

# RAJASTHAN HIGH COURT

Vijay Singh Punia

Vs.

R.S.B.P.W.P

Civil Writ Petn. No. 2075 of 1994  
(Anil Dev Singh C.J. and M.R. Calla, J.)

07.03.2003

## JUDGEMENT

**Anil Dev Singh, C. J.**

1. By this writ petition, which has been filed by way of a Public Interest Litigation, the following reliefs have been claimed:

"(i) that by a suitable writ, order or direction the non-petitioner No. 3 be directed to take immediate steps against these unauthorised factories and restrain them from discharging toxic wastes and effluents into the canal and land;

(ii) that non-petitioner No. 5 further be directed to check the raising of unauthorized construction of factories without compliance of the statutory provisions of Section 25 of the Act of 1975 and impose penalties on the factories found violating the statutory provision;

(iii) any other writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case be passed in favor of the petitioner;

(iv) that cost of the petition be awarded to the petitioner."

2. The petitioner is aggrieved by the inaction of the respondents, since they allegedly failed to implement the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short, "the Act") and they were not able to check the construction and growth of the unauthorized factories, responsible for discharging toxic wastes and effluents into the canal and on land, and it is pointed out in the petition that several

unauthorized industries/factories have been set up in large numbers at Sanganer, in Villages, Gujron-ki-Talai, Hazyawala, Kesyawala and Muhana. These factories/industries, which have been set up in these areas, are situated along the canal from Sanganer Anicut to Newata Dam. According to the petitioner, the factories/industries have been set up and some are in the process of being set up on agricultural land, without prior permission. The factories are carrying on business of dyeing and printing of cloth. The prints, created by them are called Sanganere Prints and are famous world over. While they bring glory to the country, at the same time, the factories/industries discharge toxic substances, namely, acids, chemicals, colors, bleaching powders etc., in the aforesaid canal. Bulk of the factories have not installed any pollution-control devices with the result that the canal-water is being polluted. The canal, carrying poisonous effluents, leads to Newata Dam. This dam was constructed for utilizing its water for irrigation as well as drinking purposes. According to the petitioner, the effluents, reaching the dam, through canal, are causing serious health hazards and are also causing irreparable injury to the environment, man and animals etc.

3. Pursuant to the notice issued in the writ petition, replies have been filed by respondents Nos. 3, 5 and 8. Respondent No. 3, the Rajasthan State Board for the Prevention and Control of Pollution (for short, "the Pollution Control Board") in its reply dated 10-2-95, has stated to the effect that it is tackling enormous task of controlling discharge from all-over Rajasthan. It has been pointed out that Pali was a problematic area and the Board concentrated its efforts for curbing water pollution in that area. In the reply, it is also asserted that due to untiring efforts of the Board a Common Effluent Treatment Plant (for short, "CETP") was constructed, which was to take care of treatment of ten million gallons of effluent from various textile units of Pali. In so far as the problem of discharge of effluent in the aforesaid canal, by the printing units, is concerned, the Board alludes to the fact that a survey was conducted in September, 1991. According to the survey, 240 dyeing and printing units were found to be working in Sanganer. The Pollution Control Board, after conducting the survey, came to the following conclusions:-

- (i) Half of the effluent is contributed by discharge of domestic as well as industrial effluents from Wards Nos. 8, 9 and 10 of Sanganer, into Amani Shah Nalah, which leads to Gular Dam. The water of Gular Dam is used for irrigation purposes. The remaining half of the effluent from these wards, is discharged into natural cavity, known as Pili Khana, located *near Jaipur- Sawaimadhopur*

*Railway Line.*

(ii) Domestic as well as industrial effluent from the western part of Sanganer Town, is discharged into drains, which leads to *Kumawat-ki-Dhani, near Jaipur-Diggi Railway Line.*

(iii) The effluents from the industries, situated in Khatri Colony, on New Sanganer Road, is discharged into open land, since there is no drainage system.

(iv) None of the industries in Sanganer, has installed an effluent treatment plant.

(v) The problem is compounded by mixing of domestic and industrial effluents, which lead to the water sources and open land.

4. The pollution Control Board also came to the conclusion that till the CETP was set up, the State Government should not permit any new textile industries to be established, and the industries, situated in residential areas, should be shifted to industrial areas. According to the Board, it informed the administrator, Municipal Board, Sanganer, in the year 1985 that a number of industries were working within the municipal limits and they were discharging highly polluted effluents in the canal. It was also pointed out to the Municipal Board that apart from the industrial effluent, untreated sewage from residential colonies in the town, was also being discharged. The Board even complained about the improper drainage system. It emphasized that according to the Municipal Act, it was the statutory responsibility of the Municipal Board, to take measures, to control and prevent pollution and provide for proper drainage system, in order to obviate danger to health of the public. The Municipal Board was advised that the industries, working within the municipal limits should be asked to shift to planned industrial areas. In case, the shifting of industries was not possible, then, in that case, the Municipal Board should make arrangements for the treatment of the effluents, which were being discharged by the industries and domestic sewage.

5. After reply of the respondent No. 3, this Court, on 20-9-95, passed an order, directing respondent Nos. 3 and 6, to issue suitable orders to the industries, to obtain permission from the Pollution Control Board, within 45 days from the passing of the said order and in case, the factories set up failed to produce the required permission before the respondents, they should restrain the factories from operating.

6. It seems that after the aforesaid direction, the Sanganer Kapda Rangai and Chhapai Association (for short, "the Association"), respondent No. 8 felt threatened and filed

its reply to the writ petition on 15-1-1996. In the reply, it is submitted that the entire dyeing and printing units are home industries, which were established hundreds of years back. These industries are providing jobs to lakhs of people, who were not having any source of income, except from these small units. It is pointed out that there are two types of industries namely dyeing and printing; and washing units. The washing units are ten percent of the total units, which have been set up, on the bank of Amanishah Nalla. These industries, according to the reply, are not adjacent to Anicut or the dam, referred to in the writ petition. It is also pointed out there in that in dyeing and printing units, water is not used to the extent it is used in washing units. The reply denies the fact that the units were discharging any effluent from its premises into any stream, sewer, Well or on land. It is, however, conceded that the washing units, which are established on the bank of Amanishah Nalla, are discharging the effluents into the stream. At the same time, it is stated that the said Nalla carries the dirt of the entire city. In so far as the polluted Gulhar Dam is concerned, it is stated that the Dam was broken in the year 1981, and there is no water either in the Sanganer Anicut or in the Newata Dam. The reply refers to the fact that the work of the units is highly acclaimed world-over. The industries transact business worth crores of rupees. As a result thereof, the Government is earning foreign exchange. It is emphasized that dyeing and printing work is in the nature of 'kutir udyog', employing a large number of people. The reply refutes the allegation that any toxic substances were being discharged by the industries, in the Newata Dam or in the canal. According to respondent No. 8, no provision of Section 25 of the Act, is being violated. In fact, the chemicals, used in printing, go to Amanishah Nalla and decompose the dirt, which is carried by the Nalla and this decomposition makes the water usable for agricultural purposes.

7. In compliance with the aforesaid order of this Court, dated 20-9-95, respondent No. 3 filed an affidavit, to place before the Court, the action, taken by it. It is pointed out by respondent No. 3 that initially, it identified 86 units, which were operating without the consent of the Pollution Control Board, in Gujron-ki-Talai, Hajyawala, Keshyawala and Mohana. This area is being referred by respondent No. 3, as the polluted area. The affidavit further goes on to state that the Board issued notices under Section 25 of the Act, to the aforesaid 86 units, directing them to forthwith apply for the consent of the Pollution Control Board. Out of these units, 42 units, situated in the polluted area, filed consent applications, which were refused by the Board, on the ground that none of the units had pollution control plant, for treating the effluent, which was being discharged by them. The Pollution Control Board, in compliance with the above-mentioned order, dated 20-9-95, issued directions under the provisions

of Section 33-A of the Act. The Board also identified 20 more units, which were responsible for causing pollution. Respondent No. 3 issued directions to the Rajasthan State Electricity Board (for short, "RSEB"), to disconnect the electricity of the defaulting units, which were operating in the polluted area.

8. It seems that due to the action of the Pollution Control Board, respondent No. 3, the Association filed a further affidavit, on 26-11-97 and stated that the "industry", which falls under the category of 'kutir udyog', has remained in the unorganized sector and owing to neglect of the State Government as well as Rajasthan State Industrial Development and Investment Corporation (for short "RIICO"), small entrepreneurs set up their industries in Khatri Nagar, Jaipur Gate and Muhana Road, as early as in the year 1979. It is claimed that the Industries Department was approached by the entrepreneurs, for allotment of industrial plots, to carry out their business activities. About 72 entrepreneurs had proceeded to deposit demand drafts, ranging from Rs. 500/- to 1,000/- as security-money, with the predecessor of RIICO, for allotment of plots. The members of the Association were given assurance that they would be allotted industrial plots in the Malviya Nagar Industrial area, but no allotments were made to them. On 27-4-84, an advertisement was issued in the 'Rajasthan Patrika', giving details of the decision of the RIICO, to develop Sanganer Industrial area, to provide plots for the units. In spite of the advertisement, no progress was made either by the State Government, or by the RIICO. At the same time, the dyeing and printing units continued, to proliferate in Sanganer and Muhana Road areas, due to growing demand for employment and Sanganer prints worldwide. On 16-9-96, after a gap of about 12 years, again RIICO invited pre-qualification bids, for consultancy work, to set up an area, for dyeing and printing units in Jaipur. The affidavit claims that a meeting was held between the representatives of the Pollution Control Board and members of the Association, with regard to the problem of Pollution. According to the affidavit, it was accepted by the Pollution Control Board that due to inadequacies of spaces and cost-factor in setting up individual effluent treatment plants, the only workable and realistic solution was setting up by RIICO, or by other State agencies, of a central effluent treatment plant at the terminus of Amanishah Nalla. At a meeting subsequently held between the same parties on 31-5-1995, it was decided that a detailed survey and assessment shall be undertaken for finding out the extent of pollution caused by the industry and the representatives of various Government bodies, connected with the control of pollution be called, to discuss the matter, with the representatives of the National Environmental Engineering Research Institute (for short, "NEERI"). Sampling of ground water in and around Sanganer, was also agreed

to be carried out. At the meeting, it was suggested that industries, located in Khatri Nagar, near RIICO industrial area in Sanganer, be also included in the RIICO industrial area and a CETP be provided for the industries. The affidavit goes on to state that a representation was addressed, by the Association on 15-10-1996, to the Minister for Industries and Deputy Chief Minister, Rajasthan, wherein, it was requested that developmental work be undertaken in Khatri Nagar, Jaipur Gate and Muhana Road, for ensuring all-round improved environment. The demand for CETP was reiterated. On 17-11-95, a meeting was held amongst the members of the Association, Minister for Industries, Deputy Chief Minister and the Chairman of the Pollution Control Board. The Chairman, Pollution Control Board, suggested that a survey be conducted, by NEERI, to study the level of pollution in the area and that an environmental policy be also formulated, for future. A proposal was also noted for evaluating the possibility of setting up of an industrial area, after making a proper survey. In the year 1996, a survey of the dyeing and printing units, was carried out, by the Department of Industries. A report was prepared, in which, it was suggested that *Khatri Nagar, Jaipur Gate and Ganesh Mohalla*, which are situated near the Sanganer Industrial area, be declared as industrial area. It is candidly admitted that the report, referred to the fact that the discharge of the water, used by the printing and dyeing units in the area, was being discharged through the drain of Amanishah Nalla. As regards the question of control of pollution, it was suggested that a Pukka drain be built and a CETP be constructed by the State Government. Besides, it was suggested that the units be allotted plots in a separate zone, after the same is developed by the RIICO. The report also made recommendations to the effect that concrete steps be taken in developing dyeing and printing industry, which had contributed substantially to the economy of *Jaipur*.

9. In the aforesaid affidavit, it is also pointed out that RIICO had announced setting up of an exclusive dyeing and printing sector, in its industrial estate in *Shikarpur (Sanganer)* and setting up of a CETP in the same industrial estate. The members of the Association were willing to shift to the new industrial area being set up by the RIICO and make payment at par with the dyers and printers of Pali, for setting up of the CETP.

10. The Association, respondent No. 8 filed a further affidavit even on 10-5- 2001. In that affidavit, it was, inter alia, stated that a letter dated 12-10-88, was addressed by the Member-Secretary of the Pollution Control Board, to the Managing Director, RIICO, wherein, it was stated that there was necessity of setting up of a combined

community effluent treatment plant at Sanganer and Bagroo etc. and in industrial areas, developed by RIICO. In the affidavit, reference was also made to the letter dated 21-5-1981, of the Director, Ministry of Environment and Forest, Government of India, New Delhi, wherein, it was stated that it was the responsibility of RIICO to provide combined effluent treatment in its industrial areas. The affidavit has also referred to the letter, dated 30-1-91, of the Pollution Control Board, to the Secretary, Environment, Government of Rajasthan, on the subject of problem of water pollution, caused by the Rangai and Chhapai industry in Sanganer, in which, it was emphasized that in case, immediate steps were not taken, to combat the problem of pollution, it would lead to serious problems. The affidavit asserted that the Association addressed a letter to RIICO, stating that it was conscious of the need to check pollution and was in the process of setting up the first effluent treatment plant at the premises of M/s. Glamour House, Madrampura. According to the affidavit, the plant was being set up, with the help of Rajasthan Chamber and Swiss Developmental Corporation, Switzerland. It was requested that the entire area in Sanganer, be declared an industrial area and developmental charges as also conversion charges be collected on such change of users and the charges could be utilized for setting up of a common effluent treatment plant. The members of the Association would be willing to contribute for the maintenance and running of the plant. It was pointed out in the affidavit that the National Productivity Council, was working on waste minimization programme, in the process of dyeing and printing, in collaboration with German Technology Corporation and on the recommendation of the National Productivity Council. The process, undertaken in the case of dyeing and printing, was being modified and altered to reduce the utilization of water, chemicals and colours in the process of dyeing and printing and thereby minimizing the pollution of the environment. It was asserted therein that use of alum and lime as primary effluent treatment agent was being resorted to neutralize acids, salts, dyes etc. in the effluent, which was being discharged by the units.

11. On 2-8-95, respondent No. 5, Nagar Nigam, Jaipur, filed a short reply, stating that the petitioner has no case, for invoking the extraordinary jurisdiction of this Court. It was also averred that the petitioner had not given the particulars of the unauthorized factories. We may note that the reply, on merits, was not a detailed one and was perfunctory in nature.

12. Having set out the stands, taken by the appellant, Pollution Control Board; the *Nagar Nigam, Jaipur*; and the Association, no doubt is left in our minds that effluents

are being discharged by the dyeing and printing units, which are polluting the water sources, used for agriculture and drinking purposes. Neither the Association, nor the RIICO has taken any concrete steps, to prevent pollution. It also appears that the order, dated 20-9-95, has not improved the situation, at all. The Pollution Control Board had, undoubtedly, written to the RSEB, to disconnect the electricity of the defaulting units, but, it has not made any difference to the situation. It had also written to the Collector, emphasizing the need to comply with the directions of the Court. Public notices were issued, for the purposes of requesting the units, to seek consent of the Pollution Control Board, as contemplated by the Act. It is also true that the Association had been representing for development of an industrial area, for allotment of land and for setting up of a common effluent treatment plant, but, nothing worthwhile has happened. The instant writ petition was filed in the year 1994. Despite lapse of more than eight years, no progress has been made in preventing water pollution, which is being caused due to discharge of effluent from dyeing and printing units in the area in question. We find that as per the list, submitted by the Pollution Control Board, about 486 units have been identified, which are engaged in the job of dyeing and printing of cloth. Besides, there may be several unidentified units. The pollution, caused by the aforesaid industrial units, is certainly affecting the quality of drinking water and the vegetables, produced by the farmers, using the water of the canal for irrigation purposes. This is evident from the report, title "Heavy Metal Analysis of Crop Plants From Agricultural fields of Sanganer Town, published in Journal of Environment and Pollution 4(1), 1997, authored by T.I. Khan, Navneet Kaur and Mamta Agarwal, Indira Gandhi Centre for H.E.E.P.S., University of Rajasthan, Jaipur. The report, inter alia, states as under :-

"The vegetables so produced are consumed by human beings resulting into a number of health hazards. Preliminary survey and interviews of factory owners, workers, local people and private (medical) practitioners revealed that the people are suffering from eezema, contact dermatitis, asthma, chronic bronchitis, tuberculosis, haematoma, bladder cancer etc. due to either physical condition or drinking polluted water."

12-A. While the industry is contributing to the economy of the State, at the same time, it is destroying the environment. No worthwhile steps have been taken for sustainable development. It is only a very small number of units, which may have set up CETPs recently. In the past, they had also been polluting the canal. Each one of the units has contributed to pollution and is liable to pay pollution-fine.

13. The general apathy towards environment of the authorities and the industry, shows that we have lost our age-old wisdom, our direction and values. There was a time, when in this great country, man and nature existed in harmony. Our ancient seers without the aid of technology, knew and appreciated that living beings are made of five elements, viz., water (Jal), air (Vaayu), earth (Prithvi), ether (Aakash) and fire (Agni). Knowing this, their approach was to keep the five elements pure. These elements and their sources were considered sacred and valuable as life. Since they fulfill the human needs, they were worshipped.

14. In ancient India, mountains were venerated, they being sources of rivers, flora, fauna and various other life-sustaining materials, and habitats for birds and animals. People were aware of the great usefulness of the mountains in helping cloud formation and ultimate breaking of rains over parched lands, rendering them fertile to satisfy the need of the human beings and animals, for food.

15. Similarly, rivers were worshipped, since they provide life-giving elixir, called water. Some of the rivers are still being considered sacred, as without them, there would be no existence, as water is needed by all living forms. The descent of Ganga from the heavens and Lord Shiva, taking heavy fall of its waters on his matted hair to prevent deluge on earth, signifies the compassion of the Lord for its creation and the importance of water in our daily lives. It also signifies its purity and sacred character. Something, which touched the Lord, must be kept pure, was the message in the depiction of the Ganga falling on the hair of the Lord, before touching the ground.

16. In ancient India, trees were also worshipped. This was the old environmental prudence of the people. Not so long ago, the so-called modern world laughed at the practice and termed it as "blind faith" of the backward, uneducated and naive people, even the awakened world was actually not aware of the significance of the practice. It has now dawned on them that this was for the preservation of the trees, which are so essential for our existence. The trees give out oxygen and take away carbon dioxide. They clean the air - the breath of life. They also prevent soil erosion and floods.

17. It was realized that all creations having life were made of the same building materials. There was a feeling of kinship with them. By associating animals, birds and aquatic life forms with numerous deities, the former serving as mounts of the latter, commends us to respect different life-forms - conveys to us, profound influence of natural world on all aspects of human existence. Men of by-gone eras realized their link and bond with nature in all live forms. It was also recognized that man must

establish harmony with nature. Our seers were conscious of the fact that destruction of nature will be the destruction of man himself. Atharvaveda gave the following message of peace in the various aspects of nature:-

- (i) Let there be peace in all directions.
- (ii) Let there be peace in ether ('Antriksha').
- (iii) Let there be peace in region of earth ('Prithvi').
- (iv) Let there be peace in water ('Jal').
- (v) Let there be peace in medicinal herbs.
- (vi) Let there be peace in vegetation.
- (vii) Let there be peace in God.
- (viii) Let there be peace in places.
- (ix) Let there be peace in creations.
- (x) Let there be peace - uninterrupted, only peace and ever-lasting peace and profound peace.

18. In the past, man understood nature better. He preserved and protected the same. For its kindness, he used to prostrate before it. Gratitude was expressed by feeling of love and admiration for nature. In contrast, today, nature is being plundered. For short-term gains, the kindness of mountains is being returned by denuding them of trees, fauna and flora. Birds and animals are being killed. Man is not mindful of the fact that trees are the very life-line of human existence.

19. How can there be peace, which was conceived by Atharvaveda, when the five elements are being polluted.

20. The wisdom, which this country had in the past, was also available to Red Indians. In 1854, White Chief of Washington wanted to buy land from the Chief of the Red Indians. It is the same area, which is now called Seattle. The latter's response exhibits time-less wisdom of the ages. We do not consider it appropriate to abridge the same, because, such an effort would destroy its essence. This is what Red Indian Chief wrote to the White Chief of Washington :

"The rivers are our brothers, they quench our thirst. The rivers carry our canoes,

and feed our children. If we sell you our land you must remember, and teach your children that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy, and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps the earth from his children. His father's grave and his children's birth-right are forgotten. He treats his mother, the earth and his brother, the sky as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there in life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a midday rain, or scented with the pinon pipe.

The air is precious to the red man, for all things have the same breath - the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man lying for many days, he is numb to the stretch. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grant father his first breath also receives the last sigh. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his

brothers.

I am a savage and I do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land. Tell your children that we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If man spit upon the ground, they spit upon themselves.

This we know : The earth does not belong to man; man belongs to the earth. This we know : All things are connected like the blood which unites one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life : he is merely a stand in it. Whatever he does to the web he does to himself.

Even the white man, whose God walks and talks with him as friend to friend cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover - our God is the same God. You may think now that you own Him as you wish to own our land; but you cannot. He is the God of Man, and His compassion is equal for the red man and the white. This earth is precious to Him, and to harm the earth is to heap contempt on its Creator. The white too shall pass : perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.

But in your perishing you will shine brightly, fired by the strength of the God who brought you this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffaloes are all slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the

view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. The end of living and the beginning of survival."

21. How close the aforesaid philosophy and thought is to the philosophy of ancient India. The concept of inter-relationship and inter-dependency which exists between human beings, nature and other life forms, is the essence of well-being of the human race. To illustrate the point, one may give the example of a lowly earthworm. It works for human beings. It enriches the soil and makes it fertile for them to reap the benefit.

22. Lord Krishna declares in eternal Geeta that God is sweet fragrance on the earth and brilliance in fire and the life-force in all beings. The true follower sees the Lord manifesting in everything. He sees God in every petal, every tree, every living being, air, water and land and makes the entire world, his family, a bond, which cannot be snapped, except to the detriment of human beings. Thus, in a nutshell, there can be peace only if man acts in unison with nature and all beings, but this golden principle, in present times, has been observed more in breach than in observance. No research is required to be undertaken to see stark reality, which confronts us, at every step in this State. To illustrate the point, water-bodies are being polluted. They are being made to bear the brunt of garbage and filth, industrial wastes and untreated effluents. Water-bodies because of deep excavation in the catchment areas and building activities are suffering from water shortage. In several areas of the State, because of cutting of marble, large tracts of land are today covered with marble powder. At some places, the soil cannot be seen because of thick layer of marble powder. In certain areas in the State, extensive mining is going on, with the result that even rocky parts of the hills have been reduced to a rubble. Unless, immediate measures are taken to remove the maladies, the sufferings of citizens are bound to increase due to ravishing of nature by few, in order to satisfy their insatiable passion for money. They are averse to sustainable development as they think why money should be wasted for the benefit of the environment and the society. Such narrow vision has made them forget the value of environment and ecology. They have also forgotten that man cannot survive without taking care of nature. He cannot exist without pure water and air.

23. Sustainable development is being sacrificed by them at the altar of greed. Air is being polluted by particulate matters and toxins by emission from industries. Even benevolent earth, which gives so much and produces food, is being contaminated by discharge from the factories, which is laced with chemicals. There is reckless exploitation of natural resources to a point of no-return. The nature is being injured and treated violently. If this treatment of nature does not stop, it will respond with

equal brutality. The authorities are turning a blind-eye towards the desecration of nature.

24. It is time to act now, otherwise, it may be too late as even there is limit to environment's capacity, to maintain ecological balance in face of its constant desecration.

25. Barbara Ward, in her book, "only one Earth : The Care and Maintenance of an Small planet", has pointed out that man inhabits two worlds. One is the natural world of plants and animals, soil, air and water, which preceded him by billions of years and of which he is a part. The other is the world of social institutions and artifacts he builds for himself, using his tools and engines, his science and his dreams to fashion the environment obedient to human purpose and directions. It seems to us that the world created by man, cannot survive, if he destroys the natural world. Both natural world and the world, created by man, can co-exist for benefit of each other. Development of the world, created by man, is extremely important, specially, in the context of this country. The process of development must be compatible with nature. Here lies the importance of sustainable development.

26. Sustainable development means development, where ecological system can sustain for the future. It is development that meets the needs of the present, without compromising the ability of future generations, to meet their own needs (definition of "sustainable development", derived from report of Worlds Commission on Environment and Development, 1987 - "Our Common Future").

26-A. Industrial development must be monitored, overseen and supervised by the State and its concerned organizations, constantly and closely, as it has effect on environment and its natural resources. The effect can be both, positive and negative. Positive effect sustains the environment and ecology. This will be achieved, when industry adopts pollution control devices and prevents discharge of untreated effluents into water channels and arrests particulate matters and toxins from escaping to atmosphere. On the other hand, negative effect will endanger environment. This takes place when industry discharges untreated effluents into water-channels and on land and emits particulate matters and toxins. The industries have no right to degrade the environment, or pollute the rivers, lakes, water-bodies and water channels, or pollute the air or exploit the resources, to an extent, which impair the environment.

27. In *A. P. Pollution Control Board II v. Prof. M. V. Nayudu (Retd.)* <sup>1</sup> the SC held that right of access to clean drinking water is fundamental right to life.

28. In the instant case, when effluents are freely reaching the canal, the right of the citizens of access, to clean drinking water, is being infringed, with impunity.

29. In *A. P. Pollution Control Board v. Prof. M. V. Nayudu (Retd.)* <sup>2</sup> the SC pressed into service precautionary principle and observed that it is better to err on the side of caution and prevent environmental harm, which may indeed become irreversible. It is not necessary to wait for a scientific study of the adverse effect of effluents, which are going into the canal system. There may not be sufficient time to wait for such reports. The emphasis has shifted to action, without waiting for the scientific evidence, in order to contain the harm to the environment.

30. In *M. C. Mehta v. Union of India* <sup>3</sup> the Supreme Court, drawing inspiration from Articles 39(e), 47 and 48-A of the Constitution, declared that a duty is cast on the State to secure the health of the people and improve and protect the environment. It observed that lack of concern or effort on the part of various governmental agencies had resulted in spiralling pollution levels. Relying on its earlier decision in *Vellore Citizens' Welfare Forum v. Union of India*, <sup>4</sup> it reiterated that one of the principles underlying environmental law, is that of sustainable development. The principle requires such development to take place, which is ecologically sustainable. Two essential features of sustainable development were delineated : (a) the precautionary principle, and (b) the polluter-pays principle.

31. In *M. C. Mehta v. Union of India*, <sup>5</sup> the precautionary principle was applied, since it has been accepted as part of the law of the land. The SC held that the precautionary principle makes it mandatory for the State Government, to anticipate, prevent and attack the causes of environmental degradation. In order to protect Badkhal Lake and Surajkund from environmental degradation, the SC banned construction activities with a radius of one to five kilometers there from.

32. In *M. C. Mehta v. Union of India*, <sup>6</sup> the Supreme Court, in a public interest petition for prevention of pollution of the Ganges, held that the Court is entitled to issue appropriate directions to prevent effluents being discharged into the rivers. The SC proceeded against the tanneries, which were discharging effluents into municipal sewerage, leading to the river. It issued directions for the closure of those tanneries, which had failed to take immediate steps required for primary treatment of the industrial effluents. While giving directions, the Supreme Court, though conscious of the fact that closure of tanneries may bring unemployment and loss of revenue, life, health and ecology was given priority and held to have greater importance for the

people.

33. In *Vellore Citizens' Welfare Forum ( AIR 1996 SC2715)* (supra), it was observed that while industries are vital for the country's development, but having regard to pollution caused by them, principle of sustainable development must be adopted as a balancing concept. Precautionary principle and Polluter pays principle were accepted as part of the law of the country. It was held that precautionary environmental measures should be taken by the State Government and statutory authorities and lack of scientific certainty cannot be a ground for postponing such measures, where threat to ecology seems to be serious. It was also held that the polluting industries are liable to pay compensation as well as to make good the ecological damage. In that case, discharge of untreated effluents by tanneries in the State of Tamil Nadu, were rendering water from Goodar and Palar rivers, unfit for human consumption and were contaminating the ground water and spoiling the physio-chemical properties of the soil, making it unfit for agricultural purposes. Such industries were interdicted to continue their operations, without setting up pollution control devices. Such industries were also saddled with pollution fine of Rs. 10,000/- each. The amount was directed to be deposited in the environmental protection fund, which was directed to be utilized for compensating the affected persons and restoring the ecological balance.

34. It is the fundamental right of the citizens to have pollution-free environment. Though, Article 19(1)(g) of the Constitution of India, ensures right of freedom to trade and commerce, at the same time, this freedom is not an absolute one and is subject to reasonable restrictions. Any trade, or business, which is destructive of the health of the citizens, cannot be allowed to be carried on, under the banner of fundamental right. The Supreme Court, in *M.C. Mehta v. Kamal Nath*<sup>7</sup> has emphasized that industry cannot be allowed to cause water pollution. Any disturbance of the basic environmental elements, namely, air, water and soil, which are necessary for life, would be hazardous to life. In that case, the Court was dealing with a situation, created by dirt-element flowing into the river Beas, which was being discharged by a hotel. The SC imposed exemplary damages on the erring industry, so as to act as a deterrent for others.

35. In *Abhilash Textiles v. Rajkot Municipal Corporation*,<sup>8</sup> the High Court of Gujarat held that Article 19(1)(g) of the Constitution, confers right upon every citizen, to practise any profession or to carry on any occupation, trade or business, but this fundamental right is subject to reasonable restrictions, which may be placed, in the interest of general public, as provided for in sub-clause (6) of Article 19 itself. It

further held that no one has a right to carry on business so as to cause nuisance to the society. One cannot be allowed to carry on business in the manner, by which, business activity becomes a health-hazard to the society. The case related to the discharge of effluent from dyeing and printing units in Rajkot. It was claimed by the petitioners that the industry was being carried on for the last 20-25 years and was generating employment to twenty to thirty thousand families. According to the petitioners, the notice to close down, was violative of Article 19(1)(g) of the Constitution. Rejecting the contention, the Gujarat High Court came to the conclusion that without complying with the Municipal Laws and Water (Prevention and Control of Pollution) Act, 1974, the petitioner had no right under Article 19(1)(g) of the Constitution, to carry on business.

36. In *D. S. Rana v. Ahmedabad Municipal Corporation*,<sup>9</sup> the Gujarat High Court held that a trading activity, which is likely to be injurious to the health of the residents, or causes nuisance, can be totally prohibited.

37. In *Hinch Lal Tiwari v. Kamla Devi*,<sup>10</sup> the SC declared that material resources of the community, like, forests, tanks, ponds, hillocks, mountains etc., are nature's bounty. It was recognized that they maintain delicate ecological balance and need to be protected for a proper and healthy environment, for enabling the citizens to enjoy the quality of life, which is guaranteed under Article 21 of the Constitution.

38. In *M. C. Mehta v. Union of India* (supra), the Supreme Court, in no uncertain terms, held that closure of industries may bring unemployment and loss of revenue to the State, but right to life, health and ecology must be given precedence.

39. United Nations' Conference on the Human Environment, which was held in Stockholm, in the year 1972, inter alia, declared as under :-

"Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of equality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations."

40. Article 48-A of the Constitution of India, as a directive principle of the State Policy, provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

41. Article 51-A(g) casts duty on the citizens of India, to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have

compassion for living creatures.

42. Article 21 of the Constitution, which, in its bosom conceals different facets of rights to life, mandates hygienic environment as an integral part of right to healthy life. It would be important to live with human dignity in a humane and healthy environment.

43. In spite of Article 21, Article 48-A and Article 51-A(g) and a number of International Conventions on the subject, the decisions of the Apex Court and High Courts, still, there is a long way to cover in creating industry in this country, which is friendly to environment.

Article 21 imposes a positive obligation on the State and authorities, created by it, to take preventive measure, to protect the ecology and environment and to conceive, anticipate and attack the causes of environmental degradation.

44. Though, Article 19(1)(g) of the Constitution ensures right to freedom of trade and commerce, at the same time, this freedom is not an absolute one and is subject to reasonable restrictions.

45. Six wholesome principles can be culled out from Articles 21; 48-A; and 51-A(g) of the Constitution and various judicial pronouncements :-

- (1) All human beings have the fundamental right to unpolluted environment, pollution-free water and air.
- (2) The State is obligated to preserve and protect the environment.
- (3) It is mandatory for the State and its agencies, to conceive, anticipate, prevent and attack the causes of environmental degradations.
- (4) The industry cannot be permitted to continue, as a matter of right, in case it creates pollution.
- (5) The polluter must meet the cost of repairing environment and ecology and pay reparation to those, who have suffered because of the pollution, caused by him.
- (6) Considerations of economy cannot prevail over concerns for environment and ecology.

46. In view of the aforesaid legal position, we can straightway, direct closure of the

industry, but, we would like to give a chance to the industry, the State and its concerned instrumentalities, to prevent the degradation of environment and ecology. The industry, the State and its agencies, including RIICO, must set up CETPs, so that effluents are not discharged into the canals, streams and on the ground. Since the printing and dyeing industry is scattered, it may not be feasible for one CETP, to cater to the requirement, therefore, it may be necessary to set up two or three, or more CETPS, at various places, depending upon the location of the industry. As the industry has been polluting the water-channels, by discharging the effluents, they must pay pollution-fine, so that the money, collected thus, is pooled for the purposes of setting up of the CETPs.

47. Keeping in view, the aforesaid considerations, we direct as follows :-

(1) RIICO shall develop an industrial area for dyeing and printing industry, within a period of eight months. Location of the area shall be identified and plans finalized within two months.

(2) The owners and proprietors of the present industrial outfits shall be given plots in the industrial area, for which, they shall pay the price, as determined by RIICO, at no-profit no-loss basis.

(3) Each of the printing and/or dyeing units shall pay the pollution-fine, as per below :-

Turn over of Unit for the Period from 01-04-2001 to 31-3-2002 Amount of Fine

Upto Rs. 1,00,000/-Rs. 20,000/-

Between 1,00,000 and 3,00,000Rs. 40,000/-

Between 3,00,000 and 10,00,000Rs. 1,00,000/-

Between 10,00,000 and 50,00,000Rs. 5,00,000/-

Between 50,00,000 and Rs. 1 crore and moreRs. 10,00,000/-

(4) Each of the units, within one month, shall deposit minimum pollution-fine of Rs. 20,000/- with RIICO. The balance amount, depending upon the turnover, shall be paid to RIICO, within two months. In case, pollution- fine is not paid within time, the defaulting unit shall be sealed by the respondents.

48. Allotment of alternative sites shall be made only in case the pollution- fine is paid

by the unit-holders. With the pollution-fine collected by RIICO and with its own resources and resources of the State, the CETPs shall be set up.

49. The industry, at the present location, shall stop functioning by 31-3- 2004.

With the aforesaid observations and directions, the writ petition is disposed of.

Order accordingly.

Cases Referred.

1. (2001) 2 SCC 62: (2000 AIR SCW 4573)
2. (1999) 2 SCC 718: (AIR 1999 SC 812)
3. (2002) 4 SCC 356: (AIR 2002 SC 1696)
4. (1996) 5 SCC 647: (AIR 1996 SC 2715)
5. (1997) 3 SCC 715
6. (1987) 4 SCC 463: (AIR 1988 SC 1037)
7. (2000) 6 SCC 213: (AIR 2000 SC 1997)
8. AIR 1988 Gujarat 57
9. AIR 2000 Gujarat 45
10. 25-7-2001 (reported in AIR 2001 SC 3215)