated with water. The reaction may begin slowly, especially if there is no agitation, but it will become violent. UCC itself states that with bulk systems contamination is more likely than with tightly sealed drums. All these properties of MIC show that despite all the safety precautions that could be taken, storage of large quantities of MIC in big tanks was fraught with considerable risk.

12. Investigation has disclosed that at the time when the incident took place there were three partially buried tanks, In the factory at Bhopal. These were numbered E610, E611 and E619. MIC was being stored generally in the tanks E610 and E611. E619 was supposed to be the stand by tank. In the normal running of the factory, MIC from E610 and 611 was being transferred to the Sevin plant through stainless steel pipe lines. MIC is kept under pressure by nitrogen which is supplied by a carbon steel header common to all the storage tanks. There is a strainer in the nitrogen line. Subsequent to the strainer the pipe is of carbon steel and leads to make up control valve (DMV) which also has a body of carbon steel. These carbon steel parts could get exposed to MIC pours and get corroded, providing a source of contaminant which could enter the MIC storage tank and cause dangerous, reactions in the MIC. During the normal working of the factory, MIC fumes and other gases that escape pass first through a pipe line called Process Vent Header (PVH) of 2" diameter. The escaping gases were carried by the PVH line to a Vent Gas Scrubber (VGS) containing alkali solution which would neutralize the escaping gases and release them into the atmosphere. Another escape line of such gases that was provided from the tanks was the Relief Valve Vent Header (RVVH) of 4" diameter. Normal pressure of the MIC tank is shown by a pressure indicator. When the pressure in the tank exceeded of 40 psig, a rupture disc (SRV) had to break and the said SRV in the RVVH line open automatically to allow the escaping gas to travel through the RVVH line to the VGS for neutralization.

13. Investigation has shown that the PVH and RVVH pipe lines as well as the valves therein were of carbon steel. Besides, on account of design defect these lines also allowed back flow of the alkali solution from the VGS to travel up to the MIC tanks.

14. A very essential requirement was that the MIC tanks in the factory had to be kept under pressure of the order of 1Kg/cm2g by using nitrogen, a gas that does not react with MIC. However, MIC in tank No. 610 was stored under nearly atmospheric pressure from 22nd October, 1984 and attempts to pressurize it on 30th November and 1st December, 1984 failed. The design of the plant ought not have allowed such a contingency to happen at all. The tank being under nearly atmospheric pressure, free passage was available for the entry of back flow of the solution from the VGS into the tank. According to the report of Dr. Varadarajan Committee, about 500 kgs, water with contaminants could enter tank 620 through RVVH/PVH lines. The water that entered RVVH at the time of water flushing along with backed up alkali solution from the VGS already present could find its way into the tank 610 through the RVVH/PVH lines via the blow down DMV or through the SRV and RD.

15. The first indication of any reaction in the tanks comes through the pressure and temperature indictors. The thermo well and temperature transmitting lines were out of order throughout and no temperature was being recorded for quite sometime. Pressure was also being recorded at the end of each shift to 8 hours duration instead every 2 hours as was being done earlier.

16. .....

17. On 2nd December, 1984 before 10.45PM no deviation was noticed in the pressure of tank No. 610. Soon thereafter, in the night shift, some operators noticed leakage of water and gases from the MIC structure and they informed the Control Room. The Control Room operator saw that the pressure had suddenly gone up in tank No. 610. Some staff in the 3rd shift including S/Shri R.K. Kamparia, C.N. Sen and Saumen Dey checked the pressure indicators on the tank E610 and found that the pressure had gone out of range. The factory staff tried to control the situation but they failed. Even tank E619 which had o be kept empty for emergency transfers was found to contain MIC and therefore when the reaction started, transfer thereto from tank 610 was not possible. The staff on duty immediately informed senior officials of UCIL at Bhopal about the escape of MIC. During all these developments and even thereafter the Union Carbide officials at Bhopal did not give any information to the residents or any local authority about the serious dangers to which the people were exposed and regarding which the said officials had full knowledge. On the other hand, what was initially mentioned was that ammonia gas had escaped."

14. Thereafter are listed the findings of the Scientific Team made by Dr Varadrajan indicating the causes that had resulted in the toxic gas leakage causing its heavy toll. In para 20 of the charge sheet the following findings of the investigation conducted by the C.B.I. have been noted.

"20. The investigation conducted by the C.B.I has proved the following aspects:-

(i) MIC is a highly dangerous and toxic poison.

(ii) Storing huge quantity of MIC in large tanks was undesirable and dangerous as the capacity and actual production in the Sevin plant did not require such a huge quantity of MIC should have been stored, that too in small separate stainless steel drums.

(iii) The VGS that had been provided in the design was capable of neutralising only 13 tones of MIC per hour and proved to be totally inadequate to neutralise the large quantities of MIC that escaped from tank No. E610. When the two tanks (E610 and E611) themselves had been designed for storing a total of about 90 tones of MIC, proportionately large capacity VGS should have been furnished in the design and erected rather than VGS that was actually provided.

(iv) Due to the design defect, there was back flow of alkali solution from the VGS to the tanks which had been drained in the past by the staff of UCIL. In fact, even after the incident, such draining was done from the PVH and RVVH lines.

(v) Whereas, the MIC tanks had to be constantly kept under pressure using nitrogen, the design permitted the MIC tanks not being under pressure in certain contingencies.

(vi) The refrigeration system that had been provided was inadequate and inefficient. No alternate stand by system was provided.

(vii) Neither the UCC not the UCIL took any steps to apprise the local administration authorities or the local pubic about the consequences of exposure of MIC or the gases produced by its reaction and the medical steps to be taken immediately.

21. Apart from these design defects, the further lapses that were committed were :-

(a) Invariably storing MIC in the tanks which was much more than the 50% capacity of the tanks which had been prescribed.

(b) Not taking any adequate remedial action to prevent back flow of solution from VGS into the RVVH and PVH lines. This alkali solution/water, therefore, used to be drained.

(c) Not maintaining the temperature of the MIC tanks at the preferred temperature of 0 degree Celsius but the pipe is of carbon steel and leads to make at ambient temperatures which were much higher.

(d) Putting as slip blind in the PVH line and connecting the PVH line with a jumper line to the RVVH line.

(e) Not taking any immediate remedial action when tank No. E610 did not maintain pressure from 22nd October, 1984 onwards.

(f) When the gas escaped in such large quantities, not setting out an immediate alarm to warn the public and publicise the medical treatment that had to be given immediately."

15. It was also recited that these lapses had not occurred, still the incident would have taken placed due to the basic defects in the design supplied by the UCC whose experts supervised the erection and commissioning of the plant itself. The lapses only helped to aggravate the consequences of the incident. Thereafter referring to the indications obtainable from the evidence collected during the investigation regarding the knowledge of the accused about the defective functioning of the plant the following pertinent recitals are found in paragraphs 23 and 24 of the charge sheet :

"23. The evidence collected during the investigation proves that the accused persons had the knowledge that by the various acts of commission and omission in the design and running of the MIC based plant, death and injury of various degrees could be caused to a large number of human beings and animals. All the accused persons joined in such acts of omission and commission with such common knowledge. This resulted in the incident on the night of 2nd/3rd December, 1984 which caused the death immediately and till date of about 2850 human beings and about 3000 animals. The number of affected persons is more than 5,00,000. The ailments developed by the affected persons include damaged respiratory tract function gastro intestinal functions, muscular weakness forgetfulness etc.

24. The investigation has established that S/Shri Warren Anderson, then Chairman, Union Carbide Corporation, USA, Keshub Mahindra, then Chairman, UCIL Bombay; Vijay Gokhale, then Managing Director and presently Chairman-cum-Managing Director, UCIL, Bombay; Kishore Kamadar, then Vice President In-charge, A.P. Division, UCIL, Bhopal, Dr. R.B. Roy Choudhary, then Asstt. Works Manager, A.P. Division, UCIL, Bhopal, S.P. Choudhary, then Production Manager, A.P. Division, UCIL, Bhopal; K.V. Shetty, Plant Superintendent, A.P. Division, Bhopal; S.I. Qureshi, Production Assistant, A.P. Division, UCIL, Bhopal; the Union Carbine Corporation, U.S.A.; Union Carbide Eastern Inc. Hong Kong and Union Carbide India Limited, Calcutta have committed offences punishable Under Sections 304, 326, 324, 429 IPC r/w Section 35 IPC."

16. Along with this charge sheet a detailed abstract was filed supported by documentary evidence to show how the conclusion reached by the investigating agency were supported by this documentary evidence. In this abstract it was recited that in that plant there were no facilities for collecting MIC produced separately in each shift and the material is directly laid into the storage tanks without batch wise analysis. It was also found that there are no on-line analysers. Similarly, nitrogen from a neighbouring factory if fed directly into the storage tanks, without full intermediate storage and quality determination Carbon steel section are used in the connectors to the storage tanks. Copper tubes as used in connectors to the level instruments of the tank. The system of instruments for alarm to indicate sudden increase in temperature are not suited to the conditions of operation. Only a single refrigeration system for cooling of MIC in two tanks was installed and it had not been operated for some considerable time. MIC has the combination of properties of very

high reactivity with minimum contaminants, ready volatility to become gas and very high inhalation toxicity. The installed facilities provided for disposal of unstable liquid MIC in alkali or for the neutralisation of gaseous emissions from violent reaction, on examination are found to be not capable of meeting the objectives of such disposal in a very short time of two hours. The abstract also recited that the ingress of about 500 kg of water alone, was not the sole cause of the escape of a huge quantity of toxic gas. In this connection the following averments found in the abstract were relied upon by the prosecution.

> *"The ingress, of about 500 kg of water alone, without metallic contaminants, would have led to a reaction with three to four tones of MIC and gradual rise in temperature to 70 degree Celsius, below the boiling point of MIC at the safety valve pressure. The very rapid explosive rise in temperature and pressure in the tanks 610, implies conditions for a run away dramatisation reaction already existed. Ingress of water and reaction with MIC would generate carbon dioxide evolution and cause mixing. The storage tank conditions would then equal those in a well mixed reactor supplied with heat. Once initiated, the timerisation reaction had features of auto-catalytic and auto-thermal reactions and temperatures increased rapidly to 250 degree Celsius. The relief valve design could not permit free flow of large quantities of gases at the level at which they were generated and therefore further reactions continued.*
>
> *The presence of sodium at levels of 50 to 90 ppm in the samples from residues of tank 610 indicates ingress of some alkali, possibly derived from the Vent Gas Scrubber Accumulator. It is know that the tank 610 could not be pressured with nitrogen at any time after 22 October, 1984. The contents of tank 610 were virtually at atmospheric pressure from that date providing opportunities for entry of metal contaminants. From a perusal of the reports of the events of the night of 2/3 December, 1984, it appears during the cleaning of choked filters with water in the relief Valve Vent Header, such water perhaps mixed with alkali from Vent Gas Scrubber Accumulator, could have entered the non pressurised tank and may have carried some metallic contaminants from the carbon steel portions of header pipelines. The rapid rise in temperature necessitates onset of metal catalysed polymerisation and could result from water alone. The presence of chloroform has no influence whosoever in initiating or accelerating the run-away reactions. The quantum of leakage is related not to the quantum of water but to the amount of MIC stored in a single container. If 42 tones of MIC had been stored in 210 stainless steel drums instead of a single tank, leakage by reactions or spillage would be no more than one fifth of a tone."*

17. Reliance was also placed on the brochure for showing that for manufacture of Sevin, a very volatile and dangerous raw material, MIC had to be stored in large quantities and that raw material was not properly kept under cooling conditions material was not properly kept under cooling conditions and if coming in contact with water or any other pollutant had a tendency to create extremely toxic gas which once it escapes would necessarily create disaster to the human beings and even cattle which come in its contact. It has to be stated in fairness to learned senior counsel for the appellants that they also did

not challenge the fact that MIC was a very highly volatile and dangerous material which had to be properly kept so that it may not spell disasters once it gets converted into poisonous gas and if such gas escapes from the factory. However their only contention was whether there was any prima facie evidence to show that the appellants or any one of them was in any way responsible for this unfortunate accident, which in their view was an act of God for which no human being was responsible.

18. The learned Addl. Solicitor General Shri Altaf Ahmed has also invited our attention to document D-159 a brochure of UCC, USA which stated that if MIC is contaminated with water it may become violent. He also invited our attention to D-195 which is a circular giving company information about definitions of subsidiary and associate companies. This was relied upon to show the UCIL was a subsidiary company of UCC, USA. Additional D-9 was relied upon which was a copy of the application for grant of industrial licence for manufacture of MIC based pesticides with foreign collaboration of UCC, USA, to show that UCL authorities were well aware regarding the hazardous nature of MIC which they were handling in collaboration with UCC, USA and the safety measures which were required to be undertaken. Letter D-191 dated 26.10.1984 written by R. Nagarajan of UCEI to Shri K.S. Kamdar was relied upon to show that Shri Kamdar was requested to give feasibility report for dismantling of the MIC Plant, Bhopal and the shipment thereof abroad and the cost estimate involved in such an undertaking. Reply of Shri Kamdar at D-19 dated 19.11.1984 was also relied upon to show the cost estimate prepared for dismantling and shipping of the Sevin/MIC Unit from Bhopal. These documents were relied upon to indicate that by the closing months of 1984 this plant had become useless and had to be scrapped and shifted and that showed lack of interest of the management and those operating the plant in the safe working and was almost a dead burden to them and this had resulted, according to the prosecution, in illegal omission on their part in taking necessary safety measures for containing the hazardous MIC within the confines of factory premises. D-216 was a statement showing loss to MIC Unit from 1981 to 1984 which showed huge financial loss suffered by the company in running the said plant. Thereafter the learned Attorney Solicitor General placed strong reliance on document D-205 which was Operational Safety Survey Report conducted by team of experts of UCC. This document showed that a number of deficiencies in the maintenance of MIC Unit were pointed out by experts as early as in 1982. The said report is styled as Operational Safety Survey CO, MIC and SEVIN Units Union Carbide India Limited, Bhopal Pant. It is dated 28th July 1982. The covering letter addressed to Shri J. Mukund accused no. 5 the then works Manager of the Bhopal Plant recites that the team was very impressed with the quality of operating and work procedures developed over the past few years. However it sought to bring to the attention of the address in connection with the equipment and mechanical deficiencies described in the report and suggested that continued efforts in the area of procedures, training and enforcement were necessary for contributing substantially to the on-going safety efforts at the Bhopal Plant. It was indicated that there were potentials for release of toxic materials in the phosgene/MIC unit and storage areas, either due to equipment failure, operating problems or maintenance problems. There were potentials for contaminations, overpressure, or overfilling of the SEVIN MIC feed tank. At m 2.1 were noted several conditions for

operation of the unit that presented serious potential for sizeable releases of toxic materials. They were listed as under :

"(a) Leakage of phosgene and chloroform from the PSS feed and quench feed filter head assemblies.

(b) Breakage of small lines or connections, either because of inadequate line strength, installation of long unsupported nipples, or corrosion. Examples cited included quench pump drain and vent connections, HCI Scrubber Pump drains, and MRS and hydrolyser tails pump drinks and vents. (It should be noted that several of these lines were originally schedule 10 nickel piping, and have been replaced, for the most part.)

(c) Possible failure of the hydrolyser calandria vapour line due to erosion/corrosion.

(d) Mechanical pump seal failures, caused by improper seal design (on the Glit pumps, for instance) or inadequate control of replacement materials.

(e) Release of material at unexpected places due to improper evacuation jet operation for open evacuation drops."

19. Regarding the operation of MIC Feed Tank at Sevin which was the basic source of the Bhopal Gas tragedy the Expert Committee Report indicated the dismal situation then existing even in 1982 in paragraph M. 4.2 of the Report as under :

"(a) It appears that it would be possible to contaminate the tank with material from the vent gas scrubber. Although the arrangement of lines connecting the tank and vent scrubber appear to be adequate to prevent back flow of liquid, it appears possible to back reactive quantities of water vapours and other gases from the scrubber to the feed tank when it is depressurized.

(b) Location of the tank inside a room and lack of water spray protection facilities create a situation where a toxic and flammable vapour cloud could be formed and confined without provision of knockdown or dispersal. There is mechanical ventilation in the room, but the same circumstances that could result in a leak or overfill (power failure, for instance) could result in the ventilation being inoperative. Also, it appears that a sizeable spill would not be readily dispersed by the system.

(c) There is some question about the adequacy of the tank relief valve to relieve a runway reaction or fire exposure, particularly since the tank has been enlarged.

(d) Manual control of filling of the tank, with no instrumentation backup, creates a possibility of accidental overfilling."

20. Even that apart after the Bhopal Gas tragedy as stated earlier a scientific team of experts headed by Dr. Vardarajan inspected the plant on spot and tried to find out the reasons for this tragedy. At page 81 of the Report after listing various defects in the working of the plant especially with reference to storage tank and the instrumentation and

control system the committee in paragraph 4.3 of the Report which is D-164 on the record of the Trial Court observed as under:

> *"MIC is kept under a pressure of nitrogen which is supplied by a carbon steel header common to all storage tanks. There is a strainer in the nitrogen line. Subsequent to the strainer the pipe is of carbon steel and leads to make-up DMV which also has a body of carbon steel. Similarly, the blow down DMV is also of carbon steel body. These carbon steel parts may be exposed to MIC vapours and get corroded, providing a source of contaminant which can enter the MIC storage tank."*

21. At paragraph 4.4 dealing with instrumentation and Control Systems it was observed in the Report of the Vardarajan Committee as under:

> **"4.4 Instrumentation and control System:**
>
> *The pressure in the MIC tank increases rapidly it MIC is contaminated with water. There is no high pressure alarm to alert the operator about the build-up of pressure.*
>
> *There is a graphite rupture disc between the tank and safety value. This graphite rupture disc may break because of pressure surges even under normal conditions. There is no provision for an alarm to bring such a breakage of rupture disc to the attention of the operator.*
>
> *For the storage of a lethal chemical such as MIC, two instruments in parallel (one for control/indication and another for alarm) are normally provided. No such provision is made. For example, quite often the level readings have not been recorded, reportedly because the level system used to be out of order very often due to choking problems. In fact, after the event, since the only level monitoring system provided for tank 611 was not functioning, it was not possible to ascertain the exact quantity of MIC in that tank. An additional level measuring system would have helped in such a situation.*
>
> *Ingress of contaminants or water can start a reaction with MIC which will begin slowly and produce a rise in temperature of the tank contents. However, the range of the temperature transmitter provided was only -25 degree Celsius to+25 degree Celsius, with a high alarm setting to+11 degree Celsius to+40 degree Celsius at Bhopal. The temperature of MIC in the storage tanks for most part of the year was higher than the high temperature alarm setting, i.e.+11 degree Celsius. Indeed the temperature of material in the tank was higher than the maximum of the range of the temperature transmitter, i.e.+25 degree Celsius. In such circumstance the actual temperature was not known and the transmitter was of no value. Further, provision of "rate of rise in temperature" alarm would have invited the operator's attention to the start of such a reaction. No such provision was made."*

22. In connection with refrigeration the Committee observed in paragraph 4.5 of the Report as under:

"4.5 Refrigeration:

There is only one common compressor and chillier system for all the three MIC storage tanks. For each a hazardous maternal as MIC, where maintaining it at a low temperature is considered very important, a spare compressor and chillier system would have ensured proper chilling even when the main compressor and chillier system is under repairs or maintenance. This provision of spare compressor and chillier has not been made."

23. At paragraph 5 of the Report is found an analysis of the events which led to the disaster out of the gas escape on that fateful night and the summary of the conclusion is found in the last sub-paragraph of para 5. It reads as under:

"In respect, it appears the factors that led to the toxic gas leakage and its heavy toll existed in the unique properties of very high reactivity, volatility and inhalation toxicity of MIC. The needless storage of large quantities of the material in very large size containers for inordinately long periods as well as insufficient caution in design, in choice of materials of construction and provision of measuring and alarm instruments, together with the inadequate controls on systems of storage and on quality of stored materials as well as lack of necessary facilities for quick effective disposal of material exhibiting instability, led to the accident. These factors contributed to guidelines and practices in operations and maintenance. Thus the combination of conditions for the accident were inherent and extant. A small input of integrated scientific analysis of the chemistry, design and controls relevant to the manufacture would have had an enormously beneficial influence in altering this combination of conditions, and in avoiding or lessening considerably the extent of damage of December 1984 at Bhopal."

24. In addition to the aforesaid documentary evidence the learned Additional Solicitor General also relied upon D-157 being Memorandum of Association and Articles of Association of M/s Ever Ready Company (India) Private Limited subsequently changed to M/s Union Carbide India Limited showing accused no. 2 Keshub Mahindra as the Chairman. Various annual report were pressed in service to show how accused no. 2 Keshub Mahindra presided over the meetings and how accused no. 3 V.P. Gokhate worked as whole-time Director. This was relied upon to show that these accused even though stationed at Bombay shared the criminal knowledge of the other personnel of the company who were actually handling the Bhopal plant being accused nos. 5 to 9. It was submitted relying on aforesaid material and also the statements of Arjun Singh, Mohan Singh and Ram Lai and other statements of persons working in the plant which were recorded during investigation that all the accused had criminal knowledge regarding the detective working of the plant at Bhopal and as the Plant was to be dismantled and shifted out of India the powers that monitored the plant were no longer interested in its safe keeping and by their illegal omissions to take appropriate steps for safe working of the plant and for the safe keeping of such dangerous material like MIC which they were handling at Bhopal, they were rightly changed for the concerned offences by the learned Trial Judge and that the High Court was right in refusing to interfere with the framing of these charges. In this connection it was pointed that as the material showed no transfer of

MIC from the storage tanks to the production line could take place since November 22, 1984 due to the defective system. Still no Vardarajan Committee showed that a relief valve vent header and process valve header were joined together by putting a 'U' type flexible hose jumper line. Therefore, according to him, this resulted in back flow of alkaline solution from the VGS to the storage tanks leading to a chain of reactions.

25. It was next submitted that despite the recommendations in the report of the Operational Safety Survey conducted at Bhopal Plant by experts from United States during May 1982 and despite various deficiencies of serious and minor nature being pointed out no remedial steps were take. Even during the Safety Survey leakages from MIC plant area had been noticed. Deficiency in safety valve and absence of fixed water sprayers in the MIC Plant area had been particularly pointed out. Thus the gas had leaked from the storage tank due to a chain chemical reaction. That the material led before the Trial Court at the stage of framing of charges clearly indicated that there was possibility of ingress of water and other contaminants from the RVVH or during cleaning of the valve due to rupturing the disc valve which had resulted into the grim tragedy. It was next contended that the material by the prosecution at this stage at least prima facie showed that all the accused were fully responsible for the conduct of the plant and they shared the criminal knowledge about the acts of commission and omission on the part of those of the accused who were actually handling the plant and supervising its working on that fateful night at Bhopal. That accused R. Choudhary, J. Mukund, S.P. Choudhary, K.V. Shetty and S.I. Qureshi who were actively associated with the working of the plant at Bhopal were directly concerned with the incident as they were in full knowledge of the deficiencies in the plant. Similarly accused Keshub Mahindra, V.P. Gokhale and Kishore Kamdar too had full knowledge of the defects in the plant at Bhopal and, therefore, they also shared the criminal liability based on criminal knowledge about the acts of commission and omission in connection with the operation of the said plant at Bhopal. That all the accused had full knowledge of hazardous nature of the MIC manufactured as an intermediate product in Bhopal plant, defects in the design of the plant and lack of safety measures, but still they had taken no precautionary steps to avoid this unfortunate accident.

26. Learned senior counsel for the appellant-accused on the other hand submitted that even if taking the material available on record at this stage on its face value the short question is whether any charge could been framed against the accused under Section 304 Part II, IPC with or without the aid of Section 35, IPC and even for that matter any charges could have been framed under Sections 326, 324 or 429 with or without the aid of Section 35of IPC. We may at once state that both the learned Sessions Judge as well as the High Court have taken the view on the aforesaid material that a prima facie case has been made out by the prosecution requiring accused to face the aforesaid charges and the trial of the accused on these charges cannot be cut short or nipped in the but in the light of the aforesaid material which has to be accused as prima facie true and reliable at this preliminary stage of framing of charges.

27. It, therefore, becomes necessary for us now to address ourselves on this moot question. As noted earlier the main charge framed against all these accused is under

Section 304 Part II, IPC. So far as accused nos. 2,3,4 and 12 are concerned they are also charged with offences under Sections 326, IPC and 429 IPC read with Section 35 IPC while accused 5 to 9 are charged substantially with these offences also. We shall first deal with he charges framed against the concerned accused under the main provisions of Section 304 Part II, IPC. A look at Section 304 Part II shows that the concerned accused can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged if it is alleged that the act of the concerned accused is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death the charged offences would fall under Section 304 Part II. However before any charge under Section 304 Part II can be framed, the material on record must at least prima facie show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. However, if the material relied upon for framing such a charge against the concerned accused falls short of even prima facie indicating that the accused appeared to be guilty of an offence of culpable homicide Section 304 Part I or Part II would get out of the picture. In this connection we have to keep in view Section 299 of the Indian Penal Code which defines culpable homicide. It lays down that whoever causes death by doing a an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide'. Consequently the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least prima facie indicate that the accused had done an act which had death with at least such a knowledge that he was by such act likely to cause death. The entire material which the prosecution relied upon before the Trial Court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates prima facie that on that fateful night when the plant was run at Bhopal it was run by the concerned accused with the knowledge that such running of the plant was likely to cause death of human beings. It cannot be disputed that mere act of running a plant as per the permission granted by the authorities would not be a criminal act. Even assuming that it was a defective plant and it was dealing with a very toxic and hazardous substance like MIC the mere act of storing such a material by the accused in tank no. 610 could not even prima facie suggest that the concerned accused thereby had knowledge that they were likely to cause death of human beings. In fairness to prosecution it was not suggested and could not be suggested that the accused had an intention to kill any human being while operating the plant. Similarly on the aforesaid material placed on record it could not be even prima facie suggested by the prosecution that any of the accused had a knowledge that by operating the plant on that fateful night whereat such dangerous and highly volatile substance like MIC was stored they had the knowledge that by this very act itself they were likely to cause death of any human being. Consequently in our view taking entire material as aforesaid on its face value and assuming it to represent correct factual position in connection with the operation of the plant at Bhopal on that fateful night it could not be said that the said material even prima facie called for framing of a charge against the concerned accused under Section 304 Part II, IPC on the spacious plea that the said act of the accused amounted to culpable homicide only because the operation of the plant on that night ultimately resulted in deaths of number of human beings and

cattle. It is also pertinent to note that when the complaint was originally field suo motu by the police authorities at Bhopal and the criminal case was registered at the police station Hanumanganj, Bhopal as case no. 1104/84 it was registered under Section 304-A of the IPC. We will come to that provision a little later. Suffice it to say at this stage that on the entire material produced by the prosecution in support of the charge it could not be said even prima facie that it made the accused liable to face the charge under Section 304 Part II. In this connection we may refer to a decision of the Calcutta High Court to which our attention was drawn by learned senior counsel Shri Rajendra Singh for the appellants. In the case of *Adam Ali Taluqdar and others v. Kind Emperor* AIR 1927 Calcutta 324 a Division Bench of the Calcutta High Court made the following pertinent observations while interpreting Section 304 Part II read with Section 34 IPC:

> *"Although to constitute an offence under S.304, Part 2, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though the intention of causing death. Each of the assailants may know that the act, they are jointly doing, is one that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act and therefore S.34 can apply to a case under S.304, Part 2"*

28. Once we reach the conclusion that the material produced by the prosecution before the Trial Court at the stage of framing of charges did not even prima facie connect the accused with any act done with the knowledge that by that act itself deaths of human beings would be caused the accused could not be even charged for culpable homicide and consequently there would be no question of attracting Section 304 Part II against the concerned accused on such material. When on the material produced by the prosecution no charge could be framed against any of the accused under Section 304 Part II there would remain no occasion to press in service the applicability of Section 35, IPC in support of such a charge for those accused who were not actually concerned with the running of the plant at Bhopal, namely, accused nos. 2,3,4 and 12.

29. We may now turn to the charges framed against the concerned accused-appellants under Sections 324 and 326 of the IPC. Section 324 deals with 'voluntarily causing hurt by dangerous weapons or means' while Section 326 deals with 'voluntarily causing grievous hurt by dangerous weapons or means'. Both these sections for their application require material against the accused on the basis of which it could be said that the accused had voluntarily caused such hurt or grievous hurt, as the case may be. Section 321 defines 'voluntarily causing hurt' and provides that, 'whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt"'. Similarly Section 322 deals with 'voluntarily causing grievous hurt' and lays down that, 'whoever voluntarily causes hurt, if the hurt, which he intends to cause or knows himself to be likely to cause is grievous hurt, is said "voluntarily to cause grievous hurt"'. For applicability of these Sections the material relied upon by the prosecution in support of such charges must show that the concerned accused had committed the act complained of at least with the knowledge that by such act

he was likely to cause hurt or grievous hurt to the victim. We have already indicated hereinabove that the material pressed in service by the prosecution for framing such charges against the accused falls short of indicating that the act of running the plant on that fateful night at Bhopal which in its turn involved storing and utilising highly dangerous and volatile substance like MIC in their storage tank no. 610 could not even prima facie be said to have done with the knowledge that by such act itself simple hurt or grievous hurt was likely to be caused to any one. Consequently even charge under Sections 324 and 326, IPC could not have been framed against the concerned accused. Once this conclusion is reached there would also remain no occasion to press in service against the absentee accused nos.2,3,4 as well as 12 Section 35 IPC which the prosecution sought to press in service along with substantive Sections 324 and 326 IPC. In fact on the material as placed by the prosecution in support of these charges if a charge under Section 304 Part II cannot be framed then on the parity of reasoning no charge under Sections 324 and 326 could also be framed. That takes us the Section 429, IPC which deals with mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.' For application of this Section the material must indicate that the concerned accused had committed mischief in the first place. The term mischief is defined by Section 425 IPC. It lays down that, whoever with intent to cause, or knowing that he is likely to cause, wrongful loss of damage to the public or to any person, or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief". Before the said Section is pressed in service the material relied upon by the prosecution must indicate even prima facie that the concerned accused by running the plant at Bhopal on that fateful night had knowledge that by running such plant they were likely to cause wrongful loss or damage to the public or to any person. It is difficult to appreciate how said provision can be pressed in service on the basis of the material referred to hereinabove which does not whisper or even prima facie indicate how by running such a plant wherein highly dangerous and volatile substance like MIC was stored in tank no. 610 the accused had the knowledge that by that act along they were likely to destroy anybody's property or cause wrongful loss or damage to any person. Once the applicability of Section 425, IPC dealing with 'mischief' is ruled out on such material there would remain no occasion to invoke Section 429 which for its applicability requires the prosecution to show in the first instance any material against the concerned accused indicating the commission of mischief by the accused. In our view, therefore, on the material pressed in service by the prosecution for framing charges against the accused no charge could have been framed against the concerned accused either under Section 304 Part II or under Section 324, 326 or 429, IPC with or without the aid of Section 35, IPC. On these findings of ours the appeals will be required to be allowed and all these charges will have to be quashed.

30. However this is not the end of the matter. There still remains the question as to whether any other charge can be framed against the concerned accused for any of the offences under the Indian Penal Code on the basis of the very same material relied upon by the prosecution for framing appropriate charges against the accused. It is true that though originally the criminal case was registered for an offence under Section 304-A of the IPC the Central Bureau of Investigation which took up the investigation thought it

proper to press in service Section 304 Part II and Sections 324, 326 and 429 of the IPC. charges under these sections have been found by us to be unsustainable on the material produced by the prosecution on record in support of these charges. However that does not mean that on the material as it stands on record the accused cannot even prim facie be alleged to have committed any criminal offence for which they can be called upon to face the trial and that they should get a clean chit and clear walk-over. In our view the prosecution on the material as aforesaid had made out a prima facie case against the accused for being tried under Section 304-A of the IPC which reads as under:

> ***"304-A. Causing death by negligence'-***
>
> *Whoever causes the death of any person by doing any rash of negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

31. On our finding that the material pressed in service by the prosecution does not indicate even prima facie that the accused were guilty of an offence of culpable homicide and, therefore, section 304 Part II was out of picture, Section 304-A on this very finding can straightaway get attracted at least prima facie. It cannot be disputed that because of the operation of the defective plant at Bhopal on that fateful night a highly dangerous and volatile substance like MIC got converted into poisonous gas which snuffed off the lives of thousands of human beings and maimed other thousands and killed number of animals and that all happened, as seen at least prima facie the material led by the prosecution on record, because of rash and negligent act on the part of the accused who were in-charge of the plant at Bhopal. Even though, therefore, these accused cannot be charged for offences under section 304 Part II the material led against them by the prosecution at least prima facie showed that the accused were guilty of rash or negligent acts not amounting to culpable homicide and by that act caused death of large number of persons. We may mention that on the question whether on this material. Section 304-A could be invoked or not, learned senior counsel for the appellants as well as learned Addl. solicitor General for the respondent-State did address us and, therefore, we can and should, with a view to avoid multiplicity of proceedings, exercise our powers under Article 142 of the Constitution and decide whether the material led by the prosecution can prima facie support charges under Section 304-A against concerned accused. In the *case of State of Gujarat v. Haidarali Kalubhai* (1976) 1 SCC 889 it was laid down by this Court as under :

> "*Section 304-A by its own definition totally excludes the ingredients of Section 299 or section 300, I.P.C Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, section 304-A has to make room for the graver and more serious charge of culpable homicide."*

32. On the facts found in that case if was held that prosecution evidence did not make out a case of any wilful or deliberate act on the part of the accused in order to cause the death of the deceased by driving the truck in the way he did. Whether the prosecution brings

home the charge under section 304-A or not will, of course, have to be decided in the light of the evidence that may be led in the trial against the accused who is required to face the charge under Section 304-A. But for framing such a charge the material on record must at this sate be assumed to be representing a true version of the event. For repelling the applicability of Section 304-A, learned senior counsel for the appellants pressed in service decision in the case of *Ambalal D. Bhatt v. The State of Gujarat* (1972) 3 SCC 525. The following observations in the aforesaid judgment were pressed in service:

> *"(i) In a prosecution for an offence under Section 304-A of I.P.C., the court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate an efficient cause of the death without intervention of other's negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an offence under Section 304-A, I.P.C.*
>
> *The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua non. The court has to determine whether the act of the accused is the causa causans or has there been a cause intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be, ought not to allow the mind boggle while appreciating the evidence."*

33. It was submitting that the material must prima facie show that the alleged act of the accused was the direct result of rash and negligent act. In this connection we must observe that the material led by the prosecution to which we have made a detailed reference earlier prima facie shows that there were not only structural defects but even operational defects in the working of the plant on that fateful night which resulted into this grim tragedy. Consequently a prima facie case is made out for framing charges under Section 304-A against the concerned accused. If ultimately on the evidence led by the prosecution and even by the defence if at all they choose to lead evidence in rebuttal, it is found that the act complained of was not the proximate and efficient cause of death and intervention of other's negligence had taken place the accused may get acquittal after facing the full fledged trial. But that stage has yet not come. It would, therefore, be premature at this stage to say as to what would be the ultimate result of the trial once the accused are made to face such a trial. But it cannot be said that on the material led by the prosecution at this stage even the case of culpable negligence or rashness is also not made out at least prima facie against the concerned accused and the trial should be nipped in the bud even for such a charge. Our attention was also invited by learned senior counsel for the appellants in support of their contention that the material on record does not prima facie make out a case for framing a charge under section 304-A, IPC. The following observations of Hegde, J. speaking for a Bench of three learned Judges in the case of Suleman Rehiman Mulani & Anr. v. State of Maharasthra (1968) 2 SCR 515, were pressed in service:

"The requirements of S. 304-A IPC are that the death of any person must have been caused by the accused by doing any rash or negligent act. An other wards, there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. There is no presumption in law that a person who possesses only a learner's licence or possesses no licence at all does not know driving. For various reason, not excluding sheer indifference, he might not have taken a regular licence. The prosecution evidence that first appellant had driven the jeep to various places on the day previous to the occurrence was a proof of the fact that he knew driving."

34. Even that decision cannot be of any avail to the appellants for the simple reason that question of proof of rashness and negligence will arise at the stage of trial after full evidence is led by the prosecution and even by the accused side if at all they choose to do so and in the light of that evidence the question would arise whether the charge as framed is made out by the prosecution against the concerned accused. At present we are concerned with the short question as to whether on the material led by the prosecution at this stage a case is made out for framing charge under Section 304-A, IPC or not It cannot be gainsaid that the voluminous evidence led by the prosecution in this connection at least prima facie shows that the concerned accused who operated the plant on that fateful night at Bhopal could be alleged to be at least guilty of rash and negligent act in the way this highly volatile substance MIC was handed by them and which ultimately escaped in vaporous form and extinguished the lives of thousands of human beings and animals apart from causing serious bodily injuries to thousands of others. Our attention in this connection was also invited by learned senior counsel for the appellants to the case of Kurban Hussein Mohammedali Rangwalla V. State of Maharashtra (1965) 2 SCR 622. It was submitted relying on the said decision that for punishing an accused under Sections 304-A and 285 of the IPC it was required to be shown that because of the alleged rash and negligent act death must result and death must be the direct and proximate result. In that case on evidence led at the full fledged trial the question arose whether the charge was made out all these judgments on which learned senior counsel for the appellants placed reliance, therefore, could have applicability for judging the culpability of the concerned accused after they face the trial and entire evidence is led in the case against them. However for framing charge under Section 304-A on the aforesaid material it cannot be said that the said material even prima facie did not point out the culpability of the concerned accused in running a defective plant having number of operational defects and in being prima facie guilty of illegal omissions to take safety measures in running such a limping plant on the fateful night which resulted into this colossal tragedy. The aforesaid conclusion of ours, therefore, would make out a prima facie case against accused nos. 5, 6, 7, 8 and 9 who were in actual charge of running of the Bhopal Plant and would require them to face the trial for charge under Section 304-A of the IPC.

35. So far as the remaining accused nos. 2, 3, 4 and 12 are concerned the material produced on record clearly indicates at least prima facie that they being at the helm of affairs have to face this charge for the alleged negligence and rashness of their subordinates who actually operated the plant on that fateful night at Bhopal and for that

purpose Section 35 of the IPC would also prima facie get attracted against them. A mere look at that Section shows that if the act alleged against these accused becomes criminal on account of there sharing common knowledge about the defective running of plant at Bhopal by the remaining accused who represented them on spot and who had to carry out their directions from them and who were otherwise required to supervise their activity, Section 35 of IPC could at least prima facie be invoked against accused 2, 3, 4 and 12 to be read with Section 304-A, IPC. Consequently we find that on the material led by the prosecution against the accused at this stage a prima facie case was made out by the prosecution for framing charges against accused nos. 2, 3, 4 and 12 under Section 304-A read with Section 35 IPC while substantive charges under Section 304-A could be framed against accused nos. 5, 6, 7, 8 and 9. In this connection Shri Desal, learned senior counsel for the appellants vehemently submitted that the High Court was in error in invoking Section 35 against the concerned accused. Placing reliance on *Esso Standard Inc. v. Udharam Bhagwandas Japanwalla* (1975) 45 Comp. Cas. 16 he submitted that, that was a case in which for the individual acts of the directors of the company the company was sought to be made liable by invoking the principle of corporate liability based on the doctrine of directing mind and will. Shri Desal submitted that this was a converse case where for the act of the company which is a corporate body being accused no. 12 the individual directors are sought to be roped in. The aforesaid contention of Shri Desal cannot be of any avail at this stage for the simple reason that whether on facts such converse case is made out or not in the light of aforesaid decision will depend upon the evidence that may be led at the stage of trial. But this would not rule out framing of appropriate charge against the appellants if there is prima facie material against them which in our view has been made available by the prosecution before the Trial Court for framing such a charge against the concerned accused.

36. Shri Ashok Desai, learned senior counsel then submitted that the material led by the prosecution does not even remotely indicate that accused no. 2 who was at Bombay could have shared any knowledge with persons at Bhopal who were actually operating the plant. When from the documentary evidence produced by the prosecution it is prima facie indicated that the accused at the helm of however we must add a caution. We must note that whatever we have observed at this stage in connection with the material produced by the prosecution for framing charges against the accused is strictly confined to this limited question. Whether the accused are found actually guilty of the charges framed against them or not will strictly depend upon the evidence that may be led at the stage of trial and the court will have to decide the culpability of the concerned accused, if any, strictly confined to the evidence that may be led at the stage of trial. Our present observations, therefore, should not be treated to have even remotely suggested that in fact the accused the guilty of the offences with which they are liable to be charged pursuant to our present order. Consequently on the material on record charges under Section 304-A read with section 35 IPC can be framed against accused nos. 2, 3, 4 and 12. We direct the appropriate Trial Court to frame charges as aforesaid against the concerned accused.

37. However in our view from the material which is produced on record there is a possibility of considering a further question whether charges under Section 336, 337 and

338 of the IPC with our without the aid of section 35 can be framed against the concerned accused. They read as under:

> *"336. Act endangering life or personal safety of others –whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term – which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.*
>
> *337. Causing hurt by act endangering life or personal safety of others – Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*
>
> *338. Causing grievous hurt by act endangering life or personal safety or others – Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."*

38. As none of the parties have addressed us on these aspects we leave this question for consideration of the learned Trial Judge who may after hearing the parties decide whether on the material as led by the prosecution on record at this stage charges, if any, can also be framed under Section 336, 337 and 338 of the IPC with or without the aid of Section 35 of the IPC. We express no opinion on this aspect and leave it open to the Trial Court to address itself on this question.

39. As a result of the aforesaid discussion it is held that on the material led by the prosecution appropriate charges which are required to be framed against the concerned accused are under Section 304-A, IPC so far as the accused nos. 5, 6, 7, 8 and 9 are concerned while so far as accused nos. 2, 3, 4 and 12 are concerned charges under Section 304-A read with Section 35 IPC will have to be framed. As these offences are tribal by the court of Judicial Magistrate 1st class, Bhopal the Sections Cases shall be transferred to the Court of the Chief Judicial Magistrate, 1st Class, Bhopal who will proceed with the trial in accordance with law and frame appropriate charges under Section 304-A with or without the aid of Section 35, as the case may be, against the concerned accused as indicated hereinabove.

40. In the result the appeals filed by the concerned accused partially succeed to the aforesaid extent. Charges framed against them under Section 304-A Part II, 324, 326 and 429, IPC with or without the aid of Section 35, as the case may be, are quashed and set aside. Instead it is directed that the appropriate Trial Court shall frame charges against these accused as indicated in the judgment. The appropriate Trial Court to which the case will stand transferred is also directed to consider the further question whether charges should be framed under Sections 336, 337 and 338 of the IPC after hearing the concerned parties. On that aspect we express no opinion.

Orders accordingly.

M.C. Mehta v. Union of India
AIR 1996 Supreme Court 1977
Interlocutory Application No. 29 in Writ Petition (Civil) No. 4677 of 1985, D/-10-5-1996
Kuldip Singh and K. Venkataswami, JJ.

Environmental Protection Act (29 of 1986), S. 3 - Pollution by mining operations - Closure of mines - Pollution caused by mining operations near Badkal lake and Surajkund - State Govt. ordering closure of all mines within radius of 5 kms. - Considering report of expert body erations within 2 km. radius of Badkal lake and Surajkund - Further directed that mining leases within areas of 2 to 5 kms. should not be renewed unless no objection of State and Central Pollution Control Board is obtained.

M.C. Mehta v. Union of India
AIR 1996 Supreme Court 2231
Interlocutory Application 22 in Writ Petition (Civil) No. 4677 of 1985, D/-8-7-1996
Kuldip Singh and Faizan Uddin, JJ.

Constitution of India, Art. 32 - National Capital Region Planning Board Act (2 of 1985), S. 11A(2) - Master plan for Delhi - Hazardous and noxious industries not permitted to operate in Delhi by provisions of Master Plan - No new heavy and large industrial units are to be permitted in Delhi under Master Plan - Aforesaid industries were identified on directions of Supreme Court - Direction given to them to shift from New Delhi and to relocate themselves before stipulated date - National Capital Region Planning Board directed to give them all assistance in the process of relocation - Further direction given that workmen affected shall have continuity of service in the town where industry is shifted and workers agreeing to shift will be given one year's wages as "shifting bonus" to help them settle in new location.

ORDER

1. The Master Plan for Delhi 1962 (MPD-62) was prepared and enforced under the Delhi Development Act, 1957 (the Act). At that point of time it was realised that the solution of the impending problems of the National Capital could only be found in regional context and as such the MPD-62 recommended that a statutory National Capital Region Planning Board should be set up for ensuring balanced and harmonised development of the region. The National Capital Region Planning Board Act, 1985 (Capital Region Act) came into force on February 11, 1985. The National Capital Region Plan - 2001 (the Regional Plan) was published as a statutory document. In the words of the then Chairperson, National Capital Region Planning Board, the purpose sought to be achieved by the Regional Plan was as under:

> "The two important goals to be achieved by the Regional Plan are a balanced and harmoniously developed region, leading to dispersal of economic activities and immigrants to Delhi, thereby leading to a manageable Delhi. This is to be achieved

by the progressive deconcentration of population and economic activities in the Region and their judicial dispersal to various priority towns as identified in the plan. The plan, is a frame work of policies relating to population distribution, settlement system, transport and communications, physical and social infrastructure, regional land use, environment and eco-development, management structure for plan implementation and counter magnet areas for development. The focus of the plan is Delhi whose extraordinary growth has put great pressure on its essential services and civic facilities. It is expected that a vigorous implementation of the policies contained in the plan would help maintain the quality of life of our National Capital".

The National Capital Region constituted under the Capital Region Act includes the union territory of Delhi and parts of the States of Haryana, Rajasthan and Uttar Pradesh. Under the Regional Plan, three policy zones have been identified. Apart from union territory Delhi (Delhi) the "ring towns" namely, Faridabad, Ballabgarh, Gurgaon, Bahadurgarh and Ghaziabad came to be known as Delhi Metropolitan Area (DMA) with Delhi as the core. The Delhi and the DMA are identified as two distinct zones. The area beyond the DMA upto the National Capital Region (NCR) boundary which is predominantly rural stands out as the third zone distinctly different from the other two. It would be useful to quote the relevant part of para 2.1 of the Regional Plan:-

"The prime objective of the Regional Plan is to contain Delhi's population size within manageable limits at least by the turn of the Century. As a strategy, after evaluating various alternative scenarios for development, it has been realised and recognised that, in order to save Delhi population explosion, it is necessary to moderate the growth in the areas around it.....The preliminary studies clearly concluded that economic activities with potential for large scale employment should necessarily be located outside the DMA, preferably at a distance which discourages daily interaction with Delhi. Thus, on the basis of these criteria, the zones which came out distinctly are Delhi UT, the DMA excluding Delhi UT and, the area beyond DMA within NCR, for effective application of the policies and implementation of proposals with a view to achieve a manageable Delhi and an harmoniously developed Region".

Delhi is recording heavy population growth since 1951. As the city grows, its problems of land, housing, transportation and management of essential infrastructure like water supply and sewage have become more acute. Delhi is one of the most populated cities in the world. The quality of ambient air is so hazardous that lung and respiratory diseases are on the increase. The city has become a vast and unmanageable conglomeration of commercial, industrial, unauthorised, resettlement colonies and unplanned housing. There is total lack of open spaces and green areas. Once beautiful city, Delhi now presents a chaotic picture. The only way to relieve the capital city from the huge additional burden and pressure, is to deconcentrate the population, industries and economic activities in the city and relocate the same in various priority towns in the NCR.

2. The Master Plan for Delhi perspective 2001 (the Master Plan) as approved by the Central Government under S.11A (21) of the Act was published in the Gazette of India

on August 1, 1990. The question for consideration, before us, is whether the hazardous/noxious/heavy/large industries operating in Delhi are liable to be shifted/relocated to other towns in the NCR?

3. The relevant part of the Master Plan is as under:-

"Hazardous and Noxious Industries.

Refer Annexure III H(a).

(a) The hazardous and noxious industrial units are not permitted in Delhi.

(b) The existing industrial units of this type shall be shifted on priority within a maximum time period of three years. Project report to effectuate shifting shall be prepared by the concerned units and submitted to the authority within a maximum period of one year.

(c) ……

(d) Action shall be taken by Delhi Administration to prepare a list of individual noxious and hazardous industrial units to be shifted and depending on the pollution/hazard, administration may force these industrial units to shift within a maximum prescribed period of three years.

Heavy and Large Industries.

Refer Annexure III H(b)

(a) No new heavy and large industrial units shall be permitted in Delhi.

(b) The existing heavy and large scale industrial units shall shift to Delhi Metropolitan Area and the National Capital Region keeping in view the National Capital Region Plan and National Industrial Policy of the Govt. of India.....

(c) .....

(d) Modernisation of heavy and large scale industrial units shall be permitted subject to the following conditions:

(i) It will reduce pollution and traffic congestion.

(ii) Whenever the unit is asked to shift according to the policies of the plan, no compensation shall be paid for assets attained because of modernisation".

4. It is thus obvious that under the mandatory provisions of the Master Plan the hazardous and noxious industrial units (H(a) industries) are not permitted to operate in Delhi. So far as the existing H(a) industries are concerned, they were required to be shifted within a maximum prescribed period of three years. The Master Plan came into force in August, 1990, H(a) industries should have been shifted by the end of 1993. It is unfortunate that no action in this respect was taken by the authorities concerned. The industries were required to prepare and submit the project reports to effectuate shifting. This was to be done within one year of the coming into force of the Master Plan. None of the H(a) industries submitted the required project reports within the statutory period of one year.

We have no hesitation in holding that the H(a) industries are operating in Delhi illegally and in utter violation of the mandatory provisions of the Master Plan. Delhi Administration was under a statutory obligation to prepare a list of H(a) industries. No such list was prepared within the statutory period of three years. It was only under the directions of this Court that the necessary lists were prepared.

5. There is no doubt that the H(a) industries have been operating in Delhi illegally during the last about three years. They must stop operating in Delhi and relocate themselves to some other industrial estate in the NCR. We are further of the view that the concerned officers of the Delhi Administration are equally responsible for continuous illegal operation of the H(a) industries in the city of Delhi. The Chief Secretary, Delhi Administration shall hold an inquiry and fix the responsibility of the officers/officials who have been wholly re-miss and negligent in the performance of the statutory duties entrusted to them under the Master Plan.

6. The Master Plan provides that "no new heavy and large industrial units shall be permitted in Delhi". Heavy and large industries have been categorised as H(b) under the Master Plan. It is further provided that the existing H(b) industries shall shift to DMA and the NCR keeping in view the Regional Plan and the National Industrial Policy of the Government of India. Although no period has been prescribed for the shifting of these industries but in the absence of any such provision the shifting has to be done within a reasonable time, period of six years from August 1990 when the Master Plan came into force, is more than reasonable period for these industries to shift from Delhi. Some of these industries have, during the course of arguments, offered for modernisation and also for conversion from polluting to non polluting industries. The offers are simple *ipse-dixit* with no material. We are not impressed by the offers made by these industries at this late stage. They should have modernised or changed the process of manufacture during the six years they have been operating in violation of the Master Plan. We, therefore, reject these offers.

7. It may be mentioned that H(a) and H(b) type of industries have been indicated in Annexure III to the Master Plan.

8. This Court has been monitoring this matter since January, 1995. On March 24, 1995 this Court took notice of the growing pollution in Delhi in the following words:-

> "A very grim picture emerges regarding increase of pollution in the city of Delhi from the two affidavits filed by Mr. D. S. Negi, Secretary (Environment), Govt. of Delhi. He has pointed out that the population of Delhi which was about 17 lakhs in 1951 has gone up to more than 95 lakhs as per the 1991 census. In fact, more than 4 lakh people are being added to the population of Delhi every year out of which about 3 lakh are migrants. Delhi has been categorised as the fourth most polluted city in the world with respect to concentration of Suspended Particulate Matter (SPM) in the ambient atmosphere as per World Health Organisation Report, 1989. From NEERI's annual report (1991) it is obvious that the major contribution, so far as air pollution is concerned, is of the vehicular traffic but the industries in the city are also contributing about 30% of the air pollution. So far as the discharge of effluent in

Yamuna is concerned, the industries are the prime contributors apart from the MCD and NDMC which are also discharging sewage directly into river Yamuna".

On the same day this Court directed the Central Pollution Control Board to issue notices to the industries in the following words:-

"We direct the Central Pollution Control Board (hereinafter referred to as 'the Board') through its Member Secretary to issue individual notices to all these 8378 industries indicating therein the fact that they are polluting industries and are operating in non-conforming areas in violation of the Delhi Master Plan formulated under the Delhi Development Authority Act, 1957, Delhi Municipal Corporation Act, 1957 and the Factories Act, 1948. The first Master Plan for Delhi was formulated in 1962 and the second Master Plan called the MPD 2001 came into force on August 1, 1990. Needless to say that Master Plan provides setting up of industries only in conforming areas i.e. the industrial areas earmarked for that purpose. The individual notices shall also indicate that these industries have to stop functioning in the city of Delhi and be relocated elsewhere. It may also be stated in the notices that if for the purposes of relocation the industries require any help from any Government Department/Agency, they may file their objections in that respect before the Secretary, Environment, Delhi Administration.

The individual notices shall be issued by the Board to all these industries before April 30, 1995. Apart from individual notices a public notice in this respect in two English dailies and two vernacular dailies shall also be published in the third week of April, 1995. We further direct the Doordarshan and All India Radio to make announcement in this respect on three consecutive days in the last week of April, 1995. Mr. Altaf Ahmad, learned Additional Solicitor General has agreed to give the language of the notice which is to be announced by the Doordarshan and All India Radio.

Annexure R-2 to the additional affidavit contains a list of 256 hazardous and noxious units which are operating in conforming areas. Similarly, the industries listed in Annexure R-3 and R-4 are also air polluting and water polluting industries. According to the Master Plan and the provisions of law mentioned above these industries have also to be re-located. We direct the Member Secretary, Central Pollution Control Board and other authorities to treat these units similarly as the 8378 units which are to be dealt with and similarly notices to these units shall also be issued.

The industries concerned, within 15 days, from the receipt of the notices shall file their objections, if any, before the Secretary Environment, Delhi Administration. We further give liberty to the industries concerned to approach this Court, if they deem it necessary for any assistance for the purposes of relocation".

9. It is thus obvious that as back as March/April, 1995 the polluting industries in Delhi were approached through individual notices, public notices in the newspapers, through Doordarshan and All India Radio and were asked to relocate themselves. This Court

offered all assistance to the industries in the process of re-location. There was no response at all from the industries.

10. This Court on May 8, 1995 gave further time to those industries who had not filed objections till that date. On May 10, 1995 this Court directed the Secretary, Urban Development Department, Government of India to indicate by way of an affidavit as to which of the industrial estates in NCR are available for relocation. This Court passed the following order:-

> "Mr. M. C. Mehta, the petitioner states that under the National Capital Region Act, 1985, a Board called National Capital Region Planning Board has been constituted. The Union Minister for Urban Development is the Chairman of the Board. It is further stated that under the Regional Master Plan 2001 prepared under the National Capital Region Planning Board Act, 1985, the industrial areas have been earmarked in various regions. We are in the process of dealing with 9000 odd industries operating in the non-conforming areas of Delhi. May be that some of the industries have to be re-located. We request Smt. Sheela Kaul, the Union Minister for Urban Development to file an affidavit in this Court through the Secretary of the Department indicating as to which are the industrial areas available for re-locating the industries from Delhi. This may be done within six weeks from the receipts of the order. The Registry is directed to send a copy of this order to the Urban Development Ministry as well as to the Secretary of the Ministry".

Pursuant to the Order dated May 10, 1995 (quoted above) Secretary, Department of Urban Development, Government of India filed in this Court details of the vacant industrial areas in the industrial estates at Ghaziabad, Noida, New Noida, Bullandshahr, Meerut, Rajasthan sub-divisional and Haryana. This Court by the order dated August 3, 1995 directed the Delhi Administration and the Central Pollution Control Board to display the details of the industrial, estates where industrial plots were available for relocation in their respective offices. The Central Pollution Control Board was directed to publish a notice in two daily newspapers bringing it to the notice of the industries that industrial plots in various industrial estates were available for relocation. It was also directed that necessary assistance shall be rendered to all those industries who wish to relocate themselves. It is unfortunate that despite several notices by this Court only three industries offered to relocate themselves. This Court on August 25, 1995 directed that the H category industries be dealt with immediately for the purpose of relocation. This Court passed a detailed order in the following terms:

> "Pursuant to this Court's order dated March 24, 1995, May 8, 1995, May 10, 1995 and 3rd August, 1995, affidavits have been filed, as directed by us in these orders, Mr. D. S. Negi, Development Commissioner-cum-Secretary (Envt), Government of India, has filed an affidavit dated August 23, 1995. It is stated in the affidavit that out of 9164 industries, 2224 have filed objections, 1557 industries are operating in non-conforming use zones. It is further stated that out of these, 170 industries falling under 'H' category (Highly Polluting) need to be re-located out of the National Capital Territory of Delhi, as per the provisions of Master Plan 2001. It is further stated that 1387 industries which belong to Groups F, G, D, C, E and B also require

re-location within the National Capital Territory of Delhi in conforming use zones in a phased manner as stipulated in the Master Plan 2001.

Mr. Negi has also invited our attention to the fact that some of the Federations representing the industries which did not file objections, have approached the Chief Minister of Delhi, requesting him to request this Court to give one more opportunity to these industries of file their objections to the notices which were issued and served on these industries pursuant to this Court's order. As suggested by Mr. Altaf Ahmed, Additional Solicitor General, we direct that the industries which have not filed objections till date may do so within 3 weeks from today....Mr. Negi has also stated in the affidavit that during the last two decades the city of Delhi has witnessed tremendous changes in the industrial profile, and as a result, as at present, it is estimated that there are 93,000 industries which are operating in Delhi and majority of these industries are in non-conforming use zones. The copies of the volumes containing objections of various industries have been given to Mr. Mehta and Mr. Ranjit Kumar, learned counsel appearing in these matters.

Dr. S. P. Chakrabarti, Member Secretary of the Central Pollution Control Board has also filed affidavit dated August 25, 1995. It is stated that the Board has published a public notice inviting all industries operating in non-conforming use zones in the territory of Delhi, to give their options to shift to the available industrial plots in the industrial estates of Ghaziabad, Bulandshahar, Meerut, Rajasthan Sub Division and Haryana. Copies of public notice have been annexed along with the affidavit. It may be mentioned that prior to the notice, individual notices were issued and served upon all the industries. Mr. Panjwani, learned counsel appearing for the Central Pollution Control Board has informed us that there is very poor response to the public notice in the sense that only three industrialists out of the 9164 have come forward to seek assistance for the purpose of re-location. Mr. Altaf Ahmed, Additional Solicitor General, Mr. M. C. Mehta & Mr. Ranjit Kumar, learned counsel state that they will examine the material placed on the record by the Delhi Administration today and thereafter come with positive suggestion as to how this problem is to be tackled. This may be done within two weeks. To be listed on September 14, 1995, at 2-00 p.m.

We are, however, of the view that the industries which come in 'H' category are to be dealt with immediately. According to Mr. Negi, the details of such industries are shown in the report consisting of four volumes, submitted by the Delhi Pollution Control Committee. We direct the Delhi Pollution Control Committee to serve notices to industries ('H' category industries), within two weeks from today, indicating that these industries shall have to be relocated. "They be told in the notice to give their requirements regarding plot-area etc. to the Committee. The industries may further indicate any other assistance they require from any of the authorities for the purpose of re-location. The industries shall give their response to the notice within two weeks of the receipt of the notice. The Committee shall thereafter examine the requirement of each of the industries and submit a report to this Court four weeks thereafter. We make it clear that so far 'H' category industries are concerned, there is no alternative but to re-locate them outside Delhi. We reiterate that all these industries shall be provided with proper

assistance by the Delhi Administration and all other Governments/Governmental Authorities, in the process of relocation. So far as 'H' category industries are concerned, the matter to come up on 3rd November, 1995. The said industries shall be heard and final order passed".

11. By various orders passed and notices issued by this Court from time to time, the 'H' category and polluting industries in Delhi were told in clear terms that they cannot operate in the city and they must relocate to other industrial estates in the NCR. These industries were repeatedly offered all assistance and incentives in the process of relocation. Again on September 22, 1995 this Court passed the following order:-

> "We are of the view that to control pollution in the town of Delhi is the sole responsibility of the Delhi Pollution Control Committee. It is high time that the Committee should realise its responsibility. We are all assisting the Committee to perform the job which has been entrusted to it under the law. The Committee may adopt any method to complete the necessary survey and place before this Court a complete list of hazardous industries within six weeks from today. Meanwhile, the Delhi Pollution Control Committee has placed before this Court additional list of 341 industries, which according to the Committee can be categorised as 'H' industries. We direct the Committee to issue individual notices to all these industries in similar terms as directed by this Court in the order dated August 25, 1995. This shall be done within 10 days from today.
> The matter to come up on 3rd November, 1995 for further directions. We make it clear that all the 'H' category industries to whom notices have been issued will have liberty to address this Court on November 3, 1995".

12. On November 15, 1995 the Delhi Pollution Control Committee (Committee) filed a list of the industries which are categories as H(a) and H(b). Far from agreeing to relocate, the industries even challenged the categorisation done by the Committee. They wanted further opportunity in the matter. This Court passed the following order:-

> "Mr. Altaf Ahmad, learned Additional Solicitor General has invited our attention to the three compilations filed by him in this matter. He has filed a compilation dated November 3, 1995 consisting of 708 hazardous/noxious/heavy and large industries in the city of Delhi. Apart from that there are 341 industries of similar category listed in the compilation dated September 22, 1995. In the third compilation (green colour) dated August 23, 1995, 171 industries of the same category are listed. There are, thus, 1220 hazardous/noxious/heavy and large industries as listed in this compilations. Mr. P. N. Lekhi, Mr. H. H. Salve and various other learned counsel have raised an objection that the industries they represent do not come within the category of hazardous/noxious/heavy and large industries. We, therefore, give liberty to the industries who wish to represent against their tentative categorisation to file objections before the Central Pollution Control Board (Board) within one week from today. The Board shall further indicate as to which of the industries are 'H'(a) and 'H'(b) categories as defined in the Master Plan 2001. Mr. Lekhi has suggested that since the expertise to find out whether an industry is in conforming or non-conforming area is with the DDA. It would be better that an officer of the DDA

should be associated with the Board for this purpose. We agree with the suggestion and request Mr. P. C. Jain, Additional Commissioner of Planning, DDA to associate with the Central Pollution Control Board as a specialist to indicate whether an industry, is in the conforming or non-conforming area. He shall associate with the Central Pollution Control Board from November 17, 1995. We further make it clear that if necessary the Board may hear the industry and in case it is further necessary an officer or official of the Board may visit the industry for on the spot verification. We make it clear that the categorisation made by the Board shall be final subject to modification by this Court.

Mr. F. S. Nariman, learned senior counsel appearing for M/s. Birla Textiles & M/s. Shriram Industrial Enterprises Ltd. along with Mr. Ramji Srinivasan, learned counsel appearing for M/s. DCM Silk Mills and M/s. Swatantra Bharat Mills state that the industries are willing to relocate themselves. So far as M/s. Birla Textiles are concerned, it is stated that the alternate land has already been identified in the State of Himachal Pradesh and the industry is willing to shift within a reasonable time. These industries may file their relocation schemes by placing a short note before this Court by next Tuesday. The scheme filed by these industries shall indicate the manner in which they are going to deal with the workmen and their consequent problems. Mr. Altaf Ahmad states that he would give his response to the relocation schemes within three days thereafter. We request Mr. Altaf Ahmad to further seek instructions from the Delhi Administration regarding possibility of extending various concessions to those industries which are to be relocated".

On November 30, 1995 Mr. Omesh Saigal, Member Secretary, National Capital Regional Planning Board was present in Court. He placed on record a note regarding the relocation of industries. He stated that the Board has at its disposal 5000 acres of land in various parts of the NCR. The Board is in the process of acquiring three hundred thousands acres of land in addition. According to him the Board has enough industrial plots to offer to the industries which are to be relocated from Delhi. He offered plots even up to 100 acres or more for heavy and large industries.

13. The note dated December 1, 1995 placed on record by Mr. Saigal indicates the NCR policy measures regarding dispersal of industries and further implementation of the said policy. The salient features of the note are as under:-

"Implementation of NCR Policy measures regarding dispersal of industries:

This involves a number of steps:

I. Making alternate sites available to the industries for relocation.

The board recommendations of the Planning Committee were as under:

(a) For locating the industries at new sites:

(i) If the industries were non-polluting, they could be accommodated in the regular planned industrial areas/Estates/Zones already developed or being developed in the NCR by the concerned authorities of the respective States.

(ii) In case of industries currently listed as polluting/hazardous.

When these industries set up at their new location and they improve their technology and if they no longer remain polluting and hazardous, they can be located in regular planned industrial areas.

If such industries continue to remain polluting special industries zones could be created so that they do not adversely affect the living environment in the vicinity and such industrial zones to have special infra-structure facilities to take care of the pollutants and provide protective belts around them to mitigate the effect of polluting effluents, smoke, gases, noise etc., and any accidental release thereof.

(b) The land will be allocated to the shifting units on priority and at pre-determined rates, taking into consideration their future needs for expansion and modernisation.

(c) For heavy industries requiring large sites, additional land may be acquired where necessary.

(d) Upon their relocation, the units will be treated as new units and provided all facilities as per industrial policy of the State.

(e) Additional back up facilities such as employer housing etc., may be provided wherever necessary.

(f) The NCR Planning Board can provide loan assistance to the State Government/their agencies for creation and development of such industrial areas.

III. The restrictions which may be imposed by Delhi Finance Corporation on the units who have taken loan from them.

The State Finance Corporation where the units are going to be relocated to take the loan responsibility of the shifting units financed by DFC, for which an agreement/MOU to be reached between Delhi and the State Financing Corporations with the concurrence of the appropriate re-financing apex bodies. For financing the creation of new assets for the shifted units, the State Finance Corporation to take responsibility as per the existing practice in vogue.

IV. Permission required under the Industrial Disputes Act from the State Government, Department of Labour and Employment.

The Department of Labour and Employment GNCT-Delhi to sort out the problems with regard to the existing labour in these industries.

V. Problems relating to shifting of labour to the new relocated sites outside Delhi in the NCR.

The above proposals are to be made applicable to those units which locate themselves in the NCR itself, so that in their relocated position, they generate

economic activities in the priority towns and NCR to provide employment opportunities for the deflected population. To ensure this we must be dovetail them with the plan of shifting. Since the NCR towns are within the Commuting range of Delhi and each other, the labour can either shift to the new sites or at least can keep commuting till they finally shift to the new place. If the industries are taken too far away outside the region, they will neither help in the development of the region nor be able to help in the shifting of the labour force to the new site.

VI. Setting up of a single window to facilitate relocation of industries. The matter was discussed in the Parliamentary Consultative Committee attached to the Ministry of U.S. & E. held on 22-8-95 and the following decision was taken:

In order to facilitate shifting of industries from Delhi, it is necessary that a unified single agency be formed consisting of all the participating States to act as a nodal agency to sort out all the problems of such industries ranging from the use of their vacated land to their establishment at new sites".

It would be useful at this stage to quote the provisions of the Master Plan under which the shifting industries are entitled to suitable incentives.

"GENERAL CONDITIONS

(i) In allocating new industrial plots, which have been recommended for shifting will be given priority by the Authority by offering plots to the industrial units prior to shifting.

(ii) Suitable incentives would be provided to the shifting of industries.

(iii) Ad hoc licensing to industrial units shall be discontinued".

14. There is on record an affidavit filed by Mr. C. D. Tripathi on behalf of Department of Urban Development, Ministry of Urban Affairs and Employment, Government of India giving following details of vacant industrial areas in the NCR:-

"Details of Vacant Industrial Areas"
U.P. Sub Region No. of plots Area Vacant (In acres)
GHAZIABAD
1. B.S.R. Road 33 30.78
2. Loha Mandi 83 5.39
3. S.S.G.T. Road 20 8.11
4. Loni Road Site-II 43 832.00
5. Meerut Road Site-III 25 11.27
6. Sahibabad Site-IV 64 40.74
7. Kavi Nagar, Sector-17 1 0.59
8. Udyog Kunj 56 13.82
9. Greater Noida 30 200.00
10. UPSIDC (Greater Noida) 563 155.80
11. Noida Phase-II + Extn 37 29.70

12. Noida Phase-III 18 5.00

BULANDSHAR
13. Sikanderabad 325 250.36
14. Gopalpur 129 29.63
15. Khurja 4 0.79

MEERUT
16. Meerut Mahanagar 3287.97

RAJASTHAN SUB-REGION
1. Matsya Industrial Area, Alwar 33 33.10
2. Bhiwadi 2 0.44
3. Neemrana 30 268.00
4. Behror 1 0.12

In addition, land for industrial use is under acquisition in the following areas

Location Land under acquisition (acres)
1. Matsya Industrial Area, Alwar 485.00
2. Bhiwadi 958.12
3. Khushkhera 855.62
4. Neemrana 631.50
5. Behror 11.77
6. Sotanala 153.65

Total area under acquisition: 3095.66

15. The material placed before this Court clearly shows that large number of plots are available in various industrial estates in the NCR. Some of the industrial estates are in the MPA. H(a) and H(b) industries can have no difficulty in selecting a suitable plot for relocation. The allotment of the plots shall be made on priority basis. We have no doubt that reasonable incentives, which are normally provided to new industries in new industrial estates, shall be extended to the shifting industries. This Court by the order dated May 10, 1996 in I.A. 22 (W.P. (Civil) 4677 of 1985) has already directed and laid down the manner in which the land which would become available on account of shifting of H(a) and H(b) industries is to be used. In view of the huge increase of prices of land in Delhi, the re-use of the vacant land is bound to bring lot of money which can meet the cost of relocation.

16. So far as categorising is concerned, this Court has given repeated opportunities to the industries to place their case before various authorities. In the first instance the Committee prepared list of H(a) and H(b) categories after affording full opportunity to the industries. Thereafter, this Court by the order dated December 13, 1995 permitted the industries to file further objections before the Central Pollution Control Board (the Board) regarding categorisation. Even after the Board finally decided the categorisation the industries were not satisfied. This Court gave further opportunity by the following order:-

"Learned counsel appearing for some of the industries which have been categorised hazardous have contended that the industries have been wrongly categorised as 'H'. It is also stated that similar industries have been left out of the said categorisation. Mr. Panjwani states that he along with technical team shall hear the objections personally and submit a note to this Court. Mr. P. N. Lekhi states that he would make the High Court Bar Association Committee Room available for the purpose. The lawyers may meet Mr. Panjwani at 4.30 pm on Monday, the 29th January, 1996 in the Committee room of Delhi High Court Bar Association Committee room".

16A. The above exercise was completed and a final list of H(a) and H(b) industries was placed before this Court.

17. We are of the view that despite the best efforts of the Committee and the Board, it may not have been possible to identify all the H(a) and H(b) industries in Delhi. We shall continue to identify and relocate them.

18. This Court has given several opportunities to the identified H(a) and H(b) industries to represent and file objections against their categorisation. The industries which are being finally dealt with by us have been heard more than once and after thorough investigation and scrutiny they have been categorised as H(a) and H(b).

19. The Board issued notices to 9164 industries in Delhi to show cause why they be not directed to shift from Delhi. In response to the notices 2225 objections were filed before the Committee. After considering the objections and affording opportunity of hearing, 171 units were categorised as 'H' industries under the Master Plan. Subsequently, under the orders of this Court 24 more industries were permitted to file their objections and out of which six were declared as 'H' industries. 341 more industries were identified by the Committee as H industries. Yet another 708 industries were identified as 'H' category by the Committee. It is thus obvious that 1226 (171+6+341+708) industries were identified as 'H' category industries. Under directions of this Court, a public notice mentioning all the 1226 industries was published in the Indian Express, Jansatta, Nav Bharat Times and Times of India dated 19th, 20th and 21st of November, 1995. Although most of the industries had earlier been given individual notices and were heard but despite that in the interest of justice fresh notice by publication was given to all the 1226 industries.

20. Out of 171 industries (Part of 1226 industries) which were identified as 'H' category industries, 59 did not file further objections in response to the public notice. They were earlier heard by the Committee and after full investigation were categorised as 'H' industries. There 59 industries, in terms, accepted their categorisation as H industries.

21. In response to the pubic notice 433 objections were received (10 objections were duplicate). The objections were considered and the industries were heard by the Board. Finally, the Board identified 104 units as 'H' category industries.

22. The Board considered objections of the following five industries which are operating in non-conforming areas and came to the conclusion that they were 'H' category industries:-

"(1) Pritam Singh Hari Singh 31/1A, Street No. 2, Anand Parbat Industrial Area New Delhi - 5.

(2) Bansal Plywood Industry (P) Ltd. 37, Small Scale Co-operative Industrial Estate Ltd. G.T. Karnal Road, Delhi-33.

(3) Gupta Industries 150, G-1, Opp. Police Station, Rest House, Badarpur, New Delhi - 44.

(4) Philips Rubber Industries 299, Gokulpur, Delhi-94.

(5) Philips Rubber Industries, 626-627, Loni Road, East Gokulpur, Delhi-94".

23. It may be mentioned that Vikas Rubber Oils and Chemical, Mundka, Delhi-41, C.R. Leather, Resalgarden, Nangloi, Delhi and Varun Dychem, 309, Naya Katra, Chandni Chowk, Delhi are the three industrial units which were not included in the list of 1226 industries and as such were not given public notice. These industries, however, filed objections before the Board in response to individual notices which were considered by the Board. They were categorised as 'H' industries. These are included in the list of 104 finalised by the Board.

24. The picture which emerges is that 104 units identified by the Board, 59 units earlier identified by the Committee and 5 units which are operating in non-conforming areas - totaling 168 (104 + 59 + 5) - have been, as at present, categorised as H industries.

25. We, therefore, hold that 168 industries listed below are hazardous/noxious/heavy/large industries and fall in H(a) and H(b) categories under the Master Plan:-

1. Krishna Chemicals, 3481, Gali No.1, Narang Colony, Tri Nagar, Delhi - 35.
2. Delhi Stone Crushing Co. Rajokari, N.D. 38.
3. New Kalkaji Stone Crushing, K. No. 1229, Rajokari, N.D.-38.
4. T. R. Sethi & Sons, Rajokari, N.D. - 38.
5. Ahuja Stone Crushing Co. 1234/9, Rajokari, N.D.-38.
6. Raj Stone Crushing Co. K. No. 1249, Rajokari, N.D.-38.
7. Lucky Stone Enterprises, Plot No.1, Luthra Forms, Rajokari, N.D.-38.
8. Laxmi Stone Crushing Co. K.No. 1620, V.P. Rajokari N.D. 38.
9. P. S. Sachdeva & Co. K. No. 1237, Rajokari, N.D.-38.
10. Raj Grit Udyog, K.No. 1249, Rajokari, N.D.-38.
11. D. P. Sharma & Co. No. 1238, Rajokari, N.D.-38.
12. Jagdish Stone, Rajokari, N.D.-38
13. Neelam Stone Crushing Co., K.No. 1161, 1162, V & PO. Rajokari, N.D.-38.
14. Bhagirithi Stone Co. K. No. 1234/8, Rajokari, N.D.-38.
15. Asha Stone Crushing Co. K. No. 1251, Rajokari, N.D.-38.
16. Glaxi Paints, Shahabad Daulatpur, Delhi-42.
17. Amba Potteries & Refractories, P.O. Gurgaon Road, N.D.-37.
18. Daulat Ceramic Indl. P.O. Gurgaon Road, Nangal Dairy, N.Delhi-110 037.
19. Delhi Colour of Chemical Inds., 466/6, Aggarwal Gali, Pandara Road, Mahabir Block, Shahadra, Delhi-32.

20. Anup Gupta, Alipur Garh, Narela Road, N.D.-36.
21. Pawan Stone Crushing Co., Rajokari, N.D.-38.
22. Centrury Colour Inds. 29, Netram Marg, Begampur, Delhi-41.
23. Thermal Coating P. Ltd., RZ-718, Prem Ngr, Uttam Ngr, N.D.-59.
24. Gunjan Gupta, Gupta Stone, Rajokari, N.D.-38.
25. Kulbir Singh, Rattan Singh & Co., Rajokari, Delhi-38.
26. Yadav Bros., Kh.No.1234/7, Vill, Rajokari, Delhi-38.
27. Guru Nanak Stone Crushing, Kh.No.1234/6, Vill, Rajokar, Delhi-38.
28. Apex Chemi Colours, 232, Karawal Ngr, Delhi-94.
29. K.C. Dyers, 649/2, Devi Village, Delhi-62.
30. Monark Paints, 678/2, Nai Basti, Devli, N.D. -62.
31. New Metal Co., 1/22/1, Kirari Road, Nangloi, DLH-41.
32. Manoj Batteries, 1/59, 6A, Jauharipur Road, Karawal Ngr, Delhi-94.
33. Gupta Metal Works, Kh.No. 459, Alipurgarh, Alipur, Delhi-36.
34. Best Metal, Kh.No.39, GTK Rd, Budhpur, Alipur, Delhi-36.
35. Gulshan Metal, Kh. No. 38/18, Alipur, Budhpur, Delhi-36.
36. Dinesh Metal Inds. Kh.NO.1/59, Fact. No. 3, Water Works Road, P.O. Gokulpuri, Shahadra, Delhi-94.
37. Organo Dyestuffs, Gaji No.1-A, Chowk Samaipur, Delhi-42.
38. Hindustan Insecticides Ltd., Guru Gobind Singh Marg, Delhi-15.
39. Swatantra Bharat Mills, Shivaji Marg, Delhi-15.
40. DCM Silk Mills, Shivaji Marg, Delhi-15.
41. Birla Textile Mill, Birla Lane, Subji Mandi, Delhi-7.
42. Sri Ram Foods & Fertilizers, 15, Shivaji Marg, P.O.B.6219, Delhi-15.
43. Mahabir Steel Rolling Mills, 658, Kabool Nagar, G.T. Road, Shahadra, Delhi-32.
44. Lajpat Potteries, Gali No.1, Friends Colony, Indl.Area, G.T. Road, Sahadra, Delhi-95.
45. Algha Industries, Gurgaon Road, Mahipalpur, Delhi-37.
46. Daya Ram & Sons, B.325/2, Nihal Vihar, Nangloi, Delhi-41.
47. Sunchem Pvt. Ltd., F-2, DI Bldg., Indl. Complex, Rohtak Road, Nangloi, Delhi-41.
48. Narankari Crushing Co. 22/7, Kala Pahar, New Rohak Road, Delhi-5.
49. Pratap Stone Crushing Co. Gali No.12, New Rohtak Road, Delhi-5.
50. Algha Pigments, S-19/A, Badli Indl. Estate Delhi-42.
51. M/s. Ashoka Colours, 5/14/2, Karawal Nagar, Delhi-94.
52. Bholi Ram & Sons Pottery, 254, Indl. Estate, Nangli Sakrawati, Delhi-43.
53. Ambica Industries, WZ-10, Todapur, Delhi-42.
54. U. K. Paint Ltd., 365 Mallnand, Gurgaon Road, Delhi-30.
55. Guru Nanak Stone Mills. Khasra No. 1234/6, Rajouri Garden Road, New Delhi-110 038.
56. Sardar Singh Chadha, 7249, Aram Nagar, Qutab Road, New Delhi-35.
57. Sai Chem. Kh. No. 461. Sahibabad, Daulatpur, Delhi-43.
58. Gain Singh Pratap Singh, 7249, Arun Nagar, Qutab Road, New Delhi - 35.

59. Laxmi Painter & Chemicals, 490/1-2-3-N. Pipal Wala Krion, Mal-Orband Badarpur, New Delhi - 44.
60. Bharat Dyes & Pigment Pvt. Ltd. Radhepuri, Delhi-51.
61. Tarun Trading Co., Nihal Vihar, Delhi-41.
62. D. M. Leather, Nihal Vihar, Delhi-41.
63. Modern Leather, Jwalapuri, Delhi-41.
64. Northern Indian Paints, M.I.A.Ph.II.
65. Frineds Chemicals, Munka Village, Rohtak Road, Delhi-41.
66. Ramesh Oil Co., Munka Village, Rohtak Road, Delhi-41.
67. Saini Lubricants, Munka Village, Rohtak Road, Delhi-41.
68. Friends Chemicals, Mayapuri, Indl. Area. Ph-II, Delhi-64.
69. Delhi Paint Corporation, M.I.A. Ph-1, Delhi-64.
70. J.J. Foams Pvt. Ltd., Okhla Indl. Estate, Delhi.
71. Techno Plast India, Karampura, Delhi-15.
72. Bhatia Chemical Inds., G.T. Road, Shahdara, Delhi.
73. Bhatia Rasayan Udyog, G.T.Road, Shahadara.
74. Ashoka Udyog, Loni Road, Shahdara, Delhi.
75. Tex Dyes Industries, G.T. Road, Shahadara.
76. Osra Engg. Pvt. Ltd., Hastal Village, Uttam Nag.Delhi.
77. Novex Pigments, Madipur Village, Delhi-63.
78. Hindustan Petrochemicals Vill. Mithapur, Badarpur.
79. BOC Gases, Shivaji Marg, N.D.-15.
80. M/s. Hans Paints, Colour & Varnish Works, Okhla Indl. Area.Ph-11.
81. M/s. Essel Paints, Gadhaipur, Mehrauli, Delhi.
82. Metropaint Inds. M.I.A.Ph-1, N.D.-64.
83. Lala Ram & Sons. Nehal Vihar, N.D.-41.
84. Hari Mohan & Co. Motia Khan, N.D.-55.
85. Rishi Leathers, Nehal Vihar, N.D.-41
86. Swastik Enterprises, (Formerly Samir Enterprises), Samaipur, Indl. Area, Delhi-32.
87. N.K. Leather, Hasthal Road, Rehnolla, Delhi-41.
88. Mahalakshmi Chemical Inds. Bhorgarh, Narella, Delhi-40.
89. Arora International, Jwalaheri Mkt. Paschim Vihar, New Delhi - 63.
90. Uma Shankar, Khandelwar & Co., Okhla Indl. Area, Ph-II, New Delhi - 20.
91. PMC Tyres & Tubes Indl. Area, Karaval Nagar, Delhi-94.
92. Punjab Potteries, Gurgaon Road, N.D.-37.
93. Puneet International, Nangloi, N.D.-41.
94. Commercial Union Research Lab., Najafgarh Road, New Delhi-15.
95. Bindal Industries, Narella, Alipur Rd; Delhi-40.
96. Ashoka Pulp & Paper, Jawahar Nagar, Loni Road, Delhi-94.
97. Dhawan Engg. Works, Tahirpur Indl. Area, Shahdara, Delhi-95.
98. Super King, Mfg. (Tyres) Pvt. Ltd., Jhilmil Indl. Area, Shahadara.
99. Idgah Slaughter House, Idgah Sadar Bazar, Delhi.
100. Associated Paints, Libaspur, Delhi-42.
101. Prem Metal Works, A.P.I.A., Delhi-5.

102. Bajaj Tyres Badli Indl. Area, Ph-II, Delhi-42.
103. Delhi Resin & Allied Products, Prahladpur (Near Samaipur), Delhi-42.
104. Nav Bharat Glue Mfg. Co., Alipur, Narela Road, New Delhi - 36.
105. Bhagwati Oxides & Chemicals, Jhilmill I. A., Shahadara.
106. The Gulf Paint Corpn. Gurudwara Bala Sahib Road, New Delhi.
107. Bhagsons Paint Inds. (India), Badli Indl. Estate, Delhi-42.
108. Associated Dyechem, Badli, Indl. Estate, Delhi-42.
109. Vital Chemical Pvt. Ltd., Najafgarh Road, Indl. Area, New Delhi - 15.
110. Punjab Metal Works Pvt. Ltd., Nangloi, Delhi-41.
111. Janta Paint Marg, Jhilmil Indl. Area, Shahdara, Delhi-85.
112. New India Paint Inds., Jhilmil Tahirpur, Shahdara, Delhi-32.
113. German Dyes & Chemicals, Jhilmil Indl. Area, Shahdara.
114. Sawhney Rubber Inds., Indl. Estate G.T. Rd., Shahadra, Delhi-95.
115. Swiss Coating (India), Karawal Ngr. Delhi-94.
116. K. L. Rathi, Steel Ltd., Shahadra, Delhi-32.
117. Gordhan Das Rathi Steels Ltd; Loni Rd., Shahadra, Delhi-32.
118. Nova Steels (India) Ltd., Loni Rd., Shahadra, Delhi-32.
119. Delhi Steel Rolling Mills, Loni Rd., Shahadra, Delhi-32.
120. Krishchem Inds. Okhla, N.D.-20.
121. Continental Leathers, DLF Indl. Area, Delhi-15.
122. Monark Enterprises, DLF Indl. Area, Delhi-15.
123. Jindal Plasticizers Pvt. Ltd., G.T.K. Road, Delhi-33.
124. Bharat Insecticides Ltd., BSIDC Indl. Complex, Nangloi, Delhi-41.
125. Pesto Chem India Ltd., Ansal Dilkhush Indl. Complex, GTK Rd.,
126. Hindustan Pulversing Mill, GTK Road, Bakoli, Delhi-36.
127. Durga Polymers, Kirari Rd., Nangloi, Delhi-41.
128. Akay Polymers Pvt. Ltd., Samaipur Badli, Delhi-42.
129. Croda Polymers Pvt. Ltd., Samaipur, Delhi-42.
130. Super Leathers, Najafgarh Road, Nangloi, Delhi-41.
131. R. A. Leathers, Rishal Garden, Najafgarh Rd., Nangloi, N.D.
132. MDR Leathers, Jwalapuri, Phase-II, Delhi-41.
133. Dhingra Plastic & Plastiscisers Pvt. Ltd., Okhla I.A. Ph-II.
134. Sudershan Metal Co., New Rohtak Rd., N.D.-5.
135. Sunil Metal Works, 39, Alipur, Budhpur, GTK Road, Delhi-36.
136. K. K. Metal Works, Mayapuri, Ph-II, N.D. - 63.
137. Vikas Chemicals, Nangloi, Delhi-41.
138. Arun Chemicals Udyog, 126, DSIDC, Okhla Indl. Area, Delhi.
139. Shinde Kit Products, S-92, Badli Indl. Area (S.S. Kethwaria).
140. S. Paul & Co. K. No. 1231, Rajokari, N.D.
141. Dal Chand Jajoria, A-24, Keshopur, Tannery Area, New Delhi-18.
142. Dal Chand Maurya, 240, Keshopur, Tannery Area, New Delhi - 18.
143. Satish Kumar, 447, A-16, Keshopur, Tannery Area, N.D.-18.
144. Khirmlar, Sh. Bhagwan Dass, A-31, Keshopur, Tannery Area, N.D.-18.
145. Chetram Dal Chand, A-6, Keshopur, Tannery Area, N.D.-18.
146. Khauji Lal, A-12, Keshopur, Indl. Area, Delhi-18.

147. Prabhu Dayal, A-16, Keshopur, Tannery Area, Delhi-18.
148. Raruram, S/o. Sh. Gaja Ram, A-30, Keshopur, Tannery, Area, N.D.-18.
149. Lata Devi, w/o. Dal Chand, A/33, Keshopur, Tannery Area, New Delhi.
150. Ramdhan, A-25, Keshopur, Tannery Area, N.D.-18.
151. Sanjay Bright Works, 31, DLF Indl. Area, Kirti Nagar, N.D.
152. Satpal & Sons, 1/59/7, Johripur Rd., Gokul Puri, Shahdara.
153. Om Prakash Puri & Sons, Johripur, Rd., Shahadra, Delhi.
154. Al-Ahad Leathers Pvt. Ltd., K-52/2, Nihal Vihar, Nangloi Jat.
155. Hindustan Vegetable Oils, Corpn. Ltd., Subzi Mandi Delhi-7.
156. Hindustan General Industries, Nangloi, Delhi.
157. Kumar Engg. & Allied Works, B-24, Okhla Indl. Area, Ph-I, N.D.
158. S. Paul & Co. 25/1/C Anand Parbat, New Delhi - 5.
159. Balco Paint, 16-A, DLF, Area, Delhi.
160. Balsons Paint Industry, A-93, Okhla Indl. Area, Ph-II, New Delhi.
161. Vikas Rubber Oil & Chemicals, Mundka, Delhi-41.
162. C. R. Leather, Resal Garden, Nangloi, Delhi.
163. Varun Dychem, 309, Naya Katra, Chandni Chowk, Delhi.
164. Pritam Singh Hari Singh, 31/1A, Street No.2, Anand Parbat Industrial Area, New Delhi - 5.
165. Bansal Plywood Industry (P) Ltd., 37, Small Scale Co-operative Industrial Estate Ltd., G. T. Karnal Road, Delhi-33.
166. Gupta Industries, 150, G.I, Opp. Police Station, Rest House, Badarpur, New Delhi – 44
167. Philips Rubber Industries, 299, Gokulpur, Delhi-94.
168. Philips Rubber Industries, 626-627, Loni Road, East Gokulpur, Delhi-94".

26. Having held the above mentioned 168 industries as 'H' category industries, we have no hesitation in holding that these industries cannot operate in the city of Delhi.

27. We, therefore, hold and direct as under:-

(1) The above listed 168 industries cannot be permitted to operate and function in Delhi. These industries may relocate/shift themselves to any other industrial estate in the NCR. We direct that the 168 industries listed above shall stop functioning and operating in the city of Delhi with effect from November 30, 1996. These industries shall close down and stop functioning in Delhi with effect from the said date.

(2) The concerned Deputy Commissioner of Police shall, as directed by us, effect the closure of the above industrial units with effect from November 30, 1996 and file compliance report in this Court within 15 days thereafter.

(3) The National Capital Region Planning Board shall render all assistance to the industries in the process of relocation. This direction shall go to the Board through its secretary. The National Capital Territory, Delhi Administration, through its Chief Secretary and Secretary, Industries, State of Haryana through its Chief Secretary and Secretary, Industries, State of Rajasthan through its

Chief Secretary and Secretary, Industries and State of Uttar Pradesh through its Chief Secretary and Secretary, Industries shall provide all assistance, help and necessary facilities to the industries which intend to relocate themselves in the industrial estates situated in their respective territories.

(4) The allotment of plots, construction of factory buildings, etc. and issuance of any licences/permissions etc. shall be expedited and granted on priority basis.

(5) In order to facilitate shifting of industries from Delhi, all the four States constituting the NCR shall set up unified single agency consisting of all the participating States to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up by the four States within one month from today. This direction to the four States is through the Chief Secretaries of the concerned States. The Registry shall convey this direction separately to the Chief Secretaries along with a copy of this judgment. We make it clear that no further time shall be allowed to set up the single window facility.

(6) The use of the land which would become available on account of shifting/re-location of the industries shall be permitted in terms of the orders of this Court dated May 10, 1996 in I.A. 22 in writ petition (C) 4677/85.

(7) The shifting industries on their re-location in the new industrial estates shall be given incentives in terms of the provisions of the Master Plan and also the incentives which are normally extended to new industries in new industrial estates.

(8) The closure order with effect from November 30, 1996 shall be unconditional. Even if the relocation of industries is not complete they shall stop functioning in Delhi with effect from November 30, 1996.

(9) The workmen employed in the above mentioned 168 industries shall be entitled to the rights and benefits as indicated hereunder:-

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one years wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from November 30, 1996 provided they have been in continuous service (as

defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F (b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before December 31, 1996;

(f) The gratuity amount payable to any workmen shall be paid in addition.

28. Before parting with this judgment we may briefly deal with 762 industries which did not respond to the public notice published in various newspapers. These industries are included in the list of 1226 industries which were given public notice by publication in the newspapers. These 762 industries did not file objections in response to the public notice. Ordinarily, they should have been declared as H category industries under the Master Plan but keeping in view the totality of the circumstances, we are inclined to take lenient view. A list of these 762 industries has been placed on record by the Committee. We direct the Committee (Delhi Pollution Control Committee) to issue individual notices to these industries within ten days from today asking them to show cause within ten days thereafter why they be not categorised as 'H' industries. The objections, if any, shall be decided by the Committee within further ten days and the report indicating the list of 'H' industries shall be filed in this Court before August 20, 1996.

M.C. Mehta v. Union of India
AIR 1996 Supreme Court 3311
Interlocutory Application. No. 22 in Writ Petition (Civil) No. 4677, of 1985 D/-10-5-1996
Kuldip Singh and Faizan Uddin, JJ.

Delhi Development Act (61 of 1957),S. 11A(2) – Master Plan for Delhi –Perspective 2001 – Shifting/relocation of hazardous/noxious/heavy/large industries from Delhi – Land available therefrom – User by owners/occupiers – Necessity to develop green belts and open spaces to check environmental degradation – Directions for user issued.

Environment – Preservation – Delhi Master Plan – Shifting of industries-Development of green belts.

The Provisions of the Master Plan are statutory

EN/S633/96/DVT and binding. The land which would become available on account of shifting/relocation of the industries can only be used for making up the deficiency, as per the needs of the community, based on the norms given in the Master Plan. If any land or

part of the land, so vacated is not needed for community services, it can be used as per the prescribed land use.

(Paras 7, 8)

Delhi is one of the most polluted cites in the would. The quality of ambient air is so hazardous that lung and resipratory diseases are on the increase. The city has become a vast and un-manageable conglomeration of commercial, industrial, unathorised colonies, resettlement colonies, resettlement colonies and unplanned housing. There is total lack of open spaces and green areas. Once a beautiful city Delhi now present a Chaotic picture. The most vital "community need" as at present is the conservation of the environment and reversal of the environmental degradation. There are virtually no "lung spaces" in the city. The Master Plan indicates that "approximately 34 percent of recreational areas have been lost to other uses". The housing, the sports activity and the recreational areas are also part of the "community need" but the most important community-need which is wholly deficient and needed urgently is to provide for the "lung spaces" in the city of Delhi in the shape of greenbelts and open spaces. Therefore, totality of the land which is surrendered and dedicated to the community by the owners/occupiers of the relocated/shifted industries should be used for the development of greenbelts and open spaces. While meeting the expenses of relocating/shifting the industry. It would, therefore, be in conformity with the broader concept of "community need" under the Master Plan, to permit the owner to develop part of the land for his own benefit and surrender the remaining land to the use of the community at large. The Supreme Court laid down the manner and the percentage in which the land which would become available on account of shifting/relocation of hazardous/noxious/heavy and large industries form the city of Delhi shall be used. The development is to meet the community needs which is in conformity with the provisions of the Master Plan. Therefore, it is not necessary to amend the Master Plan.

(Paras 9, 10, 11, 13)

ORDER:- The Master Plan for Delhi- perspective 2001 (the Master Plan) as approved by the Central Government under Section 11A(2) of the Delhi Development Act, 1957, (the Act) was published in the Gazette of India on August 1, 1990. The Master Plan specifically provides that the hazardous/noxious/heavy/large industries are not permitted to operate in the city of Delhi and the existing industrial units falling in these categories are to be shifted/relocated. One of the questions for consideration in this interlocutory application is how and in what manner the land made available as a result of the shifting/relocation of the these industries is permitted to be used the owners/occupiers of the said land.

2. This Court on November 24, 1995, passed the following order:-

> "The industries to be relocated are to be assisted in every possible manner. The question of utilisation of the land available as a result of shifting of these industries has also to be examined. It shifting of these industries has also to be examined. It is, therefore, necessary to have interaction with various Departments/Governments. We are informed that primary assistance has to come from the National capital Region Planning Board. We direct the Member Secretary of the Board to be present in the

Court on 30th November, 1995 at 2pm to assist us in this matter. We further direct the Urban Affairs Ministry, DDA, NCT-Delhi and MCD to depute a responsible officer each to be present in this Court on 30th November, 1995 at 2 pm."

Pursuant to the order quoted above, Mr. Omesh Saigal, Member Secretary, National Capital Region Planning Board (the Board) and Mr. K.J. Alphons, Commissioner, Land Management, Delhi Development Authority (DDA) personally assisted this Court on November 30, 1995. The assistance rendered by these officers was noticed in the following words:-

"Mr. Sehgal states that the planning Committee of the Board has already framed a scheme (the scheme) regarding the re-use of the land which is likely to be made available as a result of the shifting of the industries from Delhi. The Scheme is at present with the DDA for consideration. We have requested Mr. Sehgal to prepare a short note of what he has stated before us and place the same on the record for our assistance. He may do so within 2 days from today. On behalf of the DDA, Mr. K. J. Alphonse, Commissioner Land Management is present. He states that the Scheme sent by the Board is at present under consideration of the DDA. He further states that after the Scheme is finalised it would be sent to Urban Development Ministry, Government of India for finalisation. We have requested Mr. Alphonse to place the Scheme before this Court along with a note. He may do so within 2 days."

3. On December 13, 1995, this Court passed the following order:-

"Pursuant to this Court order dated November 30, 1995, Mr. K. J. Alphonse has placed on record the proposed Scheme regarding utilisation of land which would be available in the event of re-location of the hazardous/noxious/large scale industries from Delhi. The Scheme has been discussed with learned counsel appearing for various industries. We are of the view that it would be useful for the representatives of the industries to have discussion with the committee which is to finally examine the proposed scheme. Mr. P. C. Jain, Additional Commissioner, DDA who is present in the Court has explained to us various aspects of the Scheme. He is agreeable to the proposal that 5/10 representatives of the industries may place the suggestions/objections of the industries to the proposed Scheme before the Committee. The representatives of the industries may file their written suggestions before Mr. Jain within one week from today. Thereafter, Mr. Jain will inform them about the date when the Committee is likely to meet. It would be desirable that the Committee meets before the end of this year. In any case, the meeting must take place before 10th January, 1996, because all these matters have been listed for final hearing on that date. In any case, Mr. Jain will inform the representatives about the data of the meeting before 25th December. 1995."

Mr. K. J. Alphonse was the Chairman of the Committee in the DDA which examined the question regarding utilisation of land made available as a result of relocation/shifting of the industries. The proposal of Alphonse-Committee was approved by the technical

committee of the DDA on November 21, 1995. The operative part of the said proposal is as under:-

"SL No.	EXTEN	Percentage to be earmarked for Recreation Ground playground or any other open uses as specified by the Authority	Percentage of land to be used for providing Housing facilities by the owner at norms to be determined by DDA/GNCT Delhi	Percentage to be earmarked and to be developed for residential or commercial user to be developed by the owner.
1	2	3	4	5
1.	Up to 2000 Sq. mtr (including the first 2000 Sq. mts. of the larger plot)	_	_	100% to be developed by the over in accordance with the zoning regulations of the Master Plan.
2.	O.2 to 5 ha.	33	27	40
3.	5 ha. to 10 ha	33	34	33
4.	Over 10 ha.	33	37	30

The Alphonse-Committee almost agreed with the reuse of vacated land as suggested by the Board.

4. Mr. V. K. Bugga, Town Planner, Municipal Corporation Delhi (MCD), by way of a note placed on record, suggested that "considering the increasing level of pollution in the city, the most vibrant need of the community today is a breath of fresh air which is only possible if more and more green spaces within the city could be created besides preserving existing ones." According to Mr. Bugga "green open areas up to an extent of 50to 60 per cent or a less intensive land use are the probable answer to the question of the utilisation of the land made available on account of shifting of industries under reference.

5. Pursuant to this Court's order dated December 13, 1995 (quoted above) several industrial units/organisations submitted their objections/ suggestions before Mr. P.C. Jain, Additional Commissioner (Planning) DDA. The units/organisations were also heard by a sub-group under the chairmanship of Mr. Jian. The operative part of the affidavit dated January 10, 1996, flied by Mr. P. C. in this respect, is as under:-

> "Based on the observations/suggestions made by all the industrial unit/organisation, Special Technical Committee in its meeting held on 8-1-996 modified/clarified its earlier decision of 21-11-1995, as under: (Item No. 95/95TC. Final No. F.

20(16)/93/MP under the subject regarding utilisation of land of existing hazardous and noxious units/large scale industry on their closure/shifting.

(a) The policy would be applicable only to the hazardous/noxious [(as classified in Annexure H (a)] and heavy and large industry [as classified in Annexure H (b)] in the MPD 2001.

(b) The percentage breakup of the area is to remain unchanged between the open area, housing facility i. e. facilities required for housing, commercial/residential. The term 'Housing Facility' in the decision of the Technical Committee refers to Community Facility required for the population and as detailed out on page 150 of the Gazette (MPD 2001).

(c) The shifting industry shall also be permitted to redevelop the land for light and service industry as per the provisions of MPD 2001.

(d) The ownership of the pockets under open space and community facility would also remain with the shifting industry who will develop/maintain these two.

(e) The shifting industry would be given the benefit of FAR on the entire plot of land, thus, vacated for utilisation as per the specified land uses in MPD 2001. This is generally with understanding that the permissible FAR would be 60 as in case of extensive industrial use zone. No construction of any nature shall be permitted on the area identified as open spaces to be left as mandatory green area. A minimum of 10% of the total floor space shall have to be used for community facility.

(f) For necessary modifications in the text of MPD 2001, these pockets would be designated as Special Areas with the controls as specified in the scheme."

This Court on January 24, 1996 passed the following order:-

> "While we are hearing, Mr. D. N. Goburdhan, learned counsel appearing for the NCT, Government (Department of Land & Building) states that the Lt. Governor Delhi has constituted a committee headed by Mr. D. R. Khanna, Judge, Delhi High Court (retired) to consider as to how and in what manner the land eventually made available by relocation of the industries is to be utilised. Needless to say that we are hearing the matter for the last about 6 months and we are almost at the final stages. We however, welcome any assistance from any quarters. We direct the Registry to send the draft scheme placed by Mr. Alphonse and the suggestions made by Mr. P. C. Jain to Justice D. R. Khanna through Mr. D. N. Goburdhan, adv. within two days from today. Justice Khanna may have deliberations with his committee and place his suggestions/recommendations before this Court within 10 days thereafter."

Justice D. R. Khanna (retired) Chairperson, Land Use Advisory Committee appointed by the National Capital Territory, Delhi Administration submitted a note pursuant to the above quoted order of this Court. It is stated in the note that the time available with the Committee was short and as such the deliberations of the Committee could not be

finalised. Keeping in view the urgency of the matter, Justice Khanna states, the note contains an ex-facie view which he gathered from various deliberations of the Committee. Regarding heavy and large industries Justice Khanna stated that 'these industries have to be shifted under the Master Plan. Their number is not large but the lands occupied by them are substantial. One such occupies about 184 acres, another 112 acres, still another 37 acres and so on.' Paras 15, 16, 18 to 21 & 29 of Justice Khanna's report are as under:-

> "15. The land prices in Delhi have phenomenally sky-rocketted. In fact, their values may be many times more than the yields which are presently being enjoyed by the operation of these industries and even what they might have totally enjoyed from the time of the start of these industries. The protestations of the industries that they are going to suffer because of the shifting may appear misplaced and may be more to draw as much of compensatory relief from the government as may be possible. Left to their choice, most of these industries would themselves shift and then develop/dispose of their sites and structures, as there is least doubt that they see gold mines in them.
>
> 16. At the same time, it must be acknowledged here that none should grudge in the high profits that the owners are likely to get by development/sale of sites of factories. they have been their owners and play needed roles during relevant times in the industrialisation of NCT. Any spurt in the prices of real estate enures for their benefits. The same can only be circumscribed as the need may dictate of social or enviornmental good and uplifting the face of capital city.
>
> 18. I am informed that some hearings were provided to the representatives of the industries before formulation of these schemes, and then the percentages in columns 3 to 5 on the user of land were arrived at. I have no occasion to fully grasp the justification of these percentages but treating them as they are, I proceed to make my comments.
>
> 19. Firstly, so far as percentages mentioned in column 5 of categories 2, 3 & 4 industries, some grievances is made in the written representation received by me that they are too low. Be that as it may, still the percentages of column 5 would leave very big areas of lands with these industries which would still be gold mines with them. A three bed rooms residential flat in Delhi would fetch anything between 20 to 50 lacs, and in commercial area, much smaller would fetch much more.
>
> 20. It must be essentially taken note of that those industries which are located in residential areas, the development may have to be residential in nature. Similarly lands located in commercial areas should receive development of commercial nature. Lands located in industrial areas should retain their user. This would ensure development in accordance with the zoning regulation of the Master Plan.
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> 21. The first category of the draft scheme concerns land up to 2000 sq. mts. Their 100% development is left to the owners in accordance with the Master Plan. More

than 95% of the industries in Delhi fall in this category and would thus be substantially benefited. There is almost a unanimity on this.

29. Adverting to the FAR, normally it has to be confined to the areas that being built up on land developed. There should therefore be no reason why it should not be confined to FAR of the land in col. 5 only. To extend that for the benefit of col. 5 so as to include areas of cols. 3 and 4 would deprive areas of cols. 3 & 4 of the FAR for all time to come and would thus be greatly determinantal to them (especially when col. 4 has to be independently built upon), while giving overwhelming benefit to col. 5 lands. It has to be kept in view here that 2000sq. mts. of larger plots have still been reserved for col.5 while dealing with category 1 industries."

6. Justice Khanna submitted a supplementary note dated February 26, 1996. On March 27, 1996, we heard learned councel for the parties. We also examined and discussed Alphonse. Committee report, Jain Committee report and the two notes placed on record by Justice Khanna. We were informed that Khanna Committee was to submit its final report by April 10, 1996. We, therefore, adjourned the hearing of the case to April 12, 1996. The matter was, however, taken up for consideration on April 30, 1996. We finally heard the matter on that day and passed the following order:-

"Mr. P. V. Jai Krishnan, Chief Secretary, NCT Delhi has filed an affidavit dated April 29, 1996. We have heard learned counsel on the question of land use, which may be made available as a result of relocation/shifting of the industries from Delhi. We have before us Alphone's Committee Report. We have also before us the Report submitted by Jain Committee in this respect. The Khanna Committee appointed by NCT Government Delhi has not as yet completed its work. We have been adjourning hearing of these matters from time to time to await the Khanna Committee Report. In the affidavit it is stated by the Chief Secretary that the tenure of Khanna Committee has expired. It is stated that the NCT Delhi Admin-istration is taking steps to renew the tenure of the Committee for further period.

We are of the view that no useful purpose will be served to look for any assistance in this respect from the NCT Delhi Administration.

We have finally heard the matter today. Needless to say that the Master Plan is the Charter for this purpose and we have to lay down the land use keeping in view the provisions of the Master Plan. In this view of the provisions of the matter, we direct the NCT Delhi Administration not to proceed with this matter any further. It shall not constitute or extend the tenure of any committee. We shall finally decide the issue and the said decision shall be binding on all concerned."

7. We have given our thoughtful consideration to the point at issue before us. We have had elaborate discussion with the learned counsel representing various industries which are to be relocated/shifted. The basic charter for the land use in the city of Delhi is the Master Plan. The provisions of the Master Plan are statutory and binding. The relevant provisions regarding hazardous/noxious/heavy/large industries under the Master Plan are as under:-

"HAZARDOUS AND NOXIOUS INDUSTRIES

Refer Annexure III H (a).

(a) The hazardous and noxious industrial units are not permitted in Delhi.

(b) The existing industrial units of this type shall be shifted on priority within a maximum time period of three years. Project report to effectuate shifting shall be prepared by the concerned units and submitted to the Authority within a maximum period of one year.

(c) The land which would become available on account of shifting as administered in (b) above would be used for making up the deficiency, as per the needs of the community; based on norms given in Master Plan; if any land or part of land, so vacated is not needed for the deficiency of the community services, it will be used as per prescribed landuse; however the land shall be used for light and service industries, even if the landuse according to the Master Plan/Zonal Development Plan is extensive industry.

(d) .....

HEAVY AND LARGE INDUSTRIES

Refer Annexure III H(b)

a) No new heavy and large industrial units shall be permitted in Delhi.

b) The existing heavy and large scale industrial units shall shift to Delhi Metropolitan Area and the National Capital Region keeping in view the National Capital Region keeping in view the National Capital Region plan and National Industrial Policy of the Govt. of India.

c) The land which would become available on account of shifting as administered in (b) above would be used for making up the deficiency, as per the needs of the community; based on norms given in the Master Plan; if any land or part of land so vacated is not needed for the deficiency of the community services, it will be used as per prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry.

d) .....
(i) .....
(ii) .....

8. It is thus obvious that the land which would become available on account of shifting/relocation of the industries can only be used for making up the deficiency, as per the needs of the community, based on the norms given in the Master Plan. If any land or part of the land, so vacated is not needed for community services it can be used as per the

prescribed landuse. To appreciate the concept "need of the community" under the Master Plan it would be useful to have a look at the following provisions of the Master Plan:

> "In general it would be desirable to take up all the existing developed residential areas one by one for environmental improvements through (i) plantation and landscaping (ii) provision of infrastructure-physical and social and proper access where lacking (iii) possibility of infrastructure management of the last tier through the local residents.

Conservation and revitalisation is required in case of traditional areas and environmental upgradation and improvement is needed in other old build-up areas.

LUNG SPACES

The Master Plan for Delhi in 1962, had indicated 9101 ha. of recreational area at the Master Plan level. Within this area the city has 18 major district parks from different periods of history i. e. Roshanara and Qudisa gardens of Mughal period. Talkatora garden of British period and Budha Jayanti Park of post independence era. Out of this area 6012 ha. of district park and regional park area is now available. During the implementation of the plan approximately 34 percent of recreational area has been lost to other uses. On the basis of the landuse surveys conducted in 1981, about 2710 ha. of additional recreational area at the Master Plan level has been earmarked in the landuse plan in the DU A-81 and the Urban Extension indicated in the plan. Thus, in the urban areas shown in the landuse plan the total recreational area indicated is 8722 ha. for a population of about 9 million by 2001 @ 9.7 sqm. per person. Part of this area is required to be developed for sports activities as per policy.

Further conversion of recreational areas to other uses should be permitted only under extraordinary circumstances. Areas in lieu of such conversion may be provided elsewhere in order to maintain the over all average for the city.

Within DUA-81, the following special activity area for recreation are proposed for development.

(a) Additional special children parks of 4 ha. each (of the type of India Gate children park) 7 Nos.

Location of Special Children Park in DUA-81 to be in the district parks of Dhaula Kuan, Pitam Pura, Keshopur, Sanjay Van Trilok Puri, Gulabi Bagh, Feroz Shah Kotla and Coronation Memorial.

(b) Children traffic training parks of 5 ha. each 6 Nos.

Location of Children Traffic Training Park in DUA-81 to be in the district parks at Punjabi Bagh, Baba Kharak Singh Marg, Pragati Maidan, Dilhsad Garden, Wazirpur and Loni Road.

(c) Picnic huts 5 Nos.

About 30% of the district park areas should be developed as wood lands. where picnic hut could also be located.

Location of Picnic Huts in DUA-81 to be in the district parks at Paschimpuri, Pitam Pura, Bidiwala Bagh, Kalkaji and Mehrauli.

Preferred species of the trees to be planted in parks. gardens, wood lands and roads etc. to suit local conditions are given in annexure II.

In the Urban Extension wherever possible water bodies (lakes) should be developed to act as major lung spaces and to attract migratory birds and for improving the micro-climate. A special recreational area on the pattern of Disney land/amusement park could be developed in the land becoming available for the channelisation of river Yamuna.

The district parks in the Urban Extension would be @ sqm per person which would also include special parks given as under:

Special Children Park	4 Nos. (4 ha. each)
Children Traffic Training Parks	4 Nos. (3ha. each)
Picnic Huts	4 Nos.

In new developments the neighbourhood park of at least 1.5 ha. for 15.000 population should be planned with flowing trees and shrubs so as to achieve colourful pleasant enviornment throughout the year."

9. Delhi is one the most polluted cities in the world. The quality of ambient air is so hazardous that lung and respiratory diseases are on the increase. The city has become a vast and unmanageable conglomeration of commercial, industrial unauthorised colonies, resettlement colonies and unplanned housing. There is total lack of open spaces and green areas. Once a beautiful city Delhi now presents a chaotic picture. The most vital "community need" as at present is the conservation of the environment and reversal of the environmental degradation. There are virtually no "lung spaces" in the city. The Master Plan indicates that "approximately 34 percent of recreational areas have been lost to other uses." We are aware that the housing, the sports activity and the recreational areas are also part of the "community need" but the most important community-need which is wholly deficient and needed urgently is to provide for the "lung spaces" in the city of Delhi in the shape of greenbelts and open spaces. We are, therefore, of the view that totality of the land which is surrendered and dedicated to the community by the owners/occupiers of the relocated/shifted industries should be used for the development of greenbelts and open spaces.

10. The core question for consideration, however, is how much of the total land which would become available from each of the industrialists is to be taken away by the community for its use and how much is to be left in the hands of the industrialists for the community use. The suggestions given by Alphonse Committee in this respect have been noted by us in the earlier part of the order. Mr. Omesh Sehgal, Mr. P. C. Jain and Justice

Khanna by and large agree with the suggestions of the Alphonse Committee. We are of the view that no useful purpose would be served by maintaining two categories as suggested by Alphonse Committee in Cols. 3 and 4. After leaving the part of the land with the owner for developing the same in accordance with the permissible landuse under the Master Plan the remaining land should be surrendered to the Delhi Development Authority (DDA) for developing the same to meet the community needs. When the Master Plan permits the use of the land only to meet the community-needs, it obviously means that the land has to be surrendred and dedicated to the community. While meeting the community needs it is necessary to make suitable provision for the owner to enable him to meet the expenses of relocating/shifting the industry. It would, therefore, be in conformity with the broader concept of "community need" under the Master Plan, to permit the owner to develop part of the land for his own benefit and surrender the remaining land to the use of the community at large.

11. We, therefore, order and direct that the land which would become available on account of shifting/relocation of hazardous/noxious/heavy and large industries from the city of Delhi shall be used in the following manner:

1	2	3	4
"SL No.	EXTENT	Percentage to be surrendered and dedicated to the PDA for development of greenbelts and other spaces	Percentage to be developed by the owner for his own benefit in accordance with the user permitted under the Master Plan
1.	Up to 2000 sq. mtr. (including the first 2000 sq. mts. of the larger plot)	_	100% to be developed by the owner in accordance with the zoning regulations of the Master Plan.
2.	0.2 to 5 ha.	57	43
3.	5 ha. to 10 ha.	65	35
4.	Over 10 ha.	68	32"

12. We do not agree with the learned counsel for the industrialists that Floor Area Ratio (FAR) be permitted to them on the total area of the plot. We, however, direct that on the percentage of land as shown in Col. 4 the owners at serial Nos. 2, 3 and 4 shall be entitled to one and half time of the permissible FAR under the Master Plan.

13. The DDA has suggested that it may be necessary to amend the Master Plan for regularising the land use as directed by us. We do not agree with the suggestion. The totality of the land made available as a result of the relocation/shifting of the industries is to be used for the community needs. The land surrendered by the owner has to be used for the development of greenbelt and open spaces. The land left with the owner is to be developed in accordance with the user permitted under the Master Plan. In either way the development is to meet the community needs which is in conformity with the provisions of the Master Plan.

14. We are, therefore, of the view that it is not necessary to amend Master Plan.

Order accordingly.

M. C. Mehta v. Union of India
1996 JT (6) Supreme Court 209
Kuldip Singh and Faizan Uddin, JJ.

1. The Master Plan for Delhi - perspective 2001 (the Master Plan) as approved by the Central Government under Section 11A(2) of the Delhi Development Act, 1957 (the Act) was published in the Gazette of India on August 1, 1990. The Master Plan specifically provides that the hazardous/noxious/ heavy/large industries are not permitted to operate in the city of Delhi and the existing industrial units falling in these categories are to be shifted/relocated. One of the questions for consideration in this interlocutory application is how and in what manner the land made available as a result of the shifting/relocating to these industries is permitted to be used by the owners/occupiers of the said land.

2. This Court on November 24, 1995 passed the following order:

> *"The industries to be relocated are to be assisted in every possible manner. The question of utilisation of the land available as a result of shifting of these industries has also to be examined. It is, therefore, necessary to have interaction with various Departmental Governments. We are informed that primary assistance has to come from the National Capital Region Planning Board. We direct the Member Secretary of the Board to be present in this Court on 30th November, 1995 at 2 PM to assist us in this matter. We further direct the Urban Affairs Ministry, DDA, NCT-Delhi and MCD to depute a responsible officer each to be present in this Court on 30th November. 1995 at 2 PM".*

Pursuant to the order quoted above, Mr. Omesh Saigal, Member Secretary, National Capital Region Planning Board (the Board) and Mr. K.J. Alphons, Commissioner, Land Management, Delhi Development Authority (DDA) personally assisted this Court on November 30, 1995. The assistance rendered by these officers was noticed in the following words:

> *"Mr. Sehgal states that the Planning Committee of the Board has already framed a scheme (the scheme regarding the re-use of the land which is likely to be made*

available as a result of the shifting of the industries from Delhi. The scheme is at present with the DDA for consideration. We have requested Mr. Sehgal to prepare a short note of what he has stated before us and place the same on the record for our assistance. He may do so within 2 days from today. On behalf of the DDA, Mr. K.J. Alphons, Commissioner Land Management is present. He states that the Scheme sent by the Board is at present under consideration of the DDA. He further states that after the Scheme is finalised it would be sent to Urban Development Ministry, Government of India for finalisation. We have requested Mr. Alphons to place the Scheme before this Court along with a note. He may do so within 2 days."

3. On December 13, 1995 this Court passed the following order :

"Pursuant to this Court order dated November 30, 1995 Mr. K.J. Alphons has placed on record the proposed scheme regarding utilisation of land which would be available in the event of re-location of the hazardouslnoxious/large scale industries from Delhi. The scheme has been discussed with learned counsel appearing for various industries. We are of the view that it would be useful for the representatives of the industries to have discussion with the Committee which is to finally examine the proposed scheme. Mr. P. C. Jain, Additional Commissioner, DDA who is present in the Court has explained to us various aspects of the scheme. He is agreeable to the proposal that 5/10 representatives of the industries may place the suggestionslobjections of the industries to the proposed scheme before the Committee. The representatives of the industries may file their written suggestions before Mr. Jain within one week from today. Thereafter, Mr. Jain will inform them about the date when the Committee is likely to meet. It would be desirable that the Committee meets before the end of this year. In any case, the meeting must take place before 10th January, 1996 because all these matters have been listed for final hearing on that date. In any case, Mr. Jain will inform the representatives about the date of the meeting before 25th October, 1995.

Mr. K.J. Alphons was the Chairman of the Committee in the DDA which examined the question regarding utilisation of land made available as a result of relocation/shifting of the industries. The proposal of Alphons-Committee was approved by the technical committee of the DDA on November 21, 1995.

The Alphons-Committee almost agreed with the reuse of vacated as suggested by the Board.

4. Mr. VS.K. Bugga, Town -Planner, Municipal Corporation Delhi (MCD), by way of a note placed , on record, suggested that "considering the increasing level of pollution in the city, the most vibrant need of the community today is a breath of fresh air which is only possible if more green spaces within the city could be created besides preserving existing ones." According to Mr. Bugga "green open areas upto an extent of 50 to 60 per cent or a less intensive land use the probable answer to the question of the utilisation of the land made available on account of shifting of industries under reference."

5. Pursuant to this Court's order dated December 13, 1995 (quoted above) several industrial units/organisations submitted their objections/ suggestions before Mr. P.C. Jain, Additional Commissioner (Planning) DDA. The units/organisations were also heard by a subgroup under the chairmanship of Mr. Jain. The operative part of the affidavit dated January 10, 1996, filed by Mr. P.C. Jain in this respect, is as under :

> *"Based on the observations/suggestions made by all the industrial* units/organisations, *Special Technical Committee in its meeting on 8.1.1996 modified/clarified its earlier decision of 21.11.1995 as under: (Item No. 95/95 TC File No. F. 20(16)/93/MP under the subject regarding utilisation of land of existing hazardous and noxious units/large scale industry on their closure/ shifting).*
>
> *(a) The policy would be applicable only to the hazardous/noxious (as classified in annexure H(a)) and heavy and large industry (as classified in annexure H(b) in the MPD 2001).*
>
> *(b) The percentage break-up of the area is to remain unchanged between the open area, housing facility i.e. facilities required for housing, commercial/residential. The term Housing Facility' in the decision of the Technical Committee refers to Community Facility required for the population and as detailed out on page 150 of the Gazette (MPD 2001).*
>
> *(c) The shifting industry shall also be permitted to redevelop the land for light and service industry as per the provisions of MPD 2001*
>
> *(d) The ownership of the pockets under open space and community facility would also remain with the shifting industry who will develop/maintain these two.*
>
> *(e) The shifting industry would be given the benefit of FAR on the entire plot of land, thus, vacated for utilisation as per the specified land uses in MPD 2001. This is generally with the understanding that the permissible FAR would be 60 as in case of extensive industrial use zone. No construction of any nature shall be permitted on the area identified as open spaces to be left as mandatory green area. A minimum of 10% of the total floor space shall have to be used for community facility.*
>
> *(f) For necessary modifications in the text MPD 2001, these pockets would be designated as SPECIAL AREAS with the controls as specified in the scheme."*

This Court on January 24, 1996 passed the following order :

> ***"While we are hearing, Mr. D.N. Goburdhan, learned counsel appearing for the NCT, Government (Department of Land & Building) states that the Lt. Governor Delhi has constituted a committee headed by Mr. D.R. Khanna,***

Judge, Delhi High Court (retired) to consider as to how and in what manner the land eventually made available by relocation of the industries is to be utilised. Needless to say that we are hearing the matter for about the last 6 months and we are almost at the final stages. We, however, welcome any assistance from any quarters. We direct the Registry to send the draft scheme placed by Mr. Alphonse and the suggestions made by Mr. P.C. Jain to Justice D.R. Khanna through Mr. D.N. Goburdhan, adv. within two days from today. Justice Khanna may have deliberations with his committee and place his suggestions/ recommendations before this Court within 10 days thereafter."

Justice D.R. Khanna (retired) *Chairperson, Land use Advisory Committee* appointed *by the National Capital Territory, Delhi* Administration submitted *a note pursuant to the above* quoted *order of this Court. It is stated in the note that the time available with the Committee was short and as such the* deliberations *of the Committee could not be* finalised. Keeping *in view the urgency of the matter, Justice* Khanna *states, the note contains an* ex-facie *view which he* gathered *from various deliberations of the Committee.* Regarding heavy and large industries *Justice* Khanna *stated that "*these industries have to be shifted under the *master plan. Their number is not large but the lands* occupied *by them are substantial. One such occupies about 184 acres,* another *112 acres, still another* 37 acres and so on". Paras 15,16,18 to 21 & 29 of Justice Khanna's report are as under:

"15.. The land prices in Delhi have phenomenally sky-rocketed. In fact, their values may be many times more than the yields which are presently being enjoyed by the operation of these industries and even what they might have totally enjoyed from the time of the start of these industries. The protestations of the industries that they are going to suffer because of the shifting may appear misplaced and may be more to draw as much of compensatory relief from the government as may be possible. Left to their choice, most of these industries would themselves shift and then develop/dispose off their sites and structures, as there is least doubt that they see gold mines in them.

16. At the same time, it must be acknowledged here that none should grudge in the high profits that the owners are likely to get by development/sale of sites of factories. They have been their owners and did play needed roles during relevant times in the industrialisation of NCT. Any spurt in the prices of real estate ensures for their benefits. The same can only be circumscribed as the need may dictate of social or environmental good and uplifting the face of capital city.

18. I am informed that some hearings were provided to the representatives of the industries before formulation of these schemes, and then the percentages in column 3 to 5 on the user of land were arrived at. I have no occasion to fully grasp the justification of these percentages but treating them as they are, I proceed to make my comments.

19. Firstly, so far as percentages mentioned in column 5 of categories 2, 3 & 4 industries, some grievances is made in the written representations received by me

that they are too low. Be that as it may, still the percentages of column 5 would leave very big areas of lands with these industries which would still be gold mines with them. A three bed rooms residential flat in Delhi would fetch anything between 20 to 50 lacs, and in commercial area, much smaller would fetch much more.

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29. Adverting to the FIR, normally it has to be confined to the areas that are being built up on and developed. There should therefore be no reason why it should not be confined to FAR of the lands in col. 5 only. To extend that for the benefit of col. 5 so as to include areas of *the lands in col. 3 and 4 would deprive areas* of col. *3 & 4* of *the FAR for all time to come and would thus be greatly detrimental to them (especially when col,. 4 has to be independently built upon), while giving overwhelming benefit to col. 5 lands. It has to be kept in view here that 2000 sq. mts. of larger plots have still been reserved for col. 5 while dealing with category 1 industries"*

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"Mr. P. VS. Jai Krishnan, Chief Secretary, NCT Delhi has filed an affidavit dated April 29, 1996. We have heard learned counsel on the question of land-use, which may be made available as a result of relocation/ shifting of the industries from Delhi. We have before us Alphone's Committee Report. We have also before us the Report submitted by Jain Committee in this respect. The Khanna Committee appointed by NCT Government Delhi has not as yet completed its work. We have been adjourning hearing of these matters from time to time to await the Khanna Committee Report. In the affidavit it is stated by the Chief Secretary that the tenure of Khanna Committee has expired. It is stated that the NCT Delhi Administration is taking steps to renew the tenure of the Committee for further period.

We are of the view that no useful purpose will be served to look for any assistance in this respect from the NCT Delhi Administration.

We have finally heard the matter today. Needless to say that the Master Plan is the Charter of this purpose and we have to lay down the land-use keeping in view the provisions of the Master Plan. In this view of the matter, we direct the NCT Delhi Administration not to proceed with this matter any further. It shall not constitute or extend the tenure of any committee. We shall finally decide the issue and the said decision shall be binding on all concerned."

6. We have given our thoughtful consideration to the point at issue before us. We have had elaborate discussion with the learned counsel representing various industries which are to be relocated shifted. The basic charter for the land-use in the city of Delhi is the Master Plan. The provisions of the Master Plan are statutory and binding. The relevant provisions regarding hazardous/ noxious/ heavy/large industries under the Master Plan are as under:

"HAZARDOUS AND NOXIOUS INDUSTRIES

Refer annexure III H(a).....

HEAVY AND LARGE INDUSTRIES

Refer annexe III H(b)..... -

It is thus obvious that the land which would become available on account of shifting/relocation of the industries can only be used for making up the deficiency, as per the needs of the community, based on the norms given in the Master Plan. If any land or part of the land, so vacated is not needed for community services it can be used as per the prescribed land use. To appreciate the concept "need of the community" under the Master Plan it would be useful to have a look at the following provisions of the Master Plan.

"In general it would be desirable to take up all the existing developed residential areas one by one for environmental improvements through (1) plantation and landscaping (ii) provision of infrastructure-physical and social and proper access where lacking (iii) possibility of infrastructure management of the last tier through the local residents."

Conservation and revitalisation is required in case of traditional areas and environmental up gradation and improvement is needed in other old build-up areas.

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Further conversion of recreational areas to other uses should be permitted only under extraordinary circumstances. Areas in lieu of such conversion may be provided elsewhere in order to maintain the over all average for the city.

Within DUA-81, the following special activity area for recreation are proposed for development.....

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8. The core question for consideration, however, is how much of the total land which would become available from each of the industrialists is to be taken away by the community for its use and how much is to be left in the hands of the industrialists for the community use. The suggestions given by Alphons Committee in this respect have been noted by us in the earlier part of the order. Mr. Omesh Sehgal, Mr. P.C. Jain and Justice Khanna by and large agree with the suggestions of the Alphons Committee. We are of the view that no useful purpose would be served by maintaining two categories as suggested by Alphons Committee in Col, 3 and 4. After leaving the part of the land with the owner for developing this same in accordance with the permissible land-use under the Master Plan the remaining land should be surrendered to the Delhi Development Authority (DDA) for developing the same to meet the community needs, it obviously means that the land has to be surrendered and dedicated to the community. While meeting the community needs it is necessary to make suitable provision for the owner to enable him to meet the expenses or relocating/ shifting the industry. It would,

therefore, be in conformity with the broader concept of "community need" under the Master Plan, to permit the owner to develop parts of the land for his own benefit and surrender the remaining land to the use of the community at large.

We, therefore, order and direct that the land which would become available on account of shifting/relocation of hazardous/noxious/heavy and large industries from the city of Delhi shall be used in the following manner.

10. We do not agree with the learned counsel for the industrialists that Floor Area Ratio (FAR) be permitted to them on the total area of the plot. We however, direct that on the percentage of land as shown in Col. 4 the owners at serial No. 2, 3 and 4 shall be entitled to one and half time of the permissible FAR under the Master Plan.

11. The DDA has suggested that it may be necessary to amend the Master Plan for regularising the land use as directed by us. We do not agree with the suggestion. The totality of the land made available as a result of the relocation/shifting of the industries is to be used for the community needs. The land surrendered by the owner has to be used for the development of greenbelt and open spaces. The land left with the owner is to be developed in accordance with the user permitted under the Master Plan. In either way the development is to meet the community needs which is in conformity with the provisions of the Master Plan.

12. We are, therefore, of the view that is it not necessary to amend the Master Plan.

M.C. Mehta v. Union of India
1996 (4) SCALE (SP) 29
Kuldip Singh and Faizan Uddin, JJ.

ITEM A:

1. Pursuant to this Court's order dated March 14, 1996 Mr. CP Jain, Chief Manager (Safety and Environment Protection), Indian Oil Corporation has filed an affidavit. In our order dated March 14, 1996 we noticed the statement of Mr. CP Jain to the effect that the Public Investment Board had given its clearance to the proposal for construction of Hydro Cracking Unit in the Mathura Refinery on March 14, 1996. Mr. Jain has in the affidavit under consideration stated that after the clearance from the Public Investment Board, the proposal shall have to be approved by the Cabinet Committee on economic affairs. It is stated once the approval from the Administrative Ministry is received, the actual work of procurement of machinery and construction will start and the project is likely to be completed within a period of 42 months.

2. We are constraint to say that despite continuous monitoring by this Court even the paper work has not as yet been completed. This Court on January 20, 1995 observed as under:

"....Mr. *Mathur, in para 7 of his affidavit has given details of the further procedure to be followed for the final completion of the project. According to the affidavit the Committee of Public Investment Board has to sanction expenditure for the preparation of detail feasibility report. We are informed that Secretary Expenditure is the Chairman of the Public Investment Board. We request the Secretary, Public Investment Board to have this matter examined by the Board expeditiously keeping in view the importance of the project. We do not wish to fix any period within which the Board should finalise the matter but we trust and hope that the matter shall be finalised at an early stage."*

3. It is obvious from the tenure (sic) of our order quoted above that this Court asked the Public Investment Board to grant its approval to the Project expeditiously Mathura Refinery is emitting more than 500 Kg of Sulphur Dioxide per hour which is a health hazard for the human being and also hazardous for the world heritage Taj Mahal. According to the NEERI report, the emissions are 859 Kg. per hour.

4. This Court directed the Public Investment Board to examine the matter expeditiously, which obviously did not mean a long period of 14 months. We are of the view that the Chairman of the Public Investment Board has shown scant respect to the orders of this Court. We issue show cause notice to Mr. N.K. Singh, the Chairman of the Public Investment Board why contempt proceedings be not initiated against him.

5. We are informed that the project has now been sent to the Cabinet Committee on economic affairs. Learned counsel appearing for the Mathura Refinery states that the project shall be forwarded to the Cabinet Committee within two weeks from today. They may do so. We request Mr. Surendra Singh, Cabinet Secretary to have this project placed before Cabinet Committee on economic affairs as expeditiously as possible for clearance, after the same is received by the Committee. The Mathura Refinery shall file a short affidavit before July 10, 1996 indicating the progress in this respect. The Refinery in the affidavit may also indicate as to whether other recommendations of the NEERI are being complied with, specially regarding the setting up of the Chemo-Biochemical process. Since the work of controlling pollution - despite this Court's continuous efforts - is not being done according to the time schedule repeatedly set up by this Court and Refinery is polluting the ambient around Taj Mahal, we are of the view that pollution fine should be imposed on the Mathura Refinery. We issue notice to the Mathura Refinery to show cause why heavy pollution fine be not imposed on the Refinery.

6. To come up on July 19, 1996.

GAS AUTHORITY OF INDIA LIMITED

7. Pursuant to this Court's order dated March 14, 1996 Mr. PC Gupta, General Manager (Civil), Gas Authority of India has filed affidavit dated April 2, 1996. It is stated in the affidavit that the Ministry of Petroleum and Natural Gas has already allocated 0.60 MMSCMD for distribution to the industrial units in Agra and Ferozabad. It is stated that as per the time schedule already filed in this court, the two pipe lines shall be completed by December, 1996. It is further stated that the quantity of gas as mentioned above is only

for the purposes of supplying the same to the industries located within the Taj Trapezium. We have no doubt that while laying down the supply line within the city of Agra, the safety of Taj and also the people living in the city. of Agra shall have to be taken into consideration. We are told that expertise in this respect is available with the GAIL. If necessary, the opinion of NEERI, which has been associated by this court in Taj Trapezium matters, can also be obtained by the GAIL.

8. We have already heard arguments regarding relocation of industries from Taj Trapezium. Some of the industries which are not in a position to get gas connections or which are otherwise polluting may have to be relocated outside Taj Trapezium. The GAIL may also examine whether in the event of availability of more quantity of gas, the same can be supplied to the industries outside the Taj Trapezium which are located in the vicinity from where the gas pipe is passing.

9. Mr. Gupta has further stated that for the purpose of laying distribution network within the Taj Trapezium, GAIL is establishing a joint venture company. However, pending formation of the joint venture company, the required functions are being performed by GAIL. It is stated that GAIL had advertised comparative prices and heat equivalent of various fuels in the newspapers circulated in Agra and Ferozabad to enable the industries, who are prospective consumers of gas evaluate to the economic of conversion to gas. So far 214 parties from Agra and 364 parties from Ferozabad have responded. According to the affidavit these responses are being processed. Mr. Reddy, on our asking, states that he would have the matter examined and file an affidavit in this Court within two weeks indicating the time frame regarding the laying of distribution net work within the Taj Trapezium. Mr. Reddy further states that some land shall have to be required for the purpose of constructing City Gate Stations at Agra and Ferozabad. He states that the cooperation of the U.P. Government is required for acquiring the land. We direct the Collector, Agra as well as Collector, Ferozabad to render all assistance to GAIL in acquiring land for setting up the two stations for the public purpose.

ITEM G:

10. Pursuant to this Court's order dated March 15, 1996 Mr. Rakesh Kumar Goel, Joint Secretary, Government of U.P., has filed an affidavit. Mr. Satish Chandra, learned senior advocate appearing for the U.P. State, states that the toll at Taj Mahal, Agra is being collected by the Agra Development Authority in terms of Section 39A of the U.P. Urban Planning and Development Act, 1973. According to him the money collected is being spent on maintaining all the approach roads and other amenities provided by the authority to the tourists visiting the city of Agra. Mr. Satish Chandra states that he would persuade his clients to engage a professional Planner and Sanitation expert to beautify and clean Agra city specially the area which is directly connected with Taj Mahal.

11. To come up on 8th May 1996.

12. Regarding supply of continuous electricity to Agra City:

Mr. BB Singh and Mr. Surendra Singh, Chief Engineers, U.P. State Electricity Board have jointly filed affidavit dated April 9, 1996. It is stated in the affidavit that in order to

ensure uninterrupted electricity supply in the Taj Trapezium, the Board has already planned the additional work required to be carried out for that purpose. The work has been divided into three categories, namely Short Term, medium Term and Long Term. It is stated in the affidavit that so far as Short Term project is concerned, it shall be complete by August, 1996 and the Medium Term, which is in two parts shall, be complete within 18 months i.e. June, 1997. It is stated by Mr. Jaitley, learned counsel appearing for the Board, that with the completion of the Short Term and the Medium Term project there shall be 30% improvement in the electricity supply, so far as Agra town is concerned. After the completion of all the three projects, there shall be 100% uninterrupted supply to the Taj Trapezium. The total cost for all the three projects has been stated to be about 190 crores. Accordingly to the affidavit, the Board has.already started the Short Term and the Medium Term work with the Board's own funds amounting to Rs. 30 crores. Learned counsel for the Union of India states that copy of the affidavit has been received by him today. He would place the affidavit before the concerned authorities of the Government of India and file a short affidavit in this Court within how much time the sum of Rs. 99.54 crores needed to complete the electricity supply projects shall be made available to the U.P. State Electricity Board.

13. To come up on 8th May, 1996.

AGRA BY-PASS

14. Pursuant to this Court's order dated March 12, 1996 additional affidavit has been filed by Mr. PN Batham, Joint Secretary, U.P. Shasan, Public Works Department, Lucknow. It is stated in the affidavit that the construction of 24 Kms proposed by-pass shall continue. Mr. Srivastava, learned counsel appearing for the State of U.P. states that funds for the construction of this 24 Kms road are already available with the Department. 4.1. Km road is under construction. The remaining 19.9 Km is required to be widened to 3.7 meter width. The present proposed road is less than 3 meters and it is to be widened to the width of 3.7 meter which is the minimum requirement for single lane road. This may be done. The affidavit further states that another one meter kachcha extension is necessary to provide clear sight of vision to drivers to prevent accidents. If that is done, then 263 trees are to be cut. We are not inclined to permit the cutting of such a large number of trees and as such the extension of the kachcha road may be done only at those places where there are no trees. We make it clear that we do not permit the cutting of 263 trees as suggested in the affidavit. So far as cutting of 80 trees for widening the road by one meter is concerned, that may be done if it is absolutely necessary. Initially we were of view that this stretch of road should be constructed within six months from the date of this court's last order. Keeping in view the difficulties explained by Mr. Srivastava, we direct the P.W.D. of U.P. to compete this 24 Kms by-pass by 30th of December, 1996. A responsible officer of the Department shall file progress reports after every three months.

Om Birangana Religious Society v. The State
1996 (100) CAL WN 617
Bhagbati Prasad Banerjee, J.

In this writ application the petitioner, a religious organisation, claims that the respondents should not interfere with the right of user of microphones, loudspeakers, and for amplifying human voice and for amplifying other sounds while playing daily pujas and other religious activities and display of religious songs. The petitioner prayed for a writ in the nature of mandamus commanding the District Magistrate and/or the Sub-Divisional Officer, Ghatal, to accord necessary permission in favour of the said society in terms of section 34A of the Police Act, 1963, (West Bengal Amendment).

The point raised in this writ application is of great public importance and significance....

It is the case of the petitioner that microphones are required by the society during puja performance, arati, nitya puja, etc., and that nobody ever raised any objection to the performance of the aforesaid religious activities in the manner and in the way as had been done, but the sub-Divisional Officer, Ghatal, directed the petitioner/society not to use any microphone while performing puja and other religious activities without serving any notice in the month of September, 1993.

It also appears that the petitioners filed an application before the Sub-Divisional Officer, Ghatal, on October 11, 1993, so that permission would be granted in favour of the said society for free use of microphones.

Similar application was filed by the petitioner before the Circle Inspector of Police, Ghatal, on 17th October, 1993, so that necessary permission may be granted in favour of the said society for the use of the microphones for the aforesaid purpose.

The petitioner has alleged inaction on the part of the District Magistrate or the Sub-Divisional Magistrate to deal with and dispose off the Petitioners application for permission to use microphone.

Section 34A of the Police Act, 1861, provides power to prohibit, restrict, regulate or impose conditions on the use of microphones, if in the opinion of the Magistrate of the District or any Sub-Divisional Magistrate or a Magistrate of the First Class it is necessary so to do for the purpose of preventing annoyance or injury to health of the public or any section thereof or for the purpose of maintaining public peace and tranquillity, such officer may, by an order, prohibit, restrict or regulate or impose conditions on the use or operation in any area within his jurisdiction or in any vehicle within such are of microphones or loudspeakers or other apparatus for amplifying human voice or for amplifying music and other sounds.

Under sub-Section (3) thereof, the police officer not below the rank of Sub-Inspector, may also take such steps or use such force as may be reasonably necessary for securing compliance with any order made under sub-section (1) and may also take penal action.

It is not in dispute that for use of microphones permission is required from the authorities and that the authority, it appears that, is the sole authority to allow or not to disallow and/or to prohibit and/or to restrict, regulate and/or to control the use of microphones.

The rights of the petitioner or any association religious or otherwise, cannot be said to be absolute, nor it can be said that the District Magistrate, Sub-Divisional Officer or the police authorities are the absolute authority in the matter of granting of such permission without having any regard to other factors.

Article 19(1)(a) provides Fundamental Rights on all citizens to Freedom of Speech and Expression, ...

The freedom of speech and expression of a citizen should not be interfered with save and except in accordance with the provisions of Article 19(2) of the Constitution. It is a matter to be considered whether the public are captive audience or listeners when permission is given for using loudspeakers in public and the person who is otherwise unwilling to bear the sound and/or the music or the communication made by the loudspeakers, but he is compelled to tolerate all these things against his will and health. If permission is granted to use microphones at a louder voice, such a course of action takes away the rights of a citizen to speak with others, the right to read or the right to know and the right to sleep and rest or to think any matter. Can it be said that a person and/or an organisation simply applying a permission and after obtaining permission is entitled to display loudspeakers from local authorities. Does it concern simply a law and order situation? Does it not generate sound pollution? Does it not affect the other known rights of a citizen? Even if a citizen is ill and even if such a sound may create adverse effect on his physical and mental condition, yet he is made a captive audience to listen.

Freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India includes, by necessary implication, freedom not to listen and/or to remain silent. One cannot exercise his right at the cost and in total deprivation of others' rights. A right cannot be conferred by the authorities concerned upon a person or a religious organisation to exercise their rights suspending and/or taking away the rights of others.

In this connection, Mr. Samanta, learned Counsel appearing on behalf of the petitioner, submitted that right to propagate religion is guaranteed under Article 25 of the Constitution. Article 25(1) of the Constitution provides that subject to public order, morality and health and to other provisions of Part-III of the Constitution, all persons are equally entitled to freedom of conscience, and that right to freely profess, practise and propagate religion.

It is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to propagate religion includes the right to use loud speakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loud-speakers during religious performance in the society.

Freedom of speech is guaranteed to every citizen so that he may reach with the winds of willingness and not coerced unwillingness.

There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also know. It has a tremendous impact on the nervous system of a human being.

The American Supreme Court in the case of *Ward Rock Against Racism,* 491 US 781, upheld the city regulations designed to regulate the volume of excessively amplified music at the Naumberg Acoustic Bandshell in New York City's Central Park to protect those who use a quiet, recreational area of the park called the Sheep Meadow and also to protect resistance in Central Park West area.

In this case, the American Supreme Court rejected the challenge to these city noise regulations.

The religion that has been performed by the petitioner and others, is nothing new, but the same is there for several centuries. It cannot be said that the religious teachers or the spiritual leaders who had laid down these tenets, had any way desired the use of microphones as a means of performance of religion. Undoubtedly, one can practise, profess and propagate religions, as guaranteed under Article 25(1) of the Constitution, but that is not an absolute right. **The provisions of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution. On true and proper construction of the provisions of Article 25(1), read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require.**

Amplifier and microphone create tremendous noise and sounds which may travel at least half to one kilometre away. Having regard to the provisions of Article 19(1)(a) of the Constitution, it cannot be said that the District Magistrage, Sub-Divisional Officer and the police authorities are the sole authority who can grant at will permission without having any regard to the fundamental rights of the fellow citizens. Such authorities, by granting permission to display microphone, cannot make the public the captive listeners. **The citizens have a right to enjoy their lives in the way they like, without violating any of the provisions of the law. A citizen has a right to leisure, right to sleep, right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep.** There may be heart patients or patients suffering from nervous disorder may be compelled to bear this serious impact of sound pollution which has had an adverse effect on them. It may create health problems.

Pollution is a factor which has now a prime importance in the modern society. The effect of sound on human bodies is very serious.

Accordingly, no authority would grant permission to use microphones without having any regard to the rights of the fellow citizens or the people of the area. Such a sound pollution cannot be altogether stopped, but the sound level has to be reduced in such a

manner and in such a form so that the sound may not travel beyond a certain limit, as for example, in a public meeting microphones or amplifiers may be necessary so that the listensers may hear the speeches delivered by the leaders and for that purpose the sound has to be regulated in such a manner so that it may not travel beyond a reasonable limit and/or such a sound cannot be allowed to travel beyond the zone in which the listeners are there.

In a religious place or congregation, the use of microphones should be limited to the persons or the followers or the disciples who are there so that they may hear and know, they may follow and understand what is meant for them. No person and/or organisation can be allowed to use microphones at a high noise level or without any volume control.

So far as right of religious organisations to use loud-speaker or amplifier is concerned that right is not an independent right under Article 25 of the Constitution of India. Article 25(1) of the Constitution of India provides that subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

The Supreme Court in the case of *Narendra Prasad vs. State of Gujarat*, reported in AIR 1974 SC 2098, has considered the aspect of the matter that Article 19(1) confers various rights specified therein from (a) to (g) of the said Article for the citizen. The right under Article 25 of the Constitution is subject to the rights of Article 10. This case is the clear authority for the proposition that while exercising a right under Article 25 no person can interfere with, take away or abridge the right of a citizen guaranteed under Article 19(1)(a) of the Constitution.

Any provision of law authorising the police and/or the administration to grant permission for using of loud-speaker cannot be absolute, uncontrolled and independent of constitutional rights. All laws in this behalf are subject to the provisions of Article 19 of the Constitution as there cannot be any law which may interfere with abridge or take away the right as guaranteed under Article 19(1)(a) of the Constitution save and except the provisions laid down in Article 19(2) of the Constitution. Use of loud-speaker cannot be said to be a reasonable restriction on the freedom of speech and expression. Even Article 25 of the Constitution grants freedom of conscience and expression. Freedom of conscience is followed up by the right to freely profess, practice and propaga religion. Use of loud-speaker emanates noise which is not only a nuisance, but also a pollution.....

In West Bengal there is an authority known as 'West Bengal Pollution Control Board'. The tremendous sound and/or noise emanated from use of loud-speaker has to be controlled by all means in as much as use of such loud-speaker and/or microphones is a serious threat to public life and health.

Accordingly, it must be held that powers of the Police, District Magistrate or Sub-Divisional Officers to grant permission to use microphones is subject to certain restrictions and conditions which are necessary in order to protect and preserve a very

fundamental right of citizen under Article 19(1)(a) of the Constitution of India on the following terms:

(a) The Pollution Control Board shall maintain noise level registers for measuring the level of noise;

(b) The said authority shall indicate the level of noise which could be permitted by use of microphones on any occasion;

(c) Powers of the District Magistrates. Sub-Divisional Officers and other authorities are subject to any direction and/or conditions imposed by the West Bengal Pollution Board:

(d) The person or persons or any business house dealing with or letting or selling the micro-phones/ loud-speakers and the operating apparatus shall be bound to seal the volume and the noise level according to the directions of the Pollution Control Board, before letting or parting with or selling such apparatus for any purpose. In default thereof, they should not be permitted to deal with such items. For this purpose, the Pollution Control Board shall issue directions from time to time in this behalf;

(e) Loud-speakers should not be allowed to operate in the streets between 9 p.m. in the evening and 7 in the following morning for any purpose at any time including for the purpose of advertisement of any entertainment, trade or business. However, this restriction shall not operate in respect of loud-speakers operating by the Police, Ambulance or Fire Brigade in the exercise of any of the functions or by local authority within its area and for making announcement or making a declaration or giving some information which is necessary to the public subject to such level of volume as specified by the West Bengal Pollution Control Board;

(f) If a loud-speaker is in or fixed to a vehicle is operated solely for entertaining or communicating to the driver or passenger of the vehicle or for giving warning to other traffic and so operated without causing any annoyance to any person of the vicinity;

(g) For communicating with persons on a vessel for the purpose of directing them movement of that or any other vessel;

(i) If the loud-speaker forms part of a public telephone system;

(j) So far as use of micro-phones and/ or loud-speakers by any religious organisation or at any religious place or for the use of religious communication it should also be used solely for the purpose of communicating the speeches and/or religious teachings and/or tenets to the persons who have attended such functions and so operated does not give reasonable cause for annoyance to any person in the vicinity.

The volume and noise level should be approved by the West Bengal Pollution Control Board and the same should be enforced by the police and the administration. So far as public meeting is concerned, the same should be used in such a manner and with such a volume which should not exceed the level fixed by the Pollution Control Board which should be treated as registered level and the volume may be regulated in such a fashion so that it may reach to all persons who join in the meeting in a particular area & not beyond that. It should not be operated in such a manner so as to give reasonable cause of annoyance to the persons in the vicinity.

Before granting any permission the purpose of use of microphones and/or loud-speakers and the area where such machines would be fitted, the police authorities will inspect and seal the noise level in that particular micro-phones apparatus so that on no occasion the noise level exceeds the fixed and registered noise level. A noise level register should be maintained by the West Bengal Pollution Control Board under the control and supervision of the Member-Secretary. The Member-Secretary of the West Bengal Pollution Control Board or any other person authorised by him is given liberty to enter in any place with the help of police for the purpose of ascertaining whether the noise level has exceeded the registered noise level fixed by the said Noise Control Board, and if it is found that there was any contravention, the police will immediately seize and confiscate such loud-speakers and start necessary case for causing nuisance and/or annoyance in accordance with the provisions of law so that the offenders may not go unpunished. All concerned authorities including the State Government and its officers must remember that restriction of noise level is necessary in the interest of public health and is a matter not to be ignored in as much as ultimately this unregulated noise will cause a threat to the life and health of the people of the State and it is the duty of the State to preserve and protect the liberty of thought and expression and/or freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution of India and by indiscriminating and unregulated use of microphones people of the vicinity cannot be kept as mere captive listeners and their rights cannot be forcibly suspended by any people or organisation simply on the basis of administrative order obtained from the public authority by indiscriminate use of microphones or loud-speakers. It should be the endeavour of the State Government to preserve and protect fundamental rights of citizens, otherwise the said fundamental right as guaranteed under Article 19(1)(a) of the Constitution will become merely a lip service to the people. These conditions and restrictions should be imposed rigorously throughout the State and within a period of two months from the date of communication of this order and the Member-Secretary of the West Bengal Pollution Control Board shall submit a report to this Court about the compliance and steps taken in the matter in respect of the aforesaid order. The writ petition is thus disposed of with the mandatory directions.

Following these guidelines the Respondent concern shall grant permissions to use loud-speakers to the petitioner according to law.

Let a copy of the order be forwarded to the Hon. Secretary, Government of West Bengal, who is required to forward copies of this order to all the District Authorities including the District Magistrates, Sub-Divisional Officers, Superintendents of Police

as also the Commissioner of Police, Calcutta, so that they may discharge their duties in this regard in respect of use of microphones/loudspeakers in this State.

Let a copy of this order be forwarded to the Member-Secretary, West Bengal Pollution Control Board, 10 Camac Street. Calcutta, for taking necessary steps and complaints.

The Registrar, Appellate Side, of this Court is also directed to forward copies of this order to the Calcutta Doordarshan and the All India Radio at Calcutta as this, a matter of great public importance, for regular announcement through their media so that everybody shall know their duties and obligations in respect of use of microphones/loud-speakers.

Writ allowed with direction

Pradeep Krishen v. Union of India
AIR 1996 Supreme Court 2040
Writ Petition (Civil) No. 262 of 1995, D/-10-5-1996
A.M. Ahmadi, C.J.I, B.L. Hansaria and S.C. Sen, JJ.

Wild Life (Protection) Act (53 of 1972), Ss. 26A, 35 – Sanctuaries and National Parks – State Govt. permitting villagers living in and around to enter and collect tendu leaves from such parks/sanctuaries – Order not invalid since final notification declaring the area as sanctuaries/parks had not been issued – State Govt. however directed to issue final notification expeditiously.

The procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary or National Park has to be followed before a final notification under S. 26A or S. 35(1) is issued by the State Government. In the instant case, since the procedure for the acquisition of rights in or over the land of those living in the vicinity of the areas proposed to be declared as Sanctuaries and National Parks under S. 26A and 35 in the Act has not been undertaken and the final notification under Ss. 26A and 35 had not been made, the State Government was not in a position to bar the entry of villagers living in and around the Sanctuaries and the National Parks. The order of State Govt. permitting the villagers living in or around the proposed parks/ sanctuaries to enter the park/sanctuary and collect tendu leaves could not therefore be said to violate any provision of the Act.

In our country, the total forest cover is far less than the ideal minimum of one-third of the total land. We, cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the Sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas. If the only reason which compels the State Government to permit entry and collection of tendu leaves is, it not having acquired the rights of villagers/tribals and having failed to locate any area for their rehabilitation, the

inertia in this behalf cannot be tolerated. State Government directed to initiate action in this behalf within a period of six months and expeditiously conclude the same showing that sense of urgency as is expected of a State Government in such matters as enjoined by Art. 48A of the Constitution and at the same time keeping in view the duty enshrined in Art. 51A(g) of the Constitution.

(Paras 17, 18)

State of Himachal Pradesh v. Ganesh Wood Products

AIR 1996 Supreme Court 149 (From: Himachal Pradesh)

Civil Appeals Nos. 8184-88, 8189, 8190-93 of 1995 (arising out of Special Leave Petition (Civil) Nos. 12754 - 58 of 1995, 11082 of 1995 and 11086-11089 of 1995), D/-11-9-1995

B. P. Jeevan Reddy and M. K. Mukherjee, JJ.

(A) Constitution of India, Art. 162 – Powers of State Govt. – Setting up of katha industry – Govt. is entitled to lay down policies and empowered to refuse approval.

Industries (Development and Regulation) Act (65 of 1951), S. 11.

(B) Industries (Development and Regulation) Act (65 of 1951), S. 11 – Approval for setting up industry – Proposed katha factories – Authority proceeding on assumption that in absence of commitment on part of Govt. to supply raw material, khair wood to factories every proposal before it can be approved – Approach by authority is faulty and myopic – It is also contrary to public interest involved in preserving forest health – There is no absolute or unrestricted right to establish forest based industries notwithstanding policy of liberalization of Govt. of India.

(C) Constitution of India, Art. 226 – Public interest litigation – Establishment of katha industries – Leading to indiscriminate felling of khair trees having deep and adverse effect on environment and ecology – Public spirited citizen, M.L.A. approaching High Court for restraining Govt. from granting permission – Credentials of petitioner impeccable – No collusion between him and industry enjoying monopoly status in katha industry – It cannot be said that petitioner was not acting bona fide in approaching Court – His inability to produce material in support of his allegation does not tell upon his bona fides.

(Para 52)

(D) Constitution of India, Art. 226 – Writ petition – Bona fides of petitioner – Approval for setting up katha industries – Challenge as to – Petition by industry enjoying almost monopoly status in matter of raw material supplies – There was no indication at any stage that supplies which it was receiving in previous years pursuant to agreement with the government were going to be affected – Petitioner not entitled to question approvals granted to new units.

(Para 53)

(D) Evidence Act (1 of 1872), S. 115 – Promissory estoppel – Scope – Doctrine should not be reduced to rule of thumb – It being equitable doctrine, should be kept elastic enough in hands of Court to do complete justice between parties.

T.N. Godavarman Thirumulpad v. Union of India
InterlocutoryApplications 5, 5A, 7, 8, 9, 10, 11, 12, 13, & 14 in WP (C) No. 202/96; Decided on 02-09-1996
J.S. Verma and B.N. Kirpal, JJ.

Permission to cut Eucalyptus tress – Continuance of trees a hazard in ordinance factory – Permission granted – Tress to be hammer market by DFO – Notices to all Chief Secretaries in view of nature of Petition – Attorney General undertakes to appear in view of significance of the matter.

ORDER (RELATES IA 5)

This application is filed for permission to cut and remove 984 eucalyptus trees out of which approximately 200 trees have already fallen. The reasons given in the application indicate the urgency for granting permission to this affect because of the likely hazard from the continuance of the tree in that sensitive area of the Ordnance factory. We, therefore, allow the application and permit the Ordnance factory to cut and remove these 984 eucalyptus trees.. We make it clear that the entire exercise of cutting as well as well as removal of the trees from the site would be carried on only by the Ordnance factory itself using its own vehicle for the purpose. These trees if not already hammer marked should also be hammer marked by the D.F.O. Nilgiri.

In view of the nature of the petitions and points involved therein, we direct issue of notice to Chief Secretaries of all State Governments other than those who are already made parties. Learned Attorney General who is present states that he himself would be appearing in this matter because of its significance for the Unions of India.

T.N. Godavarman Thirumulpad v. Union of India
InterlocutoryApplications 8, 9, 10, 11, 12, 13 and 14 in Writ Petition (Civil) 202/96; Decided on 23-09-1996
J.S. Verma and B.N. Kirpal, JJ.

Tamil Nadu-Permission to remove hammer marked trees-Removal to be done in direct control of Forest Officers.

State Government in spite of notice-Not entered appearance-issue of fresh notice on standing counsels of State-Fresh notice issued.

ORDER

Shri Anil B. Divan, learned counsel for the SIV Industries submits that due compliance of the order dated 22nd July, 1996 has been made by the SIV Industries and after verification of the correctness of the statements furnished by it, the felled trees have also been hammer-marked by the concerned authorities to enable removal of the felled trees by the SIV Industries itself and not through any other agency, by use of trucks under the full control of the SIV Industries. Learned counsel also submits that the removal of these felled tress is for consumption by the SIV industries itself in its factory. Shri Harish N. Salve, learned counsel for the State of Tamil Nadu accepts his submission to be correct. This being so, we permit removal of these felled trees which have been duly hammer-marked by the concerned authorities, in trucks belonging to the SIV Industries or those which are used under full control of the SIV Industries for consumption in its factory. the entire removal would be done under the direct control of the concerned forest officers.
In spite of notices being issued to all the State Governments, many of them have not entered appearance. We, therefore, direct issue of fresh notice by service of notice on the sanding counsel for the State at Delhi.

T.N. Godavarman Thirumulpad v. Union of India
Interlocutory Applications 7, 9, 10, 11, 12, 13, & 14, in Writ Petition (Civil) No. 202/96; Decided on 07-10-1996
J.S. Verma and B.N. Kirpal, JJ.

Tamil Nadu- Coffee, Tea and Cardamom Plantations-Interim measures – Shade lopping permitted in accordance with technical opinion of a Committee at District level – DFO and Collector to be members-State of Tamil Nadu to obtain technical opinion from TANTEA – within three days.

ORDER

This order relates to all the coffee, tea and cardamom plantations, in respect of which, as an interim measure, it is directed as under:

(i) Shade looping of trees providing shade to tea, coffee and cardamom plantations may be permitted whenever it is warranted as per the considered technical opinion of a committee consisting of District Forest Officer and Collector or his nominee.

(ii) The wind fallen trees may be permitted to be removed in order to protect other trees in the private lands and Government man-made plantations. The above Committee can by a detailed order permit the removal of such trees specifying the reasons for such order.

(iii) The branches of the trees after the shade lopping are to be utilized within the Nilgiris District for firewood only in order to meet out the local fuel wood requirements and other requirements within the plantation.

(iv) The lops and tops (branches) and the wind fallen trees may be permitted by the said Committee to be removed and to be sold through the Government fuel wood depots maintained by the Forest Department and the remaining wood (timber and pulp wood) are to be given to the Forest Department for further allotment or sale to wood based industries as per the existing policy of the Government.

There appears to be controversy about the kind of interim order is required to be made for cutting the trees in these plantations. It is appropriate to obtain technical opinion on that before making an order relating to this aspect. Shri Salve, Counsel for the State of Tamil Nadu, undertakes to obtain technical opinion from TANTEA (Tamil Nadu Tea Plantation Limited, R & D Wing) by obtaining replies to the relevant including those supplied by learned counsel. This he undertakes to do within three days. Learned counsel for the plantations may furnish set of queries within two. The matter would be considered for making the necessary in this behalf thereafter. This order disposes of the I.As to this extent.

It is submitted by some learned counsel appearing for the plantations, some trees have already been cut and they should be permitted to be removed. It is directed that an application with full particulars in this behalf be made, supplying a copy to the learned counsel for the State of Tamil Nadu for his response. This be done within three days. The matter be heard thereafter.

T.N. Godavarman Thirumulpad v. Union of India
InterlocutoryApplications 7, 9, 10,11,12,13, & 14 in Writ Petition (Civil) No.202/95, Conter Petition No.539/96
Writ Petition (Civil) No. 171/96 with InterlocutoryApplications 1,3,4,5,6,7,8 and 10 in Writ Petition (Civil) No.171/96; Decided on 28-11-1996
J.S. Verma and B.N.Kirpal, JJ.

Despite Notice no representation from most State Governments – No representation from that North Eastern States – Secretaries dealing with Environment and Forest in the North Eastern States to remain personally present during hearing – Secretaries of Sikkim, Kerala and Maharashtra to be also present.

ORDER

Heard in part.

In spite of notice being served on all the State Governments, there is no representation on behalf of most of the State Government except Jammu and Kashmir, Madhya Pradesh, Kerala, Orissa, Punjab, Karnataka, Maharashtra, Tamil Nadu, Gujarat and the Union Territory of Pondicherry. Learned counsel representing the States of Mizoram and Tripura made a brief appearance at the end of the hearing today. In view of certain matters which arose during the hearing yesterday and today, it became necessary to have the version of the seven North Eastern States in particular, but no assistance to that effect

was available to the court on account of the absence of any representation at that time on behalf of any of the seven North Eastern States. It is necessary that effective representation on behalf of each of those seven States is ensured during the entire hearing of this matter. It is necessary for the Secretary dealing with Forest and Environment in each of these seven North Eastern States to remain present during the hearing of this matter. We, therefore, direct the personal presence of the Secretary dealing with Forest and Environment of each of the seven North Eastern States, namely, Assam, Nagaland, Meghalaya, Mizoram, Manipur, Tripura and Arunachal Pradesh in addition to the Secretaries of the States of Sikkim, Kerala and Maharashtra. Learned counsel appearing for these states will ensure their personal presence.

Vellore Citizens Welfare Forum v. Union of India
AIR 1996 Supreme Court 2715
Writ Petition (Civil) No. 914 of 1991, D/- 28-8-1996
Kuldip Singh, Faizan Uddin and K. Venkataswami, JJ.

(A) Constitution of India, Art. 32 - Environmental protection - Water pollution - Tanneries discharging untreated effluent into agricultural fields, roadsides, water-ways and open lands - Untreated effluent finally discharged in river the main source of water supply to residents of area - Supreme Court issued comprehensive directions for maintaining standards stipulated by pollution Control Board - Further Supreme Court directed the High Court of the State to Constitute special Bench "Green Bench" to deal with the case and other environmental matters.

(Paras 23, 24, 25)

(B) Constitution of India, Art. 21 - Environmental protection - Precautionary principle and the polluter pays principle are part of the environmental law of the country.

Environment Protection Act (29 of 1986), S. 3.

(Para 13)

(C) Environment Protection Act (29 of 1986), S.3 (3) – Scope - Statutory authority to Control Pollution and Protect environment - Constitution of - Supreme Court directed the Central Govt. to take immediate action under the provisions of the Act.

(Para 19)

Cases Referred:	**Chronological Paras**
1996 AIR SCW 1069: (1996) 2 JT (SC) 196	11
AIR 1984 SC 667	14
AIR 1980 SC 470	14
AIR 1976 SC 1207: 1976 Cri LJ 945	14

KULDIP SINGH, J.:- This petition-public interest-under Art. 32 of the Constitution of India has been filed by Vellore Citizens Welfare Forum and is directed against the pollution which is being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It is stated that the tanneries are discharging untreated effluent into agricultural fields, roadsides, waterways and open lands. The untreated effluent is finally discharged in river Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and sub-soil water of river Palar has been polluted resulting in non-availability of potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Centre Vellore nearly 35,000 hectares of agricultural land in the Tanneries Belt, has become either partially or totally unfit for cultivation. It has been further stated in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime, sodium sulphate, chlorium sulphate, fat liquor Ammonia and sulphuric acid besides dyes which are used in large quantities. Nearly 35 litres of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physicochemical properties of the soil, and have contaminated ground water by percolation. According to the petitioner an independent survey conducted by Peace Members, a non-governmental organisation, covering 13 villages of Dindigal and Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of 467 used for drinking and irrigation purposes have been polluted. Women and children have to walk miles to get drinking water. Legal aid and Advice Board of Tamil Nadu requested two lawyers namely, M. R. Ramanan and P.S. Subramanium to visit the area and submit a report indicating the extent of pollution caused by the tanneries. Relevant part of the report is as under: -

> "As per the Technical Report dated 28-5-1993 of the Hydrological Investigations carried out in Solur village near Ambur it was noticed that 176 chemicals including acids were contained in the Tannery effluents. If 40 litres of water with chemicals are required for one Kilo of Leather, with the production of 200 tons of Leather per day at present and likely to be increased multi-fold in the next four to five years with the springing up of more tanneries like mushroom in and around Ambur Town, the magnitude of the effluent water used with chemicals and acids let out daily can be shockingly imagined... The effluents are let out from the tanneries in the nearby lands, then to Goodar and Palar rivers. The lands, the rivulet and the river receive the effluents containing toxic chemicals and acids. The sub soil water is polluted ultimately affecting not only arable lands, wells used for agriculture but also drinking water wells. The entire Ambur Town and the villages situated nearby do not have good drinking water. Some of the influential and rich people are able to get drinking water from a far off place connected by a few pipes. During rainy days and floods, the chemicals deposited into the rivers and lands spread out quickly to other lands, the effluents thus let out, affect cultivation, either crops do not come up at all or if produced the yield is reduced abnormally too low .... The Tanners have come to

stay. The industry is a Foreign Exchange Earner. But one moot point is whether at the cost of the lives of lakhs of people with increasing human population the activities of the tanneries should be encouraged on monetary considerations. We find that the tanners have absolutely no regard for the healthy environment in and around their tanneries. The effluents discharged have been stored like a pond openly in the most of the places adjacent to cultivable lands with easy access for the animals and the people. The Ambur Municipality, which can exercise its powers as per the provisions of the Madras District Municipalities Act (1920) more particularly under Ss. 226 to 231, 249 to 253 and 338 to 342 seems to be a silent spectator probably it does not want to antagonise the highly influential and stupendously rich tanners. The powers given under S. 63 of the Water Prevention and Control of Pollution Act 1974 (6 of 1974) have not been exercised in the case of tanneries in Ambur and the surrounding areas."

2. Along with the affidavit dated July 21, 1992 filed by Deputy Secretary to Government, Environment and Forests Department of Tamil Nadu, a list of villages affected by the tanneries has been attached. The list mentions 59 villages in the three Divisions of Thirupathur, Vellore and Ranipath. There is acute shortage of drinking water in these 59 villages and as such alternative arrangements were being made by the government for the supply of drinking water.

3. In the affidavit dated January 9, 1992 filed by Member Secretary, Tamil Nadu Pollution Control Board (the Board), it has been stated as under:-

"It is submitted that there are 584 tanneries in North Arcot Ambedkar District vide annexure 'A' and 'D'. Out of which 443 Tanneries have applied for consent of the Board. The Government was concerned with the treatment and disposal of effluent from tanneries. The Government gave time upto 31-7-1985 to tanneries to put up Effluent Treatment Plant (E.T.P.). So far 33 tanneries in North Arcot Ambedkar District have put up Effluent Treatment Plant. The Board has stipulated standards for the effluent to be disposed by the tanneries."

4. The affidavits filed on behalf of State of Tamil Nadu and the Board clearly indicate that the tanneries and other polluting industries in the State of Tamil Nadu are being persuaded for the last about 10 years to control the pollution generated by them. They were given option either to construct common effluent treatment plants for a cluster of industries or to set up individual pollution control devices. The Central Government agreed to give substantial subsidy for the construction of common effluent treatment plants (CEPT). It is a pity that till date most of the tanneries operating in the State of Tamil Nadu have not taken any step to control the pollution caused by the discharge of effluent. This Court on May 1, 1995 passed a detailed order. In the said order this Court noticed various earlier orders passed by this Court and finally directed as under:

"Mr. R. Mohan, learned senior counsel for the Tamil Nadu Pollution Control Board has placed before us a consolidated statement dividing the 553 industries into three parts. The first part in Statement No. 1 and the second part in Statement No. 2 relate to those tanneries who have set up the Effluent Treatment Plants either individually

or collectively to the satisfaction of the Tamil Nadu Pollution Control Board. According to the report placed on the record by the Board, these industries in Statements 1 and 2 have not achieved the standard or have not started functioning to the satisfaction of the Board. So far as the industries in statements 1 and 2 are concerned, we give them three months notice from today to complete the setting up of Effluent Treatment Plant (either individually or collectively) failing which they shall be liable to pollution fine on the basis of their past working and also liable to be closed. We direct the Tamil Nadu Pollution Control Board to issue individual notices to all these industries within two weeks from today. The Board is also directed to issue a general notice on three consecutive days in a local newspaper which has circulation in the District concerned.

So far as the 57 tanneries listed in Statement III (including 12 industries who have filed writ petitions, Nos. of which have been given above) are concerned these units have not installed and commissioned the Effluent Treatment Plants despite various orders issued by this Court from time to time. Mr. R. Mohan, learned senior counsel appearing for Tamil Nadu Pollution Control Board states that the Board has issued separate notices to these units directing them to set up the Effluent Treatment Plants. Keeping in view the fact that this Court has been monitoring the matter for the last about four years and various orders have been issued by this Court from time to time, there is no justification to grant any further time to these industries. We, therefore, direct the 57 industries listed hereunder to be closed with immediate effect .... We direct the District Collector and the Senior Superintendent of Police of the District to have our orders complied with immediately. Both these Officers shall file a report in this Court within one week of the receipt of the order.

We give opportunity to these 57 industries to approach this Court as and when any steps towards the setting up of Effluent Treatment Plants and their commissioning have been taken by these industries. If any of the industries wish to be relocated to some other area, they may come out with a proposal in that respect."

5. On July 28, 1995 this Court suspended the closure order in respect of seven industries mentioned therein for a period of eight weeks. It was further observed as under:-

"Mr. G. Ramaswamy, learned senior advocate appearing for some of the tanneries in Madras states that the setting up of the effluent treatment plants is progressing satisfactorily. According to him several lacs have already been spent and in a short time it would start operating Mr. Mohan, learned counsel for the Tamil Nadu Pollution Control Board, states that the team of the Board will inspect the project and file a report by 3rd August, 1995".

6. This court on September 8, 1995 passed the following order: -

"The Tamil Nadu Pollution Control Board has filed its report. List No. I relate to about 299 industries. It is stated by Mr. G. Ramaswamy, Mr. Kapil Sibal and Mr. G. L. Sanghi, learned senior advocates appearing for these industries that the setting up of the projects is in progress. According to the learned counsel Tamil Nadu Leather

Development Corporation (TALCO) is in charge of the project. The learned counsel state that the project shall be completed in every respect within 3 months from today. The details of these industries and the projects undertaken by TALCO as per list No. I is as under .... We are of the view that it would be in the interest of justice to give a little more time to this industries to complete the project. Although the industries have asked time for three months, we give them time till 31st December, 1995. We make it clear that in case the projects are not completed by that time, the industries shall be liable to be closed forthwith. Apart from that, these industries shall also be liable to pollution fine for the past period during which they had been operating.

We also take this opportunity to direct TALCO to take full interest in these projects and have the projects completed within the time granted by us.

Mr. Kapil Sibal, learned counsel appearing for the tanneries, stated that council for Indian Finished Leather Manufacturers Export Association is a body which is collecting 5% on all exports. This body also helps the tanneries in various respects. We issue notice to the Association to be present in this Court and assist this Court in all the matters pertaining to the leather tanneries in Madras. Mr. Sampath takes notice.

So far as list No. II is concerned it relates to about 163 tanneries (except M/s. Vibgyor Tanners & Co., Kailasagiri Road, Mittalam-635811, Ambur (via). The Pollution Control Board has inspected all these tanneries and placed its report before us. According to the report most of these tanneries have not even started primary work at the spot. Some of them have not even located the land. The tanneries should have themselves set up the pollution control devices right at the time when they started working. They have not done so. They are not even listening to various orders passed by this Court from time to time during the last more than 2 years. It is on the record that these tanneries are polluting the area. Even the water around the area where they are operating is not worth drinking. We give no further time to these tanneries. We direct all the following tanneries which are numbering about 162 to be closed with immediate effect.

It may be mentioned that this Court suspended the closure orders in respect of various industries from time to time to enable the said industries to install the pollution control devices.

7. This Court by the order dated October 20, 1995 directed the National Environmental Engineering Research Institute, Nagpur (NEERI) to send a team of experts to examine, in particular, the feasibility of setting up of CETPs for cluster of tanneries situated at different places in the State of Tamil Nadu where the work of setting up of the CETPs have not started and also to inspect the existing CETPs including those where construction work was in progress. NEERI submitted its first report on December 9, 1995 and the second report on February 12, 1996. This Court examined the two reports and passed the following order on April 9, 1996:-

"Pursuant to this Court's order dated December 15, 1995, NEERI has submitted Final Examination Report dated February 12, 1996, regarding CETPs

constructed/under construction by the Tanneries in various districts of the State of Tamil Nadu. A four member team constituted by the Director, NEERI inspected the CETPs from January 27 to February 12, 1996. According to the report, at present, 30 CETPs sites have been identified for tannery clusters in the five districts of Tamil Nadu viz., North Arcot Ambedkar, Erode Periyar, Dingigul Anna, Trichi and Chengai M.G.R. All the 30 CETPs were inspected by the Team. According to the report, only 7 CETPs are under operation, while 10 are under construction and 13 are proposed. The following 7 CETPs are under operation:

1. M/s. TALCO Ranipet Tannery Effluent Treatment Co. Ltd. Ranipet, Dist North Arcot Ambedkar.
2. M/s. TALCO Ambur Tannery Effluent Treatment Co. Ltd., Thuthipet Sector, Ambur Dist. North Arcot Ambedkar.
3. M/s. TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Vaniyambattu, Vaniyambadi, Dt. North Arcot.
4. M/s. Pallavaram Tanners Industrial Effluent Treatment Co., Chrompet Area, Dist. Chengai MGR.
5. M/s. Ranipet SIDCO Finished Leather Effluent Treatment Co. Pvt. Ltd. Ranipet, Dist. North Arcot Ambedkar.
6. M/s. TALCO Vaniyambadi Tanners Enviro Control Systems Ltd. Undayendiram, Vaniyambadi, Dist. North Arcot Ambedkar.
7. M/s. TALCO Pernambut Tannery Effluent Treatment Co. Ltd., Bakkalapalli, Pernambut, Dist North Arcot Ambedkar.

The CETPs mentioned at Sl. Nos. 5, 6 & 7 were commissioned in January, 1996 and were on the date of report passing through stabilisation period. The report indicates that so far as the above CETPs are concerned, although there is improvement in the performance, they are still not operating at their optimal level and are not meeting the standards as laid down by the Ministry of Environment and Forests and the Tamil Nadu Pollution Control Board for inland surface water discharge. The NEERI has given various recommendations to be followed by the above mentioned units. We direct the units to comply with the recommendations of NEERI within two months from today. The Tamil Nadu Pollution Control Board shall monitor the directions and have the recommendations of the NEERI complied with. So far as the three units which are under stabilisation, the NEERI Team may inspect the same and place a final report before this Court within the period of two months.

Apart from the tanneries which are connected with above mentioned 7 units, there are large numbers of other tanneries operating in the 5 districts mentioned above which have not set up any satisfactory pollution control devices. Mohan, learned counsel for the Tamil Nadu Pollution Control Board states that notices were issued to all those tanneries from time to time directing them to set up the necessary pollution control devices. It is mandatory for the tanneries to set up the pollution control devices. Despite notices it has

not been done. This Court has been monitoring these matters for the last about 4 years. There is no awakening or realisation to control the pollution which is being generated by these tanneries.

The NEERI has indicated the physico-chemical characteristics of ground water from dug wells near tannery clusters. According to the report, water samples show that well-waters around the tanneries are unfit for drinking. The report also shows that the quality of water in Palar river down stream from the place where effluent is discharged, is highly polluted. We therefore, direct that all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. which are not connected with the seven CETPs mentioned above, shall be closed with immediate effect. None of these tanneries shall be permitted to operate till the time the CETPs are constructed to the satisfaction of the Tamil Nadu Pollution Control Board. We direct the District Magistrate and the Superintendent of Police of the area concerned, to have all these tanneries closed with immediate effect. Mr. Mehta has placed on record the report of Tamil Nadu Pollution Control Board. In Statement I of the Index, there is a list of 30 industries which have also not been connected with any CETPs. According to the report, these industries have not, till date set up pollution control devices. We direct the closure of these industries also. List is as under. ..... The Tamil Nadu Pollution Control Board has filed another report dated January 18, 1996 pertaining to 51 Tanneries. There is dispute regarding the permissible limit of the quantity of total dissolved solids (TDS). Since the NEERI team is visiting these tanneries, they may examine the TDS aspect also and advise this Court accordingly. Meanwhile, we do not propose to close any of the tanneries on the ground that it is discharging more than 2001 TDS.

The report indicates that except the 17 units, all other units are non-complaint units in the sense that they are not complying with the 80D standards. Excepting these 17 industries, the remaining 34 tanneries listed hereunder are directed to be closed forthwith .... We direct the District Magistrate and the Superintendent of the Police of the area concerned to have all these industries mentioned above closed forthwith. The tanneries in the 5 districts of Tamil Nadu referred to in this order have been operating for a long time. Some of the tanneries are operating for a period of more than two decades. All this period, these tanneries have been polluting the area. Needless to say that the total environment in the area has been polluted. We issue show cause notice to these industries through their learned counsel who are present in Court, why they be not subjected to heavy pollution fine. We direct the State of Tamil Nadu through the Industry Ministry, the Tamil Nadu Pollution Control Board and all other authorities concerned and also the Government of India through the Ministry of Environment and Forests, not to permit the setting up of further tanneries in the State of Tamil Nadu.

Copy of this order be communicated to the concerned authorities within three days to come up for further consideration after the replies to the show cause. There are large numbers of tanneries in the State of Tamil Nadu which have set up individual pollution control devices and which according to the Tamil Nadu Pollution Control Board, are operating satisfactorily. The fact, however, remains that all these tanneries are discharging the treated effluents within the factory precinct itself. We direct NEERI

Team which is visiting this area to find out as to whether the discharge of the effluent on the land within the factory premises is permissible environmentally. M/s. Nandeem Tanning Company, Valayampet Vaniyambadi is one of such industries. Copy of the report submitted by the Tamil Nadu Pollution Control Board be forwarded to the NEERI. NEERI may inspect this industry within ten days and file a report in this Court. Copy of this order be communicated to NEERI.

Matters regarding Distilleries in the State of Tamil Nadu.

The Tamil Nadu Pollution Control Board has placed on record the factual report regarding 6 Distilleries mentioned in page 4 of the Index of its Report dated April 5, 1996. Learned counsel for the Board states that the Board shall issue necessary notice to these industries to set up pollution control devices to the satisfaction of the Board, failing which these distilleries shall be closed. The Pollution Control Board shall place a status report before this Court."

The NEERI submitted two further reports on May 1, 1996 and June 11, 1996 in respect of CETPs set up by various industries. The NEERI reports indicate that the Physico-chemical characteristics of ground water from dug wells in Ranipath, Thuthipath, Valayambattu, Vaniyambadi and various other places do not conform to the limits prescribed for drinking purposes.

8. This Court has been monitoring this petition for almost five years. The NEERI, Board and the Central Pollution Control Board (Central Board) have visited the tanning and other industries in the State of Tamil Nadu for several times. These expert bodies have offered all possible assistance to these industries. The NEERI reports indicate that even the seven operational CETPs are not functioning to its satisfaction. NEERI has made several recommendations to be followed by the operational CETPs. Out of the 30 CETP-sites which have been identified for tannery clusters in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Thrichi and Chengai MGR 7 are under operation 10 are under construction and 13 are proposed. There are large numbers of tanneries which are not likely to be connected with any CETP and are required to set up pollution control devices on their own. Despite repeated extensions granted by this Court during the last five years and prior to that by the Board the tanneries in the State of Tamil Nadu have miserably failed to control the pollution generated by them.

9. It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80% of the country's export. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.

10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the International

sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway Ms. G. H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called Caring for the Earth which is strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a Declaration of Principles on Environmental Policy and Development Initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. “Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the Customary International law though its salient features have yet to be finalised by the International law Jurists.

11. Some of the Salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter- Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and co-operate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" in the context of the municipal law means:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "Onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign. "The Polluter Pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro Legal Action v. Union of India (1996) 2 JT (SC) 196 : (1996 AIR SCW 1069). The

Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

12. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48A and 51A (g) of the Constitution are as under:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48A. Protection and improvement of environment and safeguarding of forests and wild life - The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country.

51A(g). To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

Apart from the constitutional mandate to protect and improve the environment there are plenty of post independence Legislation on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), The Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of pollution matters. Also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of

imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the later part of this judgement.

13. In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country.

14. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H. R. Khanna's opinion in Addl. Distt. Magistrate Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207, Joly George Varghese's case, AIR 1980 SC 470 and Gramophone Company's case, AIR 1984 SC 667.

15. The Constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:

> "Also, if a person keeps his dogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, "sic utere tuo, ut alienum non leadas," this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance ...With regard to other corporeal heriditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a water-course, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; 'to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of "doing to others, as we would they should do unto ourselves."

16. Our legal system having been founded on the British Common Law the right of a person to pollution free environment is a part of the basic jurisprudence of the land.

17. The Statement of Objects and Reasons to the Environment Act, inter alia, states as under:

> "The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evidence .....Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment ..... In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health".

Sections 3, 4, 5, 7 and 8 of the Environment Act which are relevant are as under:

> "3 - Power of Central Government to take measures to protect and improve environment. –
>
> (1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.
>
> (2) In particular, and without prejudice to the generality of the provisions of section (1), such measures may include measures with respect to all or any of the following matters, namely: -

(i) co-ordination of actions by the State Governments, officers and other authorities -

(a) under this Act, or the rules made thereunder,
or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever;

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under S. 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-sec. (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

4 - Appointment of officers and their powers and functions (1) Without prejudice to the provisions of sub-section (3) of S. 3, the Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit. (2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of S. 3 or of any other authority or officer."

5 - Power to give directions. - Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation. - For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct -

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

7 - Persons carrying on industry, operation etc. Not to allow emission or discharge of environmental pollutants in excess of the standards. - No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

8 - Persons handling hazardous substances to comply with procedural safeguards. - No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed".

18. Rules 3 (1), 3 (2) and 5 (1) of the Environment (Protection) Rules, 1986 (the Rules) are as under:

"3. Standards for emission or discharge of environmental pollutants. - (1) For the purpose of protecting and improving the quality of the environment and preventing and abating environmental pollutants, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in (Schedules I to IV).

3(2) Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in (Schedules I to IV) in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons, therefore, in writing.

5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas. - (1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas: -

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environment pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government, needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified, as such under the Wild Life (Protection) Act, 1972, or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factors as may be considered by the Central Government to be relevant to the protection of the environment in an area."

19. It is thus obvious that the Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under S. 3 (3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of S. 3 (3) read with other provisions of the Act is being done by this court and the other Courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act.

20. There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures, they have been polluting the environment for over a decade and in some cases even for a longer period. This Court has in various orders indicated that these tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology.

21. Mr. M. C. Mehta, learned counsel for the petitioner has invited our attention to the Notification GOMs. No. 213 dated March 30, 1989 which reads as under:

"Order: -

> In the Government order first read above, the Government have ordered, among other things, that no industry causing serious water pollution should be permitted within one kilometre from the embankments of rivers, streams dams etc. and that the Tamil Nadu Pollution Control Board should furnish a list of such industries to all local bodies. It has been suggested that it is necessary to have a sharper definition for water sources so that ephemeral water collections like rain water ponds, drains, sewerages (bio-degradable) etc. may be excluded from the purview of the above order. The Chairman, Tamil Nadu Pollution Control Board has stated that the scope of the Government order may be restricted to reservoirs, rivers and public drinking water sources. He has also stated that there should be a complete ban on location of highly polluting industries within 1 kilometre of certain water sources.
>
> 2. The Government have carefully examined the above suggestions. The Government impose a total ban on the setting up of the highly polluting industries mentioned in Annexure-I to this order within one kilometre from the embankments of the water sources mentioned in Annexure-II to this order.
>
> 3. The Government also direct that under any circumstance if any highly polluting industry is proposed to be set up within one kilometre from the embankments of water sources other than those mentioned in Annexure-II to this order, the Tamil

Nadu Pollution Control Board should examine the case and obtain the approval of the Government for it".

Annexure-I to the Notification includes distilleries, tanneries, fertiliser, steel plants and foundries as the highly polluting industries. We have our doubts whether the above quoted Government order is being enforced by the Tamil Nadu Government. The order has been issued to control pollution and protect the environment. We are of the view that the order should be strictly enforced and no industry listed in Annexure-I to the order should be permitted to be set up in the prohibited area.

22. Learned counsel for the tanneries raised an objection that the standard regarding total dissolved solids (TDS) fixed by the Board was not justified. This Court by the order dated April 9, 1996 directed the NEERI to examine this aspect and give its opinion. In its report dated June 11, 1996 NEERI has justified the standards stipulated by the Board. The reasoning of the NEERI given in its report dated June 11, 1996 is as under: -

"The total dissolved solids in ambient water have physiological, industrial and economic significance. The consumer acceptance of mineralised water decreases in direct proportion to increased mineralization as indicated by Bruvold (1) High Total dissolved solids (TDS), including chlorides and sulphates, are objectionable due to possible physiological effects and mineral taste that they impart to water. High levels of total dissolved solids produce laxative/cathartic/purgative effect in consumers. The requirement of soap and other detergents in household and industry is directly related to water hardness as brought out by Debeer and Larsen (2). High Concentration of mineral salts, particularly sulphates and chlorides, are also associated with costly corrosion damage in waste water treatment systems, as detailed by Patterson and Banker (3). Of particular importance is the tendency of scale deposits with high TDS thereby resulting in high fuel consumption in boilers.

The Ministry of Environment and Forests (MEF) has not categorically laid down standards for inland surface water discharge for total dissolved solids (TDS), sulphates and chlorides. The decision on these standards rests with the respective State Pollution Control Boards as per the requirements based on local site conditions. The standards stipulated by the TNPCB are justified on the afore-referred considerations.

The prescribed standards of the TNPCB for inland surface water discharge can be met for tannery waste water cost-effectively (sic) through proper implant control measures in tanning operation, and rationally designed and effectively operated waste water treatment plants (ETPs and CETPs). Tables 3 and 5 depict the quality of groundwater in some areas around tanneries during peak summer period (June 3-5, 1996). Table 8 presents the data collected by TNPCB at individual ETD indicating that TDS, sulphate and chlorides concentrations are below the prescribed standards for inland surface water discharge. The quality of ambient waters needs to be maintained through the standards stipulated by TNPCB".

23. The Board has the power under the Environment Act and the rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3 (2) of the Rules even permit the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, we direct that these standards are to the maintained by the tanneries and other industries in the State of Tamil Nadu.

24. Keeping in view the scenario discussed by us in this judgement, we order and direct as under: -

1. The Central Government shall constitute an authority under S. 3 (3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired judge of the High Court and it may have other members—preferably with expertise in the field of pollution control and environment protection-to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under S. 5 of the Environment Act and for taking measures with respect to the matters referred to in Cls. (v), (vi), (vii), (viii), (ix), (x) and (xii) of subsection (2) of S. 3. The Central Government shall constitute the authority before September 30, 1996.

2. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters asses the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

4. The authority shall direct the closure of the industry owned/managed by the a polluter in case he evades or refuses to pay the compensation awarded against

him. This shall be in addition to the recovery from him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

6. We impose pollution fine of Rupees 10,000/- each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.

7. The authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.

8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who have refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

9. We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits then to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

10. The Government order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure-I to the Notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to authority to direct the relocation of any of such industries.

11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

25. We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by us. We may mention that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We direct the Registry of this Court to send the records to the registry of the Madras High Court within one week. The High Court shall treat this matter as a petition under Art. 226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary.

26. Mr. M. C. Mehta has been assisting this Court to our utmost satisfaction. We place on record our appreciation for Mr. Mehta. We direct the State of Tamil Nadu to pay Rs. 50,000/- towards legal fees and other out of pocket expenses incurred by Mr. Mehta.

Order accordingly.

Vineet Kumar Mathur v. Union of India
(1996) 1 Supreme Court Cases 119
B.P. Jevan Reddy and G.T. Nanavati, JJ.

B. P JEEVAN REDDY, J.- A letter written by Shri Vineet Kumar Mathur pointing out the pollution caused in River Gomti and its cause was treated as a writ petition by this Court orders passed from time to time. Mohan Meakins Breweries is said to be one of the industries polluting the river. It is not necessary to refer to the various orders passed in this matter from time to time. It would be sufficient to refer to the Order made on 15-1-1993 which reads as under.

> " The following order will apply to: (1) M/s Mohan Meakins, Daliganj, Lucknow; (2) M/s Oudh Sugar Mill, Hargaon, Sitapur; (3) M/s Bajaj Hindustan Ltd., Gola

Goraknath, Kheri (Sugar Unit-Distillery); (4) M/s Sharda Sugar Mill, Palia, Lakhimpur Kheri; (5) M/s Balaji Vegetable Product, Sitapur; (6) M/s Kissan Cooperative Sugar Mill, Majhola, Pilibhit; (7) M/s U.P. State Sugar, Corpn. Maholi, Sitapur; (8) M/s HAL Lucknow; (9) M/s Lucknow Producers' Milk Union, Lucknow Industries.

"The officers of the State Pollution Board will visit the above industrial establishments and make a fresh inspection of the effluent treatment plants installed in the said establishments and of their working. If there are any applications made by these industries for consent of the Board, they will be disposed of after such inspection and within three weeks from today. If after inspection it is found that the treatment plants are deficient in any respect or the deficiency pointed out earlier still continues, the Board will give responsible time for the industries to cure the deficiencies. However, the time so given should not extent beyond 21-3-1993.

The officers of the pollution Board will visit the industrial establishments concerned after the expiry of the time given to them to cure the deficiencies, and make their report to this Court before 7-4-1993.

If the industries in question do not obtain the consent of the State Pollution Board for running their units, before 31-3-1993, the industries will stop functioning after 31-3-1993.

As regards the Municipal Boards of Pilibhit, Barabanki, Sitapur, Sultanpur, Jaunpur, Lakhimpur Kheri, they are directed to install the effluent treatment plant on or before 30-4-1993 and obtain a certificate from the State Pollution Boards that the plant installed is up to the standard and its working is satisfactory. The Chief Officers and the Presiding Officers of the Municipalities concerned are required to file their affidavits on or before 30-4-1993 that they have complied with the above direction.

Mr. R.B. Misra appears for the State Government. The State Government is directed to let the Court to know what steps they have taken to release the funds to the Jal Nigam for installation of the sewerage treatment plant at Lucknow. The affidavit to be filed on or before 30-4-1993.

As regards the industries, the matter shall come up for hearing on 7-4-1993. As regards the municipalities, it would come up for hearing on 3-5-1993.".....

6. On 15-4-1993, this Court passed an order (at p. 520 of the record) holding that running of the plant between 7-4-1993 and 11-4-1993 by Mohan Meakins prima facie amounts to violation of this Court's order dated 15-1-1993. Accordingly, notices were issued to the Managing Director of Mohan Meakins, Brigadier Kapil Mohan, and to the Chief Executive Officer, Shri Yogesh Kumar, to show cause why they should not be proceeded against for contempt of this Court.

7. Now, coming back to the application made by the P.C.B on 2-4-1993 to grant consent, the P.C.B granted the consent on 21-4-1993. This fact was, however, not brought to the notice of this Court immediately either by the P.C.B. or by Mohan Meakins. Though an affidavit was filed by Shri Yogesh Kumar on 27-4-1993 in response to the contempt notice issued to him on 15-4-1993, this fact was not disclosed. Similarly, The Managing Director, Brigadier Kapil Mohan also did not disclose this fact in his affidavit filed in reply to the contempt notice. On 3-5-1993, the P.C.B also filed an affidavit stating that working of the factory for two days by Mohan Meakins is not justified but even here the P.C.B did not disclose the fact that the consent has since been granted to Mohan Meakins on 21-4-1993. It, however, appears that during the course of argument, this fact was brought to the notice of this Court. Thereupon, Shri P.H. Parekh, Advocate, who was appointed by this Court as amicus curaie in this matter addressed a letter, on 8-5-1993, to the learned Advocate for Mohan Meakins to confirm whether the plant/factory of Mohan Meakins had started working since 23-4-1993 and if so, on what basis. Shri Parekh sent a reminder on 14-4-5-1993. There was no reply from Mohan Meakins to either of these letters.

8. On 8-10-1993, this Court passed the following order in view of the failure of Mohan Meakins to respond to the letters from Shri Parekh-

> *"In spite of the letter written by the learned counsel for the petitioner on 8-5-1993 requesting the learned Advocate for the second respondent to send him copies of all the applications for consent, appeals together with the annexures and copies of the orders, passed either by the U.P. Pollution Control Board or by the Appellate Authorities under which the rspondent-Industry has been working since 23-4-1993, no documents have been supplied to him till date. Mr. Bhandare, learned counsel for the second respondent states that they were under the impression that the petitioner must be in possession of the said documents. The reply is most unsatisfactory and distressing as well. We adjourn the matter to 5-11-1993. The second respondent to supply the documents in question on affidavit. Respondent 2 to pay the cost of adjournment which is fixed at Rs 10,000 as a condition precedent. The matter will be before this Bench as part-heard."*

9. In Compliance with the above order, an affidavit was filed on 24-10-1993 on behalf of Mohan Meakins (at p. 595 of the record) disclosing that on the basis of their letter dated 2-4-1993 and that while granting the said consent, the P.C.B. was fully aware of the Order of this Court dated 15-4-1993 (issuing contempt notices to the Managing Director and Chief Executive Officer of Mohan Meakins). It was disclosed further that on the basis of the said consent, their plant had started functioning with effect from 23-4-1993.

10. In the light of the facts disclosed in the affidavit filed on behalf of Mohan Meakins, this Court issued a notice to shri Darshan Singh, Member-Secretary, Uttar Pradesh Pollution Control Board to show cause why he should not be punished for contemt of this Court for granting consent in violation of the orders of this Court dated 15-1-1993. Counsel for the state of Uttar Pradesh was also directed to produce the entire Government record relating to the said matter along with an affidavit detailing the circumstances in

which the Government had issued the Order dated 20-4-1993 (referred to in the 'consent' order) to shri darshan singh. 0n 13-5-1994, Shri Darshan Singh filed an affidavit in response to the contempt notice issued to him. In his affidavit, he referred to (1) Government of India Notification dated 12-2-1992 adding sub-rules (6) and (7) to Rule 3 of Environment (Protection) Rules, 1986 and to sub-rule (6) in particular; (2) to Section 18 of the Water Act which empowered the Central Government to give directions to the P.C.B.; (3) to the Order of this Court dated 15-1-1993 and (4) to the closure of Mohan Meakins on and with effect from 1-4-1993 in compliance with this Court's order dated 15-1-1993 and then stated that he had put up a note to the Chairman for granting consent to Mohan Meakins in view of the Uttar Pradesh Government Order dated 20-4-1993, mentioning at the same time that the consent so granted shall be subject to the orders of this Court. He stated that:

> "the Chairman, U.P. pollution Control Board/Secretary (Environment), Govt. of U.P. directed the deponent not to raise any objection in granting consent to M/s Mohan Meakins in view of G.O. dated 20-4-1993 since this unit has been established before 16-5-1991 and requested time till 31-12-1993 to achieve the standard".

He submitted that in view of the said direction, he had to and did issue the 'consent'. He also referred to Section 27(2) of the Water Act which empowered the Board to review its order refusing consent.

11. On 20-7-1994, an affidavit was filed on behalf of the state Government (sworn-to by Shri S.N. Shukla, Special Secretary, Environment) affirming the direction by the Uttar Pradesh Government to the pollution Control Board but stating at the same time that they were general instructions and were not meant for a particular industry. It was further stated in this affidavit that any such general instructions were not supposed to be relied upon by the P.C.B. to act in contravention of this Court's order.

12. In view of the affidavit of Shri darshan Singh and the aforesaid affidavit of the Government of Uttar Pradesh, this Court directed on 4-5-1995, notice to Shri Pradeep Kumar, the then Chairman of the Uttar Pradesh Pollution Control Board-cum-Secretary (Environment) to show cause as to why he should not be punished for contempt of this Court. Shri Pradeep Kumar filed an affidavit in response to the said notice stating that inasmuch as Mohan Meakins was a unit established before 16-5-1991 and had installed effluent treatment plant and also because the B.O.D. level was only marginally higher than the prescribed norms, " it was considered appropriate to review the matter in the light of the provisions of Section 27(2) of the Water (Prevention and Control of Pollution) Act, 1974", particularly in view of the orders issued by the Government of Uttar Pradesh on 20-4-1993. Paragraphs 11, 12 and 13 of his affidavit are relevant and may be extracted-

> *"(11) That in aforesaid circumstances the Member-Secretary of the Board had moved a proposal for reviewing the orders of the Board regarding refusal of the consent on 21-4-1993. It has been suggested by Member-Secretary that consent may be given to the industry subject to the condition that the unit will treat the*

effluents to the extent possible in ETP and also subject to the orders of the Hon'ble Supreme Court in Vineet Kumar Mathur v. Union of India.

(12) That the proposal of the Member-Secretary was approved by the deponent and it was directed not to raise any objections as per the provisions of the G.O dated 20-4-1993. But such approval of the deponet for reviewing consent does not mean that M/s Mohan Meakins was allowed to operate its industrial plant after 31-3-1993 in defiance of the Order dated 15-1-1993 passed by this Hon'ble Court.

(13) That in the consent letter, it has been made clear that the same is issued subject to the orders passed by this Hon'ble Court. True English translation of letter dated 21-4-1993 issued to M/s Mohan Meakins is being filed herewith and marked as Annexure IV to this affidavit."

Since this Court was not satisfied with the explanation so offered, a notice was issued on 25-8-1995 calling upon Shri Pradeep Kumar to answer the charge of contempt in response to which Shri Pradeep Kumar filed an affidavit on 12-10-1995.....

14. Shri Pradeep Kumar was the chairman and Shri Darshan Singh was the Member-secretary of the Uttar Pradesh Pollution Control Board at the relevant time.

15. We are of the opinion that the consent granted by Pollution Control Board to Mohan Meakins on 21-4-1993 is clearly in contravention of this Court's order dated 15-1-1993. The order of this Court had expressly directed that the reasonable time to be given to the various industries for removal of deficiencies in their effluent treatment plants shall not be beyond 21-3-1993. The inspection by the P.C.B., the removal of deficiencies atoll were all to be completed by 21-3-1993. All those industries which did not remove the deficiencies within the said date and did not obtain the consent of P.C.B. by 31-3-1993 were to close down. Mohan Meakins were indeed refused consent by P.C.B on 31-3-1993 and it was closed on and with effect from 1-4-1993. Yet a consent was granted on 21-4-1993 by the pollution Control Board whereunder it has been allowed to operate its plant and factory with the condition that it should remove the deficiencies on or before 31-12-1993. It may be noticed that the amendment of Environment Rules effected by the Central Government by Notification dated 12-2-1992 was long prior to this Court's Order dated 15-1-1993. Though the said amendment provided for granting time for removal of deficiencies till 31-12-1993 in case of industries established before 16-5-1981, this Court had yet ordered that it should be done on or before 21-3-1993. In such a situation, it was not open to the Pollution Control Board to grant consent on 21-4-1993 asking Mohan Meakins to remove the deficiencies by 31-12-1993. It must be remembered that both the Uttar Pradesh Pollution Control Board and Mohan Meakins were parties to the Order dated 15-1-1993. We are, therefore, of the clear opinion that the said grant of consent to Mohan Meakins was in clear contravention of the Order dated 15-1-1993.

16. So far as the addition of the words, "this consent order is subject to the orders passed by the Hon'ble Supreme Court of India in Vineet Kumar Mathar v. Union of India" are concerned, we think that it was a clever ploy by the person(s) issuing the consent. Firstly,

the Order of this Court dated 15-1-1993 precluded grant of any consent subsequent to 31-3-1993. Secondly, there was no point in saying that the said consent was "subject to the orders passed by the Hon'ble Supreme Court" when the consent being granted was itself in plain contravention of the order of this Court. If really the Pollution Control Board meant what it now says, the least-and probably the only course open to it- it could have done was to apply to this Court for permission to issue a ' consent' for the reasons stated by it. It did nothing of the sort. It went ahead and issued a consent with the said misleading words allowing the industry to operate contrary to the orders of this Court.

> *"(15) That in view of these directions the deponent granted consent to M/s Mohan Meakins vide Order dated 21-4-1993. But it has been specifically mentioned in this order that this consent is being granted subject to the orders of this Hon'ble Court passed in the above-mentioned case. Since the unit has already been closed in pursuance of Order dated 15-1-1993 passed by this Hon'ble Court w.e.f. 1-4-1993, the same ought not to have been operated without seeking permission of this Hon'ble Court because consent was granted subject to Order dated 15-1-1993. Merely because application seeking consent has been disposed by the Board does not mean that permission to operate the industry was granted by the deponent.*
>
> *(16) That in case the U.P Pollution Control Board did not dispose of the application of any industries seeking consent within 4 moths as per sub- section 7 of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 it will be deemed to be granted unconditionally.*
>
> *(17) That in the light of the above-mentioned facts and circumstances, it is most respectfully submitted before this Hon'ble Court that the deponent had never intended to permit the industry to operate their plant and while issuing consent order the deponent has specifically mentioned therein that this order is subject to orders passed by this Hon'ble Court in the above-noted writ petition. As there is a specific condition in the above-noted order, industry without ensuring compliance of such condition cannot operate its industrial plants as the same was already lying closed down pursuant to Order dated 15-1-1993 of this Hon'ble Court."*.....

22. Taking into consideration all the facts and circumstances aforesaid, we hold that Shri Pradeep Kumar and Shri Darshan Singh are both guilty of violation of this Court's Order dated 15-1-1993. In view of the explanation put forward by them and the several circumstances stated by them, however, we are inclined to accept their unconditional apology. At the same time, we administer a severe warning to both the officers that repetition of any such violation shall be viewed seriously. A copy of this Order shall form part of the service record of both the officers.

23. The contempt petition is ordered accordingly.
