

SUPREME COURT OF INDIA

M.C. Mehta

Vs.

Union of India (Uoi)

(K Singh and S S Ahmad JJ.)

19.12.1996

JUDGMENT

KULDIP SINGH, J.

1. This petition - public interest - under Article 32 of the Constitution of India was initially directed against the tanneries located in the city of Kanpur. This Court by the order dated September 22, 1987 (Kanpur tanneries) issued various directions in relation to the Kanpur tanneries. While monitoring the said directions, the scope of the petition was enlarged and the industries located in various cities on the bank of river Ganga were called upon to stop discharging untreated effluent into the river. In this judgment we are concerned with the tanneries located at Tangra, Tiljola, Topsia and Pagla Danga the four adjoining areas in the eastern fringe of the city of Calcutta (the Calcutta tanneries). These areas accommodate about 550 tanneries. According to the examination report dated September 30, 1995 by the National Environmental Engineering Research Institute (NEERI), ninety percent of the Calcutta tanneries use chrome based tanning process, while the remaining utilise vegetable tanning process. The present status of the four tannery clusters in Calcutta, according to the NEERI report, is as under:

It was observed by the inspection team that no appropriate wastewater drainage and collection systems are available in any of the tannery clusters. The untreated wastewater flows through open drains causing serious environmental, health and hygiene problems. Also, no wastewater treatment facilities exist in any of the four tannery clusters.

2. The observations by the NEERI team, regarding the Calcutta tanneries in the report are as under:

-Tannery units are located in highly congested habitations, offering little or no scope for future expansion, modernization or installation of ETP(s)

- Tannery units are located in thickly populated residential areas

- Surroundings of the tanneries are extremely unhygienic due to discharge of untreated effluents in open drains, stagnation of wastewater in low lying areas around the tannery units, and accumulation of solid waste in tanneries.

It is thus obvious that the Calcutta tanneries have all along been operating in extreme unhygienic conditions and are discharging highly toxic effluents all over the areas. This Court on the basis of the material on the record in Kanpur-tanneries order observed as under regarding the noxious nature of the tannery-effluent:

It should be remembered that the effluent discharge from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks.

Needless to say that the State of West Bengal and the West Bengal Pollution Control Board (the Board) are wholly re-miss in the performance of their statutory obligations to control pollution and stop environmental degradation.

3. On February 19, 1993 the State Government informed this Court that the Calcutta tanneries were being shifted from their present location and the new location would be fully equipped with pollution control devices. This Court gave three months time to the State Government to take appropriate steps in that direction. The State Government by way of an application sought extension of time for the shifting of the Calcutta tanneries. This Court considered the application on August 13, 1993 and passed the following order:

The State of West Bengal has moved an application for extension of time for the shifting of over 500 tanneries functioning on the bank of the river Ganges. This Court by its order dated February 19, 1993 gave three months time to the State of West Bengal to take appropriate steps. The relevant part of the order is as under:

As regards the industries in Group 'D' Part II of Annexure 'A', the State Government is said to be taking steps for shifting these industries from the place where they are presently located to another place and to erect a common effluent plant for them in the new place. In that view of the matter, the State of West Bengal shall take appropriate steps within a period of three months.

We see no ground to grant 3 years time to the State of West Bengal. We direct the West Bengal Pollution Control Board to publish a general notice in a Daily paper which is popular in the said area consecutively for 3 days directing the tanneries to shift their place of working within three months from the date of publication of the notice or in the alternative set up effluent treatment plants to the satisfaction of the Board. It shall be clearly stated in the notice that in the event of failure the functioning of the industry at present place shall be stopped. The Board shall also issue individual notices to all the industries within two weeks from the receipt of this order.

We are prima fade of the view that the Government of West Bengal cannot back out from its obligation of providing an alternative place of working to these tanneries in case they wish to shift their place of functioning. We direct the Secretary, Small-Scale Industries, Government of West Bengal to be personally present in this Court on 24.9.1993 with a proposal regarding the alternative land or appropriate compensation to be paid to each of the industries.

This Court on September 24, 1993 directed the Board to examine the possibility of setting up of common effluent treatment plants for the Calcutta tanneries in the four areas. The Board was further directed to indicate the cost which was likely to be incurred in the setting up of the project. The

Calcutta-tanneries were directed to approach NEERI for the preparation of the projects. Pursuant to the directions of this Court, the Board filed affidavit dated October 5, 1993 in this Court. It is stated in the said affidavit that the Calcutta tanneries "are operating for a considerable period of time with no regard to environmental pollution control virtually shifting of the tanneries from the present location to another place and construction of common Effluent Treatment Plants, is the only practicable solution to control the environmental degradation as a whole". The relevant part of the affidavit is as under:

3. As per the order of the Hon'ble Supreme court dated 24th September, 1993, Technical Officers of the Board have examined the possibility of setting up a common Effluent Treatment Plant for the tanneries situated in Tiljala, Topsia and Tangra area which are located in the eastern fringe of Calcutta.

A layout map indicating the location of the tanneries in Tiljala, Tangra and Topsia area alongwith a diagram mentioning the number of tanneries in such areas are also enclosed herewith collectively and marked as Annexure - 'A'.

I It reveals from the inspection that adequate space is not available in Tiljala, Tangra and Topsia area for construction of Common Effluent Treatment Plant.

In this connection it can be mentioned that Tanneries situated at Tiljala, Tangra and Topsia area are operating for a considerable period of time with no regard to environment pollution control.

After the enactment of the Water (Prevention & Control of Pollution) Act, 1974 in the State of West Bengal, tanneries of the said locality never applied for consent to the State Pollution Control Board. Only in the year 1989, more than one hundred tanneries applied for consent to the State Board after long persuasion.

Considering their practical problem, State Board issued consent under the Water (Prevention and Control of Pollution) Act, 1974, to tanneries for six months only in the year 1989 with a condition that within the validity period of consent i.e. within 6 (six) months, the said tanneries will construct primary effluent treatment plant and submit a scheme of secondary effluent treatment plant. But unfortunately none of the tanneries situated in the said area constructed or have taken any steps for construction of effluent treatment plant.

Therefore, State Board issued legal notice to the tanneries in the year 1992. Show cause notices were also issued by the State Board asking why their factory may not be directed to be closed for not putting up right type of effluent treatment plant as per the order of Hon'ble Supreme Court dated 1st December, 1992.

Subsequently more than 275 nos. of tanneries applied for consent to the State Board but in view of the Hon'ble Supreme Court's order dated 19th February, 1993, "Consent" was not granted to any of the tanneries. Moreover tanneries of the said area were directed to submit an undertaking in the court stamp paper that they are willing to move to any place as fixed up by the Government of West Bengal.

Accordingly, more than 280 tanneries submitted their undertaking in 'Court Stamp Paper' that they are willing to move to any place as fixed up by the Government of West Bengal from their present

location.

5. That, due to the existence of the tanneries without having any treatment facilities in Tangra, Tiljala and Topsia area, environmental degradation in such areas and their surroundings are extremely alarming. Virtually shifting of the tanneries from the present location to another place and construction of common Effluent Treatment Plant, is the only practicable solution to control the environmental degradation as a whole.

4. The matter came up for further consideration on October 15, 1993. This Court agreed with the above quoted opinion of the Board and came to the conclusion that the only viable solution was to relocate the Calcutta Tanneries. This Court further passed the following order:

Mr. Satendra Nath Ghosh; Secretary, Department of Cottage and Small Scale Industries, Government of West Bengal has stated in his affidavit dated September, 1993 that the Government of West Bengal has already identified 507.27 acres of land to be acquired or setting up the tanneries complex. He has further stated that on technical advice, the Government is thinking of having a bigger project and as such the acquisition proceedings in respect of the above said land have not been initiated.

Along with the affidavit a Notification dated July 28, 1992 has been annexed. By the said Notification a Monitoring Committee for the integrated leather complex to be set up in the District of South 24 Parganas has been constituted. The Committee consists of 19 members including the Minister Incharge, Cottage and Small Scale Industries, Minister Incharge, Sunderbad Development Board, Secretary, Cottage and Small Scale Industries, Secretary, Commerce and Industries Department, Secretary to the Chief Minister of West Bengal, the Secretary, Irrigation and Waterways Department, Secretary, Environment Department, Secretary, Public Health Engineering and various other highly placed officers connected with the project. Thereafter the Deputy Secretary to the Government of West Bengal in the Department of Land and Land Revenue addressed a letter dated July 13, 1993 to the Collector of South 24 Parganas informing him that a decision has been taken on the government level to acquire the land measuring 507.27 acres in mouzas Karaldanga and others, P.S. Bhangor in the District of South 24 Parganas for the integrated leather complex under the provisions of the West Bengal Land Requisition and Acquisition Act 1948 (the Act) as a special case. By another letter dated August 23, 1993, the Governor of West Bengal has accorded sanction of Rs. 60 lacs for meeting the acquisition expenses towards acquisition of land measuring 507.27 acres, under the above mentioned Act.

It is, thus obvious that the West Bengal Government have already taken steps to acquire 507.27 acres of land for the tanneries complex. There is no reason why the plan should not go ahead and be completed within a reasonable time. We direct the Minister, Incharge Cottage and Small Scale Industries Department, who is the Chairman of the Committee, to proceed with the Project in accordance with the following time schedule.

1. The Committee shall entrust the project to a technical authority like the National Environmental and Engineering Research Institute or any other equally competent authority for preparing a project in this respect. The expenditure for getting the project prepared shall be met by the West Bengal Government. The project should be got prepared on war-footing and be prepared within a period of two months of the receipt of this order.

2. The procedure for acquiring the land measuring 507.27 acres under the Act shall be commenced within one month from the receipt of this order and shall be completed expeditiously.

3. After the acquisition proceedings are completed and land is taken in possession of the State Government shall get the land developed through the authorities under the control of the State Government. This shall be done within three months thereafter.

As at present we give the above directions to the Monitoring Committee. The Secretary, Department of Cottage and Small Scale Industries shall keep on sending the progress report to this Court after every four weeks. After the above quoted steps are completed in accordance with the schedule given by us, further directions in this respect shall be given. We make it clear that any violation of this order shall attract the provisions of the Contempt of Court Act.

5. While examining the progress made in the execution of the project in terms of the above quoted directions this Court on February 25, 1994 passed the following order:

We directed the Minister Incharge, Cottage and Small Industries Department, Chairman of the Committee to proceed with the projects on war-footing and have the project report prepared within the period of two months from October 14, 1993. We have been informed by the learned Counsel appearing for the State of West Bengal that a preliminary report has been received from the Central Leather Research Institute, Madras, but the design and estimate are yet to be received. We are of the view that the project is not being executed in accordance with the time schedule directed by this Court. We request and direct Mr. Probir Sengupta, Minister Incharge, Cottage and Small Industries to file an affidavit in this regard within two weeks explaining the progress in the project and also the reasons, if any, why the time schedule fixed by this Court is not being followed. We make it clear that the affidavit should be filed in this Court on or before 15.3.1994. We further direct the Minister Incharge to depute a responsible officer to be present in this Court on the date when we take up the affidavit for consideration.

6. Pursuant to the above quoted order of this Court, Probir Sen Gupta, Minister Incharge, Department of Cottage and Small Scale Industries, Government of West Bengal filed affidavit in his capacity as the Chairman of Monitoring Committee set up by State Government by the notification dated July 28, 1992 to monitor the new integrated leather complex. The affidavit stated as under:

....About 1,000 acres of land has already been acquired and possession taken for setting up the Calcutta Leather Complex. It is stated by the learned Counsel appearing for the Minister that the Calcutta Leather Complex includes the tanneries and all other allied leather industries. It is stated that the Project Report in respect of the complex has been received from the Central Leather Research Institute, Madras. We are of the view that the development of the Complex should be done in a phased manner. Top priority has to be given to the tanneries which are to be shifted from Calcutta to the new Complex. The Project which has been prepared by the Calcutta Leather Research (in short - CLRI) relates to the tanneries as well as other allied industries to be set up at the new complex. We direct the State of West Bengal to take up that part of the Project for implementation in the first instance which relates to the tanneries. While doing so, if any technical difficulty arises, the State of West Bengal may immediately approach the CLRI through its Deputy Director, Dr. Mariappan, to render the advice asked for within two weeks of the receipt of the requisition. Of course, the Institute shall be entitled to its normal fees for rendering the advice.

Meanwhile, we direct the State of West Bengal to assess the need of each of the tanneries either directly or through the Association (the learned Counsel has informed us that an Association is in the process of being formed) regarding the extent of land and other facilities required by them. This is to be done within four weeks from today and a report be filed in this Court. We further direct the State of West Bengal to take into hand the development of the acquired area either directly or through the Association. Copy of the order be sent to the West Bengal Government and to the Minister personally.

7. This Court took up the matter for further monitoring on July 29, 1994. Jyotirmoy Ghosh, Joint Secretary, Department of Cottage and Small Scale Industries Government of West Bengal, had filed an affidavit indicating the progress made in the relocation of Calcutta tanneries. After examining the contents of the affidavit this Court passed the following order:

We are prima facie satisfied that no steps at all have been taken by the Government of West Bengal to comply with our orders reproduced above. We issue notice returnable on 19.8.1994 to (through speed post/fax) Mr. Prabir Sengupta, Minister Incharge, Department of Cottage and Small Scale Industries, Government of West Bengal, and Mr. Jyotirmoy Ghosh, Joint Secretary, Department of Cottage and Small Scale Industries, Government of West Bengal to show cause why contempt proceedings be not instituted against them. Meanwhile, we give them opportunity to file further affidavit showing compliance, if any, of this Court's orders made by the State of West Bengal.

8. This Court on September 9, 1994 considered the affidavits filed by Probir Sen Gupta, Minister Incharge and by Jyotirmoy Ghosh, Joint Secretary respectively of the State of West Bengal. After hearing Mr. N.N. Gooptu, learned Advocate General, State of West Bengal, this Court passed the following order:

We are prima facie satisfied that there has been no effort on the part of the West Bengal Govt. to comply with the directions given by this Court. Despite our finding, we restrain ourselves and refrain from issuing contempt notice to the Minister and the Joint Secretary at this stage.

We reiterate our earlier direction given on April 15, 1994 and expect the State Govt. to comply with the same fully within a period of 8 weeks from today. During the course of arguments, we have given sufficient indication to the learned Advocate General as to how the State of West Bengal is to proceed in this matter. We indicate that the State Govt. shall issue individual notices to each of the tanneries indicating that as per this Court's order, all the tanneries have to be shifted from their existing place of work to the place which has already been acquired by the State Govt. They shall be asked to give their requirements regarding land, financial assistance and any other assistance which they need within the specified period. The State Govt. shall also indicate thereafter by a public notice the mode of transferring the land and the mode of payment of the price by the tanneries. Meanwhile, the State Govt. shall take immediate steps to develop the land in the sense that it shall start working on the sewage system, water works, electricity and other amenities and construction work which is to be done. We make it clear that we have only indicated some of the steps which are necessary in the process of shifting the tanneries from their present place of work. It is for the State Govt. to have a detailed scheme prepared and have the project completed within a phased manner.

Mr. Harish N. Salve, learned senior counsel appearing for the Tanneries Association has very fairly stated that they have no objection in shifting to the new place provided all the facilities are given to them by the State Govt. He further states that the main difficulty in their way is the setting up of an

Effluent Treatment Plant. The State Govt. shall have an estimate prepared immediately regarding the expenditure and the time it is going to take in setting up the E.T.P. We shall thereafter apply our mind to find out the way to pool financial sources from the State Govt., Central Government and the Tanneries themselves.

9. On February 20, 1995 this Court was informed that the estimated cost of the land in the new complex would be Rupees 860.00 per square meter. Learned Counsel appearing for the Calcutta tanneries, however, contended that the price suggested was on the higher side. Various suggestions for reducing the cost of land were considered and finally the Court passed the following order:

Mr. Ajoy Sinha, Principal Secretary to the Government of West.

Bengal and Secretary Department of Cottage and Small Scale Industries has filed two affidavits dated February 7, 1995 and February 16, 1995 on behalf of the State of West Bengal in Tanneries Matter. The affidavits be taken on record.

We have heard Mr. M.C. Mehta, Mr. Dalip Sinha and Mr. G. Ramaswamy. Mr. Ajoy Sinha has annexed copy of the Notice dated January 10, 1995 served on all the tanneries along with the affidavit dated February 7, 1995. It has been mentioned in para VI of the notice that the estimated cost of the land in the new complex would be Rs. 860.00 per sq. metre. It is further stated that this has been worked out on the basis of the total estimate of the cost, which according to the State Government, comes to about Rs. 130 crores. Mr. G. Ramaswamy, learned senior counsel appearing for the tanneries has informed us that during the course of discussion between the representatives of the tanneries and the Government officials, it was disclosed that cost of the common effluent treatment plant to be set up at the new complex would come to about Rs. 65 crores. The Co-ordinating Committee of the Calcutta Tanneries has, in its letter dated February 15, 1995, informed the Government that they are willing to shift to the new complex. The main objection raised by the tanneries is that the price as Rs, 860.00 per sq. metre is excessive and very much on the higher side. We have no doubt that the Government must have fixed the price per square metre on "no profit no loss" basis.

We are of the view, that the amount of Rs. 65 crores, to be spent on the construction of the common effluent treatment plant, should initially be founded by the Government or from some other source provided by the Government. After the treatment plant is constructed and the tanneries are shifted to the new complex an "effluent charge" can be levied on the tanneries for reimbursing the amount spent on the common effluent treatment plant in a phased manner. This arrangement can bring down the initial cost to be incurred by the tanneries.

We issue notice to the Government of West Bengal through Deptt. of Industries, Ministry of Environment and Forests - Union Government, the Ganga Project Directorate and the State Pollution Control Board. These authorities shall give their reaction to our suggestion within a period of two weeks from today. Affidavits shall be filed by all these authorities within ten days from today. Registry to send copies of this order to all the above-mentioned authorities within two days by speed post.

10. Pursuant to the order dated February 29, 1995, Ganga Project, Directorate and Ministry of Environment and Forests filed affidavit wherein it was stated that "the amounts provided under the plan are for specific items of works approved by the Central Ganga Authority. Under the

circumstances, It may not be feasible to divert earmarked funds for other purposes". On February 24, 1995 this Court passed the following order:

We are of the view that the Ministry of Environment and Forest be requested to reconsider the matter and also the allocations it has made for various projects under the Ganga Action Plan and include if possible the Tanneries Project in West Bengal in the Plan to be executed in the near future. The Ministry must find out a way to found the Tanneries Project as suggested by this Court in the order dated Feb., 20,1995. We adjourn the matter for three weeks to enable the Ministry and the Ganga Project Directorate to reconsider the whole matter and file a fresh affidavit in this Court within the above period. Copy of this order may be sent to the Ministry of Environment and Forest and to the Ganga Project Directorate.

11. Pursuant to the above quoted order of this Court Bhag Singh, Deputy Secretary, Ganga Project Directorate filed affidavit dated April 6, 1995. Para 6 of the affidavit stated as under:

It is now submitted that in view of the above observations of the Supreme Court, the Ganga Project Directorate in the Ministry of Environment & Forests will prepare a scheme of Common Effluent Treatment Plant hi West Bengal and move for its inclusion in Phase II of Ganga Action Plan. It is further submitted that this scheme like other schemes under Ganga Action Plan Phase II will have to be funded by the center and the State Government on 50:50 basis. The proposal for the. scheme will be called from the State Government of West Bengal and after due examination will be submitted for the approval of Expenditure Finance Committee, the Planning Commission and the Cabinet Committee on Economic Affairs.

12. Agreeing with the Ganga Project Directorate that project would be included in the Ganga Action Plan Phase II, this Court on April 7, 1995 passed the following order:

We agree with the Ministry of Environment & Forests that the project of setting up of Common Effluent Treatment Plant for about 540 tanneries, to be re-located, be included under Ganga Action Plan Phase II. Mr. Gooptu, learned Advocate General, appearing for the State of West Bengal, very fairly states that it would be possible for the State of West Bengal to meet 50% of the cost of the Project. He further states that the State will arrange the funds either from its own sources or from financial institutions or other sources. Therefore, it is agreed by all that the Project of setting up of Common Effluent Treatment Plant shall be undertaken under the Ganga Action Plan Phase II and its total cost of Rs. 65 crores shall be met 50% by the Ganga Project Directorate and the remaining 50% by the State Government in the manner indicated by the learned Advocate General. We reiterate that after the treatment plant is constructed and the tanneries are shifted to the new complex, "Effluent Charge" shall be levied on the tanneries for reimbursing the amount spent on the common Effluent Treatment Plants in a phased manner. Needless to say that the money collected in that manner shall be divided half and half by the State of West Bengal and the Ministry of Environment and Forests. We direct the State of West Bengal through the Department of Cottage and Small Scale Industries to prepare and send the Project for setting up of Common Effluent Treatment Plant for the tanneries to the Ganga Project Directorate within one month from the receipt of this order. The Ganga Project Directorate shall thereafter examine the project within two weeks and send the same for approval of expenditure to the Finance Committee of the Planning Commission and the Cabinet Committee on Economic Affairs. We request the Finance Committee, Planning Commission and the Cabinet Committee on Economic Affairs to expedite the sanctioning of the project as and when it is received by these authorities.

Mr. Gooptu, learned Advocate General states that the total cost of the project has been estimated at Rs. 158 crores. He further states that the price of the land as Rs. 860 per sq. metre was determined on the basis of the estimated cost of the leather Complex. Since Rs. 65 crores are now being spent by the Ganga Project Directorate, and the State of West Bengal, the total price for the purposes of market value has to be reduced. After doing this exercise, all present agree that the price comes to Rs. 600 per sq. metre.

We direct the State of West Bengal to go ahead with the relocation of tanneries from the present sites to the new complex by offering the plots to the individual tanneries at Rs. 600 per sq. metre. The State of West Bengal shall keep in mind the requirements of each of tanneries so far as the area is concerned, but in no case the area lesser than the area already occupied by the tanneries shall be offered to them.

The State of West Bengal shall issue public notices offering land in the new complex to the tanneries at Rs. 600 per sq. metre. We direct the West Bengal Pollution Control Board to issue individual notices to all the tanneries informing them that the land is being offered by the State of West Bengal in the new complex. The Board shall further inform the tanneries that all necessary amenities and facilities necessary for setting up of tanneries in the new complex, shall be provided. The Board shall indicate in the notices that the offer of the State Government for purchase of plots in the new complex shall be accepted within two weeks of the receipt of the notices. We make it clear that the tanneries who fail to avail the opportunity offered by the State of West Bengal to shift to the new complex shall be liable to be closed without any further notice. Mr. Gooptu, learned Advocate General states that the plots shall be offered to those tanneries who will deposit 25% of the total purchase price at the rate of Rs. 600 per sq. metre.

State of West Bengal to file an affidavit by 21st April, 1995 giving the progress made pursuant to this order.

A copy of this order be sent to all the concerned authorities. We make it clear right at this stage that the area vacated by the tanneries shall be maintained as a green area in any form at the discretion of the State Government.

13. Pursuant to the above quoted order, the Board issued notices to all the Calcutta tanneries. The Board also issued public notices in four newspapers namely. The Statesman (English), The Telegraph (English), Aajkal (Benali) and Ganashakti (Bengali). The notices served on the tanneries and published in the newspapers stated that all the Calcutta tanneries should approach the State Government for allotment of plots in the new integrated leather complex by May 15, 1995 failing which such tanneries shall be liable to be closed without any further reference. The affidavit dated May 3, 1995 filed by the Board further stated that "it is admitted position that all the tanneries are still operating without any pollution control devices and without any statutory permission from the State Board, except few units which might have been closed for financial or other reasons". This Court on April 21, 1995 passed the following order:

Pursuant to this Court's order dated April 7, 1995, an affidavit has been filed by Mr. Jyotirmoy Ghosh, Joint Secretary in the Government of Cottage and Small scale Industries, Government of West Bengal. Mr. N.N. Gooptu, learned Advocate General has further explained the various contents of the affidavit to us. We are satisfied that the Government of West Bengal is complying with the

different directions issued by us in our order dated April 7, 1995.

Mr. R. Mohan, learned Senior counsel appearing for the West Bengal Pollution Control Board states that pursuant to this Court's order dated April 7, 1995 individual notices have been issued to all the tanneries to be re-located.

Learned Counsel for the tanneries has brought to our notice that some of the tannery owners are residing within the tannery premises. Learned Counsel further contends that after the tanneries are re-located, the residence part of the premises may be permitted to remain with them. This matter shall be examined at a later stage. Meanwhile, we direct the Labour Commissioner Calcutta to depute inspectors to have a survey of the area and find out as to how many tanneries-owners are actually residing within the tannery premises and file a report in this case. The report shall also indicate the actual area occupied for the purpose of residence.

14. On May 10, 1995 Mr. Ghosh, learned Counsel appearing for the Calcutta tanneries sought extension of the time for depositing 25% of the price of the land. The amount was to be deposited by May 15, 1995. The time was extended upto May 31, 1995. This Court on July 14, 1995 passed the following order:

Pursuant to this Court's order dated February 20, 1995 April 7, 1995, April 21, 1995 and May 10, 1995, State of West Bengal was required to file a report in this Court giving the progress made in this respect. The detailed report has not as yet been placed on record. We direct the State Government through the Advocate General, who is present in Court to file a detailed report indicating the area and its situation which has been ear-marked for the re-location of the tanneries, and the notice/office which is made to the tanneries by way of publication or any other method and all other steps which the State Government has taken in this respect in pursuance of our orders. This may be done within two weeks from today. It is stated by Mr. N.N. Guptoo learned Advocate General that none of the tanneries have come forward to deposit 25% of the price or is willing to buy the land. We make it clear that the tanneries which are not cooperating with this Court and the State Government shall ultimately be liable to be closed unconditionally.

We give notice to these tanneries through their counsel, who are present in Court, to show cause as to why, in view of their conduct, they be not closed forthwith. Arguments on the report filed by the State and the notice issued to the tanneries shall be heard on 11th August, 1995. The State shall also place on record the inspectors' report. Meanwhile, we further give liberty to the tanneries to accept the offer in terms of the advertisement and deposit 25% of the price of land with an application for condonation of delay within three weeks which will be considered by this Court.

Mr. Ashok Sen, Mr. G. Ramaswamy, Mr. A.K. Ganguli, Mr. D.V. Sehgal and Ms. Harvinder Choudhary, learned Counsel appearing for the tanneries have stated that the Government has issued certain instructions indicating that the tanneries need not shift from the present place. Mr. N.N. Guptoo learned Advocate General may take notice of these instructions if any, and clarify the position by way of the affidavit.

On August 11, 1995 Mr. Shanti Bhushan, learned Counsel appearing for about 208 Calcutta tanneries of Chinese Origin stated that it was technically feasible to set up a common effluent treatment plant within the area where the tanneries were situated. It was further stated that the tanneries were prepared to meet the cost of the project. Although the Board had repeatedly stated

before this Court that the setting up of the common effluent treatment plant/plants at the existing tanneries complexes was not possible but despite that this Court gave liberty to Mr. Shanti Bhushan to file a short affidavit indicating the details of the project. Thereafter the matter came up for further consideration on September 5, 1995 when this Court passed the following order:

The tanners in the city of Calcutta are primarily located in four areas called Tangra, Tiljala, Tapsia, Pagla Danga. Mr. Shanti Bhushan, learned Counsel appearing for about 208 tanneries situated in Tangra has invited our attention to a project for setting up of common ETP which the said tanners have got prepared from KROFTA Engineering Ltd., Chandigarh. It is stated that KROFTA are the specialist in designing projects for setting up of effluent treatment plants particularly pertaining to tanneries. Mr. Shanti Bhushan states that the project is likely to cost about Rs. 5 crores. The total amount shall be pooled by the tanners themselves. Even the land which will be required for the project will be purchased and utilised by the tanners themselves. According to Mr. Shanti Bhushan the plant can be set up at the existing location in Tangra where according to him sufficient land is available. It is not possible for us to say whether the project as prepared by KROFTA is viable and feasible, keeping in view the location where the tanneries are situated. It is suggested by Mr. Shanti Bhushan that NEERI may be asked to have a second look at the project prepared by KROFTA. We request Dr. P. Khanna, Director of the NEERI to appoint a team of experts to visit the spot and examine the project prepared by KROFTA. We wish to know specifically as to whether the project is viable and feasible and can be constructed on the existing location without interfering with the normal life of the residents, in that area. Whether the project is capable of controlling pollution and odour in totality. It may also be examined whether the project caters for the primary as well as secondary stages of the effluent treatment. NEERI team may also have the view point of KROFTA Engineering which can also come on the date on which the NEERI team proposes to visit. The West Bengal Pollution Control Board and the West Bengal Government may also be consulted by the NEERI & Krofta. The NEERI may inform the time and date of its visit to the following advocates:

- 1.

Mr. Ashok Sen, St. Adv. 19

Teen Murti Lane,

New Delhi. Tele.3793259

Fax. 3792237, 3016936

2. Mr. Shanti Bhushan, Sr. Adv.

Res. B-16, Sector 14 NOIDA.

Tel. 8527412, 8520348

Off, C-67, Sector 14, NOIDA

Tel. 8522668, Fax. 8525729

Ch. 412, Lawyers Chambers,

Delhi High Court,

New Delhi. 3385266

3. Mr. G. Ramaswamy, Sr. Adv.

Res. A-7, Sector 14, NOIDA

Tel. 8524357, 8526101

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Since we are already in the process of hearing final arguments and there is an urgency in the matter we request Mr. P. Khanna to have the matter examined and file a report within three weeks from the receipt of this order. Mr. Imtiaz Ahmad, learned Counsel will file three copies of the project report along with one copy of the brochure pertaining to KROFTA. The Registry shall send by speed post/fax one copy of the same to NEERI along with this order

The expenses of the NEERI shall be borne by Mr. Shanti Bhushan's clients.

We make it clear that other tanneries which are located in Tiljala, Topsia and Pagla Darga may, if they have joint project like that of Tangra, the same be placed before the visiting team of NEERI for their inspection and' report.

This Court has been monitoring this petition for a long time primarily with a view to control pollution and save the environment. In the process the Calcutta tanneries have been extended all possible help to re-locate themselves to the new complex. Despite repeated reports by the Board that the Calcutta tanneries were/are discharging highly noxious effluent and are polluting the land and the river, this Court did not order the closure of the tanneries because they agreed before this Court and had given clear undertaking that they would relocate to the new complex. In spite of all the efforts made by this Court to provide every possible facility to the Calcutta tanneries to shift to the new complex they remained wholly non-cooperative. With a view to control the pollution generated by the Calcutta tanneries this Court in the order quoted above agreed to examine the proposal regarding setting up of common effluent treatment plants at the existing areas where the tanneries are operating. This Court directed NEERI to examine the feasibility of the projects. NEERI submitted its report dated September 30, 1995. The report indicates that a four member team inspected the existing sites of tanneries clusters and examined the issues relating to the proposed common effluent treatment plants and their locations at Tangra, Tiljola, Topsia and Pagla Danga in Calcutta. The conclusions reached by the NEERI are as under:

5.0 Conclusions

On review of the proposed CETP schemes for tannery wastewater management at Tangra, Tiljola, and Topsia by M/s. Krofta Engineering Ltd., Chandigarh and M/s. BOC, Calcutta at Pagla Danga; and after detailed discussions with the consultants, the inspection team notes that

- The proposed schemes are neither scientifically sound, nor can be constructed on the existing locations without interfering with the normal life of the residents in above mentioned areas
- The proposed CETP schemes are not capable of treating the wastewater laden with high total dissolved solids, chromium, and nitrogenous constituents. Thus the proposed CETP designs cannot control pollution and odour in totality at the tannery clusters at Tangra, Tiljola, Topsia, and Pagla Danga
- The proposed designs have little scientific basis, and do not consider the industry - specific requirements of effective wastewater treatment in tannery clusters at Tangra Tiljola, Topsia and Pagla Danga.

In view of categorical findings of the NEERI and also several reports by the Board there is no possibility of setting up of common effluent treatment plants at the existing locations of the Calcutta tanneries. In the facts and circumstances, discussed in this judgment, we have no hesitation in holding that the Calcutta tanneries shall have to be relocated from their present locations.

15. We may at this stage deal with the contention raised by learned Counsel for the Calcutta tanneries that the site where the new leather complex is being set up is a part of the wet land. Pursuant to this Court's order dated July 14, 1995 Ajoy Sinha, Principal Secretary and Secretary, Department of Cottage and Small Scale Industries, Government of West Bengal filed affidavit dated July 29, 1995. Para 7(d) of the affidavit is as under:

It is further submitted that the said area is clearly outside the boundaries of the wetland area as claimed by the writ petitioners in O.K. No. 2851 of 1992 in the court of Mr. Justice Umesh Chandra Banerjee in the Calcutta High Court, This will appear from the map and report submitted by the

Collector, South 24 Parganas which are annexed hereto and marked Letter 'C' and 'C1' respectively.

Along with the affidavit the Principal Secretary has annexed letter dated July 12, 1995 from District Magistrate, South 24 Pgs. addressed to the Principal Secretary. The operative part of the letter is as under:

Kindly recall your verbal instruction in the matter indicated above. A sketch map has been prepared on the Thana map showing the location of "Wetland" as shown in Annexure - 'C' of the case referred above as also the location of the proposed Calcutta Leather Complex. It is evident from the sketch plan enclosed herewith that eastern boundary of the "Wetland" falls to the West and is beyond the boundary of the proposed Calcutta Leather Complex site. The technical report prepared by the surveyor is also enclosed herewith.

Incidentally, it may be mentioned that the berries mentioned in the Writ Petn. are situated within the boundary of Annexure -'C' of the Writ Petn. of the case mentioned above.

It, therefore, shows that the area of the proposed Calcutta Leather Complex does not fall within the area of the Wetland.

The Technical Report by the surveyor indicating that the new leather complex does not fall within the area of the wetland has also been attached along with the affidavit of the Principal Secretary. The site plan enclosed with the affidavit clearly shows that the leather complex is outside the boundary of the wet land. No material to the contrary has been placed on record by the Calcutta tanneries. We, therefore, reject the contention of the learned Counsel that the new leather complex is a part of the wet land.

16. As a result of the monitoring done by this Court towards re-location of the Calcutta tanneries the following steps to facilitate the re-location have been undertaken:

1. The State Government has acquired and taken possession of the land for setting up of the new tanneries complex.
2. The State Government has repeatedly offered plots to the Calcutta tanneries in the new complex but they have not as yet accepted the offers.
3. 25% of the land-price in the new complex was to be deposited by May 15, 1995 but despite extension asked by the Calcutta tanneries and granted by this Court the money has not been deposited.
4. The price of land in the new complex was fixed at Rs. 860 per sq. meter. At the asking of the tanneries the price has been reduced to Rs. 600 per sq. meter by High Court.
5. The State Government is ready and willing to extend all the concessions and benefit necessary in the process of relocation.
6. A very large number of Calcutta tanneries are operating without setting up of the pollution control devices. Highly noxious and poisonous effluents are being discharged on the surrounding areas and in the river.

7. The NEERI and the Board have authoritatively opined that common effluent treatment plants cannot be constructed at the sites where the Calcutta tanneries are at present operating.

17. The Calcutta tanneries are even otherwise operating in violation of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act). Sections 2(dd), (e), (J), (k) 24(1)(a), 25(1), (2) and 26 of the water Act are as under:

2(dd) "outlet" includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes or is likely to cause, pollution.

(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;

(j) "stream" includes ♦

(i) river;

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

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

(iv) subterranean waters;

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

(k) "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any (industry operation or process, or treatment and disposal system), other than domestic sewage.

24. Prohibition on use of stream or well for disposal or polluting matter, etc. - (1) 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 or sewer or on land);

25. Restrictions on new outlets and new discharges. - [(1) Subject to the provisions 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 any extension or 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 outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

26. Provision regarding existing discharge of sewage or trade effluent. - Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a [stream or well or sewer or on hand], the provisions of Section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under Sub-section (2) of that section (shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette).

It is obvious from the provisions of the Water Act reproduced above that in terms of Section 26, the Calcutta tanneries are under an obligation to obtain consent from the Board before they are permitted to discharge the trade effluent into a stream or on land. According to the affidavits filed by the Board very large number of Calcutta tanneries have not obtained the consent required under the Water Act. Such tanneries are liable to be prosecuted under the Water Act.

18. The Calcutta tanneries are also violating the mandatory provisions of the Environment (Protection) Act, 1986. We direct the Board to examine individual cases and take necessary action against the defaulting tanneries in accordance with law.

19. This Court in *Vellore Citizens Welfare Forum v. Union of India and Ors.* , explained the "Precautionary Principle" and "polluters Pays principle" as under:

Some of the salient principles of "Sustainable Development", as culled out from Brandtland 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 cooperate, 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) Environment 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 Environmentally - Legal Action v. Union of India* JT 1996 (2) 196. 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.

20. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land.

21. It is thus settled by this Court that one who pollutes the environment must pay to reverse the damages caused by his acts.

22. We, therefore, order and direct as under:

1. The Calcutta tanneries operating in Tangra, Tiljola, Topsia and Pagla Danga areas in the eastern fringe city of the Calcutta (about 550 in number) shall relocate themselves from their present location and shift to the new leather complex set up by the West Bengal Government. The tanneries which decline to relocate shall not be permitted to function at the present sites.

2. The Calcutta tanneries shall deposit 25% of the price of the land before February 28, 1997 with the concerned authority. The subsequent instalments shall be paid in accordance with the terms of the allotment letters issued by the State Government.

3. The tanneries who fail to deposit 25% of the price of the land as directed by us above shall be closed on April 15, 1997.

4. The Board shall issue public notice in two English and two Bengali newspapers for two consecutive days by December 31, 1996 directing the Calcutta tanneries to deposit 25% of the land-price before the authority named therein by February 28, 1997. It shall also be stated in the public notice that the tanneries failing to deposit the amount shall be closed on April, 15, 1997.

5. The Board shall prepare a list of the tanneries which decline/fail to deposit 25% of the land-price

by February 28, 1997 and send the same to the Superintendent of Police and Deputy Commissioner of the areas concerned. The Superintendent Police/the Deputy Commissioner concerned shall close all the tanneries who fail/decline to deposit 25% of the land-price. The said tanneries shall be closed on April 15, 1997.

6. All the Calcutta tanneries who deposit the 25% of the land- price shall be permitted to function at the present sites provided they keep on depositing the subsequent instalments in accordance with the terms of the allotment letter.

7. The State Government shall hand over the possession of the plots allotted to the tanneries before April 15, 1997.

8. The State Government shall render all assistance to the tanneries in the process of relocation. The construction of the tannery buildings, issuance of any licenses/permission etc. shall be expedited and granted on priority basis.

9. In order to facilitate shifting of the tanneries the State Government shall set up unified single agency consisting of all the concerned departments to act as a nodal agency to sort out all the problems. The single window facility shall be set up by January 31, 1997. We make it clear that no further time shall be allowed to the State government to set up the single window facility.

10. The use of the land which would become available on account of shifting/relocation/closure of the tanneries shall be permitted for green purposes. While framing the scheme the State Government may keep in view for its guidance the order of this Court dated July 10, 1996 in IA 22 in Writ Petition (Civil) No. 4677/1985 relating to the shifting of Delhi industries. The shifting tanneries on their relocation in the new leather complex shall be given incentives which are normally extended to new industries in new industrial estate.

11. The tanneries which are not closed on April 15, 1997 must relocate and shift to the new leather complex on or before September 30, 1997.

12. All the Calcutta tanneries shall stop functioning at the present sites on September 30, 1997. The closure order with effect from September 30, 1997 shall be unconditional. Even if the relocation of tanneries is not complete they shall stop functioning at the present sites with effect from September 30, 1997.

13. We direct the Deputy Commissioner/Superintendent Police of the area concerned to close all the tanneries operating in Tangra, Tiljola, Topsia and Pagla Danga areas of the city of Calcutta by September 30, 1997. No tannery shall function or operate in these areas after September 30, 1997.

14. The State Government shall appoint an authority/Commissioner who with the help of Board and other expert opinion and after giving opportunity to the polluting tanneries concerned assess the loss to the ecology/environment in the affected areas.

15. The said authority shall further determine the compensation to be recovered from the polluter - tanneries as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

16. The amount of compensation shall be deposited with the Collector/District Magistrate of the area concerned. In the event of non-deposit the Collector/District Magistrate shall recover the amount from the polluter-tanneries, if necessary, as arrears of land revenue. A tannery 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 tannery which has resulted in the environment degradation and suffering to the residents of the area.

17. We impose pollution fine of Rs. 10,000 each on all the tanneries in the four areas of Tangra, Tiljola, Topsia and Pagla Danga. The fine shall be paid before February 28, 1997 in the office of the Collector/District Magistrate concerned.

18. We direct the Collector/District Magistrate of the area concerned to recover the fines from the tanneries.

19. The compensation amount recovered from the polluting tanneries and the amount of fine recovered from the tanneries shall be deposited , under a separate head called "Environment Protection Fund" and shall be utilised for restoring the damaged environment and ecology. The pollution fine is also liable to be recovered as areas of land revenue. The tanneries which failed to deposit the amount of Rs. 10,000 by March 15, 1997 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.

20. The State Government in consultation with the expert bodies like NEERI, Central Pollution Control Board and Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution. The scheme/schemes so framed shall be executed by the State Government. The expenditure shall be met from the "Environment protection Fund" and from other sources provided by the State Government.

21. The workmen employed in the Calcutta tanneries shall be entitled to the right and benefits as indicated hereunder:

a. The workmen shall have continuity of employment at the new place where the tannery is shifted. The terms and conditions of their employment shall not be altered to their detriment.

b. The period between the closure of the tannery at the present site 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 tanneries shall be given one years wages as "shifting bonus" to help them settle at the new location.

d. The workmen employed in the tanneries which fail to relocate shall be deemed to have been retrenched with effect from April 15, 1997 and September 30, 1997 respectively keeping in view the closure dates of the respective tanneries provided they were in continuous service for a period of one year as defined in Section 25B of the Industrial Disputes Act, 1947. These workmen shall also be paid in addition six years wages as additional compensation.

e. The workmen who are not willing to shift along with the relocated industries shall be deemed to have been retrenched under similarly circumstances as the workmen in (d) above but they shall be

paid only one years wages as additional compensation.

f. The shifting bonus and the compensation payable to the workmen in terms of this judgment shall be paid by May 31, 1997 by the tanneries which close on April 15, 1997 and by November 15, 1997 by the other tanneries closing on September 30, 1997.

g. The gratuity amount payable to any workmen shall be in addition.

23. 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 Calcutta High Court would be in a better position to monitor these matters hereinafter. The "Green Bench" is already functioning in the Calcutta High Court. We direct the registry of this Court to send the relevant records, orders, documents etc. pertaining to the Calcutta tanneries to the Calcutta High Court before January 10, 1997. The High Court shall treat this matter as a petition under Article 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 make it clear that it will be open to the High court to pass any appropriate order/orders keeping in view the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary. The matter pertaining to Calcutta tanneries is disposed of with costs which we quantify as Rs. 25,000.