

RAJASTHAN HIGH COURT

Vijay Singh Puniya

Vs.

State of Rajasthan

C.M.A. Nos. 249 and 256 of 2003

(Anil Dev Singh, C.J. and K.S. Rathore, J.)

18.08.2003

JUDGEMENT

Anil Dev Singh, C. J.

1. These are two applications : DB Civil Misc, Application No. 249/2003, has been filed by Sanganer Kapda Rangai Chhapai Association, which was respondent No. 8 in DB Civil Writ Petition No. 2075/94, whereas DB Civil Misc. Application No. 256/2003 has been filed by the State of Rajasthan. Both the applications are for modification and clarification of our judgment and order dated 7-3-2003 (Reported in AIR 2003 Rajasthan 286). In DB Civil Misc. Application No. 249/2003, it has been prayed as follows:-

"The Association most respectfully submits to the principles invoked by this Hon'ble Court but most respectfully also prays that this Hon'ble Court may kindly reconsider the levy of fine on the members of the Association and direct that the fine levied be on the basis of a percentage of gross profits of 10% on the turnover in the year 2001-2002 as earned by each of the members of the Association. It is most respectfully submitted that the large majority of the members of the Association are job workers and are not engaged either in any manufacturing or trading activity. The capital employed by the aforesaid job workers in their business is miniscule and the out-go of huge amounts as directed by this Hon'ble Court in its order of 7-3-2003 would entail a complete denuding of the financial capacity of the large majority of the members of the Association and possibly result in their economic ruination.

That it is further submitted that this Hon'ble Court has been pleased to direct that the fine levied and collected on member of the Association would be

utilized in the corpus of funds for setting up of the necessary number of common effluent plant, which is likely to take up to one year. It is submitted that in this circumstance this Hon'ble Court may kindly direct that the fine imposed by this Hon'ble Court as may be modified may be payable in 12 equal monthly installments to RIICO Ltd.

That in the facts of the case this Hon'ble Court may kindly modify the directions in paragraph 50 of the judgment of this Hon'ble Court and kindly state that the industry would stop functioning at the present location unless the location is converted for industrial use by RIICO/State Government after levying conversion and development charges as may be necessary. With the establishment of one, two or more CETPs the grievance of the petitioner would stand corrected and the valid concerns of this Hon'ble Court safeguarded."

2. By judgment and order dated 7-3-2003 (Reported in AIR 2003 Rajasthan 286) we held that the dyeing and printing units are discharging effluents, which are polluting the water sources used for agricultural and drinking purposes. We also observed that neither respondent No. 8 nor Rajasthan State Industrial Development and Investment Corporation had taken any concrete steps to prevent pollution. While disposing of the writ petition, we directed as follows :-

"47. 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 CETP.

48. 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 :-

Up to Rs. 1,00,000/-	: Rs. 20,000/-
Between 1,00,000 and 3,00,000	: Rs. 40,000/-
Between 3,00,000 and 10,00,000	: Rs. 1,00,000/-
Between 10,00,000 and 50,00,000	: Rs. 5,00,000/-
Between 50,00,000 and Rs. one crore and more	: Rs. 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.

49. 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.

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

3. On 30-5-2003, it was submitted on behalf of the respondent No. 8 Association that shifting of the industry to industrial areas developed by RIICO shall entail huge expenses and it should be allowed to continue at present sites. It was also contended that pollution could be controlled by setting up CETPs in Sanganer area where dyeing and printing industry is located. It was also submitted that dyeing and printing industry shall provide the funds for setting up of requisite number of CETPs.

4. On the other hand, the learned counsel for RIICO submitted that an industrial area with requisite infrastructure is available at a distance of about 20 Kms. from Sanganer, where 250 industrial units can be accommodated. It was also pointed out that the area earmarked for shifting of the industry was most appropriate. It was asserted before us by the learned counsel for RIICO that water, electricity and sewage system was available at the site selected by RIICO for accommodating the industrial units. It was

also submitted that the units were dispersed over a large area and it was extremely difficult and costly to set up effluent plants to effectively prevent effluents from flowing into the Amanishah Nallah.

5. Keeping in view the rival contentions of the parties, on 30-5-2003, we passed the following order:-

"Having regard to the submissions of the learned counsel for the parties and in order to ascertain the feasibility of the suggestion of the industry that it should not be asked to shift from the present site to the new industrial area and CETPs should be provided, at the present site itself, we consider it appropriate to constitute a committee of the following members :-

1. Chief Secretary, Government of Rajasthan.
2. Chairman, Pollution Control Board.
2. Secretary, Environment Dept., Govt., of Rajasthan
4. Secretary, Industries Department, Govt. of Rajasthan

The Committee shall give its report on all aspects of the matter as also with reference to the following points :-

1. Whether or not the present site, where industry is located, is suitable?
2. Whether or not pollution can be controlled by setting up of CETPs over the area in question?
3. What would be the cost of preventing pollution in the area and what would be the cost of preventing pollution in the industrial area, set up by RIICO?"

6. Pursuant to the direction, the committee held a number of sittings and also paid a visit to Sanganer, on 13-6-2003. In order to arrive at a conclusion with regard to the points on which reference was made by us, the committee took the assistance of the following persons:-

1. Sh. Sudhansh Pant, Collector, Jaipur.
2. Sh. K. N. Gupta, Spl. Secretary, Industries.
3. Sh. R. D. Berin, TL PMC.

4. Sh. B. K. Gupta, DTL PMC.
5. Sh. Dinesh Goyal, Commissioner, JDA.
6. Sh. M. G. Hajare, TL DSC-I.
7. Sh. S. K. P (Bcholi, PD, PUDR.
8. Sh. S. A. Faarooqi, Dy. Secretary, UDH.
9. Sh. S. B. Saxena, SE Div. I, RUIDP.
10. Sh. S. P. Gupta, CMD, RIICO.
11. Sh. Hemant Murdia, CTP.
12. Smt. Pushpa Satyan, DC.
13. Smt. Shuchi Sharma, Addl. Commissioner, JDA.
14. Sh. R. K. Vyas, Sr. Dy. GM, RIICO, MLA, Jaipur.
15. Sh. M. S. Kala, Advisor (Infra.) RIICO.
16. Sh. Rajesh Singh, SDM, Sanganer.
17. Sh. Hanuman Singh, Patwari, Sanganer.
18. Sh. Narendra Singh, Patwari, Sanganer.
19. Sh. K. D. Pandey, N. Tehsildar, Sanganer.
20. Sh. Vijay Singhal, R.O., Rajasthan State Pollution Control Board.
21. Dr. Akshey Bhargava, Senior Environmental Engineer, Rajasthan State Pollution Control Board.
22. Sh. S. K. Shukla, LO, Rajasthan State Pollution Control Board.
23. Sh. S. N. Tikkiwal, Rajasthan State Pollution Control Board.

7. In the minutes of the meeting of the committee held on 17-6-2003, a note was taken of the survey conducted by the District Collector, Jaipur. The District Collector found that 473 dyeing and printing units were operating in Sanganer and were located in the following eight blocks :-

- (i) Muhana Nide Block - 152
- (ii) Diggi Malpura Road Block - 50
- (iii) Shikarpura Block - 46
- (iv) Jaipur Gate Block - 34
- (v) Paliwal Garden Block - 21
- (vi) Sanganer Town Block - 77
- (vii) Khatri Nagar Block - 80
- (viii) Namdev Colony Block - 13

8. In the minutes of the meeting dated 17-6-2003, a reference was also made by the committee to the report of the Town Planner, who in his report had observed that the location of such industrial units within residential areas of the town was not desirable. The Town Planner, therefore, suggested that industrial units be shifted from the present site to a new organized and developed industrial area for such industries. The committee also took cognizance of the note submitted by RIICO, in which it was pointed out that at present the industrial units situate in Sanganer are discharging effluents without any treatment and the effluents are creating multiple problems like health hazards to the general public and damaging the ground water of the surrounding area. It was, therefore, suggested by RIICO that the industry should be shifted to the industrial area developed by RIICO in Bagru Chhitroli, which is located at a distance of about 30 kms. from Sanganer Town.

9. Before the committee, the principal Secretary, Environment, also produced a copy of the order of the Human Rights Commission dated 3-12-2002, whereby a direction was issued to the effect that Amanishah Nallah should be kept free from pollution and should only be used for rain water to flow into it and for charging ground water with fresh water during the rainy season. As per the order, no industrial or domestic waste water can be discharged into this Nallah. The Human Rights Commission identified the Jaipur Development Authority and Jaipur Municipal Corporation as implementing agencies.

10. The committee during the site-visit of Sanganer, observed that a large number of laborers employed in the units, were not local but were from other States. The laborers

were found to be living in the factory premises itself in a very unhygienic surroundings. The committee also found that the printing was not confined to the traditional Sanganeri Prints; that printing was done on job-work basis; that designs were given by the people, who got the printing done; that there were very little traditional inputs in the printing; and that the printing was also done in a primitive manner, requiring very little investment in machines and fixtures.

11. The Rajasthan Urban Infrastructure Development Project by means of a report placed its views before the committee with regard to the setting up of the treatment plants for treating industrial effluents at the site where the industry is presently located. The views of the Rajasthan Urban Infrastructure Development Project are incorporated in its letter dated 17-6-2002, to the Rajasthan Pollution Control Board, which was written in compliance with the direction of the chairman of the committee.

12. The committee on the basis of the survey conducted by it and material presented before it, filed its report in June, 2003, in compliance with the order dated 30-5-2003. Analyzing the material before it, the committee gave the following report :-

"During the visit it has been observed that the labor involved in these industrial units are not predominantly local but are also from outside the State. The printing work is mainly based on job-work and is not confined to the traditional Sanganeri print. The printing method is conventional involving very little investment in machines and fixtures. Insanitary and unhygienic conditions were observed in all the places visited by the team. The committee also visited a unit where a primary effluent treatment plant had been installed, which was found to be non-functioning. Photocopy of the proceedings of the visit are being annexed and marked as Annexure-2.

After the visit, a wrap up meeting was held under the Chairmanship of Chief Secretary, wherein Collector, *Jaipur*, was directed to provide detailed list of the industrial units located in Sanganer and availability of land for each cluster for installation of CETP. Rajasthan Urban Infrastructure Development Project (RUIDP) was asked to furnish details of proposed sewer line passing through sanganer and work out feasibility of joining industrial waste water from different clusters of industries with this main sewer line. Rajasthan State Industrial Development and Investment Corporation (RIICO) was also directed to work out the cost of CETP for each cluster along with the cost of CETP proposed to be installed in case the existing units are shifted. Finally, Chief

Town Planner, *Jaipur* was asked to furnish land use qualification map of the area along with his comments.

In compliance of above directions, District Collector Jaipur, submitted his report along with locational map, photocopy of which is annexed and marked as Annexure-3, Collector, *Jaipur*, in his report has identified 473 units located in 8 clusters. It has also been indicated in the report that CETP cannot be installed at Diggi Malpura Road, Shikarpura and Sanganer Kasba whereas for other areas, land has been identified with an available area ranging from Order 43 to 1.83 hectares.

Rajasthan Urban Infrastructure Development Project has submitted its report indicating that the sewage treatment plant proposed to be installed at Delawas will have the capacity of 62.5 MLD and 10% of this capacity can be considered by them in the form of industrial waste to join sewerage system passing through Sanganer. They have, however, suggested that it would be better if the industrial effluent and domestic sewage is kept separate as different type of treatment is required. However, if the industrial waste is to be joined to the sewage system, primary chemical treatment should be provided first to take care of chemical pollutants so that the partially treated waste water may join the sewerage systems and can further be treated in proposed sewage treatment plant at Delawas along with sewage. Photocopy of the report is annexed and marked as Annexure-4.

Chief Town Planner in his report has stated that location of such industrial units within the town and their inter-mingling with residence is not at all desirable. From his point of view industrial units may be shifted from the present site to the organized and developed industrial area for such industries. He has further pointed out that in case industrial units are not shifted for some reason, only those pockets where all plots are being used by such industrial units, may be considered for regularization subject to necessary effective pollution control measures being taken. Photocopy of the report is annexed and marked as Annexure-5.

Rajasthan State Industrial Development and Investment Corporation has submitted its report wherein two alternative sites have been proposed, one at Shikarpura and another at village Kesriawala near Muhana Road. It has been pointed out that the dyeing and printing units should not be allowed at

Shikarpura as this area has been reserved for Hi-tech industries. Further, at Village Kesriawala, it may perhaps not be feasible to shift the industries on this land due to acute shortage of ground water and there may be resistance from villagers against development of such industrial area. However, Rajasthan State Industrial Development and Investment Corporation has suggested to relocate these units at industrial area of Bagru-Chhitroli, which is located at 30 kms. from Sanganer Town. The two reports of Rajasthan State Industrial Development and Investment Corporation are annexed and marked as Annexure-6.

It was also brought to the notice of the committee that the Rajasthan Human Rights Commission has issued directions on 3-12-2002 in case No. 01/17/1590 to the effect that no waste water should be allowed to be discharged into Amanishah Nallah and the said Nallah should be kept free from pollution and should only be used for rain water flow and charging ground water with fresh water during rainy season. Photocopy of the order dated 3-12-2002 is annexed and marked Annexure-7.

The reports submitted by the various departments were examined by the members of the committee in the meeting held on 17-6-2003. The observations of the committee members during the site inspection of Sanganer were also discussed at length. The committee also considered whether a meeting should be held with the representatives of the Industry. It was felt that looking at the terms of reference given by the Hon'ble High Court a factual report only is required to be submitted. As such there was no need to hold a separate meeting with the representatives of the Industry, who could submit their case in the High Court directly. Minutes of the meeting held on 17-6-2003 is annexed and marked as Annexure-8.

The next meeting of the committee was held on 18-6-2003 to consider the draft report to be submitted to the High Court. Secretary, Industries was also present in the meeting and he was briefed about the proceedings held earlier when he could not be present as he was on leave. Secretary, Industries made a site inspection of the industrial units in Sanganer on 19-6-2003 after which the committee met again to finalise the report to be submitted to the High Court.

The report of the committee on the three reference points given by the High Court is as follows :-

(i) Whether or not the present site, where industry is located, is suitable :

The objective assessment of suitability of a site for any purpose can only be made on the basis of the land use plan. As per the report of the Chief Town Planner the location of industrial units within a town and their intermingling with residences is not at all desirable. The location of the industries as well as the land use purpose of the area on which those industries are located is indicated in the report submitted by the Chief Town Planner which is annexed as Annexure-9. Since none of the industries are situated in an area marked for industrial purposes, the committee was of the opinion that the present site of the industries was not suitable. Besides, industrial units located at *Jaipur Gate, Paliwal Garden, Khatri Nagar, Sanganer Town and Namdeo Colony* are discharging their waste water into the Amani Shah Nallah. Rajasthan State Human Rights Commission has passed an order on 3-12-2002 in case No. 01/17/1590 that no waste water should be allowed to be discharged into Amani Shah Nallah and the said Nallah should be kept free from pollution and can only be used for rain water to flow. In the light of the order of the Rajasthan Human Rights Commission according to which the waste/effluents even after treatment cannot be allowed to flow into the Amani Shah Nallah, the industries situated in the above mentioned locations cannot be continue to operate as there is no other outlet for discharge of waste water in these colonies. During the site inspection of the area the members of the committee also felt that the site where the industries are situated was not suitable.

(ii) Whether or not pollution can be controlled by setting up of Common Effluent Treatment Plant over the area in question :

After examining the report submitted by the Various departments the committee is of the view that it is technically feasible to control pollution by setting up properly designed common effluent treatment plants in the area in question.

There are around 473 industrial units engaged in dyeing, printing, bleaching and washing contributing around 10 MLD of waste water depending upon extent and nature of job undertaken by them.

This waste water contains Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), PH, Oil and Grease, Total Suspended Solids (TSS), Iron, Zinc, Copper, Chromium, Nickel etc. and thus has chemical toxicants as well as biological ox disable matter.

Since the waste water from these industries is primarily consisting of chemical toxicants and biological oxidants, the treatment required should preferably be of physico-chemical in nature followed by biological treatment. The unit processes involved in the treatment of waste water should generally consist of screen Chamber, grit removal chamber, equalization tank, flash mixture, clariflocculation tank, aeration tank, secondary settling tank, decanter or sludge drying beds, activated derbon and pressure stand filters, final treated water tank and Secured Landfill Facility (SLF) for disposal of chemical sludge.

It will, thus, be seen that adequate area (at least 2 acres) would be required to set up an effective treatment plant. The District Collector, in his report, has identified certain vacant land in different clusters where the industry is situate. However, the suitability of this land for setting up of a common effluent treatment plant can only be determined after a detailed technical survey. However, the fact still remains that even if a common effluent treatment plant is set up there would be a problem of the discharge of the treated water in view of the directions of the Human Rights Commission that there should be no discharge in Amani Shah Nallah.

(iii) What would be the cost of preventing pollution in the area and what would be the cost of preventing pollution in the industrial area set up by RIICO :

The cost of preventing pollution in the area would depend upon the amount of effluent discharged by the industrial units and the type of treatment plant to be set up. It is very difficult to estimate the volume of discharge by the industries located in Sanganer as most of them are doing job work and the amount of waste water generated varies from time to time. A rough survey done by the Rajasthan Pollution Control Board indicates that the waste water discharge was between 5290 KLD to 10,000 KLD. Since the units are located in different areas a minimum of two common effluent treatment plants would be required. The cost of the CETP would depend on the type of treatment envisaged. The CETP for primary treatment would treat the waste water up to the sewage standard whereas a CETP for primary and secondary treatment would treat the waste water up to stream standard. In the absence of a detailed survey report only a rough estimate of the expected cost could be worked out by the concerned departments. As per the rough estimate of the Rajasthan Pollution Control Board, the cost of setting up of common effluent treatment plants along with connecting drainage system would be approximately Rs. 10 crores. As per

the estimates projected by RUIDP the cost of minimum two CETPs for only primary treatment would be around Rs. 270 lacs. The cost of effluent collection system would be around Rs. 290 lacs and the cost of sewer from CETP to the main sewage would be around Rs. 75 lacs. Thus, the total cost for setting up of CETPs for primary treatment and linking them with the sewerage system as per estimates of RUIDP would be around Rs. 6.35 crores apart from the cost of the sewage treatment plant which is Rs. 24 crores.

According to RIICO the cost of setting up a CETP in Bagru Chhitroli industrial area would be around Rs. 6.10 crores including expenditure on the CETP, conveyance system, disposal drains and development of Nallah.

After examining the various reports the committee is of the view that the cost of preventing pollution, if the industries continue in their present location would be marginally more than the cost in the industrial area set up by RIICO in Bagru-Chhitroli."

13. Thus, it is apparent that the committee has not found the present site to be suitable for the industry.

14. The learned counsel for the applicant association submitted that the committee has answered the reference wrongly with regard to the suitability of the area in question for location of the industry. We do not find any force in the argument of the learned counsel for the applicant. It needs to be noted that the industrial units engaged in dyeing and printing, bleaching and washing of cloth, are situate in eight different clusters spread over a large area, including agricultural lands. This is evident from Index Map, which has been annexed to the report. Locations of industrial units in some of the clusters are situate in residential areas. According to the Chief Town Planner, location of industrial units within a town and in residential areas is not desirable. Apart from the opinion of the Chief Town Planner, industrial units cannot be allowed to operate in residential areas, as they are health hazards for the residents in several ways. It cannot be denied that these units have been causing pollution by emitting effluents. Location of the industrial units leads to increased traffic density in the area, which causes noise pollution. The whole environment and ambience of the residential area is adversely affected. During the site visit, the committee found insanitary and unhygienic condition prevailing in the whole area. The residents cannot be expected to lead a healthy life in an area, which is infested with filth

and squalor. We note with dismay and anguish, how the industry has come up in an area, which is not meant for the purpose for which it is being used. The land use of the area does not permit it to be used for industrial purposes. The State ought not to have allowed the misuse of the land. Such abominable violation should not have been tolerated by the concerned authorities.

15. It was pointed out to the committee by RIICO that since industries are situated in different clusters in Sanganer Town, it would not be possible to have one CETP for all the industries and at least 2-3 CEPTs would be required to be set up to treat the effluent discharged by the industries. It was also pointed that in case it was felt necessary to retain industries near Sanganer, RIICO would have to acquire land near Shikarpura but that would be a very long drawn out process.

16. The views of the Chief Town Planner with regard to the status of units in Khatri Nagar and Paliwal Garden which were placed before the committee need to be mentioned. The views as expressed in writing by the Chief Town Planner, are as follows :-

"Status of units in *Khatri Nagar, Jaipur Gate and Paliwal Garden* :

(i) Khatri Nagar : A cluster of dyeing printing industries is existing near the Railway Crossing in Sanganer Town known as Khatri Nagar. The location may be seen in Annexure - (A) and (B) which is abutting Amani Shah Nallah. The roads in the colony are having right of way ranging from 25 ft. to 30 ft. with one major road having 40 ft. right of way. All the roads are having number of encroachments in the form of platforms, entrance steps, water tanks etc. which reduce the effective width of road. Electric and telephone lines have also been erected. The roads are insufficient to cater to the requirements of industrial traffic. The construction in the plots have been made with almost zero set-backs on most of the sides. These conditions may not allow fire fighting and ambulance services to operate efficiently. The roads have got open drains which are mostly damaged and are carrying the untreated effluent which is ultimately getting disposed in open areas of Amanishah Nallah. These drains have also been blocked at several places with rags, plastic bags, jute bags and solid waste generated from the industries.

(ii) Cluster of Industries near Jaipur Gate:

Another cluster of dyeing and printing industry is known as Jaipur Gate and its location may be seen in Annexures (A) and (B). This industrial cluster also adjoins residential colonies. The roads in this area are about 30 ft. wide while one road is 60 ft. wide. The roads are paved and have open drainage system. The open drains carry untreated effluent plastic bags/rags etc. which block the free flow of the effluent. The access to the area is from the main road of the town which is catering to the main traffic of Sanganer Town. Most of the construction has been made with either zero or little set-backs on all the sides. The roads are insufficient to cater to the industrial requirement.

(iii) Paliwal Garden :

This areas is located adjoining Jaipur Gate area. There are number of hand made paper units in this block in addition to few textile units. Few residential houses are also sandwiched in this area.

The total number of industrial units in all the three locations, i.e., Khatri Nagar, Jaipur Gate and Paliwal Garden is 107 nos and land use for these areas have been shown as residential in the Master Plan of Jaipur.

(iv) Status of units sat Muhana Road :

A cluster of dyeing printing industries is existing on Muhana Road from the take off point at Diggi Malpura road junction. The location may be seen in Annexures (A) and (C). This is abutting the Gullar Dam Canal. Several approaches have been taken from Muhana road through culverts on this canal into the industrial cluster. These roads are almost kuchha and are having right of way from 20 to 30 ft. with few roads of 40 ft. There is no inter- connectivity between different blocks of the cluster and the roads have dead end at most of the places thereby one has to come on the main road and then go to another block. All the roads are having number of encroachments in the form of platforms, entry steps, water tanks etc. which reduces the effective width of road. Electric and telephone lines have also been erected. The roads have been developed in a haphazard manner with creation of poor road junctions. The construction in the plots have been made with almost zero set-backs on most of the sides. These conditions may not allow fire-fighting and ambulance services to operate efficiently. The total number of units located in this area is 133 nos. One CETP was constructed at this location by the industrial units of this area, but this has not come into operation.

17. From the aforesaid report, the following points *inter alia* emerge :

- (i) The roads are insufficient to cater to the requirements of industrial traffic.
- (ii) The construction in the plots have been made with almost zero set-backs on most of the sides.
- (iii) It may be difficult for the fire fighting and ambulance services to operate efficiently.
- (iv) Some of the locations, where industries have been set up, are basically residential areas. In certain areas, roads are developed in a haphazard manner. There is lack of inter-connectivity between different blocks and clusters and roads have dead ends.

18. Reference also needs to be made to a report compiled by the Rajasthan State Pollution Control Board, *Jaipur* and Department of Civil Engineering Malviya Regional Engineering College, Jaipur (RSPC), in March, 1997, captioned "Ground Water Monitoring Assessment. Thereof At Sanganer and Surrounding Areas of *Jaipur City*."

19. In Chapter 2 of the report, it has been emphasized that the abundant growth of the textile printing industry has caused water and soil pollution in the adjacent areas, on account of emission of effluents into the water channels. The report also alludes to the fact that the waste water released by the units causes adverse effect on agricultural products, animals and the health of the people living in Sanganer, which includes a number of villages. The report refers to the pollution of Amanishah Nallah by the release of large amount of untreated waste water by the units during the course of printing and dyeing process. The report, while referring to Amanishah Nallah, refers to it as an ephemeral stream of importance flowing past the Sanganer Town. The release of waste water by the units not only flows into the Amanishah Nallah but also fills the depressions and makes permanent roadside pools in the area of Sanganer. One such pool is visible in the following photograph which is on the cover-page of the report of the Rajasthan State Pollution Control Board, Jaipur and Department of Civil Engineering Malviya Regional Engineering College, Jaipur :

In the report aforesaid of RSPC, it is pointed out that in Sanganer Town, textile dyeing and printing industry uses dyes which contain metals such as

Alluminium (Al), Cu (Copper), Fe (Iron), Stornium (Sn), Chromium (Cr) etc. It has been highlighted in the report that the waste water being released by the units contains Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), PH, Oil and Grease, Total Suspended Solids (TSS), Fe, Zinc (Zn), Cu, Cr, Nickel (Ni) etc.

20. Thus, according to the report, the waste water contains both chemical toxicants as well as biological oxidisable matter. It is pointed out that the industries discharge these effluents, without any treatment, into the nearby Nallah and from there these metals percolate to the ground water and contaminate it. The report makes a special reference to the presence of Cr in the water discharged by the units. It also lists the ill effects of Cr. At this stage, it may be necessary to extract the relevant part of the report :-

"Hexavalent chromium Cr⁺⁵ is highly poisonous to plants and human system. In plants it causes yellowing of leaves. In human beings it causes lung cancer, eye and skin irritation, affects central nervous system, liver and kidney damage, lung and respiratory tract effects."

21. The analysis of waste water discharged from units also shows presence of Lead (Pb) in drinking water. According to the report, it affects bone marrow, formation of hemoglobin, kidney, lungs etc. and it replaces calcium in bones. Children can experience neuropsychological problems, retardation etc.

22. As already noticed, the waste water contains copper (Cu) as well. According to this report, large concentration (2 mg/day) of copper acts as intestinal irritant leading to vomiting. The report of RSPC also reflects that presence of Cr, Pb, Fe and Magnesium (Mg) have crossed the permissible limits in drinking water. Presence of all the aforesaid metals in the ground water is harmful to the health of the citizens. The vegetables and crops grown by the use of waste water containing cocktail of the aforesaid metals and other impurities is posing grave danger to health of the inhabitants since they (vegetables and crops) imbibe and ingest toxins from the water. Consumption of such vegetables and crops can lead to a number of diseases. The situation needs to be remedied before it becomes too late.

23. From the material on record and from all angles, it appears to us that the committee appointed by us was right in coming to the conclusion that the present area where the industry is located, is not suitable. The site which has been proposed by RIICO appears to be suitable as water, electricity and other facilities are available in the area. The site proposed by RIICO is earmarked for industry and is not located in a

residential areas. Since the industry will not be dispersed and spread over different areas, it will be easier to manage the effluents being discharged from these industries and it would be possible to treat the same by setting up of one CETP on the site proposed by RIICO.

24. For years, the industrial units in Sanganer Town have been emitting untreated effluents and they have been allowed to pollute the water sources. Even when an opportunity is being provided to the industry to shift from the present location to the site, which has been developed by RIICO, there is resistance from the owners of the units. They should grab the opportunity, so that the industry can be run in a more organized and environment friendly manner.

25. While economic growth of the State is extremely important, at the same time, it must be compatible with ecology. In order to safeguard, protect and improve the environment, it is necessary to direct the shifting of the industries from the present site to an industrial area where proper arrangements for treating the effluents would be undertaken. The learned counsel for the applicants submitted that in case the industry is required to shift to another site lot of hardship in terms of dislocation and monetary losses, will be caused to their clients. They will have to spend huge amount of money to rehabilitate themselves at the new site. In the judgment and order dated 7-3-2003, we pointed out to the effect that the ecology and environment are of paramount importance and on account of monetary considerations, the ecology and environment cannot be given a back seat. This view finds support from the judgment of the Supreme Court in *M.C. Mehta v. Union of India*¹ wherein the Supreme Court held that the closure of industries may bring unemployment and loss of revenue to the State, but right to life, health and ecology must be given precedence. In the instant case, the industries have not been closed. They are being merely asked to shift to a proper location with a view to protect life and health of the citizens; to preserve ecology; and to boost sustainable development.

26. From the report of the Committee headed by the Chief Secretary, Government of Rajasthan, it appears that for printing and dyeing, no heavy machinery has been commissioned. According to the report the method employed for printing is conventional in nature involving very little investment in machines and fixtures. It has also been pointed out in the report that most of the workforce employed by the units do not belong to the State of Rajasthan, besides, they have been living in the premises of the industrial units. Therefore, there will not be any question of uprooting them from their houses.

27. Even from another angle, entrepreneurs who are operating from Sanganer and nearby villages, will not be losers. The present sites would remain as assets in their hands on shifting from the present locations. While shifting may cause some sort of dislocation and inconvenience to the owners of the industrial units, the ecology and environment will be saved and the latter must be given preference. Therefore, we reject the contentions and submissions of the entrepreneurs advanced against the direction contained in the judgment and order dated 7-3-2003 with regard to the shifting of the industry from the present site.

28. There is another aspect of the matter which requires consideration. By invoking the principle "polluter pays", pollution fine was levied on the printing and dyeing units vide judgment and order dated 7-3-2003. Each of the units was required to pay the pollution fine as per below :-

Turn over of Unit for the Period From 1-4-2001 to 31-3-2002 Amount of fine

Up to Rs. 1,00,000/- :	Rs. 20,000/-
Between 1,00,000 and 3,00,000:	Rs. 40,000/-
Between 3,00,000 and 10,00,000 :	Rs. 1,00,000/-
Between 10,00,000 and 50,00,000 :	Rs. 5,00,000/-
Between 50,00,000 and Rs. one crore and more:	Rs. 10,00,000/-

It was also directed that -

"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 units shall be sealed by the respondents."

29. It is submitted on behalf of the Association that the pollution fine is very steep as it will workout to be ranging between 20% and 50% of the turnover. According to the submission of the learned counsel for the applicants, where turnover of the unit holder is three lacs, he will have to pay Rs. 1,00,000/- as pollution fine and even in the case where the turnover is ten lacs, he will have to pay the same amount viz. Rs. 1,00,000/- . It was further pointed out that a person having a turnover of ten lacs and a person having a turnover of fifty lacs, will have to pay the same amount viz. five lacs. It was

highlighted by the learned counsel for the applicants that there cannot be any comparison between a person earning ten lacs and a person earning fifty lacs, but yet both of them will have to pay Rs. 5,00,000/- as pollution fine. According to him, this will create an unjust situation and persons having different turnovers will be required to pay the same amount of pollution fine. We find force in the submission of the learned counsel for the applicant.

30. In the circumstances, we consider it appropriate to vary the formula for determining the damages on the principle of "Polluter Pays" by directing that each of the industrial units shall pay to RIICO 15% of its turnover.

31. As a postscript and in order to clarify, we would like to point out that though we have used the word "pollution fine" in the judgment and order dated 7-3-2003, in essence and in actuality, it is in the nature of damages which the industrial units are required to pay for causing disturbance to the one of the basic environmental elements, namely water, which is so very necessary for existence of living creatures including human beings, animals, birds, flora and fauna. Any person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of the nature such as air, water, river sea and other elements of the nature, he not only violates the fundamental right guaranteed under Article 21 of the Constitution but also breaches the fundamental duty, to protect the environment under Article 51-A (g). Article 51-A (g) provides that it shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to show compassion for living creatures. The emission of untreated waste water by the industrial units is depriving the citizens of access to unpolluted ground water which is essential for their existence. Not only the ground water has been affected by the way the industrial units have been operating, but their working has also affected the quality of vegetables and crops which are grown in the area. The owners of the industrial units, unmindful of the environmental degradation have caused disturbance to the ecological balance for their self interest and their actions are hazardous to life within the meaning of Article 21 of the Constitution. For enforcing the rights under Article 21 of the Constitution and compelling the persons to discharge their fundamental duties under Article 51-A (g) of the Constitution, the courts exercising extraordinary jurisdiction can impose damages on the polluters for the restoration of the ecological balance and also for the victims who may have suffered due to intrusion upon the environment and ecology by the former. The direction given by us regarding payment of by the industrial units to RIICO will assist RIICO in constructing CETPs in order to prevent further damage to

the ground water and to arrest use of untreated water for growing crops and vegetables.

32. Accordingly, the judgment and order dated 7-3-2003 is modified to the extent indicated above. The application filed by the applicant-association is disposed of.

33. After having dealt with the application of the applicant-association, we proceed to consider the application of the State, being DB Civil Misc. Application No. 256/2003. In this application, it has been prayed as follows :-

"It is, therefore, most humbly prayed that paras 47 and 49 of the judgment dated 7-3-2003 may kindly be suitably clarified to the effect that the cost of CETPs shall be borne by the members of Sanganer Kapda Rangai and Chhappai Association and such CEPTs should be run by such association on the pattern on which they are being run in the industrial area set up by RIICO at Pali and Balotra."

34. The prayer of the State may not detain us as the cost of CETPs to be erected where the units will be shifted, will in all probability be met from the pollution fine which has been imposed on the industrial units. RIICO has to collect the pollution fine from the industries on the basis of the modified formula. In case there is any shortfall, it will be open to RIICO to file an appropriate application for orders. At present we do not find any need to entertain the application. Accordingly, the same is disposed of.

Order accordingly.

Cases Referred.

1. (1997) 3 SCC 715