

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 197 OF 2017

Vanashakti & Anr.

...Applicants

Versus

Municipal Corporation of Greater Mumbai & Ors.

...Respondents

COMPILATION OF RELEVANT JUDGMENTS ON BEHALF OF APPLICANTS

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Zaman Ali,

Advocate for the Applicants

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village site should be extended even than it was at the time when the notification was issued. This submission must also fail.

9. The other controversies sought to be raised by the appellant are factual in nature and we do not consider it necessary to go into the same.

10. In the result, the appeal fails and is dismissed with costs.

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(BEFORE E. S. VENKATARAMIAH AND K. N. SINGH, JJ.)

M. C. MEHTA (II) .. Petitioner ;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition No. 3727 of 1985†,
decided on January 12, 1988

Constitution of India — Articles 32, 21, 48-A and 51-A(g) — Ecology — Public interest litigation against Ganga water pollution — Standing of the petitioner not a riparian owner

Held :

In common law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river. But in the present case the petitioner is not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case, the petitioner is entitled to move the Supreme Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974. (Para 16)

M. C. Mehta v. Union of India, (1987) 4 SCC 463 and *Pride of Derby and Derbyshire Angling Association Ltd. v. British Celanese Ltd.*, 1953 Ch 149 : (1953) 1 All ER 179 (CA), referred to

Constitution of India — Articles 32, 21, 48-A and 51-A(g) — Public interest litigation against Ganga water pollution — Responsibilities of Municipal Corporations (Kanpur Nagar Mahapalika) — Directions issued to the Mahapalika — U. P. Nagar Mahapalika Adhiniyam, 1959,

†Under Article 32 of the Constitution of India

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Sections 114(iii), (vii) & (viii), 251, 388, 396, 397, 398, 405 and 407 — Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), Sections 2(e), (g), (gg), (j), (k), 3, 4, 16, 17, 20, 21, 23, 24, 33 — Environment (Protection) Act, 1986, Section 17

Held :

Although Parliament and the State legislature have enacted laws imposing duties on the Central and States Boards constituted under the Water (Prevention and Control of Pollution) Act and the municipalities under the U. P. Nagar Mahapalika Adhiniyam for prevention and control of pollution of water, many of those provisions have just remained on paper without any adequate action being taken pursuant thereto. On account of the failure to obey the statutory duties for several years the water in the river Ganga at Kanpur has become so much polluted that it can no longer be used by the people either for drinking or for bathing. The Nagar Mahapalika of Kanpur has to bear the major responsibility for the pollution of the river near Kanpur city. (Paras 7 and 16)

Accordingly, the Court directed the Kanpur Nagar Mahapalika to submit its proposal for effective prevention and control of water pollution within 6 months to the Board constituted under the Water Act. The Court also directed the Mahapalika to get the dairies shifted to a place outside the city or arrange for removal of wastes accumulated at the dairies, to lay sewerage line where the same is not constructed as also to increase the size of the existing sewers in labour colonies, to construct public latrines and urinals for use of poor people free of charge, to ensure with the help of police that dead bodies or half burnt bodies are not thrown into the Ganga and to take action against the industries responsible for the pollution. Licences to new industries should not be granted unless adequate provision has been made for the treatment of trade effluent flowing out of the factories. (Paras 17 to 19, 22 and 23)

The above directions would apply mutatis mutandis to all other Mahapalikas and Municipalities which have jurisdiction over the areas through which the river Ganga flows. (Para 26)

Constitution of India — Articles 32, 21, 48-A and 51-A(g) — Public interest litigation against Ganga water pollution — High Courts directed ordinarily not to grant stay of criminal proceedings initiated by Board under Water (Prevention and Control of Pollution) Act against industrialists responsible for causing such pollution on their applications under Section 482 CrPC — Criminal Procedure Code, 1973, Section 482 — Water (Prevention and Control of Pollution) Act, 1974

Since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such an order of stay is made in any extraordinary case the High Courts should dispose of the case within a short period. The High Courts were, therefore, to take up for hearing all the cases where such orders have been issued under

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Section 482 of the Code of Criminal Procedure, 1973 staying prosecutions under the Water Act within two months from the date of institution of such case. (Para 21)

Constitution of India — Articles 32, 51-A(g), 21 and 48-A — Public interest litigation against Ganga water pollution — Central Government has duty to introduce compulsory teaching of lessons on protection and improvement of natural environment in schools

Held :

Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under Article 51-A(g), it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes. The Central Government shall get textbooks written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India. (Para 24)

In order to rouse amongst the people the consciousness of cleanliness of environment the Government of India and the governments of the States and of the Union Territories may also consider the desirability of organising 'keep the city clean' week (Nagar Nirmalikaarana Saptaha), 'keep the town clean' week (Pura Nirmalikaarana Saptaha) and 'keep the village clean' week (Grama Nirmalikaarana Saptaha) in every city, town and village throughout India at least once a year. (Para 25)

[The case against the Nagar Mahapalikas and Municipalities in the State of Uttar Pradesh shall stand adjourned by six months. Within that time all the Nagar Mahapalikas and Municipalities in the State of Uttar Pradesh through whose areas the river Ganga flows shall be affidavits in the Court explaining the various steps they have taken for the prevention of pollution of the water in the river Ganga in the light of this judgment. The case as against the several industries in the State of Uttar Pradesh which are located on the banks of the river Ganga will be taken up for hearing on February 9, 1988.] (Para 26)

R-M/8550/CR

Advocates who appeared in this case :

Petitioner-in-person ;

B. Datta, Additional Solicitor General, R. K. Jain, Vinod Bobde, R. N. Trivedi, K. N. Bhat, Tapash Ray and B. R. L. Iyengar, Senior Advocates (R. P. Singh, R. P. Kapur, Ravinder Narain, S. Sukumaran

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C. B. Singh, S. K. Dhingra, P. K. Jain, D. N. Goburdhan, Arvind Kumar, Ms Laxmi Arvind, Vineet Kumar, Deepak K. Thakur, T. V. S. N. Chari, Vrinda Grover, Badri Nath, Rakesh Khanna, Mukul Mudgal, A. K. Ghose, M. M. Gangadeb, Probir Mitra, Sushil Kumar Jain, Suryakant, Pappy T. Mathews, Mrs Mamta Kachhawaha, Mrs Shobha Dikshit, G. S. Misra, S. R. Srivastava, Parijat Sinha, R. Mohan, Ms Bina Gupta, Ranjit Kumar, Krishna Kumar, R. C. Verma, Arun Minocha, Sri Narain, E. C. Aggarwala, S. R. Setia, H. K. Puri, T. S. Rana, Pramod Swarup, Ashok Grover, S. Markandeya, Swarup, Ms Lalita Kohli, K. C. Dua, Rajbirbal, R. A. Gupta and Ms A. Subashini, Advocates, with them), for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J.—By our judgment dated September 22, 1987 in *M. C. Mehta v. Union of India*¹ we issued certain directions with regard to the industries in which the business of tanning was being carried on at Jajmau near Kanpur on the banks of the river Ganga. On that occasion we directed that the case in respect of the municipal bodies and the industries which were responsible for the pollution of the water in the river Ganga would be taken up for consideration on the next date of hearing. Accordingly, we took up for consideration first the case against the municipal bodies. Since it was found that Kanpur was one of the biggest cities on the banks of the river Ganga, we took up for consideration the case in respect of the Kanpur Nagar Mahapalika.

2. The Kanpur Nagar Mahapalika is established under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as 'the Adhiniyam'). Sub-section (3) of Section 1 of the Adhiniyam, which is to be found in its first chapter, provides that the first chapter of the Adhiniyam shall come into operation at once and the remaining provisions in relation to a city shall come into operation from such date as the State Government may by notification in the official gazette appoint in that behalf and different dates may be appointed for different provisions. In exercise of the powers conferred by the said sub-section and in continuation of a notification dated September 28, 1959 bringing into operation Sections 579 and 580 of the Adhiniyam, the Governor of Uttar Pradesh was pleased to issue a notification dated January 18, 1960 appointing the first day of February, 1960 as the date on which the remaining provisions of the Adhiniyam and the three Schedules, appended thereto, would come into operation in relation to the cities of Kanpur, Allahabad, Varanasi, Agra and Lucknow, as constituted under Section 3 of the Adhiniyam. The duties and powers of the Mahapalika and Maha-

¹ (1987) 4 SCC 463

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palika authorities are set out in Chapter V of the Adhiniyam. Clauses (iii), (vii) and (viii) of Section 114 of the Adhiniyam, which incorporates the obligatory duties of the Mahapalika, read as follows :

114. *Obligatory duties of the Mahapalika.*—It shall be incumbent on the Mahapalika to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely,—

- (iii) the collection and removal of sewage, offensive matter and rubbish and treatment and disposal thereof including establishing and maintaining farm or factory ;
- (vii) the management and maintenance of all Mahapalika water-works and the construction or acquisition of new works necessary for a sufficient supply of water for public and private purposes ;
- (viii) guarding from pollution water used for human consumption and preventing polluted water from being so used ;

3. Sections 251, 388, 396, 397, 398, 405 and 407 of the Adhiniyam read as follows :

251. *Provision of means for disposal of sewage.*—The Mukhya Nagar Adhikari may, for the purpose of receiving, treating, storing, disinfecting, distributing or otherwise disposing of sewage, construct any work within or without the city or purchase or take on lease any land, building, engine, material or apparatus either within or without the city or enter into any arrangement with any person for any period not exceeding twenty years for the removal or disposal of sewage within or without the city.

388. *Provision may be made by Mukhya Nagar Adhikari for collection, etc., of excrementitious and polluted matter.*—

(1) The Mukhya Nagar Adhikari may give public notice of his intention to provide, in such portion of the city as he may specify, for the collection, removal and disposal by Mahapalika agency, of all excrementitious and polluted matter from privies, urinals, and cess-pools, and thereupon it shall be the duty of the Mukhya Nagar Adhikari to take measures for the daily collection, removal and disposal of such matter from all premises situated in such portion of the city.

(2) In any such portion as is mentioned in sub-section (1) and in any premises, wherever situated, in which there is a water-closet or privy connected with a Mahapalika drain, it shall not be lawful, except with the written permission of the Mukhya Nagar

Adhikari, for any person who is not employed by or on behalf of the Mukhya Nagar Adhikari to discharge any of the duties of scavengers.

396. *Removal of carcasses of dead animals.*—(1) It shall be the duty of the Mukhya Nagar Adhikari to provide for the removal of the carcasses of all animals dying within the city.

(2) The occupier of any premises in or upon which any animal shall die or in or upon which the carcass of any animal shall be found, and the person having the charge of any animal which dies in the street or in any open place, shall, within three hours after the death of such animal or, if the death occurs at night within three hours after sunrise, report the death of such animal at the nearest office of the Mahapalika health department.

(3) For every carcass removed by Mahapalika agency, whether from any private premises or from public street or place, a fee for the removal of such amount as shall be fixed by the Mukhya Nagar Adhikari shall be paid by the owner of the animal, or, if the owner is not known, by the occupier of the premises in or upon which, or by the person in whose charge, the said animal died.

397. *Prohibition of cultivation, use of manure, or irrigation injurious to health.*—If the Director of Medical and Health Services or the Civil Surgeon or the Nagar Swasthya Adhikari certifies that the cultivation of any description of crops or the use of any kind of manure or the irrigation of land in any specified manner—

- (a) in a place within the limits of a city is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or
- (b) in a place within or beyond the limits of a city is likely to contaminate the water-supply of such city or otherwise render it unfit for drinking purposes,

the Mukhya Nagar Adhikari may by public notice prohibit the cultivation of such crop, the use of such manure or the use of the method of irrigation so reported to be injurious, or impose such conditions with respect thereto as may prevent the injury or contamination :

Provided that when, on any land in respect of which such notice is issued, the act prohibited has been practised in the ordinary course of husbandry for the five successive years next preceding the date of prohibition, compensation shall be paid from the Maha-

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palika Fund to all persons interested therein for damage caused to them by such prohibition.

398. *Power to require owners to clear away noxious vegetation.*—The Mukhya Nagar Adhikari may, by notice, require the owner or occupier of any land to clear away and remove any vegetation or undergrowth which may be injurious to health or offensive to the neighbourhood.

405. *Power to require removal of nuisance arising from tanks, etc.*—The Mukhya Nagar Adhikari may by notice require the owner or occupier of any land or building to cleanse, repair, cover, fill up or drain off a private well, tank, reservoir, pool, depression or excavation therein which may appear to the Mukhya Nagar Adhikari to be injurious to health or offensive to the neighbourhood :

Provided that the owner or occupier may require the Mukhya Nagar Adhikari to acquire at the expense of the Mahapalika or otherwise provide, any land or rights in land necessary for the purpose of effecting drainage ordered under this section.

407. *Any place may at any time be inspected for purpose of preventing spread of dangerous disease.*—The Mukhya Nagar Adhikari may at any time, by day or by night, without notice or after giving such notice of his intention as shall in the circumstances, appear to him to be reasonable, inspect any place in which any dangerous disease is reputed or suspected to exist, and take such measures as he shall think fit to prevent the spread of the said disease beyond such place.

4. The above provisions deal with the specific duties of the Nagar Mahapalika or the Mukhya Nagar Adhikari appointed under the Adhinyam with regard to the disposal of sewage and protection of the environment in or around the city to which the Adhinyam applies. There are almost similar provisions in Sections 7, 189, 191 and other provisions of the Uttar Pradesh Municipalities Act, 1916 which applies to the smaller municipal bodies. The Uttar Pradesh Water Supply and Sewerage Act, 1975 imposes statutory duties on the authorities mentioned therein regarding the provision of water supply to the cities and towns and construction of sewerage systems in them. The perusal of these provisions in the laws governing the local bodies shows that the Nagar Mahapalikas and the Municipal Boards are primarily responsible for the maintenance of cleanliness in the areas under their jurisdiction and the protection of their environment. We have, in the judgment delivered by us on September 22, 1987, briefly referred to the Water (Prevention and Control of Pollution) Act, 1974 (Act 6

of 1974) (hereinafter referred to as 'the Water Act') in which provisions have been made for the establishment of the Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. In the Water Act the expressions 'pollution', 'sewage effluent', 'sewer', 'stream' and 'trade effluent' are defined as follows :

2. *Definitions.*—In this Act, unless the context otherwise requires,—

- * * *
- (e) 'pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms ;
- * * *
- (g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains ;
- (gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent ;
- * * *
- (j) 'stream' includes—
- (i) river ;
 - (ii) water course (whether flowing or for the time being dry) ;
 - (iii) inland water (whether natural or artificial) ;
 - (iv) subterranean waters ;
 - (v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the official gazette, specify in this behalf ;
- (k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage.

5. Sections 3 and 4 of the Water Act provide for the constitution of the Central Board and State Boards respectively. A State Board has been constituted under Section 4 of the Water Act in the State of Uttar Pradesh. Section 16 of the Water Act sets out the functions of the Central Board and Section 17 of the Water Act lays down the functions of the State Board. The functions of the Central Board are primarily advisory and supervisory in character. The Central Board is also required to advise the Central Government on any matter concerning the prevention and control of water pollution and to co-ordinate the activities of the State Boards. The Central Board is also required to provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution. The functions of the State Board are more comprehensive. In addition to advising the State Government on any matter concerning the prevention, control or abatement of water pollution, the State Board is required among other things (i) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof, (ii) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof; (iii) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution; (iv) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents; (v) to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by the Water Act; (vi) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution; and (vii) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents. The State Board has been given certain executive powers to implement the provisions of the Water Act. Sections 20, 21 and 23 of the Water Act confer power on the State Board to obtain information necessary for the implementation of the provisions of the Water Act, to take samples of effluents and to analyse them and to follow the procedure prescribed in connection therewith

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and the power of entry and inspection for the purpose of enforcing the provisions of the Water Act. Section 24 of the Water Act prohibits the use of stream or well for disposal of polluting matters etc. contrary to the provisions incorporated in that section. Section 32 of the Water Act confers the power on the State Board to take certain emergency measures in case of pollution of stream or well. Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal of any matter therein or of any likely disposal of any matter therein, or otherwise, the Board may under Section 33 of the Water Act make an application to a court not inferior to that of a Presidency Magistrate or a Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.

6. The Environment (Protection) Act, 1986, which has also been referred to in our earlier judgment, also contains certain provisions relating to the control, prevention and abatement of pollution of water and one significant provision in that Act is what is contained in Section 17 thereof, which provides that where an offence under that Act is committed by any department of government, the Head of that department shall be deemed to be guilty of the offence and is liable to be punished.

7. It is unfortunate that although Parliament and the State legislature have enacted the aforesaid laws imposing duties on the Central and State Boards and the municipalities for prevention and control of pollution of water, many of those provisions have just remained on paper without any adequate action being taken pursuant thereto. After the above petition was filed and notice was sent to the Uttar Pradesh State Board constituted under the Water Act, an affidavit has been filed before this Court by Dr G. N. Misra, Scientific Officer of the U. P. Pollution Control Board setting out the information which the Board was able to collect regarding the measures taken by the several local bodies and also by the U. P. Pollution Control Board in order to prevent the pollution of the water flowing in the river Ganga. A copy of the report relating to the inspection made at Kanpur on November 23, 1987/November 24, 1987 by Shri Tansar Ullah Khan, Assistant Environmental Engineer and Shri A. K. Tiwari, Junior Engineer enclosed to the counter-affidavit as Ex. K-5 reads thus :

The inspection made on November 23, 1987/November 24, 1987 along with Sri A. K. Tiwari, Junior Engineer. Following are the facts observed at the time of inspection.

- (1) Kanpur town is situated on the southern bank of river Ganges.

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- (2) The present population of the town is approximately 20 lakhs.
- (3) The city is covered with piped water supply.
- (4) The city has developed between river Ganges on the north side and river Pandu on the south side. G. T. Road divides the city into two halves.

In the north side most of the area is covered by sewerage system and the sullage/sewage is discharged without treatment into river Ganges through 17 nalas including sewerage by-pass channel at Jajmau.

In the south side there is no sewerage system and the sewage/sullage are discharged without treatment into river Pandu through 5 nalas. River Pandu joins river Ganges near Fatehpur (sketch enclosed).

- (5) The Kanpur Nagar Mahapalika has not yet submitted any proposal of sewage treatment works to the Board.
- (6) Mr Ikramur Rahman, A.E. Nagar Mahapalika told the Kanpur town is covered under Ganga Action Plan and following are the proposals—

(A) *U. P. Jal Nigam*

- (1) Re-modelling of sewage pumping station at Jajmau and improvement to sewage farm.
- (2) Nala Tapping.
- (3) Sewage Treatment Plant.

(B) *Kanpur Jal Sansthan*

- (1) Cleaning of Trunk and main sewers.

(C) *Integrated Environmental and Sanitary Engineer project is being executed under the Dutch Assistance in Jajmau area*

- (1) Crash Programme (is to remove deficiencies in the existing sanitary facilities).
- (2) Laying of industrial sewer.
- (3) U. A. S. B. Sewage Treatment Plant.

Sd/-
(A. K. Tiwari)
J.E.

Sd/-
(Tanzar Ullah Khan)
Asstt. Environmental Engineer.

8. Appendix A/1 to 'An Action Plan for Prevention of Pollution of the Ganga' gives the following particulars relating to the quantity

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of sewerage generated in the city of Kanpur which is discharged into the river Ganga and other relevant matters :

KANPUR

Population in 1981	Estimated water supply in 1981	Estimated sewage generated (70 per cent of the water supply to the city)	Treatment
16.39 lakh	392.14 million litres a day	274.40 million litres a day	Nil

9. It is thus seen that 274.50 million litres a day of sewage water is being discharged into the river Ganga from the city of Kanpur, which is the highest in the State of Uttar Pradesh and next only to the city of Calcutta which discharges 580.17 million litres a day of sewage water into the river Ganga. Para 4 of the affidavit filed by Shri Jai Shanker Tewari, Executive Engineer of Kanpur Nagar Mahapalika reads thus :

(4) That the pollution in river Ganga from Kanpur is occurring because of following reasons :

- (i) About 16 nalas collecting sullage water, sewage, textile waste, power plant waste and tannery effluents used to be discharged without any treatment into the river. However some nalas have been trapped now.
- (ii) The dairies located in the city have a cattle population of about 80,000. The dung, fodder waste and other refuse from this cattle population is quantitatively more than the sullage from the city of human population of over 20 lakhs. All this finds its way into the sewerage system and the nalas in the rainy season. It has also totally choked many branches of sewers and trunk sewers resulting in the overflow of the system.
- (iii) The night soil collected from the unsewered areas of the city and thrown into the nalas.
- (iv) There are more than 80 tanneries in Jajmau whose effluent used to be directly discharged into the river.
- (v) The total water supply in Kanpur is about 55 million gallons per day. After use major part of it goes down the drains, nalas and sewers ; sewage is taken to Jajmau sewage pumping station and a part of it is being supplied to sewage farms after diluting it with raw Ganges water and remaining part is discharged into the river.
- (vi) Dhobi ghats.
- (vii) Defecation by economically weaker sections.

10. The affidavit further states that the U. P. Jal Nigam, the U. P. Water Pollution Control Board, the National Environmental Engineering Research Institute, the Central Leather Research Institute, the Kanpur Nagar Mahapalika, the Kanpur Development Authority and the Kanpur Jal Sansthan have started taking action to minimise the pollution of the river Ganga. It is also stated therein that the financial assistance is being provided by the Central Ganga Authority through Ganga Project Directorate, State Government, the World Bank, the Dutch Government etc. for implementing the said measures. The said affidavit gives information about the several works undertaken at Kanpur for minimising the pollution of the river Ganga. It also states that Rs 493.63 lakhs had been spent on those works between the years 1985 and 1987 and that the total allocation of funds by the Central Ganga Authority for Kanpur is Rs 3694.94 lakhs and that up to the end of the current financial year it is proposed to spend Rs 785.58 lakhs (1985 to 1987-88) towards various schemes to be completed under Ganga Action Plan. The affidavit points out that in Kanpur city sewer cleaning has never been done systematically and in a planned way except that some sewers were cleaned by the U. P. Jal Nigam around 1970. The main reasons for malfunctioning and choking of the city sewerage, according to the affidavit, are (i) throwing or discharging of solids, clothes, plastics, metals etc. into the sewerage system; (ii) throwing of cow dung from dairies which are located in every part of the city which consists of about 80,000 cattle; (iii) laying of undersized sewers specially in labour colonies; (iv) throwing of solid wastes and *malba* from construction of buildings into sewers through manholes; (v) non-availability of mechanical equipment for sewer cleaning works; and (vi) shortage of funds for proper maintenance. It is asserted that the discharge of untreated effluents into the river Ganga will be stopped up to 80 per cent by March 1988.

11. Shri M. C. Mehta, the petitioner herein, drew our attention to the Progress Report of the Ganga Action Plan (July 1986 — January 1987) prepared by the Industrial Toxicology Research Centre, Council of Scientific and Industrial Research. At page 20 of the said report the details of the analysis of the Ganga water samples collected during August 1986 to January 1987 from Uttar Pradesh region are furnished. That report shows that the pollution of the water in the river Ganga is of the highest degree at Kanpur. The Ganga water samples taken at Kanpur show that the water in the river Ganga at Kanpur consisted of 29.200 units (mg/ml) of iron in the month of August 1986 when the ISI limit for river water is 0.3 and 0.900 (mg/ml) of manganese whereas the WHO limit of manganese for drinking water is 0.05. The Progress Report for the period February 1987-June 1987 of Microlevel Intensive Monitoring of Ganga under

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Ganga Action Plan describes the samples of the water taken from the river Ganga at Kanpur thus :

BOD (Bio Oxygen Demand) values are found to be higher than prescribed values of ISI. COD (Chemical Oxygen Demand) values are also found to be higher. These values clearly indicate that *river water is not fit for drinking, fishing and bathing purposes.*

Table II further shows that Total Coliform and Fecal Coliform bacteria are always found very high. This is due to disposal of large quantity of untreated municipal waste into river Ganga. These high values of bacteria indicate that *water is not fit for drinking, bathing and fishing purpose.*

To improve quality of water in Ganga, all nullahs should be trapped immediately and raw water should be treated conventionally at Water Works and disinfected by chlorination.

(emphasis ours)

12. In the concluding part of the said Progress Report it is stated thus :

The Ganga is grossly polluted at Kanpur. All nullahs are discharging the polluted waste into river Ganga. But Jajmau by pass channel, Sismau, Muir Mill, Golf Club and Gupta Ghat nullahs are discharging huge quantities of polluted waste water. To improve the water quality of Ganga all major nullas should be diverted and treated. Combined treatment should be provided for Jajmau tanneries. Effluent treatment plants should be installed by all major polluting industries.

13. It is needless to say that in the tropical developing countries a large amount of misery, sickness and death due to infectious diseases arises out of water supplies. In Lall's *Commentaries on Water and Air Pollution Laws* (2nd Edition) at pages 331 and 333 it is observed thus :

In the tropics, we cannot safely take such a limited view. Such water-borne diseases as malaria, schistosomiasis, guinea worm and yellow fever are either terrible scourges of, or threats to, many tropical populations. The hazards from bad water are thus much greater. Poverty is much more serious for many tropical areas ; in the rural areas — where most people live — and around the edges of the cities, which are the fastest-growing communities, most people cannot afford a conventionally good water supply at present, and the choice in the short run may be between doing nothing and providing somewhat improved supply. If an ideal water system is not possible, there are options as to what needs should be met by the partial improvements. To make the right

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decisions we need again the broad picture of water-related diseases. So, because of these two tropical characteristics — warmth and poverty — a wider view than in temperate lands is necessary. (p. 331)

* * *

Water-borne diseases — The classical water-borne diseases are due to highly infective organisms where only rather few are needed to infect someone, relative to the levels of pollution that readily occur. The two chief ones have a high mortality if untreated and are diseases which a community is very anxious to escape : typhoid and cholera. Both are relatively fragile organisms whose sole reservoir is man.

These two diseases occur most dramatically as the 'common source of outbreak' where a community water supply gets contaminated by faeces from a person suffering from, or carrying, one of the infections. Many people drink the water and a number of these fall ill from the infection at about the same time.

Typhoid is the most cosmopolitan of the classical water-borne infections. In man it produces a severe high fever with generated systemic, more than intestinal, symptoms. The bacteria are ingested and very few are sufficient to infect. The typhoid patient is usually too ill to go out polluting the water and is not infective prior to falling sick. However, a small proportion of those who recover clinically continue to pass typhoid bacteria in their faeces for months or years ; these carriers are the source of water-borne infections. Gallstones predispose to the carrier state as the bacteria persist in the inflamed gall bladder. In the tropics, lesions of *schistosoma haematobium* in the bladder also act as nide of infection, producing urinary typhoid carriers, whilst rectal schistosomiasis combined with typhoid leads to a persistent severe fever lasting many months. Typhoid bacteria survive well in water but do not multiply there.

Cholera is in some ways similar to typhoid, but its causative bacteria are more fragile and the clinical course is extremely dramatic. In classical cholera the onset of diarrhoea is sudden and its volume immense so that the untreated victim has a high probability of dying from dehydration within 24 hours or little more.

Several other infections are water-borne but are less important than typhoid and cholera. Leptospirosis, due to a spirochaete, has its reservoir in wild rodents which pollute the water. Leptospire can penetrate the skin as well as being ingested. They

produce jaundice and fever, called Weil's disease, which is severe but not common.

14. The amount of suffering which the members of the public are likely to undergo by using highly polluted water can be easily gathered from the above extract.

15. In the book entitled '*Water Pollution and Disposal of Waste Water on Land*' (1983) by U. N. Mahida, ISE (Retd) the problem of water pollution, the benefits of control of pollution and the urgency of the problem have been dealt with. At pages 1, 2, 4 and 5 of the said book it is observed thus :

As long as the human population was small and communities were scattered over large areas of land, the disposal of human wastes created no problems. People could defecate in areas surrounding villages and other habitations and leave it to nature to dispose of the waste by assimilation in the surrounding land and air. But as communities became more concentrated and villages and town grew, such a mode of disposal by natural agencies came to be replaced by organised disposal, though again through the agency of natural land and soil columns. The collection of human excreta and its disposal in earthen trenches was resorted to by many towns and adopted the basket privy system.

The introduction of a system of water-borne sewage created new problems in the disposal of human wastes, as now along with the earlier problem of getting rid of solid wastes, i. e., human excreta, the problem of the disposal of the water employed for the removal of human wastes had also to be faced. This was the origin of the problem of sewage disposal. At first the natural instinct was to channelize the sewage — the soiled water — to natural streams and rivers. For a time this mode of disposal was even considered quite efficacious. Such methods did not create difficulties as sewage discharges were small as compared to the stream flow. But with the increased discharge of progressively large quantities of sewage, polluted streams became a serious menace to public health.

Nature of the Problem

The introduction of modern water carriage systems transferred the sewage disposal from the streets and the surroundings of townships to neighbouring streams and rivers. This was the beginning of the problem of water pollution. It is ironic that man, from the earliest times, has tended to dispose of his wastes in the very streams and rivers from which most of his drinking

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water is drawn. Until quite recently this was not much of a problem, but with rapid urbanisation and industrialisation, the problem of the pollution of natural waters is reaching alarming proportions.

The most disturbing feature of this mode of disposal is that those who cause water pollution are seldom the people who suffer from it. Cities and industries discharge their untreated or only partially treated sewage and industrial waste waters into neighbouring streams and thereby remove waste matter from their own neighbourhood. But in doing so, they create intense pollution in streams and rivers and expose the downstream riparian population to dangerously unhygienic conditions. In addition to the withdrawal of water for downstream towns and cities, in many developing countries, numerous villages and riparian agricultural population generally rely on streams and rivers for drinking water for themselves and their cattle, for cooking, bathing, washing and numerous other uses. It is thus riparian population that specially needs protection from the growing menace of water pollution. (pages 1 and 2)

* * *

Benefits of Control

The benefits which result from the prevention of water pollution include a general improvement in the standard of health of the population, the possibility of restoring stream waters to their original beneficial state and rendering them fit as sources of water supply, and the maintenance of clean and healthy surroundings which would then offer attractive recreational facilities. Such measures would also restore fish and other aquatic life.

Apart from its menace to health, polluted water considerably reduces the water resources of a nation. Since the total amount of a country's utilisable water remains essentially the same and the demand for water is always increasing, schemes for the prevention of water pollution should, wherever possible, make the best use of treated waste waters either in industry or agriculture. Very often such processes may also result in other benefits in addition to mere reuse. The application of effluents on agricultural land supplies not only much needed water to growing crops but also manurial ingredients; the recovery of commercially valuable ingredients during the treatment of industrial waste waters often yields by-products which may to some extent offset the cost of treatment.

If appropriate financial credits could be calculated in respect

of these and other incidental benefits, it would be apparent that measures for the prevention of pollution are not unduly costly and are within the reach of all nations, advanced or developing. It is unfortunate that people are becoming more receptive to the idea of sharing the financial burden for lessening pollution. It is now recognised in most countries that it is the responsibility of industries to treat their trade wastes in such a way that they do not deteriorate the quality of the receiving waters, which otherwise would make the utilisation of such polluted waters very difficult or costly for downstream settlers.

Urgency of the Problem

The crucial question is not whether developing countries can afford such measures for the control of water pollution but it is whether they can afford to neglect them. The importance of the latter is emphasised by the fact that in the absence of adequate measures for the prevention or control of water pollution, a nation would eventually be confronted with far more onerous burdens to secure wholesome and adequate supplies of water for different purposes. If developing countries embark on suitable pollution prevention policies during the initial stages of their industrialisation, they can avoid the costly mistakes committed in the past by many developed countries. It is, however, unfortunate that the importance of controlling pollution is generally not realised until considerable damage has already been done. (pages 3 and 4)

16. In common law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river. In *Pride of Derby and Derbyshire Angling Association Ltd. v. British Celanese Ltd.*², the second defendant, the Derby Corporation admitted that it had polluted the plaintiff's fishery in the River Derwent by discharging into it insufficiently treated sewage, but claimed that by the Derby Corporation Act, 1901 it was under a duty to provide a sewerage system, and that the system which had accordingly been provided had become inadequate solely from the increase in the population of Derby. The Court of Appeal held that it was not inevitable that the work constructed under the Act of 1901 should cause a nuisance, and that in any case the Act on its true construction did not authorise the commission of a nuisance. The petitioner in the case before us is no

2. 1953 Ch 149 : (1953) 1 All ER 179 (CA)

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doubt not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case we are of the view that the petitioner is entitled to move this Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act. We have already set out the relevant provisions of the statute which impose those duties on the authorities concerned. On account of their failure to obey the statutory duties for several years the water in the river Ganga at Kanpur has become so much polluted that it can no longer be used by the people either for drinking or for bathing. The Nagar Mahapalika of Kanpur has to bear the major responsibility for the pollution of the river near Kanpur city.

17. It is no doubt true that the construction of certain works has been undertaken under the Ganga Action Plan at Kanpur in order to improve the sewerage system and to prevent pollution of the water in the river Ganga. But as we see from the affidavit filed on behalf of the authorities concerned in this case the works are going on at a snail's pace. We find from the affidavits filed on behalf of the Kanpur Nagar Mahapalika that certain target dates have been fixed for the completion of the works already undertaken. We expect the authorities concerned to complete those works within the target dates mentioned in the counter-affidavit and not to delay the completion of the works beyond those dates. It is, however, noticed that the Kanpur Nagar Mahapalika has not yet submitted its proposals for sewage treatment works to the State Board constituted under the Water Act. The Kanpur Nagar Mahapalika should submit its proposals to the State Board within six months from today.

18. It is seen that there are a large number of dairies in Kanpur in which there are about 80,000 cattle. The Kanpur Nagar Mahapalika should take action under the provisions of the Adhinyam or the relevant bye-laws made thereunder to prevent the pollution of the water in the river Ganga on account of the waste accumulated at the dairies. The Kanpur Nagar Mahapalika may either direct the dairies to be shifted to a place outside the city so that the waste accumulated at the dairies does not ultimately reach the river Ganga or in the alternative it may arrange for the removal of such waste by employing

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motor vehicles to transport such waste from the existing dairies in which event the owners of the dairies cannot claim any compensation. The Kanpur Nagar Mahapalika should immediately take action to prevent the collection of manure at private manure pits inside the city.

19. The Kanpur Nagar Mahapalika should take immediate steps to increase the size of the sewers in the labour colonies so that the sewage may be carried smoothly through the sewerage system. Wherever sewerage line is not yet constructed steps should be taken to lay it.

20. Immediate action should also be taken by the Kanpur Nagar Mahapalika to construct sufficient number of public latrines and urinals for the use of the poor people in order to prevent defecation by them on open land. The proposal to levy any charge for making use of such latrines and urinals shall be dropped as that would be a reason for the poor people not using the public latrines and urinals. The cost of maintenance of cleanliness of those latrines and urinals has to be borne by the Kanpur Nagar Mahapalika.

21. It is submitted before us that whenever the Board constituted under the Water Act initiates any proceedings to prosecute industrialists or other persons who pollute the water in the river Ganga, the persons accused of the offences immediately institute petitions under Section 482 of the Code of Criminal Procedure, 1973 in the High Court and obtain stay orders thus frustrating the attempt of the Board to enforce the provisions of the Water Act. They have not placed before us the facts of any particular case. We are, however, of the view that since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such an order of stay is made in any extraordinary case the High Courts should dispose of the case within a short period, say about two months, from the date of the institution of such case. We request the High Courts to take up for hearing all the cases where such orders have been issued under Section 482 of the Code of Criminal Procedure, 1973 staying prosecutions under the Water Act within two months. The counsel for the Board constituted under the Water Act shall furnish a list of such cases to the Registrar of the concerned High Court for appropriate action being taken thereon.

22. One other aspect to which our attention has been drawn is the practice of throwing corpses and semi-burnt corpses into the river Ganga. This practice should be immediately brought to an end. The co-operation of the people and police should be sought in enforcing this restriction. Steps shall be taken by the Kanpur Nagar Maha-

palika and the police authorities to ensure that dead body or half-burnt bodies are not thrown into the river Ganga.

23. Whenever applications for licences to establish new industries are made in future, such applications shall be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. Immediate action should be taken against the existing industries if they are found responsible for pollution of water.

24. Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the Constitution [vide clause (g) of Article 51-A of the Constitution] we are of the view that it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India.

25. In order to rouse amongst the people the consciousness of cleanliness of environment the Government of India and the governments of the States and of the Union Territories may consider the desirability of organising 'Keep the city clean' week (Nagar Nirmalika-rana Saptaha), 'Keep the town clean' week (Pura Nirmalika-rana Saptaha) and 'Keep the village clean' week (Grama Nirmalika-rana Saptaha) in every city, town and village throughout India at least once a year. During that week the entire city, town or village should be kept as far as possible clean, tidy and free from pollution of land, water and air. The organisation of the week should be entrusted to the Nagar Mahapalikas, Municipal Corporations, Town Municipalities, Village Panchayats or such other local authorities having jurisdiction over the area in question. If the authorities decide to organise such a week it may not be celebrated in the same week throughout India but may be staggered depending upon the convenience of the particular city, town or village. During that week all the citizens including the members of the executive, members of Parliament and the State legislatures, members of the judiciary may be requested to co-operate with the local authorities and to take part in the celebrations

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by rendering free personal service. This would surely create a national awareness of the problems faced by the people by the appalling all-round deterioration of the environment which we are witnessing today. We request the Ministry of Environment of the Government of India to give a serious consideration to the above suggestion.

26. What we have stated above applies mutatis mutandis to all other Mahapalikas and Municipalities which have jurisdiction over the areas through which the river Ganga flows. Copies of this judgment shall be sent to all such Nagar Mahapalikas and Municipalities. The case against the Nagar Mahapalikas and Municipalities in the State of Uttar Pradesh shall stand adjourned by six months. Within that time all the Nagar Mahapalikas and Municipalities in the State of Uttar Pradesh through whose areas the river Ganga flows shall file affidavits in this Court explaining the various steps they have taken for the prevention of pollution of the water in the river Ganga in the light of the above judgment. The case as against the several industries in the State of Uttar Pradesh which are located on the banks of the river Ganga will be taken up for hearing on February 9, 1988.

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(BEFORE SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.)

SATYA NARAIN PANDEY .. Appellant ;

Versus

STATE OF U. P. AND OTHERS .. Respondents.

Civil Appeal No. 1502 of 1987[†] and Special Leave
Petitions (Civil) Nos. 15030-31 of 1987,
decided on January 13, 1988

Rent Control and Eviction — Exemption from Rent Control Act — U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2(1) — Applicability — Building to which Act is already applicable is entitled to exemption on satisfying the requirements of any of the clauses of Section 2(1)

Rent Control and Eviction — Exemption from Rent Control Act — U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2(1)(a) and (b) — Nature of exemption under

Rent Control and Eviction — Exemption from Rent Control Act — U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2(1)(c) to (f) — Applicability — When Act is already applicable to a building, landlord's intention to use it for any of the purposes specified in the clauses (c) to (f) would automatically exclude operation of the Act

[†]From the Judgment and Order dated July 14, 1987 of the Allahabad High Court in C.M.W.P. No. 11907 of 1987

2015 SCC OnLine NGT 840

In the National Green Tribunal[±]

(BEFORE SWATANTER KUMAR, CHAIRPERSON AND M.S. NAMBIAR, MEMBER (JUDICIAL), DR. D.K. AGRAWAL, MEMBER (EXPERT) AND PROF. A.R. YOUSUF, MEMBER (EXPERT))

Original Application No. 6 of 2012 and M.A. Nos. 967/2013 & 275/2014

Manoj Misra ... Applicant;

*Versus*Union of India through the Secretary Ministry of Environment and
Forests and Others ... Respondents

And

Original Application No. 300 of 2013 and M.A. Nos. 877/2013, 49/2014, 88/2014
& 570/2014

Manoj Misra and Another ... Applicants;

*Versus*Union of India through the Secretary, Ministry of Environment and
Forests and Others ... Respondents.Original Application No. 6 of 2012 and M.A. Nos. 967/2013 & 275/2014 and
Original Application No. 300 of 2013 and M.A. Nos. 877/2013, 49/2014, 88/2014
& 570/2014

Decided on January 13, 2015, [Hearing on: 9th December, 2014]

Advocates who appeared in this case :

Mr. Ritwick Dutta, Advocate. Mr. Rahul Choudhary, Advocate Ms. Pallavi Talware,
Advocate Ms. Preeta Dhar, Advocate and Ms. Richa Relhan, Advocate for the
Applicants;

In O.A. No. 6 of 2012

Mr. Vivek Chib, Asif Ahmed, Ms. Ruchira Goel and Mr. Kushal Gupta, Advs. for the
Respondent No. 1;

Ms. Mamta Tandon and Mr. V.K. Tondon, Advs. for the Respondent No. 2 & 5;

Mr. Rajiv Bansal and Mr. Kush Sharma, Advs. for the Respondent No. 3;

Mr. Narender Pal Singh, Adv. and Mr. Dinesh Jindal, LO, DPCC for the Respondent
No. 4;

Mr. Raman Yadav, Adv. for the Respondent No. 6;

Mr. Balendu Shekhar and Mr. Vivek Jaiswal, Advs. for the Respondent No. 8;

Mr. Narreender Hooda, Sr. Adv. and Mr. Vineet Malik, Adv. for the State of Haryana;

Mr. Mahesh Kr. Sharma, Adv. for the Delhi Cantonment Board;

Ms. Maninder Acharya, Sr. Adv with Ms. Puja Kalra, Advs. for the South Delhi
Municipal Corporation;

Mr. Suresh Tripathi, Adv. for the DJB;

Mr. Venkatesh and Mr. Anuj P. Agarwala, Advocates for the DCWA;

Mr. Ankur Gupta and Mr. Sanjay Kumar, Advs. for the DMRC;

In O.A. No. 300 of 2013:

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advs. for the Respondent No. 1;

Mr. Ravi P. Malhotra and Mr. Abhinav Kumar Malik, Advs. for the Respondent No. 2
& 4, 7;

Mr. V.K. Tondon and Ms. Mamta Tandon, Advs. for the Respondent No. 3 & 8;

Ms. Maninder Acharya, Sr. Adv. with Mr. Balendu Shekhar,;
Ms. Puja Kalra, Advs. and Mr. Yashish Chandra, Advocate for the Respondent No. 5;
Mr. S.B. Upadhyay, Sr. Advocate with Mr. Sarvjit Pratap Singh;
Mr. Kaustuv P. Pathak, and Mr. Param Kumar Misra, Advs. for the Respondent No. 6;
Mr. Robin R. David and Mr. Febin M. Varghese, Advocates for the Respondent No. 9;
Mr. Narendra Pal Singh, Advocate & Mr. Dinesh Jindal, Law Officer, DPCC for the Respondent Nos. 10&11;
Mr. Yusuf Khan, Mr. Avneesh Arputham and Mr. Kabeer Shrivastava, Advocates for the Respondent Nos. 14 to 16;
Mr. Mahesh Kumar Sharma, Advocate for the Delhi Cantonment Board;
Mr. Balendu Shekhar and Mr. Vivek Jaiswal, Advocates for the EDMC;
Mr. Suresh Tripathi, Adv. for the DJB;
Mr. Venkatesh and Mr. Anuj P. Agarwal, Adv. for the DCWA;
Ms. Puja Kalra for the North MCD.

The Judgment of the Court was delivered by

SWATANTER KUMAR, CHAIRPERSON:— In the year 1994, in furtherance to a news item published in Hindustan Times titled 'And Quite Flows the Maily Yamuna', the Hon'ble Supreme Court of India issued *suo moto* notice to various authorities. Since 1994, the Hon'ble Supreme Court has passed various orders in Writ Petition No. 725 of 1994 and other connected matters with one object in mind, that, the '*Maily Yamuna*' should be converted into salubrious and pristine Yamuna and its water in the entire region, at least from Hathnikund in Haryana, to the Monitoring Station at Taj Mahal, Agra, should be least polluted. However, nothing mentionable was achieved for prevention, control and restoration of River Yamuna on behalf of the concerned authorities. Being completely dissatisfied with the state of affairs prevailing in that regard, the Hon'ble Supreme Court, vide its Order dated 10th October, 2012, observed as under:

"It has been brought to the notice of this Court that despite heavy expenditure, in thousands of crores, having been incurred by the Central Government, Government of the States of Haryana and Uttar Pradesh and the local authorities in the National Capital Territory of Delhi, the pollution of river Yamuna has increased by the day. A report has been filed on behalf of the Central Pollution Control Board wherein it has been reflected in paragraph (2) that the samples collected from river Yamuna show flagrant violation of the prescribed standards. For example, where the maximum permissible limit of BOD is 3 mg/l, there at the Nizamudin Bridge, it is 37 mg/l. Similarly, the total coliform permissible is 5000 MPN/100 ml, there it is 17000000000. The situation at some of the other points, including Kalindi Kunj, Okhla and even Palwal is no different. It is unfortunate that huge public funds have been spent without showing any results in the improvement of water quality of river Yamuna. Learned counsel appearing for Delhi Jal Board has not been able to inform the Court as to how many CETP and/or STP have been established by the Board and whether they are functional or not as per the requirements."

2. The Hon'ble Supreme Court then proceeded to pass certain directions, with the hope that the authorities would take adequate and appropriate steps to attain the object of making Yamuna clean and healthy. We are, in the present applications, primarily concerned with that section of River Yamuna which flows in the National Capital Territory (for short 'NCT') of Delhi. Yamuna has a 54 km stretch from Village Palla in the north to village Jaitpur in the south and forms inter-state border between Delhi and UP. Nearly 26-27 km stretch is from Wazirabad Barrage to village Jaitpur, which is the most significant section from the point of view of pollution. Experience has shown that authorities lacked requisite will to execute the orders, plans and

schemes sincerely and effectively, which has resulted in turning Yamuna, particularly, in this section into a drain carrying sewage, domestic waste as well as industrial and trade effluents. The State instrumentalities and authorities have failed to discharge their Constitutional and statutory duties, while citizens have failed to discharge their Fundamental Duty to protect the environment, particularly in relation to River Yamuna. While, on one hand we venerate our rivers, on the other hand, we do not think twice before discharging untreated industrial effluents and sewage into them. River Yamuna is a victim of this dereliction of our Fundamental Duty for years. Despite assaults on nature by polluting River Yamuna through various activities like, encroachments on its banks and dumping waste on its river bed and floodplain, still, River Yamuna really flows 'quietly'. The authorities, as well as the people of Delhi owe a Fundamental Duty to do everything in their power to ensure restoration of River Yamuna to its natural flow and tranquillity. Thus, there is dire need to take stringent and effective steps, with a determined mind, to ensure that none fails in performance of their respective functions, duties and obligations to achieve the ultimate goal of converting 'Maily Yamuna' into 'Nirmal Yamuna' under the project 'Maily Se Nirmal Yamuna' Revitalization Plan, 2017.

Factual matrix of the case/Facts leading to filing of the present applications.

3. The Applicant - Mr. Manoj Mishra, is a retired officer from the Indian Forest Services and the Applicant No. 2 (in Original Application No. 300/2013) Mrs. Madhu Bhaduri, is a former member of Indian Foreign Services, who have instituted both these applications under Sections 14 and 15 read with Section 18(1) of the National Green Tribunal Act, 2010 (for short, 'the NGT Act'). The first applicant has stated that besides being a member of Indian Forest Services of the country, he is a convener of the 'Yamuna Jiye Abhiyaan', part of a citizens movement to save the River Yamuna. Applicant no. 2 has averred that she has been a diplomat and an ambassador of Belarus, Lithuania and Portugal and after retirement from the services, she has been working as a social worker, with active engagement in various issues concerning the society and environment.

4. These applicants have approached the Tribunal with averments in their respective applications that their campaign has recognised that River Yamuna is not only a sacred river of India, but an aquatic lifeline for millions of people and also a large number of them depend on it for sustenance. Various studies and data have revealed the fact that River Yamuna is critically threatened by unrelenting encroachments on its flood plain and by increasing population load, emanating as much as from domestic refuse, as from the agricultural practices in the flood plains and industrial effluents from the catchment area draining into Yamuna. The flood plains and river bed of Yamuna are under increasing pressure of alternative land use for various purposes, which are driven primarily by growth of economy at the cost of the river's integrity as an eco-system. The applicants strive to protect River Yamuna. The primary subject matter of the Original Application No. 6 of 2012 is the recent encroachment and dumping of building debris and other solid waste in the river bed/flood plain and even into the natural water body of River Yamuna. According to the applicants, there is a water body situated in the river bed of Yamuna, located across the road from colonies of East Delhi. *The City Map*, Delhi Eicher, 2006 Edition, clearly shows proof of long living natural water body opposite to these colonies. A picture taken from the Google Earth on 28th October, 2010, after the floods in the river, also shows the water bodies. When the applicant visited the river beds and flood plain of River Yamuna on 11th November, 2011, it was revealed that the said river bed and the downstream of the water body is being covered with solid waste, including construction debris and household waste. Photographs have been filed with the Application to show that one of the water bodies has become a dumping ground. The applicants made various representations to the Yamuna River Development Authority

and informed it about the illegal actions on the part of the concerned Departments, more particularly, the Department of Irrigation and Flood Control, Municipal Corporation of Delhi and the Department of Agriculture & Co-operation, but to no avail. On the contrary, fresh debris continued to be dumped in that area and a large number of "Jhuggies" (hutments) were also constructed. The applicants paid successive visits to the site in question during November and December, 2011 but such dumping activities increased with time, despite the fact that applicant made all possible efforts to move the authorities vested with duty of preventing such activities.

5. The Ministry of Environment, Forest and Climate Change (for short, the 'MoEF'), in exercise of the powers conferred under sections 3, 6 and 25 of the Environment (Protection) Act, 1986 (for short, the 'Act of 1986') promulgated the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short, the 'Rules of 2000') which clearly provide the entire mechanism for management of solid waste and respective responsibilities of the State Government, Municipalities and the Delhi Pollution Control Committee. Most of them are respondent authorities who have failed to discharge their duties to manage and regulate the dumping of municipal and other solid waste on the flood plain, river bed and in the river itself. According to the applicant, illegal and indiscriminate dumping of solid waste in the natural water body in the river bed of Yamuna has not only recklessly polluted River Yamuna but also damaged the ecology in the area.

6. According to the applicant, the right to a clean and healthy environment for the inhabitants of the area and the entire Delhi for that matter is violated. The authorities have miserably failed to discharge their duties to protect the River Yamuna, its river bed, flood plain and wildlife, in and around the river, from being polluted and being adversely affected. This is a clear violation of the rights of the public at large in terms of Article 21 of the Constitution of India. There is a clear constitutional mandate that not only requires the State to endure to safeguard environment and wildlife, but, also the citizens to improve the natural environment including forest, lake, river, etc. The present case, according to the applicant, is a glaring example of total failure of both the constitutional obligation of the State and fundamental duty by the citizens under Articles 48A and 51A(g) respectively of the Constitution of India. The applicant has also relied upon the judgement of the Supreme Court in the case of *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, where the Supreme Court held that: "right to live is a fundamental right under Article 21 of the Constitution and it includes right to enjoyment of pollution free water and air for full enjoyment of life." The applicant also invoked special jurisdiction of the Tribunal in terms of Section 15 of the NGT Act, praying for complete restitution of the environment and ecology of the river bed and for making Yamuna pollution free.

7. On the above factual averments, the applicant has prayed in Original Application No. 6 of 2012 that all the debris and other solid waste dumped in the river bed should be directed to be removed and the natural water body be restored to its original form. The authority should be directed to take appropriate steps for preventing the dumping of debris on the river bed and for taking all other steps that may be necessary in that behalf.

8. The grievance of the two applicants in Application No. 300/2013 is in regard to the ongoing encroachments and the conversion of Kushak Drain into parking and road-cum-parking space and conversion of land use of the Shahdara Link Drain from 'utility' to 'commercial' and proposed construction of commercial undertaking in the form and nature of "Delhi Haat" - a commercial shopping complex, over and above the drain.

9. The case of the applicants in this application is that River Yamuna cuts across the eastern part of the NCT of Delhi and is bound by hard rocky area of the ridge and closed basin of Chhattarpur. A physiographic layout of NCT of Delhi shows that the

natural drainage of city is river bound. The city of Delhi, on account of its undulating terrain, has a number of natural and manmade storm water drains to ensure that the city does not get flooded during rains and the water reaches with ease to River Yamuna. Quite contrary to this, the urban flooding in Delhi in monsoon is common. The main reason for this frequent flooding is that, over a period of time many of the storm water drains, which also at one time acted as the natural tributaries of River Yamuna, have been first turned into storm-cum-waste water drains and later many of them were covered and taken away from public view and obstructed from playing their natural role as storm water drains as well as verdant greenways within the city. According to the applicants, such ill-advised conversion of drains has reduced the easy and efficient drainage in the city as well as compromised the biodiversity present in and along these drains and their ability to recharge the ground water. The conversion has played havoc with the environment and the ecology associated with these drains, including their ability to carry clean water and to keep the ambient air quality. Further, as a result of pollution resulting from traffic coming to a standstill, there is manifold increase in air pollution and people have to face unimaginable hardship. There is also the risk of fatal diseases like dengue etc. from the standing water. Some newspaper cuttings have been annexed to substantiate this plea.

10. The Kushak drainage system in South Delhi forms a major tributary of the Barapula drainage basin and is situated in the west bank of the River. Originating from the southern ridge beyond the Mehrauli Badarpur Road, it drains out wastes from areas in Saket, Pushp Vihar, Khidki Village onto Sheikh Sarai, Chirag Delhi and then enters Panchsheel Enclave after crossing the outer Ring Road. Skirting along the Siri Fort area, it flows further into G.K.-I, Andrews Ganj, Defence Colony along the Jawahar Lal Nehru Stadium and Jangpura before meeting the Barapula Drain opposite Nizamuddin area. It covers a distance of some 11 kms and drains out sewage and other wastes from most key localities of South Delhi area.

The Shahdara Basin covering about 30,000 acres of land in the Union Territory of Delhi, is situated on the eastern bank of River Yamuna. The basin is bound by the River on the west, river Hindon on the east and Uttar Pradesh on the north and south. The G.T. road passes through the centre of this basin from west to east. The Shahdara drain is managed by the Department of Irrigation and Flood Control of the Government of Delhi. According to the applicants, the whole of the Shahdara basin in Delhi is below the High Flood Level of River Yamuna and it has the tendency of getting flooded quite often. This drain is helpful in carrying runoff during the rains and helps in preventing flooding of the area during excessive rains. This drain acts as a lifeline for many aquatic and riparian species of flora and fauna, which thrive and survive on the existence of this drain. The Shahdara drain in east Delhi is around 5 kms long, beginning from Northern Railways main line in Shakarpur area, till it meets the main Shahdara drain close to the Chilla Regulator. The applicants have stated in their application that these, amongst other drains, are an essential feature of the city to keep the environment and ecology balanced.

11. The applicants have made an attempt to show the significance of storm water drains and why is it essential that they must be kept obstruction and pollution free. It is also the averment of these applicants that the drains ought not to be covered, as covering of such drains would add to natural calamity, increase in pollution and diseases. They have specifically referred to the advantages of open drain system in the application. The relevant part thereof reads as under:

"...well protected and conserved drainage architecture (natural as well as manmade) in any city is an essential part of its efficient environmental and social planning and management. Open to sky storm water drains that ensure easy collection and draining away of rainfall water serves a number of purpose, in addition to ensuring that the potential flooding of areas in a city is prevented. These

include:

- a) Serve as ground water recharge channels;
- b) Serve as greenways, when these are properly managed;
- c) Provide much needed open stretches in cities which are otherwise turning into concrete jungles and heat sinks;
- d) Ensure that the water that flows in these drains is well oxygenated and hence wholesome before it finally drains into a river, sea or a lake;
- e) Help clean naturally the waste water if any that flows in these drains;
- f) Maintain biodiversity and habitat conditions for a variety of plants and animals including small mammals, reptiles, birds, butterflies, etc.
- g) Act as NMT (non motorized transport) channels;
- h) Help maintain/increase value of property lying close to these channels in cities where widespread concretization has turned an urban area/city into a heat sink and where open spaces are available only at a premium."

12. To further support their plea, they have also averred that many cities in developed countries like USA, UK, Canada, Germany, Denmark and Switzerland etc. where the city and town planners had previously permitted the covering of urban streams and storm water drains and converted them into either roadways or other incompatible uses, are now realizing the past mistakes and have now reverted to the open drain system and are taking steps to reopen its drains in a process called, "greening of city's grey architecture".

13. The MoEF had visited the drain systems in Pune and reported to the High Court in Bombay in PIL No. 41/2011, that the works on the drain system, i.e. its channelization, wrong channelization, concretization or converting the drains in the name of development, showed the following disadvantages:

1. Constriction and alteration of water bodies.
2. Reduced recharge of ground water and impeding the natural ecological flow.
3. Destruction of riparian biodiversity, riverine ecology and the wetlands/floodplains.
4. Pollution of Surface, Subsurface and Ground water.
5. Change of natural functions of streams to convert them into sewers and gutters."

14. The applicants have specifically averred that articles based on different studies which have also been published, show formation of an unambiguous opinion that Yamuna can be described as 'The Dirty Drain'. Referring to the 21st meeting of the governing body of the Unified Traffic and Transportation Infrastructure (Planning and Engineering) Centre (for short 'UTTIPEC') held on 19th February, 2010, the applicant avers that covering a drain is injurious to the environment, ecology and human health. The applicants have relied upon the following extract of the said meeting.

"no such covering of drain, henceforth, will be taken up by any agency, apart from the works which have already been undertaken and these drains should be cleaned and developed with ecological and local landscaping and to be used as NMT connectivity routes as per the presentations earlier given by various experts at previous Governing Body meetings."

15. However, in absolute contradiction to the afore-referred, the South Delhi Municipal Corporation (for short 'SDMC') is implementing a project under Jawaharlal Nehru National Urban Renewal Mission (for short 'JNNURM'), for conversion of Kushak Nallah/drain for providing parking/road-cum-parking under its jurisdiction. They are also planning to construct "Delhi Haat" in East Delhi, by covering Shahdara Link Drain along NOIDA Link Road at Mayur Vihar, Phase-I. They have even issued public notice to that effect on 5th July, 2013 for changing use of 27,000 square meters area of

Shahdara Link Drain from 'utility' to 'commercial'. The applicants made various representations against these proposed projects. Relying upon the Doctrine of 'Public Trust', the applicant made further representations before these authorities, with an intention to draw their attention, but nothing fruitful was achieved from these efforts, thus, compelling the applicants to approach the Tribunal by filing the present application.

16. The applicants heavily relied upon the judgment of the Supreme Court in the cases of *M.C. Mehta v. Kamal Nath*, (2000) 6 SCC 213 and *Dr. B.L. Wadhwa v. Union of India*, (1996) 2 SCC 594.

17. With reference to these judgments, it is contended that pollution is a civil wrong and is committed against the community at large. Persons who commit such wrong have to pay damages (compensation) for restitution of the environment and ecology. Rapid industrial development, urbanization and regular flow of persons from rural to urban areas, has made major contribution to environmental degradation. Thus, the authorities entrusted with the work of pollution control, cannot be permitted to sit back with folded hands on the pretext that they have no means to control the pollution and protect the environment. The drains, particularly, the natural storm water drains which meet River Yamuna and provide it water, that can even help in diluting pollution and provide safer environment, must be kept free of obstruction and pollution. With reference to the above facts and the principles of law, the applicants have prayed that for preservation of environment and maintaining the ecological balance, the Tribunal should direct stopping of construction activities on both these drains, that the drains should not be covered, that Expert Committees should be appointed to suggest methods for maintenance of storm water drains as ecologically secure green ways and the respondents or any other person be prohibited from demolishing or destroying the natural and/or artificial drains in Delhi.

18. To these applications, the respondents have filed different replies. According to the respondent no. 6, Delhi Tourism and Transportation Corporation (for short 'DTTC'), the work of constructing "Delhi Haat" has not commenced and is at a preliminary stage of consideration, thus, the petition is not maintainable. As the said respondent is only concerned with the "Delhi Haat" project they have not dealt with any averment in relation to the Kushak drain. According to this respondent, the matter in relation to the covering of storm water drain is a matter of controversy and some directions have also been passed by the Delhi High Court in that behalf. No work has commenced on the Shahdara Link Drain. Only objections have been called for by the Delhi Development Authority (for short 'DDA') by issuing a public notice for conversion of land use from 'utility' to 'commercial'.

19. According to the Respondent Nos. 4 and 7, objections and suggestions have been received in response to the public notice dated 5th July, 2013, issued by the DDA and the matter is pending for further decision. It is stated that the Delhi Master Plan, 2021 is to be modified, subject to determination of these objections. The averment with regard to passing of the resolution dated 19th February, 2010 by the governing body is not disputed before us.

20. According to the Delhi Pollution Control Committee (for short 'DPCC') and the State Level Environmental Impact Assessment Authority (for short 'SEIAA'), it is stated that these projects may fall within the Clause 8(a) of Environmental Impact Assessment Notification, 2006 (for short 'Notification of 2006') and if that be so, the SDMC or the Delhi Municipal Corporation (for short 'MCD') or any other agency, on that behalf, has not approached any of the respondents for getting Environmental Clearance, ought to have been taken. In Original Application No. 6/2012, respondent no. 1 has taken the stand that the present application does not involve substantial question relating to environment. However, referring to the Rules of 2000, it is stated

that these Rules stipulate specifications source segregation, collection, transportation, waste process disposal and other features of disposal of Municipal Solid Waste (for short 'MSW'). It is denied by this respondent that any representation was received by them. According to them, it is the responsibility of all the concerned State Pollution Control Boards to control and monitor the discharge of industrial effluents in order to ensure that untreated industrial effluents do not fall into the river. It is stated that in order to address the immediate need for intervention in the interest of ecology and environment of River Yamuna, the Central Government had extended a hand-holding role, through central assistance for pollution abatement works in identified stretches of certain rivers under the Ganga Action Plan. The Yamuna Action Plan is being implemented by the Government with assistance from Japan International Corporation Agency, in three States; Uttar Pradesh, Haryana and Delhi, in a phased manner. According to this respondent, the Municipal Authorities are required to set up waste processing and disposal facilities following the norms for handling MSW, i.e. collection, segregation, transportation, processing and disposal of MSW.

21. The DDA/respondent no. 3 has responded to this application stating that the DDA is not the person responsible and hardly any relief can be claimed against them under the provisions of the NGT Act, 2010. According to this respondent also, the responsibility lies on the municipalities and municipal authorities for dealing with MSW. The structure plan for Yamuna River Front Development (for short 'YRFD') Project has been developed by the DDA on the basis of value analysis and through study of the site and other factual data. In their reply, details of such plan have been provided. The purpose of the project is to facilitate the citizens of Delhi with vast recreational areas and simultaneously preserving, restoring and developing biodiversity of river basin. The areas under jurisdiction of DDA are under various stages of development and designs were meticulously made to reach the goal of achieving the objectives of YRFD Project. According to them, they are putting up warning sign boards against dumping of *malba* and debris at the sites which are under its purview and jurisdiction.

22. According to the respondent nos. 2, 4 and 5, the Tribunal has no jurisdiction to entertain this application, as it does not involve any substantial question of law relating to environment, arising out of the implementation of enactments specified in the Schedule I to the NGT Act, 2010. On 16th May, 2012, a meeting of these respondents and the implementing/monitoring agencies was held and decisions were taken in relation to identification of areas generating solid and/or building waste in bulk, creation of special task force for patrolling of areas generating solid/building waste in bulk and illegal dumping sites, removal of dumped soil by the Delhi Metro Rail Corporation (for short the 'DMRC'), issuance of public notice publicising the temporary waste deposit sites under the MCD, removal of waste lying along the roadside and submission of YRFD by the DDA to the Environment Department. These decisions were approved and some actions had been taken in furtherance thereto. On 9th July, 2012 a meeting to review the progress and compliance of the decisions/directions which emerged in the meeting dated 18th May, 2012, was conducted, where the steps to be taken in future to prevent dumping of solid waste in the River Yamuna flood plain, which was a serious problem, were stated. It was considered necessary to install barricades, identify areas generating bulk solid/building wastes and erection of further warning signage at the sides of Yamuna river. With these averments, these respondents said that they are taking effective steps to control and prevent the menace of dumping debris in the flood plain and in the River Yamuna, including the MSW and construction debris.

23. As would be evident from the above-referred pleadings and the voluminous records that have been produced before the Tribunal, no one before the Tribunal is questioning the seriousness of the environmental and ecological issues arising from

pollution of River Yamuna, throwing of construction debris and other MSW in the River, its flood plain, as well as the storm water drains, whether natural or artificial, which have been converted as dirty drains carrying sewage or municipal waste. These pollutants and unchecked developments which are violative of the Principle of Sustainable Development are causing havoc in the city of Delhi. The various concerned authorities, particularly respondent no. 6, are shifting the responsibility on others, but are unable to dispute a hard fact, that they have failed to prevent and control the pollution, much less, restore River Yamuna to its natural flow. The various measures stated to have been taken by the authorities have fallen much short of those required. There appears to be a lack of institutional will to implement various policies, schemes and decisions to protect and restore River Yamuna and its banks. How long this attitude of planning, waiting and watching would be resorted to by the concerned authorities and would it be in the interest of environment, ecology and public interest and health of the residents of Delhi, is the moot question, to which the attention of all concerned needs to be adverted to.

Proceedings before the Tribunal with reference to its Orders and implementations thereof

24. Finding that substantial questions of law, with regard to environment, are involved in these applications, notices were issued to the respondents. In the meanwhile, they were directed to take steps to stop further encroachment and dumping of MSW and debris in the riverbed. The question that was required to be considered was to find out the most effective and practical way in which dumping could be stopped on the Flood Plain and the riverbed of Yamuna, as well as how these areas are to be restored and beautified so as to discourage further dumping of construction debris or waste in and around River Yamuna. Vide order dated 31st January, 2013, the Tribunal directed State of UP, the DDA, Government of NCT of Delhi and the East Delhi Municipal Corporation to start the removal of debris from the river banks and the water bodies mentioned in the petition near River Yamuna. The Corporation had stated that it had issued Notification identifying the sites at Gazipur which were meant for dumping of MSW. Thus, all other authorities were also directed to identify the sites for dumping of debris and waste and in the meanwhile all construction debris was directed to be transported to the site at Gazipur.

25. Vice Chairman, DDA was directed to hold meeting within one week with all the concerned Corporation/Authorities as well as with the State of UP to ensure that the directions are complied with and debris, which was stated to be in huge quantity, is removed from the riverbed. Vide our order dated 1st February, 2013, keeping in view the fact that a large number of authorities were involved, it was considered appropriate to constitute a Special Committee chaired by the Secretary, MoEF and of which Additional Secretary, MoEF was also directed to be a Member. The Tribunal had also appointed Local Commissioners to visit the sites in the entire stretch of Yamuna that flows in Delhi and to report with regard to removal of construction debris and other waste. The reports from the Local Commissioners had shown that the directions issued by the Tribunal were not being carried out in its true letter and spirit. One of the Commissioners noticed that trucks are entering into River Yamuna from different places where the wall was found punctured despite the fact that there are police posts. It was also pointed out that DMRC was also throwing its debris in the riverbed of Yamuna. Again, all public authorities were directed to ensure removal of debris and maintenance of proper log records for carrying of such debris to the earmarked sites. We must notice that all the Learned Local Commissioners acted *pro bono* and did not take any fees for ensuring compliance of the directions of the Tribunal. The High Powered Committee constituted by the Tribunal, in its report noticed that nearly 37000 cu.m. of debris/construction materials are lying on the eastern bank and 53,000 cu.m. on the western bank near Nizamuddin bridge, Batla House, of the river

Yamuna. These figures were undisputed. The report of the High Powered Committee was provided to all the authorities and they were directed to remove the debris thrown by the respective authorities and take them to the earmarked sites. The Tribunal also directed all concerned authorities, including the Police, to ensure that no fresh debris or waste was thrown on the riverbed. The High Powered Committee had also considered development, beautification and restoration of river banks for entire River Yamuna from one end to another end of NCT of Delhi. It was felt that out of the total 9700 hectares area for River Front Development ('O' Zone) only 1452 hectares was available with DDA and the balance area is under agriculture and other leases, encroachments, etc. by different persons.

26. In the order dated 17th July, 2013, the Learned Local Commissioners had filed their respective reports. They brought to the notice of the Tribunal that dumping continues on the river bank particularly in Geeta Colony. They also stated that the debris has not been lifted from that site and mainly the debris have been dumped at the bank of the River Yamuna. This debris was thrown in front of the residential block of the DMRC and in Geeta Colony.

27. In the order dated 22nd July, 2013, it was noticed that nearly 400 to 500 tonnes debris per month is being disposed of on the banks of river Yamuna in Geeta Colony, more particularly, during the night hours. Thus, the Tribunal issued directions for the Government of UP and NCT of Delhi to depute officers and keep a vigil over dumping of debris on the river bank. It was further noticed that nearly 5000 tonnes of debris was lying on the western bank. The dispute was whether it belongs to DDA or DMRC. Both these authorities were directed to hold a meeting and mutually decide as to who is responsible to remove debris. But, in any event if no decision is mutually taken, both the parties will remove debris in equal share and report to the Tribunal on 15th August, 2013.

28. In this very order, the Tribunal, while invoking the 'Polluter Pays' Principle, directed that any person who is found dumping debris on river bank in Geeta Colony site and for that matter in any site, shall be liable to pay compensation of Rs. Five Lakhs for causing pollution and/or destroying the riverbed and flood plain and the time and man power taken for removal of the said debris from the site in question. The Learned Counsel appearing for the MoEF had stated before the Tribunal that the Expert Committee requires further time to finalise the 'Preservation and Beautification Plan' of river bank and flood plain and that the terms of reference are under preparation. This request was accepted and time was granted to the authorities. The Tribunal also clarified that the sum of Rs. Five Lakhs for dumping, debris or waste on the river bank Yamuna would be the liability of the person responsible for dumping, even the truck owner, as well as person to whom the debris belongs. In other words, the person whose property was demolished and debris was generated and the contractors who were carrying on the business and were transporting the debris. It was stated before the Tribunal and it was found to be correct that the debris thrown by DMRC and DDA had been completely removed and only some smaller debris remained. They were agreed to be cleared by 15th September, 2013 positively. The Irrigation Department of UP was throwing its debris at Thokar No. 11&13 and the solid waste is also being thrown along side of Noida link road towards Geeta Colony. These authorities were directed to clean and remove both construction debris and MSW. The Learned Local Commissioners in their Report confirmed that the debris dumped by the authorities and people have been removed. Through our order dated 24th September, 2013, we had recorded appreciation for the work done by all authorities in removing the debris. The High Powered Committee was directed to expedite the filing of the report before the Tribunal. The Committee had also asked for some details from various other authorities who were directed to fully cooperate and furnish the required information to the Committee so as to enable and prepare this report with utmost expeditiousness.

29. Learned Advocate General appearing for the State of UP submitted that entire debris had been removed from the banks of River Yamuna from the area under their jurisdiction and they were keeping strong vigil, ensuring that no dumping of any material is permitted in future. The DMRC filed an affidavit stating that they have removed nearly around 23280 metric tonnes debris and 4700 metric tonnes debris still remains around the locations which are occupied by *Jhuggies* and it is difficult for them to remove that debris. However, they were directed to remove the same as well.

30. On 21st October, 2013, in Original Application No. 300 of 2013, after hearing the parties at great length and considering the resolution of the UTTIPEC, it was directed that *status quo* shall be maintained, i.e., no further construction shall be carried out in the drains in Delhi: whether manmade or natural. Even the Delhi High Court had noticed that there is no consistent policy of the State as to whether they should be covered or not.

31. Vide our order dated 28th November, 2013, we had also directed the authorities to take a clear stand as to whether such projects would be covered under the Notification of 2006 or not. As already noticed, the Corporation had taken a stand that such projects are covered. Thereafter, the matters had mainly been heard together and common orders were passed in the Original Application Nos. 06 of 2012 and 300 of 2013.

32. Interim Report on behalf of the MoEF was filed and time was prayed for filing of the final report. On 18th December, 2013 Professor C.R. Babu, Chairman of the Committee which was constituted by the MoEF to critically analyse and examine the YRFD Plan and to give suggestion for its further improvement, was present before the Tribunal. He submitted that considerable work was still required to be completed and some data is to be collected. It was noticed that some data was available which had been provided for the first time by Geo-Spatial Delhi Ltd (GSLD) in form of 0.6m contour interval maps, examination of which, will result in better mapping of Yamuna River Front flood plan. Tribunal granted time till February, 2014 to accomplish the object.

33. The River Yamuna is one of the sacred Himalayan Rivers originating from Yamunotri Glacier (near Saptarishi Kund at Bandar Poonch Glacier Peak at an elevation of 6387 m in Mussoorie range of lower Himalaya. The river travels over a distance of 1370 km across Uttarakhand, Himachal Pradesh, Haryana, Delhi, Rajasthan and Uttar Pradesh and finally joins Ganga at Allahabad (Prayag); its basin spreads over an area of 66,220 sq.km which constitutes 42.5% of the total Ganga River basin and has four major tributaries - Tons, Giri and Bata, which join it from its right side and Asan, which join it from its left side, all of which constitute basin (Head water) of the river in Himalayan states. Tons constitute 60% of the flow of the river. In plains its tributaries are Hindon, Chambal, Sindh, Betwa and Ken. The upper Yamuna basin upto Okhla in Delhi represents less than 20% of its total basin (Martin et al, 2007; Agarwal & Krause, 2013). According to Agarwal & Krause (2013), 17 hydroelectric projects were completed, one hydroelectric project is under construction and about 20 are proposed within Yamuna river basin. It enters into plains of north India after the river forms an interstate border for about 50 km between Uttarakhand and Himachal Pradesh. In the plains, it forms an interstate border between Haryana and Uttar Pradesh for about 200 km distance and then it enters into Delhi. After traversing 45 km, it forms an interstate border between Delhi and UP and then forms interstate border between Haryana and UP and finally enters into UP and runs parallel to Ganga before joining it at Allahabad. A total of 6 barrages were constructed across the river. In the hills one barrage on Yamuna at Dakpathar and another one on its major tributary Asan were constructed in Uttarakhand; in the upstream of Delhi, Hathnikund (Tajewala) barrage was constructed in Haryana and the water was diverted to Western Yamuna Canal

(WYC) and Eastern Yamuna Canal (EYC). The tail end of WYC joins the River Yamuna near Palla and EYC also joins at Wazirabad reservoir. Further, the abstraction of water at Tajewala barrage, which is about 2 km distance downstream from Hathnikund, takes place. Within NCT of Delhi, three barrages were constructed across the river—the Wazirabad, the ITO and the Okhla barrages. In UP, Gokul barrage was constructed to provide drinking water to Mathura and Agra. The river enters into NCT of Delhi at Palla in the north and exists at Jaitpur in the south. The river Yamuna within NCT of Delhi and the corresponding portion of UP traverses over a distance of 54 km. The stretch of 26 km in the upstream of Wazirabad reservoir receives water from a branch of Western Yamuna canal which joins the river at Palla and the Eastern Yamuna canal joins it at Wazirabad barrage; both the canals originate from Hathnikund barrage, the downstream of which there is no flow from barrage, during lean period and whatever the flow is from the canals. Consequently, there is practically no flow after Hathnikund barrage into river Yamuna during dry season.

34. However, it needs to be noticed that during monsoon season, because of higher floods (7 lakh cusecs of water passed over Tajewala weir in 1978; Report of the High Powered Committee, 2010), Haryana, Uttar Pradesh and Delhi planned and constructed extensive drainage and river control works including embankments. The mean availability of water in the river at Tajewala during monsoon (July-October) is 19705 cusecs for distribution among basin States. The discharges higher than 1975 cusecs are received at Tajewala for an average of 28 days during 4 months of monsoon. The Delhi Development Authority had intended to channelize the river in the city portion (from downstream of Wazirabad to Okhla during MPD 1981-2001) to restrict the flow area in the river and utilize the remaining land for other development purposes. The concept of channelization was however not found technically feasible, as there are: (i) no flood moderating structures in the upstream and (ii) adverse impacts of higher flow levels in the canalized river section on the entire drainage system.

35. For these reasons, it is necessary to first workout mechanism for ensuring minimum environmental flow in the River Yamuna passing through NCT Delhi during non-monsoon season on the one hand, whereas, have complete obstruction free cross-sectional area, including the flood plain, for safe disposal of peak monsoon flood as released from upstream barrage at Tajewala, on the other hand. Maintaining minimum environment flow of River Yamuna and the fact that this was considered by the Expert Committee as one of the essential facets for the effective implementation of the report, vide our order dated 17th February, 2014, we directed the State of Haryana to be impleaded as a party. The copy of the report furnished was directed to be supplied to all the Learned Counsels appearing in the case. After considering the findings of the Expert Committee, the Tribunal had directed the Director, IIT Delhi and the Director, IIT Roorkee and Professor Brij Gopal on 27th May, 2014 to provide due assistance to the Tribunal. The Directors were granted liberty to nominate Professors from the relevant fields. Professor Gosain appeared before the Tribunal and submitted a note on the facets of pollution resulting from drain sewage and finally polluting River Yamuna very seriously. Professor Brij Gopal also appeared and after hearing them along with and on the basis of the interim reports that have been submitted by the MoEF, the matters covering both these applications were divided into three different classes vide our Order dated 30th May, 2014, which were the environmental issues. It will be useful to refer to the order dated 30th May, 2014 as it deals with the different facets of environmental issues raised in these two petitions and how it should be proceeded any further:

"In furtherance to the order of the Tribunal we are informed by the Professor Gosain, that Director of IIT Delhi as well as Director of IIT Roorkee are out of the country and therefore have not been able to present today before the Tribunal. We direct both the Directors to be present on the next date of hearing positively and

without fail.”

Professor Gosain, has placed before the Tribunal a short note on the various facets of pollution i.e. resulting from the drains sewage and finally polluting the river Yamuna very seriously.

After hearing the Learned Counsel appearing for the parties as well as Professor Gosain and Professor Brij Gopal we will divide this environmental issue into three different facets:

1. The first issue is related to the drains (natural or artificial) coverage thereof and the pollution resulting there from.
2. Steps that are required to be taken for ensuring and rendering Yamuna river free from pollution.
3. Restoration and beautification of the banks of river Yamuna

As far as all the above aspects are concerned and before the Tribunal passes any direction for ensuring pollution free Yamuna in NCT Delhi, it is necessary for the Tribunal to have certain specific data and suggestions before the Tribunal we hereby, therefore, constitute the following committee:—

- (a) An officer not below the rank of Joint Secretary from the Ministry of Environment and Forest
- (b) Member Secretary of the Central Pollution Control Board
- (c) Engineer-in-Chief, Delhi Development Authority
- (d) Member Secretary, Delhi Pollution Control Committee
- (e) Member (Drainage), Delhi Jal Board
- (f) Two Chief Engineers from South Delhi Municipal Corporation and East Delhi Municipal Corporation
- (g) Professor Gosain and Professor Brij Gopal

The above committee shall conduct the inspection and visit all or any of the places that they consider it appropriate and report as follows:—

- i. There are how many natural and or artificial drains in Delhi.
- ii. Drains which are joining the main Drains of Delhi directly or indirectly joining the river Yamuna.
- iii. How many of storm water drains are there and how many carry sewage jointly or separately.
- iv. How many STPs have been established in Delhi for treating the sewage or otherwise. The effluents/waste/sewage thrown/dumped in these drains. What is the present status of all the STPs? Are they functional and are working to their optimum capacity and their performance? At how many points, new STPs needs to be established? Whether it is possible to restore the existing STPs and make them functional to their optimum capacity suggestion in that regard?

The Additional Secretary, Ministry of Environment and Forests and Vice-Chairman of Delhi Development Authority shall hold the meeting within two weeks from today to ensure the compliance of these directions as well as to consider the proposal for restoration and beautification plan of Yamuna River banks submitted by the DDA before the Tribunal, merit thereof or substitution of the entire scheme by another appropriate scheme.

We make it clear that the banks of river Yamuna would be left lie abandon areas and it should be ensured that no debris, construction debris or any other material including MSW is thrown into the river banks or even all along the drains of Delhi and the same is not used for human evacuation.

Let this report be submitted to the Tribunal. This Committee shall conduct its meeting at the earliest and would ensure that by the next date of hearing the report is

placed before the Tribunal.

Liberty to the respective Corporations to remove the hurdles in the direct flow of the drains.

The South Municipal Corporation may examine all the possibility of restoration, greenery of the area near to Archana Cinema."

36. During the course of arguments following issues were deliberated upon and were also noticed by us in our order dated 17th July, 2014, as would be evident from the following extract:

"Upon hearing the learned Counsel appearing for the parties and the Experts, we direct the Committee inter-alia to consider two major alternatives for ensuring pollution control and protection of river Yamuna therefrom, and restoration to its original natural status of being a river and not a drain.

- (i) Whether it is advisable to install STPs of various sizes in all the outlets smaller and bigger i.e. each drain of Delhi or
- (ii) it is more beneficial to prohibit discharge into Yamuna river of any sewage, domestic or trade effluents through the drains and all drains be connected to a new major drain which should carry the entire waste of Delhi to a destination where requisite treatment plant should be established to treat the waste, recycle semi solid and water for beneficial purposes."

37. The Expert Members and the High Powered Committee found that it was not feasible and advisable to take recourse to the latter issue and the former option would be more feasible and would effectively control the pollution in river Yamuna. In relation to the matters relating to drainage in Delhi, the Committee was put at a disadvantage because of non-availability of relevant data. Thus, the Tribunal directed that the drainage map of 1976, which shows the natural drains and man-made drains, should be taken as the basis for preparing recommendations in that report. Vide order dated 4th September, 2014, it was noticed that it was imperative for all authorities to work *in tandem* and co-operation, to achieve the object of making Yamuna free of pollution for the restoration and beautification of its flood plains. Both these aspects are essentially interlinked as making the drains of Delhi pollution free would automatically result in improving tremendously the quality of water in River Yamuna. Thus, the High Powered Committee, of which, even eminent Professors were members, was directed to hold its meeting and *inter alia* answer the following:

"A) The Committee constituted by this Tribunal shall expeditiously and in any case not less than one week from today hold a meeting and provide a clear answer on the following to the Tribunal:

- 1) Taking the 1976 drainage map of Delhi as the basis, the two maps submitted by Prof. A.K. Gosain today before the 1) 1)Tribunal, one showing natural drains and other natural drains carrying sewage, are the correct documents to be the foundation for further progress of the Project.
- 2) Whether the drainage carrying sewage, (the storm water drainage) should or should not be permitted to carry sewage in any part of Delhi.
- 3) How many STPs are required and in what capacity?
- 4) There are nearly 201 natural drains and the majority of which are also carrying sewage which ultimately joins into the River Yamuna through 22 outfall points. Whether it will be technically feasible, taking all aspects into consideration including the geographical and economical parameters, to lay down a separate pipeline/open lined channel to carry the sewage from these 22 points to an appropriate distant place in Delhi where an STP of an appropriate capacity should be established with proper utilisation of the remnant water or whether it will be more advisable to construct STPs on most

of the drains carrying sewage to ensure that the same sewage waste is treated prior to its joining River Yamuna.

- 5) Lastly, the Committee should state as to what is the best methodology to be adopted to ensure that the sewage from the colonies where sewage treatment system does not exist as of today is appropriately brought to the STP plants and/or to the point of the major drains collecting the sewage. This is more particularly in relation to the unauthorised colonies of Delhi."

38. It also needs to be noticed that the MoEF had constituted an Expert Committee vide its order dated 13th September, 2013. This Committee was to critically analyse and examine the YRFD Plan of DDA, steps to be taken for further improvement of river bank and also to consider other relevant aspects. This Committee submitted its report on these aspects on 19th April, 2014. Vide order dated 24th September, 2014, the Tribunal further directed that the report shall not only suggest the methodology or process that is required to be followed for restoration and beautification of riverbed, but, even state as to who should execute the work and the manner in which the work should be executed.

39. The Committees had filed interim status reports and final reports as well during pendency of the applications. These reports were prepared by the Committees on two facets: firstly on restoration, preservation and beautification of river banks and secondly on control of pollution in River Yamuna. In these meetings, representative from Engineers India Ltd, Central Pollution Control Board, Central Water Commission, National Disasters Management Authority, Indian Space Research Organisation, DDA and other authorities were present and participated.

40. We may notice that the final report relating to 'preservation, restoration and beautification of River Yamuna' was finally submitted by the High Powered Committee on 19th April, 2014, while the other report relating to 'control of pollution and restoration of Yamuna river' by the Expert Committee appointed by the Tribunal, was submitted on 13th October, 2014. Both these reports shall constitute an integral part of this judgment.

41. This matter was listed for final hearing and was heard on different dates. Referring to their respective reports, Professor Brij Gopal, Professor A.A. Kazmi and Professor A.K. Gosain were present before the Tribunal and had explained the various aspects of their reports, as well as the need for prioritization for installation of various Sewage Treatment Plants (for short 'STPs') on the drains. After detailed discussions, it was found to be feasible and in fact the entire project was decided to be completed within two and a half years. After the matters were heard at great length, we reserved the case for judgment on 9th December, 2014. Vide the same order, the Tribunal had also directed CPCB, DPCC and a representative of the MoEF and the Delhi Jal Board to take samples of the drains joining River Yamuna from 10 different points from the 22 km stretch flowing in NCR Delhi and prepare baseline data for the purposes of determining the improvement or restoration of the water quality of River Yamuna as well as its banks.

42. We may notice here that even during the pendency of this application, directions had been issued to various authorities to act and take steps in accordance with law to protect River Yamuna and its banks. It was submitted by various authorities that huge construction debris and other waste that had been dumped at the river bank and riverbeds of Yamuna, have been removed. There is, according to all, a total check on dumping of fresh construction debris or waste on the riverbeds. It is hoped that the directions in this regard even in future would be strictly adhered to by all concerned.

Analytical discussion on merits and the reports of the Expert Committee

43. It not only seems, but, is virtually difficult to visualize the extent of pollution of

River Yamuna, particularly in NCR Delhi. Some have called Yamuna, 'a drain', some as 'most polluted river' while others have termed it a 'dry river', except for in the monsoon season, when it only carries wastes of different kinds. These expressions may not sound very appropriate for a river which is the major source of human living and has religious sentiments attached with it, but when examined scientifically, these expressions are found to be having substance. River Yamuna, a major tributary of River Ganga, originates from Yamunotri Glacier near Bandarpunj peaks in the Mussorie Range at an elevation of about 6,320 meters above mean sea level in District of Uttarkashi, Uttarakhand. The catchment area of the River Yamuna covers parts of Himachal Pradesh, Uttarakhand, Uttar Pradesh, Haryana, Rajasthan, Madhya Pradesh and the entire territory of Delhi. At Yamuna Nagar District of Haryana, the river is diverted into Western Yamuna Canal and the Eastern Yamuna Canal for irrigation. River regains its water from ground water accrual and feeding canal (Drain No. 2), downstream of Karnal, before it enters Delhi, near Pala Village. Yamuna River within NCR is classified into five distinct segments due to its characteristics, hydrological and ecological conditions. All these five segments have different sources of water and waste water. In the Delhi segment of Wazirabad Village at Okhla, nearly a segment of 22 kilometers, it only get domestic and industrial waste water of Delhi and thus, is the most polluted segment. The CPCB has placed on record state-wise contribution of waste water generation in the cities located on the banks of Yamuna. The figures in this statement are astonishing. It shows that in Delhi the length of the River is 48 kms, forming merely 3% of the total length of this river, before it joins the River Ganga. However, the sewage generation is 3,800 MLT, forming 76% of the pollutants put into the River Yamuna. Keeping in view the fact that the Yamuna River is not a continuous river, especially during dry months between October and May, the situation is bound to get worse. This situation stares all concerned, including the Government in face and leads only to one question: "Would it ever be possible to clean River Yamuna and restore its wholesomeness?" This question can safely be answered in the affirmative. But all that is needed is the concerted effort from all stakeholders and a positive participation from the residents of NCR, Delhi. No process can prove to deliver the desired results unless and until the persons involved in carrying on the process as well as the people for whose benefit the process is being set up, fully cooperate and ensure adherence to the prescribed methodologies.

44. The Expert Committee has opined that 32 STP's ought to be installed at minor and major drains of Delhi, in addition to the existing STP's. Once these proposed STP's are established and made operational, the drains are kept clean and it is ensured that sewage does not enter these drains, restoration of Yamuna to its original status is completely an achievable goal.

45. The Tribunal while accepting the reports of the Expert Committees, not only critically examined the reports and recommendations but even considered other alternative proposals to make River Yamuna pollution free. One of the main suggestions was with regard to laying down of an independent pipeline on the banks of River Yamuna, where all the drains carrying sewage, industrial waste and trade effluents would join it. This pipeline shall carry such waste to a designated destination near Agra Canal, where it shall be treated. The treated water shall be recycled for industrial and agricultural purposes. This suggestion was found to be not practicable for variety of reasons by the expert bodies. Firstly, it may become unworkable during the monsoons for high level of water and its pressure. Secondly, the pipeline itself may get choked or blocked because of the effluents containing variety of wastes including solid waste. Further that laying down of such long pipeline in the river bank may not be ecologically advisable.

46. We have accepted these final reports after due scrutiny and keeping in view all the practical aspects including financial implications. The only viable way to clean

River Yamuna and its river beds is to implement these reports without default and demur with the amendments and additions that have been made by us in this judgment. Another advantage of accepting this report is that the infrastructure of existing STP's would come handy and can be effectively utilised for treatment of the sewage and ensuring removal of pollutants. According to Delhi Jal Board, there are 23 STP's planned and existing as of today in Delhi. These include one STP that is proposed to be established at Delhi Cantt. Other STP is stated to be under construction and is likely to commence in the year 2014-2015. The oxidation pond at Timarpur is proposed to be closed which was commissioned in 1947. There is a STP at Okhla which was commissioned in 1937 and four STP's at Kondli are lying closed due to inadequate sewerage. Majority of the STP's are not operating to their optimum capacity and some of them are not functioning properly for a variety of reasons. Thus, the entire STP infrastructure, if made fully functional, can be utilised to support and aid the effective implementation of the project under the Expert Reports. Only 32 additional STP's are required to be established and made operational for complete treatment of sewage which is generated in Delhi. Under this project, total of 55 STP's are required to be established and made operational. Out of them, 22 STP's are already in place. However, they are not operating to their optimum capacity. This itself, places the entire project at a great advantage as the investments already made would not be wasted and would form integral part of the comprehensive project. However, it is essential that Delhi Jal Board takes all steps without any further delay to ensure that the existing 23 STP's are made functional effectively and operate to their optimum capacity.

47. Ancillary corollary thereto is recycling and reutilization of the water that would be discharged from these STP's after treatment of the sewage. This would not only help in providing usable water for horticulture and industrial purposes for which there is a great shortage in Delhi, but, would also minimize the discharge into River Yamuna, preventing its pollution on the one hand and furthering the cause of its restoration on the other.

48. We may also advert to existence of high pollutants in River Yamuna. Analysis Reports have been submitted by the CPCB of the various samples showing water quality in main 18 drains of Delhi. The samples were collected by the Board from 19th November, 2013 to 18th October, 2014 at different dates on different intervals and from all the 18 drains of Delhi (Najafgarh + Supplementary drain, Magazine Road drain, Sweeper Colony drain, Khyber Pass drain, Metcalf House drain, ISBT + Mori Gate drain, Tonga Stand drain, Kailash Nagar drain, Civil Mill drain, Delhi Gate (power house) drain, Sen Nursing Home drain, drain number 14, Barapulla drain, Maharani Bagh drain, Abu Fazal drain, Jaitpur drain, Tuglakabad drain and Shahdara drain). Most of these drains are found to be highly polluted and are releasing much higher quantity of BOD. Even presence of heavy metal was noticed. We would only be referring to the high content of pollutants in the respective drains which would sufficiently indicate the dimensions of the environmental problem and its seriousness which we are dealing in the present case. For instance, Magazine Road drain carries 593 mg/l Chemical Oxygen Demand (COD) as opposed to the prescribed value of 250 mg/l. Tonga Stand drain, Kailash Nagar drain, Delhi Gate (Power House) drain carries the COD content of 810 mg/l, 547 mg/l and 633 mg/l respectively, as opposed to the same prescribed value of 250 mg/l. As far as Suspended Solids in mg/l is concerned, the prescribed limit is 100 mg/l, while the Shahdara drain, Delhi Power House drain, Kailash Nagar drain, Tonga Stand drain, Khyber Pass drain and Magazine Road drain are carrying 405 mg/l, 845 mg/l, 373 mg/l, 953 mg/l, 581 mg/l and 329 mg/l respectively. In this very report, it has been shown that metals like Chromium (Cr), Copper (Cu), Iron (Fe), Nickel (Ni), Lead (Pb) and Zinc (Zn), are the metals out of which, all or few of them, have been found to be present in all the 18 drains. Such high levels of pollutants in River

Yamuna, are indicators of the likely environmental and health hazards, which will result from direct or indirect use of the Yamuna water. Large scale agricultural activity on the river bank or floodplain, is one of the glaring examples of indirect impacts of environmental pollution. The vegetables grown in these areas, for which the direct source of irrigation is the ground water or water flowing in River Yamuna, are bound to be contaminated. We have noticed in some detail the serious health hazards, including diseases like cancer and other serious diseases, from which the persons consuming such products may suffer. Thus, the agricultural activity needs to be stopped immediately to prevent further environmental and health hazards and in any case till the time Yamuna is restored to its original status and carries only wholesome water or the water which can be used for irrigation purposes, without exposing the residents of Delhi to serious diseases and health hazards. We have already noticed the disputes that are pending between the lessees of land, falling in the river Flood Plain, but, that would either way be inconsequential against the issues of environment which have to take precedence over the individual rights. Most of the lessees do not have subsistent rights, therefore, they cannot be permitted to continue the activity to raise agricultural produce, which would be seriously injurious to human health. This fact is fully substantiated by the data placed before the Tribunal which shows that the drains joining River Yamuna and even Yamuna itself, carries heavy pollutants, including the heavy metals. On top of that, pesticides are being used and sprayed over the agricultural produce, which only makes them worse for human consumption in regard to the injury that they would cause to human health. Unless the river is restored to its original health, the agricultural activity would result in seriously jeopardising the environment as well as human health. The period involved in the restoration under the project approved by the Tribunal is not very long. The prohibition is not of permanent nature but is only for a limited period of two and a half years. Certainly for the good of the society and in public interest such restrictions can safely be imposed in consonance with the provisions of environmental laws in force in the country.

48. As we have already indicated the entire stretch of River Yamuna through NCT Delhi and its border with Uttar Pradesh is 52 kms. This stretch has been divided into three main sections. First is of 26 kms. from village Palla to Wazirabad, which is largely rural in character. Generally, it is in its natural state, except marginal bunds on its two sides and has growing urbanization on the UP side. On this stretch the river and its Flood Plains together span 1.5 km to 4 km.

49. The next stretch of 22 kms is from Wazirabad Barrage to Okhla Barrage. This section is highly urbanized, with the river and its Flood Plains greatly compromised. Flow of the river is further impeded by the ITO Barrage and 9 bridges and flyovers resulting in the river and its flood plain getting restricted to as low as 800 m strip in some places. The last stretch of 4 to 5 kms is from Okhla Barrage to village Jaitpur. This stretch has developed rapidly, both on Delhi and UP side; its flood plain either being encroached by settlements or intensely degraded by stone crushers, resulting in the river and its floodplain reducing to 800 m to 1.5 km width.

50. It cannot be disputed and in fact, has not been disputed that the present status of Yamuna is only of a sewer, due to lack of fresh water flow, discharge of untreated or partly treated domestic and industrial waste and due to dumping of debris on its banks and in it. Its flood plains are highly truncated and degraded, resulting in depletion in most of its natural bio-diversity. It has been submitted before the Tribunal that around 37000 cu. m. on the Eastern bank and around 53000 cu.m. on the Western bank is the quantum of debris which was lying on the banks River Yamuna. Of course, majority of this has already been removed under the directions of the Tribunal and steps have been taken to identify such sites. Still little part of debris, consisting of construction and other debris remains. Steps need to be taken not only to remove the remaining part of debris and clear the river banks absolutely, but also to

prevent and ensure that there is no fresh dumping of debris in the entire stretch passing through National Capital Region (for short, 'NCR'). Huge dumps and encroachments of the river banks were noticed by the Expert Committee constituted by the MoEF, during their visits to these sites. Private persons, authorities and even bodies like DMRC had contributed to encroachments and dumping, which was rampant. Thus, the Committee recommended that:

1. All solid waste dumps, including those used for roads and bunds, within the active floodplain should be removed forthwith.
2. All solid waste recycling units, farm houses, cattle farms and nurseries must be relocated at the earliest.
3. Construction of new bunds, roads and guide bunds, widening of existing bunds, spurs and guide bunds within the active floodplains should be stopped and banned.
4. No filling of the floodplain/riverbeds be allowed in the name of development and renovation of ghats. The floodplain under built up areas at Sur Ghat and Quedsia Ghat should be recovered. All recreational facilities for people visiting ghats should be created close to the embankments/roads where a channel taken out from the water course of the river can be brought for the purpose.
5. All settlements encroaching upon the floodplain (with the exceptions noted in the detailed report) should be relocated at the earliest.
6. Construction of new barrages and roads, railway and metro bridges, and embankments and bunds should not be permitted. In exceptional cases, a critical assessment of their potential impacts on flood aggravation and environmental clearances should be made mandatory.
7. There is a shortage of landfill sites in Delhi. Immediate action is required to identify additional landfill sites catering to the next 25 years of requirement. Action is also required to identify more sites for recycling of building material waste.

51. Unauthorised activities are being carried out on the floodplain and at some places they have even encroached up to the riverbed of Yamuna. Agricultural products raised from these areas have shown to be injurious to human health, primarily for the reasons that the river carries very high pollutants, including heavy metals and acidic elements. One of the studies brought on record which is even supported by the United Nations, is the first to link river contamination with adverse impacts on human health. According to this study, around 23% of children had lead levels in their blood above 10 micro grams - a widely accepted guideline - whose adverse health effects have been noted. The study said high level of lead in blood was eight times more when exposed to the riverbank after Wazirabad in north Delhi, compared to rural areas upstream in Haryana, where river water contamination was found to be less. Heavy metals such as lead are more readily absorbed by children as compared to adults. The resultant disasters would be impairment of motor skills, onset and development of hypertension and may even result in slow cognitive development. Water and soil samples were lifted every 2 km, starting, from Wazirabad Barrage and covered 22 km of the river in the capital. The presence of heavy metals increased after Wazirabad even though every drop of water that flows in the river in Delhi has to be cleaned through Sewage Treatment and Effluent Treatment Plants. Presence of heavy metals was negligible in Haryana. Hexavalent chromium, said to be hazardous was found to be highest at Old Yamuna Bridge and Indraprastha Estate Power Plant. This is the area where maximum vegetables are grown on riverbed. At this point there is also heavy industrial discharge into the river.

52. Agricultural activities must be carried on as it is essential for our day to day living, but, agriculture produce that will lead to greater harm to human health must be

checked and if necessary should also be stopped. The principle of 'Inter-generational Equity' would require that today's younger generation should not be exposed to serious health hazards and thus, it will not only be desirable but essential that such contaminated produce/vegetables are not offered for consumption to the people at large. The Principle of Comparative Hardship would clearly mandate that where the injury is much greater in proportion to the benefit that would accrue as a result of such activity, the activity must be stopped in the larger interest of the public and of public health.

53. The health of the public is a matter which ought to find absolute priority in the agenda of proper governance by the State. Right to health is a part of the right to life guaranteed by Article 21 of the Constitution of India. Where the planning processes are left to the government and to the public bodies, it is inherent that overriding considerations of public health and danger to life must be issues to which top priority consideration is bestowed. Where there is a failure in this regard, the Courts will have to step in. Nothing can be more fundamental than the issue of public safety and public health. No amount of technical pleas can justify a situation where a large number of people are exposed to health hazards because of industrial or any other activity, causing pollution of air or water. Unfortunately, as the sad situation may be, River Yamuna - the main source of drinking water supply - was stated to be the free dumping place for untreated sewage and industrial waste, as back as in 1996 (Ref.: *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83, *Bayer (India) Ltd. v. State of Maharashtra*, AIR 1995 Bom 290, *Dr. B.L. Wadhera v. Union of India*, (1996) 2 SCC 594).

Thus, as of today, the Tribunal cannot ignore the extreme pollution of River Yamuna and its consequential adverse impacts on health of residents of Delhi.

54. We may also notice that an application being M.A. No. 275 of 2014 had been filed before the Tribunal where the applicants referred to large scale pollution of River Yamuna which resultantly has led to the contamination of food crops grown in the area, soil pollution, ground water contamination thereby adversely affecting the human health. River Yamuna is a major tributary which forms a large part of the larger River Ganga system. Applicants have claimed that such pollution in the River Yamuna is contaminating the vegetables grown on its banks. Some of the news articles have even described this river as "Yamuna, the poison river". Moderate levels of toxic metals (nickel, lead, manganese, chromium and zinc) were evident in the water at several locations. At one particular location lead levels were found 10 times more than anywhere else in the river and in another location near a thermal power plant, mercury concentration was 200 times more than determined by the United States Environmental Protection Agency. The study reveals that industrial effluents and untreated sewage continue to choke the river. The amount of Faecal Coliform - bacteria available in human and animal faeces - has grown by as much as 30 times as compared to the CPCB values. The applicants have annexed various articles and photographs in support of their averments. The study titled "Anthropogenic Arsenic menace in Delhi Yamuna Flood Plains" showed that the maximum concentration up to 180 ppb was found in the groundwater. Analysis of around 120 water samples collected extensively along the Yamuna Flood Plain showed that more than 55% had arsenic contamination beyond the WHO limit of of Comparative Hardship would clearly mandate that where the injury is much greater in proportion to the benefit that would accrue as a result of such activity, the activity must be stopped in the larger interest of the public and of public health.

53. The health of the public is a matter which ought to find absolute priority in the agenda of proper governance by the State. Right to health is a part of the right to life guaranteed by Article 21 of the Constitution of India. Where the planning processes are left to the government and to the public bodies, it is inherent that overriding

considerations of public health and danger to life must be issues to which top priority consideration is bestowed. Where there is a failure in this regard, the Courts will have to step in. Nothing can be more fundamental than the issue of public safety and public health. No amount of technical pleas can justify a situation where a large number of people are exposed to health hazards because of industrial or any other activity, causing pollution of air or water. Unfortunately, as the sad situation may be, River Yamuna - the main source of drinking water supply - was stated to be the free dumping place for untreated sewage and industrial waste, as back as in 1996 (Ref.: *State of Panjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83, *Bayer (India) Ltd. v. State of Maharashtra*, AIR 1995 Bom 290, *Dr. B.L. Wadhera v. Union of India*, (1996) 2 SCC 594).

Thus, as of today, the Tribunal cannot ignore the extreme pollution of River Yamuna and its consequential adverse impacts on health of residents of Delhi prohibited in terms of the provisions of the Act of 1986. We find merit in the contentions raised on behalf of the DDA, of course, subject to such orders as may be passed by the High Court of Delhi. Even if these persons have an interest in the land, they cannot carry on an activity which is environmentally improper and is completely injurious to human health, just to make some money. Section 5 of the Act of 1986 clearly empowers the Boards and/or MoEF to prohibit such activity which is injurious to environment and human health.

56. The Expert Committee, in its report dated 19th April, 2014 stated that it had more than 6 meetings and conducted site visits. The Committee also critically evaluated the available information relating to rejuvenation, development and management of River Yamuna, particularly, with respect to the 52 km stretch of NCT of Delhi and the portion relating to the State of Uttar Pradesh and recommendations of different Authorities and Committees constituted by the Government and agencies differently. The Committee also generated 1:1000 resolution maps on GIS platform using 2010 data sets supplied by GSDL on different aspects of the river ecosystem and flood zoning was also undertaken using digital model. The High Powered Committee constituted by the Tribunal with the Secretary, MoEF as Chairperson, had also constituted Expert Committee and sub-Committee to examine various matters in this regard. Experts were chosen by the MoEF and it had also deputed its own experts and scientists to examine these various aspects. This is how all the above reports came to be submitted before the Tribunal from time to time.

57. As already noticed above, vide order dated 13th September, 2013 passed by the Tribunal, the Expert Committee was required to examine and critically analyse the Yamuna River Front Development Plan of the DDA as well. This was done by the Committee. This Plan of DDA is an 'Integrated project of recreational areas along with bio-diversity parks, in four of the sub-zones of the 'O Zone'. The area proposed for the implementation of Yamuna River Front Development (YRFD) scheme by the DDA, is the active Flood Plain which is frequently flooded by medium floods. According to the Expert Committee, the proposed activities such as construction of various recreational and public facilities, by effecting topographic changes, will reduce the flood carrying capacity and aggravate flooding, besides contributing to pollution. Development of the flood plains has to be strictly done, while keeping the biodiversity intact and ensuring that no major and impermissible construction activity is permitted on the flood plain. Biodiversity parks could be made at suitable locations, for example, sub-zone IV and sub-zone VI, as recommended by the Expert Committee in its report. The Committee has specifically noticed that the flood carrying capacity of the river has been considerably reduced due to encroachments and waste dumps resulting in flooding of its banks every year and this was also reported by NEERI in its report of 2005. The Committee has suggested that new wetland habitats should be created for biodiversity

conservation, wherever feasible and inter-connectedness between wetlands for water movement and exchange should be promoted. The Expert Committee, for the reasons stated in its Report, suggested that the YRFD plan of DDA is untenable and should be stopped. It has already been placed on record that the DDA itself admits in their proposed re-delineation of 'O Zone', in terms of the public notice issued by it on 28th September, 2013, that the 'River Front' refers to an area that lies outside the embankments of a river, but the area of the proposed YRFD plan is within the active floodplain. Thus, it is recommended that this YRFD scheme should be replaced by another plan for restoration of the river and its floodplain, as suggested by the Expert Committee and accepted by the High Powered Committee. We direct that all the recommendations of the Expert Committee, including the above, should be implemented without any further delay.

58. This report has been examined by the Tribunal and we are of the considered view that the DDA should not proceed further with its YRFD scheme and the recommendations of the Expert Committee as accepted by the High Powered Committee should be implemented. We order accordingly. Preservation, restoration and beautification of River Yamuna and its banks would not achieve the desired results, unless effective steps were taken to ensure that the riverbed is neither encroached nor any kind of waste (construction debris, municipal waste or any other waste) is dumped at the banks of River Yamuna. The Expert Committee's recommendations, as accepted by the High Powered Committee, were that the 'O' Zone as defined in the MPD, 2021 and as delineated in the report dated 19th April, 2014, together with the corresponding part of the River and its active floodplain, within the embankments on the UP side on the east, should be designated as the River Zone. The river zone so designated should be preserved and protected for the conservation and restoration of the river and no development activity should be permitted within the river zone that encroaches upon the active floodplain, obstructs the flow or pollutes the river.

59. Having considered all aspects and the Expert Committee Report before the Tribunal, the Tribunal is of the considered view that till Yamuna is rejuvenated and is restored to its wholesomeness, agricultural activities on the flood plain/ 'O' Zone should be strictly prohibited. The concerned authorities should ensure that the vegetables grown on this belt are not permitted to be sold in the market. The Association of such vegetable market should be informed of this prohibition and the MoEF should issue directions forthwith, prohibiting the production and sale of vegetables from this area with immediate effect.

60. Some of the Municipal Corporations on their own have taken steps to concretize the drains as well as to cover them. In some parts of Delhi, particularly, in relation to the drain in Defence Colony and other parts of South Delhi, drains have been covered to some extent. In other places, the work has just started while in other places, a very meagre part of the work has been executed. According to the report of the Expert Committee, covering of drains in Delhi would have very serious adverse impacts upon the environment and ecology of Delhi. This would result in more flooding, explosion of diseases and clogging of drains.

The Expert Committee noticed that the storm water drain system is designed to carry the rain water only and also to allow recharge in the ground water through its drainage system, as well as through other bodies. It stated that the storm water drain system has been designed based on the good engineering practices and taking average intensity of rainfall as 1 cusecs per acre. The storm water drain system should carry rain water and nothing else to maintain the ecology and environment. Ideally, the storm water should flow through its designed natural drainage system and sewage through sewerage network and finally treated at STPs before it is finally disposable into the river. They proceeded to notice with approval the policy decision taken by a

Committee chaired by the Chief Secretary, Delhi in respect of the various drains as circulated by Circular dated 25th February, 2014 which inter alia provided as under:—

"1. *Natural drains*: Natural drains are those drains which are naturally occurring, formed by the watershed of the area draining into it and have been existing naturally with a fully unlined base originally. Although many modifications have been made to the natural drains over the years through lining, covering etc. these drains would still continue to be considered as natural drains. The policy in r/o natural drains shall be as under:

- a. The natural drains shall neither be lined (concretising the surface) nor shall they be allowed to be covered in any case.
- b. The number of the natural drains will be confined to the list of such drains contained in the MPD 2021.
- c. Construction of elevated road along these drains without affecting the aesthetics, flow of drain and without hampering cleaning of the drain may be allowed. Similarly, service road and NMV track along the drain may also be allowed provided it does not in any manner affect the flow, cleaning of the drain and aesthetics of the area."

The said policy has also found favour with the High Court in W.P.(C) No. 2385/2011.

The Committee, thus, has recommended that there should not be any concretization or covering of drains particularly natural drains in Delhi. According to the Committee such course is not technically feasible and is not in the interest of ecology and environment.

61. Upon its examination, the view expressed by the Expert Committee is not only acceptable, but is in consonance with the settled principles of ecology. The natural drains cannot be permitted to be concretised or covered, as it would not only destroy the flora and fauna but would even destroy the ecology of the entire area. We are in the agreement with the reasons given by the Expert Committee that it is neither appropriate nor in the public interest to permit Corporations to concretise and cover all the natural drains of Delhi. In order to prevent wastage of public funds which have been spent recklessly, even though without proper application of mind and after consideration of requisite data, we would permit the Corporations to keep intact the construction done so far on the drains, particularly, where the work has fully been completed in all respects and they have already been covered. However, where work has just commenced or just a partition wall has been erected, in our considered view all this work should be dismantled, especially, where only *saria* (iron rods) have only been fixed. Iron removed from these places can safely be used in construction of other projects by the Corporations, including construction and setting up of STP's and allied infrastructure. Thus, it would cause minimum, albeit unavoidable waste of some public money. M.A. No. 88 of 2014 has been filed by a Resident Welfare Association praying for directing the Corporations to protect the environment, remove pollutants and prevent encroachments from drains. The Corporations or such authorities are liable to be directed to clean all the drains of Delhi not only of the area pertaining to the applicant, but also ensure that the drains are kept clean and obstruction free in the entire NCR. Proper legal action should be taken against the persons who throw any Municipal Solid Waste, including plastic etc. into these drains. The Corporations and concerned authorities should provide dustbin/containers of appropriate size and give due incentive to the citizens as well as cleaning agencies, for dumping the municipal or any other solid waste into the big dustbins, from where the same should be transported for disposal in accordance with the Rules of 2000. The Corporations can certainly take steps to beautify and maintain the banks of such drains, for which the residents should be required to participate and ensure proper maintenance of the

drains and their surrounding areas. We are not oblivious of the fact that it may not be possible for the NCR Delhi to incur the entire financial liability of this project in the current year. The project is proposed to be completed within two and a half years. Thus, the expenditure can be spread over that period. In any case, there appears to be no financial constraint on the DJB and other concerned authorities, as it has been conceded before us that Rs. 20,000 Crore is the planned budget for providing of network of water and sewage in the entire Delhi for the coming five years, commencing from the year 2012-2013. Pipeline and sewage is to be laid for 9,000 kms in the 2000 odd colonies of Delhi. The establishment of STP's is also covered under this planned expenditure. Out of this amount, Rs. 1000 Crore has been earmarked for water network and Rs. 1031 Crore for sewage network, for the current year. Similar amount is also provided for the financial years 2014-2015 to 2016-2017. This being the financial status, we do not foresee any difficulty in provisioning of adequate funds for timely completion of this project. In fact, the DJB and the concerned authorities would have ample finances at their disposal within the ambit of the already provided planned expenditure. Besides that, we have also granted liberty to the Corporation and the DJB to collect funds from the general public on the 'Polluter Pays' Principle. The safest criteria for determining the quantum of environmental compensation payable by people of Delhi, would be the certain percentage of the property/house tax payable by an individual. It may be noticed that certain kind of charges like education cess, sewage tax and certain other charges, do form part of the property/house tax payable by individuals, thus, environmental compensation can also form part of such property/house tax. But this, we would leave primarily at the discretion of the authorities concerned. They may or may not impose such charges if there are more than adequate funds available with the DJB and the NCT Delhi for completion of the project.

62. Another facet which calls for attention of the Tribunal is that all the natural and manmade drains in Delhi should be kept clean, free of obstruction and dumping of any material or municipal waste, in or around them should be strictly prohibited. It has been submitted before us that besides the existing 157 natural drains which have been identified by the Expert Committee with reference to the 1976 Drainage Map of Delhi, around 44 drains are not traceable. It is important that the said untraceable 44 drains should be traced and a definite report is submitted to the Tribunal, for two reasons. Firstly, if these drains are traced, then they could be kept clean and obstruction free and if any additional STP or ETP is required to be provided on any of them, timely steps in that regard could be taken. Secondly, if these drains are existing and are covered, while being connected to such colonies which do not have STP and are discharging their sewage into such drains, then it is bound to affect the success of the project adversely. Therefore, the Principal Committee should trace and/or cause to be traced, these 44 drains and submit a status report in that regard to the Tribunal. After submission of such report, if any further directions are necessitated, the Tribunal would pass such directions.

63. To keep the matters beyond ambiguity and with reference to the report filed on behalf of the South Delhi Municipal Corporation and the photographs annexed thereto, we direct that no further construction work would be carried on in the G.K-I drain and all the iron rods, especially in the middle section of the drain, shall be entirely removed. The part of the drain which has been covered would be permitted to remain, while it will be ensured that the same is neither occupied by unauthorised occupants nor is used as a platform for dumping, as is even evident from the photographs submitted by the Corporation. No further construction work would be carried out in the Andrews Ganj drain and the entire middle section where iron bars are visible shall be removed. On the Chirag Delhi drain, no work appears to have been done as shown in photographs and only iron bars have been fixed on one side of the drain. The entire

iron bars shall be removed and no construction shall be carried out on the drain. In Pushp Vihar, the drain which is already covered need not be demolished, but the iron bars which have been fixed in the portion ahead of the covered area, would be removed and the drain would be made obstruction free and not divided. The iron so removed, shall be used for other construction works by the Corporations/authorities concerned. The wall on one side of the drain that has been constructed would not be demolished. However, it should also be ensured that the covered part of the drain, even at Pushp Vihar, is not used as a platform for unauthorised occupation or dumping of waste.

64. The Act of 1986 was enacted by the Indian Parliament for protection and improvement of environment and to implement the decisions taken at the United Nations Conference on Human Environment at Stockholm in June, 1972. The rapid decline in environmental quality that was evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems, were the main aspects that weighed with the Legislators to enact various environmental laws. The Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act') intend to provide pristine water and clean air on one hand, while on the other, place a statutory obligation upon the industries or units intending or carrying on any industrial or other activity where they emit gases or smoke in the air or trade effluents in the land/water/stream etc., not to operate without consent of the concerned Pollution Control Boards. In other words, they are mandated by law to adhere to the prescribed standards of emission and discharge of trade effluents. Where they intend to prevent and control pollution of air and water, there they give a statutory right to the citizens of India to claim clean environment.

65. The most significant event in the recent past of the Indian environmental jurisprudence, was the declaration of the Hon'ble Supreme Court that right to decent and clean environment was an essential feature of right to life as enshrined under Article 21 of the Constitution of India. The dictum of the Supreme Court of India in its various judgments, not only declared it to be a fundamental right, but commanded the States to discharge its constitutional obligation for providing a cleaner environment, as its contamination was of a very high degree (Ref: *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647, *Tirupur Dyeing Factory Owners' Association v. Noyyal River Ayacutdars Protection Association*, (2009) 9 SCC 737 and *M.C. Mehta v. Union of India*, (2009) 6 SCC 142). The judgments of the Supreme Court, of course, were with reference to the facts and circumstances of a given case, but the golden principle underlining these judgments was uniform, i.e. protection and improvement of the environment. The Supreme Court in its judgments even rejected the plea of the State that lack of availability of finances at a given point of time could be an available defense, for not taking effective steps for providing a cleaner environment. In this regard, reference can be made to the judgment of the Supreme Court in the case of *Ashok Kumar Thakur v. Union of India*, (2008) 6 SCC 1, wherein the Supreme Court held:

"It is to be noted that financial constraint cannot be a ground to deny fundamental rights and the provision for the schemes and the utilisation of the funds are also relevant factors. It appears that better coordination between the funds provider and the utiliser is necessary."

66. The concern of the framers of the Constitution for environment is not only exhibited by introduction of Article 48A by the 42nd Amendment Act of 1976, but also by Article 51A(g) of the Constitution, which places a fundamental duty upon the citizens to protect and improve the natural environment, including forests, rivers, wildlife and to have compassion for living creatures. Therefore, the law declared by the

Supreme Court of India, mandate of the Constitution and the statutory rights and obligations, are *ad idem* to the mandate that there has to be protection and improvement of environment and all must contribute to provide decent and clean environment. United Nations conference on Environment and Development held at Rio-de-Janeiro in June, 1992, in which India participated had also called upon the States to provide effective access to judicial administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The States in discharge of their above obligation have enacted the National Green Tribunal Act, 2010, which provides for access to specialised environmental justice in the country. This Tribunal has been established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal right relating to environment and giving relief and compensation for damage to the person and property and for matters connected therewith and incidental thereto. The primary object of establishing this Tribunal is to provide easy access and expeditious dispensation of environmental justice. The legislature in its wisdom has vested wide jurisdiction in the Tribunal to ensure that major spectrum of environmental jurisprudence are covered, so as to render effective and concerned decisions in the field of environment.

67. It is expected of the Tribunal to deal with the multi-disciplinary issues relating to environment. Section 20 of the NGT Act reads as under:

"The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

68. A bare reading of the above provision makes it amply clear that in exercise of its varied jurisdictions, i.e. original, appellate and special jurisdiction, the Tribunal is to be guided by the three well-settled canons of environmental jurisprudence. These principles being a part of the statute that created this Tribunal, the obligation upon this Tribunal, to ensure that cases before it are expeditiously disposed of, in line with these principles, is greater. In other words, these principles are the very foundation of the determinative process before the Tribunal. The Principle of Sustainable Development takes within its ambit the Principle of Inter-generational Equity. In fact, all these three principles, i.e. the Precautionary Principle, the Polluter Pays Principle and the Principle of Sustainable Development have to be collectively applied for proper dispensation of environmental justice. In the case of *Tirupur Dyeing Factory Association case* (supra), the Hon'ble Supreme Court observed that the 'Polluter Pays' Principle and Precautionary Principle itself have to be read with the doctrine of Sustainable Development. Normally, they are applied collectively depending upon the facts and circumstances of case. Restriction is an inbuilt fact of Sustainable Development and that itself serves the cause of Intergenerational Equity. Sustainable Development means the development that can take place and which can be sustained by the nature and ecology with or without mitigation. In such matters the required standard is the risk of harm to environment or to human health and has to be decided in public interest, according to a 'reasonable person's test'.

69. The Supreme Court in the case of *Vellore Citizens Welfare Forum* (supra), referred with approval, the concept of development to say that the traditional concept that development and ecology are opposed to each other is no longer acceptable. Sustainable Development is the answer i.e., development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. It is intended to improve the quality of human life, while living within the carrying capacity of the supporting ecosystems. The 'Precautionary' Principle and 'Polluter Pays' Principles were, therefore, said to be the essential features of the

Principle of Sustainable Development.

70. We have referred to the Principle of Sustainable Development only to illustratively repel the contention that development on the banks of River Yamuna is necessary by raising constructions of the kinds which were contemplated by the DDA and even suggested at the Bar. This reasoning would equally be applicable to the concept of covering of natural storm water drains. Unquestionably, Yamuna is a very polluted river and it hardly contains water, which could be used for many useful purposes, including agricultural activities. Its water is unfit for human consumption and even for industrial purposes. Steps have to be taken to restore Yamuna to its original salubrious and pristine form.

71. Before we examine the applicability of the three statutorily stated Principles to the present case, we must refer to the project and the manner in which it is to resolve these serious environmental issues and achieve the object of revitalizing River Yamuna.

72. The entire issue could be identified into two segments, which are the primary sources of pollution of River Yamuna. The first, pollution resulting from discharge of industrial and trade effluents; and the second, sewage and domestic discharge and untreated waste entering the River Yamuna through different drains. The installation and operationalization of CETPs for all industrial pockets of Delhi, would take care of treating the trade and industrial effluents before it is permitted to join any drain. As of date, in some industrial clusters CETPs are in existence, but are not working to their optimum capacity and effectively. Thus, it is required that all the industrial clusters in Delhi should have a CETP which has to be established and made effectively operational by the concerned authorities, particularly the DJB and other Corporations and authorities in-charge of industrial clusters under the guidance of the Principal Committee. Wherever they are in existence, it should be ensured that they should work to their optimum capacity and effectively, to prevent and control the pollution resulting from discharge of industrial/trade effluent of that industrial cluster. The new CETPs that are to be installed must be established keeping in view the manufacturing and production activities of the industries within that industrial cluster. It should be ensured that the treated effluent is strictly in consonance with the prescribed parameters and does not carry any hazardous ingredients, particularly, heavy metals. We also direct that the authorities concerned would require each industry to contribute for the establishment, maintenance and operationalization of such CETPs. The criteria has to be the quantum of production/manufacture, nature of process and consumption of water and electricity by such industrial units. Such industrial units within a particular industrial cluster have to pay these amounts on the 'Polluter Pays' Principle, for the pollution already caused by them and even which they are causing presently, as well as to prevent pollution in future on the Precautionary Principle. Major part of such costs, obviously have to be borne by the authorities concerned, let us say $\frac{2}{3}$ rd, while $\frac{1}{3}$ rd of the total costs should be borne by the industries.

73. Once all the new 32 STPs are established and made effectively operational and all the existing STPs (21) are set in order and they operate to their optimum capacity, then the entire sewage and domestic discharge from all the colonies of Delhi, through nearly more than 157 drains, would stand treated. This treated discharge then has to be re-used, recycled for supplying water for industrial and agricultural purposes. In other words, the treated sewage and domestic discharge would have only remnant water, which is not to have pollutant elements and even odour for that matter. Keeping in view the demand of water by industrial and agricultural sector of Delhi, larger part of the treated discharge would stand recycled, reutilized and a very small remaining part would be discharged into the River Yamuna. The environmental flow of Yamuna would be maintained, which will be preceded with controlled dredging, required to remove huge accumulation of sediments, sludge and debris. Upon

completion of this project, River Yamuna would stand restored to its crystalline and pristine form and would provide clean and wholesome water for use by the residents of Delhi, as well as its natural beauty would add to the glory of the National Capital.

74. It will also be ensured that the remaining debris which has not been lifted so far, should be removed from the Flood Plain of the River Yamuna and it should be ensured that no waste of any kind, much less construction debris or waste, is dumped or permitted to be dumped in that area again. We have already noticed and directed that all the drains would be cleaned and there will be complete prohibition on dumping of any kind of waste and construction and demolition material in and on the banks of the drains, which would then carry only the treated effluent, free of any foul smell.

75. Controlled dredging of river and drains has been recommended by the High Powered Committee. Such exercise would be necessary for cleaning of River Yamuna. For years, Yamuna has been carrying untreated sewage, trade and industrial waste and bearing the brunt of dumping of municipal and/or other waste, including construction debris, plastic, metals and even the wet waste. With the passage of time, there has been a huge accumulation of sediments and sludge. This, besides causing serious pollution of the river, has considerably reduced the flood carrying capacity of the main channel. This has even silted up wetlands, flood plain and water bodies. According to the High Powered Committee in several places, many of the spurs have lost their original purpose because of the flow in the river is highly reduced and regulated. In several places, these are being extended right up to the current channel and being developed as parks etc. Such development has to stop, to provide water space for the river channel to carry more water. Existing wetlands and water bodies, both upstream and downstream of Wazirabad reservoir, should be deepened and enlarged. Besides, recommending stopping of such activities on the Flood Plain, the Expert Committees have made various recommendations which we accept, *inter-alia*, that (i) culverts must be constructed under the existing guide bunds of roads and flyovers, which have fragmented massive wetlands, so that flood waters flow without obstructions along the river course and into the floodplain wetlands. This will also help movement of aquatic biota (e.g., fish) and enhance the groundwater recharge. (ii) a greenbelt/greenway should be developed on both sides of the embankment, for controlling erosion, reducing sediment load of the main channel, reduce pollution, and beautification. Nature trails may be provided across riparian areas for recreation to the public without losing ecological function of the Flood Plain.

76. And most importantly the Committee recommends control of sewage pollution must be given highest priority, adoption of new technologies to reduce BOD levels from 20 - 30 mg/l to below 10 mg/l together with the use of treatment wetlands as suggested which would enhance quality of water in the river.

77. Upon proper analysis, it is required that controlled dredging is carried-out by the authorities of the main drains of Delhi and River Yamuna to remove huge accumulation of sediments, sludge and waste dumped in and around river and drains to enhance the capacity of the main channel and to restore ecology and biodiversity.

78. Improvement in the levels of pollution in river Yamuna, widening of the river carrying capacity of the main channel and taking of other remedial and preventive measures still may not completely and satisfactorily serve the object of attaining 'Nirmal Yamuna' unless the environmental flow of the river is maintained continuously. Respondent no. 7 (the Central Water Commission), Upper River Division, Government of India has filed a detailed affidavit in which it has been stated that as per entry 17 of list-II of 7th Schedule, Constitution of India, water is a State subject and reach of respondent no. 7 in this regard is advisory, promotional catalytically in nature.

79. Development and regulation of floodplain of rivers falls within the purview of the State. Floodplain is an integral part of river system even though it is used only

occasionally to pass down flood flows. When floodplain is not occupied by water it forms part of the land system providing possibilities of carrying on some restricted activity. It is not possible to provide uniformity in the extent of floodplains with respect to different rivers as well as its various reaches.

80. Floodplain zoning has been accepted as an important non-structural strategy for flood management. The basic concept of floodplain zoning is to regulate land use of floodplains to restrict damage caused due to floods. The floodplain zoning, therefore, aims at determination of locations so that flood damages are reduced to minimum. A very restrictive activity can be allowed in that area. It is not only to protect the areas from damage resulting from floods and failure of water protective measures, but is also useful in reducing the damage caused due to drainage congestion, particularly in urban areas. The Commission claims to have prepared a model bill relating to floodplain zoning. This model bill provides for different categories based of priorities in floodplain.

Following are the recommended priorities:

1. "Defense installations, industries, public utilities like hospitals, electricity, installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc buildings should be located in such a fashion that they are above the levels corresponding to a 100 years frequency or the maximum observed flood levels. Similarly, they should also be above the levels corresponding to a 50 years rainfall and the likely submersion due to drainage congestion.
2. Public institutions, government offices, universities, public libraries and residential areas. Buildings should be above a level corresponding to a 25 year flood or a 10 year rainfall with stipulation that all buildings in vulnerable zones should be constructed on columns or stills as indicated above.
3. Parks and playgrounds. Infrastructure such as playgrounds and parks can be located in areas vulnerable to frequent floods. Since every city needs some open areas and gardens, by restricting building activity in vulnerable areas, it will be possible to develop parks and play grounds, which would provide a proper environment for the growth of the city."

81. According to this affidavit, the National Water Policy - 2012 provides that conservation of rivers, river corridor, water bodies and infrastructure should be undertaken in a scientifically planned manner through community participation. Encroachments and diversion of water bodies must not be allowed and wherever it has taken place, it should be restored to the extent feasible and maintained properly. Despite declaration of floodplains, demarcation has all along been a matter of concern.

82. The floodplain must be demarcated, kept free from any permanent developments and wherever it is possible, it should be restored to its original position.

83. Keeping in view the fact that various developments have taken on the floodplain of river Yamuna and to a larger extent they have adversely affected the river flow, its ecology and bio-diversity, we would direct that floodplain zoning should be taken with reference to the flood of once in 25 years, as against other suggested figure of more years. It is important to demarcate the floodplain on this basis immediately, to protect it from any encroachments or development activities, which as already discussed and requested by the High Powered Committee, would adversely affect the ecology and environment.

84. Thus, it is necessary to call upon the authorities to demarcate the floodplain for the flood of once in 25 years and to prohibit any kind of development activity in the area in question. Furthermore, the Committee should consider restoration of the area and wherever necessary, even demolish the properties, which are likely to be dangerously exposed to the flood and are even affecting the ecology and bio-diversity

and flow of the river.

85. Environmental flow of river identifies the minimum flow which the river should maintain round the year. If no water or minimum desired level of water is maintained in River Yamuna through-out the year, then it would not help the cause of environment. The flow of the river would by itself keep the river and environment healthier and also cause dilution to the requisite levels, even if some extent of pollutants enter the river. The carrying capacity of the river has a direct co-relation to the availability of quantity of water. We have also noticed that water of river Yamuna in Delhi NCR is released at Tajewala. At Tajewala, the river is divided into two canals, which go through different parts of State of Haryana and ultimately join river Yamuna and Ganga. The water released in river Yamuna passing through NCT Delhi is low or negligible except in monsoon period. Thus, it adds to the concentration of the pollution and adds to the environmental degradation. This has to be prevented. Thus, we direct the Chief Secretaries of NCT of Delhi and State of Haryana to have a meeting with the Principal Committee and fix the quantity of water that should be released through-out the year to maintain the environmental flow of river Yamuna throughout the year to ensure prevention and control of pollution.

86. There is unanimity amongst all the stakeholders appearing before the Tribunal including the Expert Members in making the submission that there should be one organisation for looking after the entire project and all departments, corporations and authorities should be answerable and work through that organisation or body. That body should implement the entire project and should oversee the functioning, performance and execution of all the segments of this project. It is in view of this that we have constituted a 'Principal Committee' where more or less all concerned departments are represented or individual department like DDA, NCT of Delhi, Department of Irrigation, DJB, corporations and any other body or authority responsible for executing the work or any part thereof would be answerable and work under the direct supervision of the 'Principal Committee'. All permissions sought for by the respective departments are required to be dealt with utmost expeditiousness, for ensuring timely completion of the project. The 'Principal Committee' shall submit reports to the Tribunal every quarter in relation to execution and progress of the project.

87. Now let us revert to the developments on the banks of River Yamuna. On a Flood Plain, rampant construction is prohibited under the law. A regulated activity could be carried on, only with the approval of the concerned authorities. The DDA had proposed a plan for prohibition, restoration and beautification of the Flood Plain of River Yamuna which has been found to be prejudicial to the environment and ecology, as well as to the flow of the river. Besides these defects, the Expert Committee has also pointed out that there could be heavy floods in Delhi, if the proposal of the DDA was implemented. For these reasons, besides the ones recorded in the Expert Committee's report, of which the DDA itself was a party, we do not approve of implementation of the DDA plan, but would accept the report of the Expert Committee and direct the river bank/Flood Plain to be kept in the manner as indicated in the report. We direct that walkways will be provided on the outer extreme of the Flood Plain of the River Yamuna, away from the embankments, with green area around providing a space and environment which is safe for walkers. In this judgment, of which the reports of the Expert Committee are an integral part, we have applied the precautionary principle by directing various steps which are required to be taken by the authorities, including prohibitory orders in relation to dumping and throwing of waste of any kind in the drains in the River Yamuna to protect the environment. We have evoked the Polluter Pays Principle requiring the industrial clusters to contribute towards establishment of CETPs. Similar directions in regard to the contribution by residents for establishment of STPs wherever the State feels the need for that purpose.

In any case, maintenance of CETPs and STPs should be a burden that is required to be shared by the industries and residents of Delhi. They have the fundamental duty to protect the environment, not only on the Polluter Pays Principle but even on the correct analysis of Article 51A(g) of the Constitution. There is a rapid growth in the construction and industrial activity in the city causing further and more serious pressures on the environment and infrastructures in the city. If the authorities are permitting such growth then they have to impose restrictions to regulate the same as well as incur such costs which are necessary for preventing irretrievable injury to the environment and ecology of River Yamuna in Delhi. The sustainable development would certainly require all these authorities and residents of Delhi to act with reasonable caution and restrictions on the one hand and contribute towards protection, improvement and restoration of the environment on the other.

88. Subject to any law coming into force, we have already stated that flood of once in 25 years would be considered for defining and demarcating the flood plain. No development/construction activity, except that is stated herein, would be permitted in the Flood Plain of River Yamuna. No authority or person before us has even taken up the plea that why development/construction activity cannot be carried on in other parts of NCR, Delhi. As of now, sufficient land is available, may it is expensive, but that cannot be a ground for destroying the ecology, environment and biodiversity of River Yamuna of Delhi. The result of indiscriminate, unregulated and uncontrolled development activity are widely visible and felt by each and every one in Delhi. It would not only be unwise, but may prove fatal, if such approach is continued any further.

89. At the very initial stages of this application, the Tribunal vide its order dated 31st January, 2013, had constituted a Committee chaired by the Vice Chairman of Delhi Development Authority, which consisted of Senior Bureaucrats and technocrats from the concerned Departments of NCT of Delhi, State of UP and Commissioners of the Corporations to examine the entire matter in relation to preservation, beautification and restoration of river bank and pollution of River Yamuna, including the restoration of drainage system in Delhi. On the submission of the learned Counsel appearing for the parties and examining the wide repercussions and significance of the recommendations, it was considered appropriate to involve the concerned Ministries of the Government of India as well. Resultantly, vide order dated 1st February, 2013, Secretary MoEF was made the Chairperson of the Committee while the Additional Secretary, MoEF was made as a Member of the Committee. They were free to co-opt high officers from other Ministries, if they considered it necessary. Thus, subsequently, this Committee consisted of Secretary and other Senior Officers and Scientists from the MoEF, Vice-Chairman and Chief Engineer and other senior officers from various Corporations of Delhi, Member Secretary, CPCB, Sr. Technocrats and officials from State of UP. This Committee had been submitting interim reports before the Tribunal upon which various directions were issued by the Tribunal from time to time for more specific and scientific examination of the issues involved in the present application and for submission of more definite and practical recommendations for achievement of the object. These recommendations were not only in relation to prevention and control of pollution of river Yamuna and improvement of the river bank but also for removal of huge debris as afore noticed from the river banks and their utilisation at the site and the plant at Burari for production of all tiles.

90. The Principal Committee constituted by the Tribunal, in terms of its above orders, for adopting a more scientific approach and assessment of data collected through field studies, further constituted a more specialised Committee, consisting of Professor C.R. Babu, Professor A.K. Gosain and Professor Brij Gopal. This Committee made its recommendations on the basis of their vast experience in their respective fields and made scientific data available upon making such field visits.

91. This Expert Committee submitted its comprehensive report which was considered by the High Powered Committee chaired by the Secretary MoEF. This Committee accepted the complete report in regard to restoration, preservation and beautification of the river bank of Yamuna. In this Committee even DDA had been duly represented. The point of view of DDA was considered in great depth by Experts from various fields with a specific technical know-how in restoration of river banks. As already noticed, it was found that the execution of the plan prepared by the DDA would not be in the interest of environment particularly the ecology and biodiversity in and around river Yamuna and it could be even fatal in relation to floods harming the larger public interest. The report prepared by the Committee on 19th April, 2014 was duly approved and while reiterating its recommendations, the High Powered Committee submitted the report in that behalf to the Tribunal dated 2nd August, 2014.

92. The report in relation to the improvement of drainage system and control of pollution of river Yamuna was dealt with by the Committee consisting of experts in the field as constituted vide order dated 30th May, 2014 of this Tribunal.

93. The Members of this Expert Committee we have already referred above. This Committee besides interacting with various departments also interacted with the foreign consultants engaged by the DJB. After serious deliberations and even considering the proposal of the Corporations for covering all the natural and man made drains of Delhi, it submitted its recommendations on 13th October, 2014 to the Tribunal. This report of the Committee dated 13th October, 2014 makes the project prepared by the DJB as annexure to the report for the purpose of complete and effective execution of its recommendations. Both the above reports were subjected to serious deliberations and consideration before the Tribunal particularly its Expert Members. Certain queries in relation to the second report were specifically raised by the Tribunal and as recorded vide its order which had been duly explained by the Members of the Expert Committee and it was only after serious deliberation scrutiny and examining its various facets including practical aspects, the reports have been accepted by this Tribunal as well.

94. We are not oblivious of the herculean task which will be required in carrying out the '*Maily Se Nirmal Yamuna*' Revitalization Project, 2017, but we are of the firm view that any further deferment in taking stern and serious steps for preventing and controlling pollution of River Yamuna, is bound to expose Delhi and its residents to grave environmental disasters. Implementation of provocative action plan postulated by the Expert Committees and as described in this judgment is inevitable to protect public health, public interest and the environment. This is the only solution to bring down the highest contribution of pollutants (76% of the total Yamuna's Pollution level) to a negligible and preferably to zero percent, in the interest of ecology, environment and to provide clean water to the residents of Delhi.

To ensure complete and effective implementation of the recommendations made by the Expert Committees in their reports dated 19th April, 2014 and 13th October, 2014 respectively, as well as, to identify the authorities responsible for compliance for timely preparation and execution of action plans, prepared in terms of this judgment, we hereby issue the following directions in the larger environmental and public interest:

- i. The Tribunal hereby accepts both the reports filed by the Expert Committees: first report dated 19th April, 2014, read with the gist of recommendations submitted by the Principal Committee on 2nd August, 2014, on the aspects of preservation, restoration and beautification of the banks of River Yamuna and the second report dated 13th October, 2014, read with its annexure, in relation to drainage system in Delhi, together with the Action Plan prepared by the DJB for revitalization of River Yamuna. Both these reports shall form integral part of this

judgment. All the concerned authorities of NCT of Delhi, State of UP and State of Haryana shall implement the same without demur and default, expeditiously. The entire project contemplated under these reports and this judgment of the Tribunal shall be completed by 31st March, 2017.

- ii. This project shall be called '*Maily Se Nirmal Yamuna*' Revitalization Project, 2017.
- iii. Implementation of both these reports and the components of the project shall be simultaneously executed by the concerned agencies, who shall prepare their respective Action Plans in terms of the reports as well as this judgment and submit it to the Principal Committee constituted hereinafter, in not later than four weeks from the date of pronouncement of this judgment.
- iv. (a) Presently, under the jurisdiction of the DJB, there are 23 STPs in existence or planned to be made operational by 2015. Out of them, the oxidation pond at Timarpur is proposed to be closed, as it was commissioned in the year 1947. The STPs at Okhla and Kondli are lying closed due to inadequate sewerage and majority of the STPs are not operating to their optimum capacity. Thus, we direct that the DJB and other concerned Corporations under whose jurisdiction the existing STPs fall, shall, within two months from today, ensure that all these STPs, including the one proposed to be commissioned at Delhi Cantt., should be made fully operational, should operate to their optimum capacity and operate effectively 24×7, without compromising the quality of treated water released from such STPs.
- (b) It is further directed that the Action Plan in regard to installation of STPs on 32 major and minor drains shall be prepared, in accordance with the recommendations in the Expert Committee Report afore-referred and action taken in furtherance thereto, within three months from the date of passing of this order.
- (c) All the newly proposed 32 STPs should be constructed and installed with the requisite capacity varying from 0.6 mgd to 10 mgd, at the sites specified in the report of the Expert Committee within the time frame indicated in this judgment. Once, the total of 55 STPs would operate effectively and to their optimum capacity, the water released from them shall be recycled and utilised for agriculture, horticulture and industrial purposes and least of this recycled water would be discharged into the River Yamuna.
- (d) Action Plan to be prepared to utilize the treated water from the existing 23 STPs as well as from the 32 proposed STPs. It will be ensured that the release of water from these existing STPs should be strictly in accordance with the prescribed parameters and free of any odour and it should meet the faecal coliforms standards.
- (e) Wherever necessary, the technology of the existing STP's should be upgraded to ensure proper performance and adherence to the prescribed standards of effluent discharge.
- (f) The concerned authorities shall construct and install 26 pump stations at the locations and of the capacity as indicated in the Action Plan placed before the Tribunal. The process thereof should begin within three months from the date of passing of this judgment.
- (g) Further, all the STPs shall be provided with a power backup to ensure that they operate effectively 24×7. It shall be ensured that the functional data of all STPs is online and is connected to the Delhi Pollution Control Committee as well as the Central Pollution Control Board, particularly in respect of COD, TDS, TSS and pH and it shall be ensured that the STP's are operational even during power failures.

- (h) All the industrial clusters in Delhi shall be provided with Common Effluent Treatment Plants (CETPs). These CETPs shall be effluent-specific and capacity-specific, with reference to the particular industrial cluster. The installation cost of the CETP shall be borne preferably by the authority that owns and maintains that industrial cluster. In the event of shortage of finances the authority concerned can require the persons running the industrial activity/unit in that cluster to share the cost on 'Polluter Pays Principle' in the ratio $\frac{2}{3}$ and $\frac{1}{3}$ respectively.
- (i) We direct the State of Haryana to ensure that all the industries/industrial clusters that are located near or at the banks of River Yamuna, should preferably be no discharge units. If that is not possible, then such industrial clusters should be directed to install CETPs of the requisite size and standards, so as to ensure that the effluent discharged by them is strictly in accordance with the prescribed norms.
- v.(a) Having given our considered view to the various reports placed on record, submissions made by the Learned Counsel appearing for the parties and the Experts, we are of the opinion that presently the flood plain should be identified for the flood of once in 25 years in the interest of ecology, biodiversity and the river flow. Thus, we direct accordingly and also direct that the DDA shall prepare a map in this regard and would physically demarcate the entire flood plain.

Above interim prescription of the flood plain is not rigid, but is subject to change, in the event any of the public authorities, including the MoEF, moves the Tribunal, based upon some collected data or any other specific information in that regard.

- (b) We direct and prohibit carrying on of any construction activity in the demarcated flood plain henceforth. We further direct the Principal Committee to identify or cause to be identified, all existing structures as of today which fall on the so identified and demarcated flood plain. Upon identification, the Principal Committee shall make its recommendations as to which of the structures ought or ought not to be demolished, in the interest of environment and ecology, particularly, if such structures have been raised in an unauthorised and illegal manner.
- (c) The Principal Committee may keep in mind that certain structures need to be protected, amongst other reasons, for their historical, mythological and heritage importance and/or are protected structures. The Committee shall clearly spell out the regulatory regime that should be provided for dealing with such existing structure in the flood plain.
- (d) We direct all the concerned authorities including the DDA, Municipal Corporations and the NCT of Delhi, to take immediate and effective steps for repossessing the Flood Plain area under the unauthorised and illegal occupation of any person and/or any other body.

This direction is also necessitated for the reason that as per the records before the Tribunal, out of total area of 9700 hectares for River Front Development ('O' Zone), only 1452 hectare is presently available with the DDA for development and the remaining area is occupied in an unauthorised manner and is under agriculture activity for which leases had been granted by the DDA or even otherwise.

- (e) It is an established fact that presently, vegetables, fodder grown and allied projects at the flood plain of River Yamuna are highly contaminated. Besides containing ingredients of high pollutants, such produce is even found to contain metallic pollutants. Thus, it is an indirect but a serious public health

issue as the persons eating or using such agricultural produce can suffer from serious diseases including cancer.

Therefore, we direct that no authority shall permit and no person shall carryout, any edible crops /fodder cultivation on the Flood Plain. This direction shall strictly be adhered to till Yamuna is made pollution free and is restored to its natural wholesomeness.

- vi.(a) During the pendency of this application, it was brought on record that nearly 37,000 cubic m. construction debris are lying on the eastern bank of River Yamuna, while 53,000 cubic m. debris is lying on the western bank of the River. The major part of this debris has already been removed under the orders of the Tribunal during pendency of this application. The local Commissioners appointed had reported to the Tribunal that major part of debris had been removed by the DDA, DMRC, Corporations, the PWD and the UP Government. DMRC has removed 33,000 cu. m. from Sarai Kale Khan and 20,000 MT from Shastri Park, the State of UP has removed 37,000 MT from the Flood Plain and DDA has removed 2500 cu. m. from Eastern Bank of River Yamuna and 7500 cu. m. from Western bank of River Yamuna, amongst others.
- (b) Indiscriminate dumping of debris and construction waste is a direct source of not only pollution of River Yamuna, but even the environment and ecology as a whole. In order to control and prevent such pollution, we confirm the interim order dated 22nd July, 2013, passed by the Tribunal, with the variation in payment of amount of compensation payable by the offender and direct that no person, authority, corporation and/or by whatever name or designation it is called, shall dump any kind of construction debris, municipal, or any other waste on the floodplain/river bed of River Yamuna and its associated water bodies. There shall be complete prohibition on dumping of any material in and around River Yamuna.
- (c) Whoever violates this direction relating to the dumping of debris, shall be liable to pay compensation of Rs. 50,000/- on the 'Polluter Pays' Principle and the Precautionary Principle. Such compensation shall be used for removal of such waste and restoration of environment.
- (d) We hereby prohibit any person from throwing *pooja* material or any other material like, food-grain, oil, etc into River Yamuna, except on the designated site. Any person who is found disobeying this direction shall be liable to pay compensation of Rs. 5,000/- on the 'Polluter Pays' Principle. At the same time, we direct the concerned authorities, particularly, the Irrigation Department and concerned Corporations or authorities to build special Ghats on the banks of River Yamuna, where people could offer or immerse such materials, which shall then be duly collected by the concerned authorities for immediate and proper disposal in a scientific manner. It shall be ensured that no such material is permitted to join the main stream of the river at any point. In this regard they may take such steps, as may be technically advised, including, providing of screens and barricades.
- (e) We have provided the above compensation payable by the offenders who are found to be throwing municipal or any other waste into the river or its flood plain and by the persons who are found to be dumping construction and heavy debris, based on the 'Polluter Pays' Principle. Even though, it is not practically possible to determine the amount of compensation with exactitude, that such offenders should be directed to pay, however, on a rough estimation based on manpower required, time and money spent for removal of such waste and debris as well as making the river free from adverse environmental impacts of

such dumping into the river and on the flood plain, we have fixed the above compensation for environmental degradation under Section 15 of the NGT Act.

- (f) Whatever remnant construction or other waste is still lying on the banks of the entire stretch of Yamuna in NCT Delhi, would be removed positively within four months from today by the concerned authority/State under whose jurisdiction the said area falls.
- vii. We direct all the concerned authorities, corporations, bodies including Resident Welfare Associations to clean all the 157 natural storm water drains as identified by the Committee, within four months from the date of passing of this judgment and the drains should be made obstruction free and no waste should be permitted to be dumped in such drains. The drains may be cleaned mechanically or manually as the situation may demand. Such cleaning would include the dredging of the drains besides compliance of the specific recommendations of the Expert Committee. There shall be controlled dredging of River Yamuna to remove the huge accumulation of sediments and sludge for restoration of the cross section and flood carrying capacity of the River Yamuna.
- viii. Existing wetlands and water bodies, both up-stream and downstream of Wazirabad reservoir, should be deepened and enlarged. This should be done in addition to providing more water bodies.
- We direct the Chief Secretaries of the States of Himachal Pradesh, Uttarakhand, NCT of Delhi, Haryana and Uttar Pradesh, Secretary, Water Resources, Government of India and Secretary, MoEF, to hold a meeting within four weeks from today to prepare an immediate action plan required to ensure proper environmental flows throughout the year, in the entire river and particularly the stretch flowing through Delhi.
- ix. The concerned Corporations under the guidance of the Principal Committee shall submit a report as to the identification and existence of the 44 drains (natural) which have been reflected in the Drainage Map of 1976, but were not traceable, as pointed out by the Expert Committee before the Tribunal. This report will be submitted to the Principal Committee within three months from the date of passing of this judgment.
- x. The compostable material drawn out of such immersion or offering, should be used for manure purposes and should not be unduly stored. All other scientific method may be adopted for its removal and disposal.
- xi. The Yamuna River Front i.e. the flood plain shall be restored, preserved and beautified, strictly in accordance with the report of the Expert Committee dated 19th April, 2014 as per its acceptance on 2nd August, 2014 by the MoEF as well as High Powered Committee.
- xii. However, restricted activities of floriculture and silviculture can be carried on, subject to such specific permissions and restrictions as may be imposed by the authorities/Principal Committee and also subject to the orders of the Courts, wherever, the matters are stated to be pending.
- xiii. The respective Corporations and/or authorities would be responsible for execution of these directions directly under the supervision of the Principal Committee constituted herein.
- xiv. The Government of the NCT of Delhi and the neighbouring States shall, within a period of three months from today, identify the site where the sludge/dredged material from the drains and River Yamuna is to be stored. The Principal Committee shall also issue directions as to the best way of utilisation of such sludge/dredged material including, for construction of tiles, particularly in reference to paver blocks.
- xv. Sites for storage of fly ash are a direct source of air and water pollution.

Therefore, in furtherance to the MoEF Notification dated 14th September, 1999 and this judgement, we direct proper covering of fly ash at the particular sites on the river bank of Yamuna. All the concerned authorities shall ensure that such fly ash should be disposed of at the earliest. Further, we direct that the Government should provide incentives for use of bricks made of fly ash in preference to red bricks. Since the Indraprastha Power Station generates considerable amount of fly ash and is located very close to the river bank, thus, the unit should take all effective steps to prevent pollution of the river water by dumping fly ash at suitable locations.

- xvi. We are informed that Rupees Twenty Thousand Crores has already been provided under the planned expenditure to the NCT of Delhi, out of which Rs. Two Thousand Thirty One Crores have been specifically earmarked for providing sewage connection, sewage treatment, sewage disposal and water network. As per the Expert Committee the total expenditure of the present project is estimated at Rs. Four Thousand Crores, which can safely be met from the above head under the planned budget. However, still if there be need, we direct that the public authorities/Municipal Corporations could require the public at large to contribute to this expenditure based on the 'Polluter Pays' Principle. Funds/compensation so collected shall exclusively be used for this project and allied projects, with the object of ensuring pollution free Yamuna, clean and effective drainage system and for providing wholesome water to the residents of Delhi. Such environmental compensation may be determined by the Authority/Corporation with reference to the size of plots, construction raised thereupon, activity being carried on therein, consumption of water, quantum of sewage and domestic discharge and such other relevant considerations as the authority may deem fit and proper. The charges could be collected as part of the property/house tax.
- xvii. We direct all Public Authorities, Municipal Corporations and the concerned Departments, including the Department of Irrigation, to take effective steps to protect the Flood Plain as well as to educate all sections of society to co-operate and not to do any acts or deeds which are prohibited under this judgment and would have adverse consequences. These authorities should place large-sized dustbins, beyond the demarcated Flood Plain and towards the inhabitation, as well as in the bio-diversity parks. They shall request for concerted efforts both by the ones who are governing and ones who are governed. They shall issue circulars, display signages and may take recourse of Print and Electronic Media for educating people at large for effective completion of this project.
- xviii. We direct all concerned to make every possible effort to ensure that the storm water drains do not carry sewage. Sewage may be carried through those drains upon which the STP's have already been installed, till the completion of the project. After the completion of the project, steps shall be taken so that only minimal quantity of treated water from the STPs reaches Yamuna.
- xix. The CPCB, DPCC in coordination with the DJB, shall collect samples from River Yamuna, its floodplain and from the respective STP's at different places and sites for detailed analysis. This shall form the baseline data for implementation of this project. It will also be helpful in determining the improvement in the water quality.
- xx. The authorities concerned shall take all steps to rejuvenate the water bodies associated with River Yamuna.
- xxi. All concerned authorities shall deal with utmost priority and expeditiousness, in case any application in furtherance to any construction or authorization is moved by any of the authorities, Corporations or DJB, directly or through the Principal

Committee, in execution of the Project. We grant liberty to the State Authorities, Corporation and DJB to approach the Tribunal in the event there is undue delay in dealing with such application in accordance with law.

- xxii. There shall be no construction and/or coverage of any of the drains in Delhi by any Authority or Municipal Corporation. All the drains shall be kept obstruction free by the concerned Corporation. Where substantial work (more than 85%) has been completed, such work is permitted to be completed by the Corporation after obtaining specific orders from the Tribunal in that regard. Rest of the work, where construction has just begun, the construction, including iron material, shall be removed. While completing such remnant work, Corporation shall ensure that the cross section of the drains to carry the requisite storm water for the flood of once in 25 years and other effluents, are not compromised. Such construction and/or removal shall be carried on in terms of paragraph no. 61 of this judgment.
- xxiii. We constitute the 'Principal Committee' which shall be responsible and under whose supervision the directions contained in this judgment and the project reports shall be completely, effectively and expeditiously complied with. All concerned Authorities, Corporations, DJB and any other department, responsible for carrying out directives of this judgment, shall report the matters and submit the respective reports and data to the Principal Committee, for onward transmission to this Tribunal. The Committee shall file quarterly report of compliance before the Tribunal. The Committee shall consist of Special Secretary, MoEF, Joint Secretary of Ministry of Water Resources, Chief Secretary, Delhi Administration, Vice Chairman, DDA, Commissioner of all the Corporations, Commissioner, DJB, Secretary, Department of Irrigation, NCT of Delhi, concerned Secretaries of the States of Haryana, Uttar Pradesh, Himachal Pradesh and Uttarakhand.
- The four Members, namely, Professor C.R. Babu, Professor A.K. Gosain, Professor Brij Gopal and Professor A.A. Kazmi shall be the Members of the Principal Committee and shall be associated with commencement and completion of all the aspects of this project. The Delhi Jal Board along with Corporation under whose jurisdiction the required number of STP is to be constructed and established as well as the drains which are to be completed and made obstruction free shall be responsible for execution of the work as contemplated in the action plan, reports of the Committee and the judgment of the Tribunal. They shall work in tandem and under the supervision of the Principal Committee.
- xxiv. All the Authorities, Corporation, DJB, CPCB, DPCC and any other department or authority, directly or indirectly connected with the compliance of these directions and the Project Reports, shall report to the Principal Committee in relation to all the actions taken in furtherance thereto and their progress from time to time. In the event of default, the Head of Department of such Authority/Corporation/Board would be held personally responsible.
- xxv. These specific directions are in addition to any other direction that we have recorded in the entire judgment.
- xxvi. By this judgment, we not only mandate but even request all the concerned Authorities, State Governments and the Principal Committee to ensure timely compliance of these directions, as this is the only plausible and practical way by which River Yamuna would become pollution free and its flood plain conducive for the biodiversity that it deserves. We have no doubt that with the concerted efforts of all concerned, '*Maily Se Nirmal Yamuna*' Revitalization Project, 2017, would be a success. It would not only meet the ecological and environmental standards prescribed but would also provide clean air and water to the residents

of Delhi, who are entitled to it and have a legal and constitutional right to receive the same. It will also help in providing sufficient water for agricultural and industrial purposes, thus, saving considerable quantity of potable water, so as to enable the concerned authorities to provide the same to all the colonies of Delhi. We also express a pious hope that residents of Delhi would render all help and assistance to all concerned and even abide by their fundamental duty for rejuvenating River Yamuna.

xxvii. We would be failing in our duty if we do not record our sincere appreciation for the contribution made, efforts put in and technical guidance provided, by the Members of the Principal Committee constituted by the Tribunal particularly the Expert Members, namely, Professor C.R. Babu, Professor A.K. Gosain, Professor Brij Gopal and Professor A.A. Kazmi.

xxviii. We grant liberty to all the parties, the applicants or even the public, to approach the Tribunal for any clarification or modification or for removal of any of the difficulties felt by them in implementation of the directions contained in this judgment and/or of the project reports.

95. In view of the above discussion, Original Application Nos. 6 of 2012 and 300 of 2013 and M.A. Nos. 877/2013, 49/2014, 88/2014 & 570/2014 in Original Application No. 300/2013 and M.A. Nos. 967/2013 & 275/2014 in Original Application No. 6/2012 stand disposed of in terms of this judgment and particularly, the directions stated in paragraph no. 94 of the judgment. The parties are left to bear their own costs.

† Principal Bench New Delhi.

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**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 116 of 2014
(M.A. No. 1054 of 2015, M.A. No. 554 of 2018 &
M.A. No. 716 of 2018)**

In the matter of :-

Meera Shukla Vs. Municipal Corporation, Gorakhpur & Ors.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present:

Applicant:	Ms. Katyani and Ms. Mehak Rastogi, Advs.
UPPCB:	Mr. Pradeep Misra and Mr. Daleep Kr. Dhyani, Advs.
Respondent no. 1:	Ms. Alpana Pandey, Adv.
CPCB:	Dr. Abhishek Atrey, Adv. and Mr. Prateek Gaur, Adv.
NMCG:	Mr. Ishwer Singh, Mr. Varun Thakur and Mr. Brajesh Pandey, Advs.
CGWA:	Mr. B. V. Niren and Mr. K. Mudgall, Advs.
GIDA:	Mr. Gaurav Dhingra and Mr. Ashok Upadhaya, Advs.
State of Uttar Pradesh:	Ms. Priyanka Swami, Mr. Gaurav Parkash and Mr. Sanjeev Kumar, Advs.
Gorakhpur Development Authority:	Mr. Sanjay Visan and Mr. Saurabh Tripathi, Advs.
Uttar Pradesh Jal Nigam:	Mr. I. K. Kapila, Adv.

Date and Remarks	Orders of the Tribunal
<p style="text-align: center;">Item No. 06</p> <p style="text-align: center;">August 23, 2018</p> <p style="text-align: center;">HB & DV</p>	<p>1. Ramgarh Lake, Ami River, Rapti River and Rohani River in and around District Gorakhpur are said to be severely polluted on account of untreated sewage and industrial effluents being discharged therein. The said rivers are tributaries of Ghaghara and the river Ghaghara is a tributary of River Ganga. River Ghaghara meets River Ganga somewhere near Ballia.</p> <p>2. O.A. No. 116 of 2014 was filed before this Tribunal on 24.05.2014 and has been pending for the last more than four years. The main grievance in the application is that the steps required to prevent contamination of the water bodies and ground water are not been taken. This is adversely affecting the farmers and other inhabitants, flora, fauna and ecology of area. The applicant has pointed</p>

	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>out the details of environmental degradation in Gorakhpur District. It is stated that 103 water bodies which originally existing are under threat. There is no proper management of solid waste disposal, leading to vector borne diseases and health problems. There are no designated sanitary landfills. The 2021 Master Plan does not take care of these problems. <i>Ramgarh Taal</i> is encroached and is subjected to dumping of waste. Underground municipal sewerage system covers only a small area. Urban development of the city is haphazard. The Gorakhpur Industrial Development Area (GIDA) is under obligation to oversee the integrated, development of the township and has to ensure setting up of CETP. As a result of pollution, productivity has been adversely affected. Industries are not complying with the environmental norms. The UPPCB is not performing its duty. The sample tested by the CPCB found a lot of pollution and a report to this effect was submitted in June, 2011. There is a high organic load in terms of B.O.D and C.O.D in River Ami as well as in the river Rapti. There are sugar distilleries and other factories responsible for the pollution. The underground water has been contaminated with Arsenic. In the year 2012, 557 persons died with encephalitis deaths. In the last 30 years, 50,000 people have died. A financial package of Rs. 4,000 Crore was given by the Central Government to fight the said diseases but there is no proper utilization of the amount. Apart from the 557 death in Gorakhpur Division more deaths have taken place in the area as stated in the news report dated 16.07.2013. The total deaths reported are 1256 in the year 2012.</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>3. Accordingly, the applicant has sought direction for installation of adequate STPs, MSW facilities, removing encroachments, closing down the polluting industries and restoring the damage made to the ecology, after study by the experts.</p> <p>4. The matter has been dealt with on several dates in the last four years. Reference may only be made to the orders passed on 11.02.2015, 13.10.2015, 24.04.2017, 31.01.2018 and 23.03.2018.</p> <p>5. On 11.02.2015, it was noted that two source of drinking water i.e. Ramgarh Lake and Rapti River have become highly polluted on account of industrial and domestic discharge of waste water. It was noted that since river Rapti joins river Ganga, the pollution of Rapti also pollutes river Ganga. Accordingly, direction was issued to UPPCB, UP Jal Nigam, Gorakhpur Municipal Corporation, Gorakhpur Development Authority, Gorakhpur Industrial Development Authority, Central Pollution Control Board and Central Ground Water Authority to consider the matter of installation of STPs/CETPs and ground water regulation. The Tribunal also directed that the no MSW be dumped on the banks of the river Rapti and the Municipal Corporation was directed to identify the dump site. The industries were directed to set up ETPs, STPs and CETP.</p> <p>6. On 13.10.2015, it was noted that existing STPs were not being fully utilized while three more STPs were required.</p> <p>7. On 24.04.2017, it was stated that Environmental Clearance was granted for the land fill site but the site has not been constructed. UPPCB had not taken any action</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>beyond issuing show cause notice. The Tribunal observed that there was sufficient cause for prosecution of the officers and as well as payment of environmental compensation.</p> <p>8. On 25.08.2017, this Tribunal directed sealing and dismantling of hand pumps, so that contaminated water is not extracted in the Ballia District.</p> <p>9. On 30.01.2018, Status Report submitted by the UPPCB dated 06.11.2017 was considered. It was stated that the Gorakhpur Nagar Nigam had failed to set up Waste to Energy Plant despite of Environmental Clearance already granted. It was noted that the DPR has been prepared and placed before the NMCG. The NMCG stated that the DPR is to be considered by the State of UP for setting up of STP. UPPCB was directed to close 28 units which have not set up any ETP/STP in spite of the fact that they were legally required to do so. The CGWA, CPCB and UPPCB were directed to take ground water sample from the borewell where there was contamination. The Health Department of the Gorakhpur Nagar Nigam was directed to carry out health survey. The report of the Gorakhpur Nagar Nigam is that there is no Health Wing in Nigam.</p> <p>10 In view of the above, it is clear that the authorities have failed in performing their duties to protect environment and also to carry out the orders of the Tribunal to take necessary steps in the matter.</p> <p>11. On 22.03.2018, the Tribunal imposed cost of Rs. 5 Lakhs on Gorakhpur Nagar Nigam; Rs. 1 lakh on State of UP and Rs.1 Lakh on CGWA for not complying with the</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>order of this Tribunal. The amount was to be deposited in the ratio of 25 %, 50 % and 25 % respectively with the CPCB, UPPCB and Legal Aid Committee, NGT.</p> <p>12. Subsequently, the Joint Inspection Report dated 19.03.2018 has been filed on behalf of CPCB, CGWB and UPPCB. 17 Groundwater samples were collected, the findings of the committee inter alia are follows:</p> <p>“04. Findings:</p> <p><i>Analysis of ground water samples referred above revealed following specific observations:</i></p> <p>a. <i>It was found that by and large ground water is found to be generally suitable for drinking purposes as per Drinking Water Standards, BIS (IS 10500 : 2012/2015) in terms of the parameters tested, except Nitrate, Iron, Manganese and Fluoride found beyond the permissible limit at some locations.</i></p> <p>b. <i>Nitrate concentration was found more than 45 mg/l at Bargadwa (H/P IM-II), Betia Hata Chauraha (H/P IM-II) and at Bahrampur, Madarasa road (H/P IM-II). Iron concentration was found more than 1.0 mg/l at Ram Janaki Nagar, Opposite House No. 449-D (H/P IM-II), Mahadeo Jharkhandi colony, Zone-I, near Overhead tank no. 04 (H/P IM-II), Betia Hata Chauraha (H/P IM-II), Harraiya Chungi, Nausarh (T/W), R/o ShSukhu Seth harraiya Chungi Nausarh (Punjab Machine (Shallow Hand-pump), Kaushal Vikas Kendra Laldiggi (H/P IM-II) and at Bahrampur, Madarasa road (H/P IM-II). Manganese concentration was fund more than 0.3 mg/l at Ram Janaki Nagar, Opposite House No. 449-D (H/P IM-II), Betia Hata Chauraha (H/P IM-II), R/o Sh Sukhu Seth Harraiya Chungi Nausarh (Punjab Machine (Shallow Hand-pump) and at Bahrampur, Madarasa road (H/P IM-II). High concentration of Fluoride was found at Lala Toli, Ilahibagh (Mini Tube well).”</i></p> <p>05. Suggested action:</p> <p><i>“a. High concentration of Nitrate in ground water is mainly due to anthropogenic activities. Ground water having Nitrate concentration more than 45 mg/l should not be used. In areas where high concentration of nitrate is reported, it was noted that a general sanitary conditions have not been observed satisfactory. Improper management of sewage and municipal solid waste can be one of the probable factors for impact of organic pollutants on the groundwater quality in the nearby locations. Thejoint inspection team is of the view that the local sanitary conditions should be</i></p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p><i>improved and alternate sources should be identified for provision of hand pumps.</i></p> <p><i>b. Iron, Fluoride and Manganese contamination in ground water is geogenic (natural/contributed by soil/aquifer quality) in nature. In areas where high Iron, Manganese and Fluoride concentration in ground water is reported, the joint inspection team is of the view that alternate sources should be identified for provision of hand pumps and in case the problem of the groundwater quality persists, at source Iron and Fluoride Removal Technologies be adopted before supplying water to the community. High concentration of Fluoride at Ilahibagh needs further investigation to ascertain the contributing source.”</i></p> <p>13. Though, the report clearly shows failure in the municipal waste management, the joint inspection does not cover all the areas and cannot said to be comprehensive to enable this Tribunal to pass a final order on that basis.</p> <p>14. It is undisputed that more than 500 children have died on account of pollution. No adequate steps have been taken even to prevent discharge of untreated effluents in future.</p> <p>15. Learned Counsel for the UPPCB has stated that tenders have been invited for setting up of MSW Plant, to convert waste to energy, and the issue is pending with the State Government for the last four months. Environmental Clearance has been granted for setting up of such plant on 32 acres of land. Learned counsel for the State of UP has no explanation as to why the matter has not been processed.</p> <p>16. The stand of NMCG has earlier been that the matter is to be considered by the State Government. Vide order dated 30.01.2018, this Tribunal has already directed the State of UP to take a decision in the matter of grant of sanction of the DPR.</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>17. It has been stated by the UPPCB that out of 28 units which did not have ETPs, 8 have now installed ETPs, 13 have changed their process and 5 units are closed. GIDA has acquired the land for CETP and DPR is under consideration. This does not justify action for violation of law earlier nor delay in setting up pollution control devices justified.</p> <p>18. We are thus of the view that there is undoubtedly failure of the administration for preventing pollution which has resulted in death of children as already noted. There is continued violation of environmental norms for which action is not being taken. In spite of direction in the last four years very little and insignificant steps have been taken and the result is that the pollution still continues. In such an emergent situation the stand of the authorities of shifting the burden of the responsibility from one department to another is against the spirit of the Constitution. They have to come together and take immediate steps to prevent any further damage and also to reverse the damage already done. Those responsible for failure have to be made accountable. Those who have suffered need to be rehabilitated.</p> <p>19. All applications seeking waiver of the cost imposed are without any substance and are earlier rejected. The authorities dealing with the matters are liable to be proceeded against for their negligence and failure of duties in appropriate civil and criminal proceedings in accordance with law.</p> <p>20. In the above crises situation of failure of law, the Tribunal is left with no alternative but to constitute a</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>credible mechanism to oversee planning and execution of further steps in the matter on urgent basis. A Monitoring Committee is accordingly constituted as follows:-</p> <ol style="list-style-type: none"> i. Justice Devi Prashad Singh, former Judge, Allahabad High Court – Chairman. ii. Senior Representative of Central Pollution Control Board. iii. Senior Representative of Uttar Pradesh State Pollution Control Board. iv. Dr. A.B. Akolkar, Ex-Member Secretary, Central Pollution Control Board, Delhi. v. Representative of Uttar Pradesh Jal Nigam. <p>21. The technical/scientific members of the Monitoring Committee shall collect samples, cause analysis of such samples at Central Pollution Control Board Laboratory. They shall also carry out joint inspection of industries and other entities viz. ETPs, STPs, MSW site etc to ascertain contribution to environment degradation. The Central Pollution Control Board shall be the convenor of technical and scientific team, which shall submit its report to the Chairman of Monitoring Committee.</p> <p>22. The Chief Secretary of Uttar Pradesh is directed to provide logistic support to the Monitoring Committee and determine their remuneration in consultation with them. All concerned authorities will co-operate with the Committee and comply with such directions as may be issued by the Committee, subject to any further orders in the matter by the Tribunal.</p> <p>23. The Committee will have an action plan prepared for</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>the steps required for setting up of Municipal Solid Waste plant, ETPs/CETPs or other urgent steps at the earliest possible. The action plan may provide for strict timelines. The Committee may also secure information from the concerned authorities as to whether the ETPs already installed are functioning.</p> <p>24. It is stated by learned Counsel for the applicant that polluting industries have hidden pipelines and the effluents are being discharged through such pipelines instead of being treated in the ETPs.</p> <p>25. The Committee may also oversee the steps for availability of potable water for the inhabitants. The names of the persons responsible for dealing with the situation in Gorakhpur representing UPPCB, Nagar Nigam, Jal Nigam, GIDA to be displayed on the respective websites for information of all concerned.</p> <p>26. The Committee may also oversee the rehabilitation programme for compensating the victims who have suffered on account of pollution caused. The Committee may also oversee that all effluents are directed to the ETPs, CETPs and STPs for treatment.</p> <p>27. It will be open to the parties to give their suggestions to the Committee. The Committee may have its own website to furnish information about the steps taken and also to receive any suggestions with a view to involve the local public in its endeavours.</p> <p>28. The report of the progress made by the Committee may be furnished to this Tribunal after three months of its functioning by E-mail at filing.ngt@gmail.com. The Committee will also be at liberty to issue any direction of</p>
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	<p>Item No. 06</p> <p>August 23, 2018</p> <p>HB & DV</p>	<p>interim measures to meet emergent situation.</p> <p>The application stands disposed of.</p> <p>A copy of this order be sent to the concerned authorities by E-mail.</p> <p>List for consideration of the Report of the Committee on 10th January, 2019.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">23.08.2018</p>
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Item No. 04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 116/2014
(With Report dated 15.06.2020)

Meera Shukla

Respondent(s)

Versus

Municipal Corporation, Gorakhpur & Ors.

Respondent(s)

Date of hearing: 16.06.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Ms. Katyani, Advocate

Respondent(s): Mr. Mukesh Verma, Advocate for State of UP
Mr. Pradeep Mishra, Advocate for UPPCB
Mr. Raj Kumar, Advocate for CPCB
Mr. I.K. Kapila, Advocate for UP Jal Nigam

ORDER

1. The issue for consideration is the remedial action for contamination of water bodies and ground water, specially Ramgarh Lake, Ami River, Rapti River and Rohani River in and around District Gorakhpur, Uttar Pradesh.
2. The matter was exhaustively reviewed vide order dated 23.08.2018. The Tribunal noted the allegation that Ramgarh Lake and the Ami, Rapti and Rohani Rivers in and around District Gorakhpur were severely polluted on account of discharge of untreated sewage and industrial effluents. Steps required to prevent contamination of water bodies and groundwater were not

being taken. This was affecting the farmers and inhabitants, flora, fauna and ecology of area and causing degradation of the environment. 103 water bodies are under threat. There was no proper management of solid waste and no designated scientific sanitary landfill. There was encroachment of the Ramgarh Taal. Common Effluent Treatment Plant (“CETP”) had not been set up. Industries were not complying with the environmental norms. There was high organic load in River Ami and Rapti. Sugar and Distillery units were also causing pollution. 557 persons died in the year 2012. About 50,000 persons died in the last 30 years. It was also noted that Ami, Rapti and Rohani Rivers are the tributaries of Ghaghara which ultimately terminated into River Ganga. For public health at Gorakhpur, clean water supply was necessary, apart from cleaning of water bodies and other steps for protection of environment.

3. The Tribunal issued directions for the purpose and a Monitoring Committee was constituted headed by former Judge of Allahabad High Court with representatives of the Central Pollution Control Board (“CPCB”), Uttar Pradesh Pollution Control Board (“UPPCB”) and State Jal Nigam to oversee compliance of directions of this Tribunal already issued on the subject of closing the sources of contaminated water (like handpumps) and taking steps for supply of potable water, to ensure proper waste management and deal with other issues mentioned above. The Committee was to carry out inspection of the industries causing pollution of water bodies, drains and rivers in the area and Effluent Treatment Plants (“ETPs”), Sewage Treatment Plants (“STPs”), CETP and Solid Waste Management (“SWM”) sites. Action plan was required to be

prepared for solid waste processing, proper functioning of ETPs and CETP and also for making available potable water to the inhabitants, apart from undertaking rehabilitation program for compensating the victims who had suffered. The Committee was to furnish reports to this Tribunal for further action.

4. The matter has been dealt with on several dates since then in the light of reports received from the Committee. The Tribunal passed directions with regard to installation of STPs and CETP by Gorakhpur Industrial Development Authority ("GIDA"), closure of industries operating illegally, adding to the pollution of the Rivers or their tributaries, shifting of construction activities from the floodplain zones/catchment area, unscientific disposal of municipal and other wastes. The earlier orders include orders dated 25.10.2018, 17.12.2018, 07.03.2019, 29.04.2019 and 19.07.2019.
5. The matter was last dealt with on 27.09.2019 in the light of above reports and earlier orders and it was observed:

"6. Order dated 25.10.2018 dealt with the pollution caused by M/s. Yash Paper Mills, Faizabad by discharge in Tihura Drain affecting the agricultural lands as result of demolishing the clay barrier as per directions from the Sub Divisional Magistrate. Allegation of alleged collusion of SDM of the area was directed to be looked into by the Chief Secretary, UP. The stand of the SDM is that the barrier was removed to ensure flow of the drain, though the rain has to be kept clean and free from discharge of effluents.

7. Order dated 17.12.2018 dealt with the damage to the forest land by Bajaj Sugar Mill, Golagokaran Nath, District Lakhimpur, pollution by M/s Gallant Ispat Limited, Gorakhpur by discharging effluent into a drain joining Ami River, pollution by M/s Rungta Industries Pvt. Ltd. and M/s Crazy Snacks Ltd. discharging effluent in GIDA drain, pollution by M/s Yash Paper Mills, and pollution of Ami River by sewage generated in Gorakhpur, Sahjanwa, Unwal, Kauriram and Khajni, pollution by M/s Bajaj Hindustan

Limited (Distillery Unit), illegal construction around Ramgarh lake and absence of sanitation, violation of environmental norms by Baba Raghav Das Medical College, Gorakhpur. The Tribunal directed the State PCB to take necessary action for enforcement of law by closing the polluting activity and recover compensation on "polluter pays principle" and report to this Tribunal. With regard to encroachment action was required to be taken by Principal Secretary, Urban Development and report was to be given to this Tribunal. With regard to violation of medical norms, report was to be given by Health Department. Jal Nigam was to take action for STPs and GIDA for CETPs. Other actions were to be taken by Environments and Irrigation departments, Nagar Nigam and District Magistrate, Siddharth Nagar and compliance reports furnished. Against this said order, appeal of the State of UP has been dismissed on 01.07.2019 by the Hon'ble Supreme Court, being Civil Appeal No. 5414/2019. Compliance reports have not been received from all the concerned authorities except from UPPCB to which reference will be made later.

8. Order dated 07.03.2019 dealt with reports dated 08.02.2019 from the Committee with regard to the pollution caused by M/s Bharati Research and Breeding Farm, FL-27, Sector -13, GIDA, Gorakhpur, UP, M/s Mother Shree Dairy, D-1/3D, Sector 13, GIDA, Gorakhpur, UP, M/s Alkane Construction Equipment Pvt. Ltd., FL-24, Sector 13, GIDA, Gorakhpur, UP, M/s Burnet Pharmaceutical Pvt. Ltd., AL-1, Sector -13, GIDA, Gorakhpur, UP, M/s Gorakhnath Agro Industries Pvt. Ltd., FL-20/27, Sector-13, GIDA, Gorakhpur, UP, M/s Royal Savera Foods Pvt. Ltd., FL-28, Sector -13, GIDA, Gorakhpur, UP and M/s Dr. Sandhu Hatchery, FL-28, Sector -13, GIDA, Gorakhpur, UP. The same were referred to CPCB for comments with further directions to the state PCB to take action in the light of the said reports in accordance with law. UPPCB has filed an action taken report which will be dealt with in the later part of this Order.

9. CPCB filed a report about the scale of compensation to be recovered which was considered vide order dated 29.04.2019. The report was directed to be acted upon by the State PCB. CPCB was to also deal with the remedial action against illegal drawal of groundwater. The compensation was to be revised based on actual period of violation. The Tribunal also dealt with report dated 18.04.2019 dealing with the transfer of forest land by the GIDA.

10. Finally, vide order dated 19.07.2019, reports with regard to pollution by K.M Sugar Mills, and Malvika Cement Private Limited and also pollution of River Gomti and Ramgarh Lake were considered. The reports were directed to be furnished to the CPCB and UPPCB for further action. Report on the issue of illegal construction in catchment area of Ramgarh Lake was directed to be dealt with by Urban Development Department of UP. The pollution of River Gomti, reported by the Committee, in pursuance of a separate order

of the Tribunal in O.A 24/2018, was to be dealt with by the Chief Secretary, UP. The Chief Secretary was directed to file an action taken report for consideration in the matter of pollution of river stretches, i.e O.A. No. 673/2018. This aspect has to be considered in the said matter. The Urban Development Department was to file action taken report with regard to construction by GDA in catchment area of Ramgarh Lake which is still awaited. Review petition has been filed by GDA seeking liberty to place its view point before the Urban Development Department.

11. It may be mentioned that apart from the reports relating to the pollution of the waterbodies in question directly or indirectly and other connected issues referred to above, the same learned Judge was also overseeing the subject of compliance of municipal solid waste in terms of order of this Tribunal dated 16.01.2019 in O.A. No. 606/2018 (which also covers compliance of Bio Medical Waste Management Rules, 2016 (BMW Rules)). In this regard, reports have been filed which have to be dealt with. In the same matter, Chief Secretaries of all the States were required to remain present before this Tribunal with the status of compliance on several important aspects of environment. After their appearance, directions have been issued requiring them to monitor such compliances at their level at least once in a month and at the level of the Districts Magistrates, twice in a month. Reports of such monitoring are to be furnished by the Chief Secretaries periodically to this Tribunal.

12. We may now note the reports which have been put up for consideration:

- I. Reports have also been filed by the Central Pollution Control Board (CPCB) and the State Pollution Control Board (SPCB) in pursuance of earlier orders, as follows:
 - A. Action taken report filed by the CPCB on 17.09.2019 (Pp 2503-2517) in respect of M/s Malvika Cement Pvt. Ltd., Raebareli, Uttar Pradesh.
 - B. Report filed by UPPCB dated 13.09.2019 (Pp 2535-2567) in respect of M/s K.M. Sugar Mills (Distillery & Sugar Units), Masaudha, Ayodhya.
 - C. Action taken report filed by the UPPCB dated 23.09.2019 (Pp 2568-2590) in respect of M/s Yash Paper Ltd. and the conduct of the SDM, Ayodhya in dealing with the matter.
 - D. Report of the UPPCB (Pp 2467-2471) on the subject of environmental compensation payable by M/s B.R.D. Medical College & Hospital (Nehru Chikitsalay), Gorakhpur.
 - E. Report dated 17.07.2019 (Pp 2087-2092) on the subject of environmental compensation furnished by the UPPCB in respect of:

- i. *M/s Bharti Research and Breeding Firm, FL-27, Sector-13, GIDA, Gorakhpur, UP*
- ii. *M/s Mother Shree Dairy, D-1/3D, Sector-13, GIDA, Gorakhpur, UP*
- iii. *M/s Alkane Construction Pvt. Ltd., FL-24, Sector-13, GIDA, Gorakhpur, UP*
- iv. *M/s Burnet Pharmaceutical Pvt. Ltd., FL-1, Sector-13, GIDA, Gorakhpur, UP*
- v. *M/s Gorakhnath Agro Industries Pvt. Ltd., FL-20/27, Sector-13, GIDA, Gorakhpur, UP*
- vi. *M/s Royale Savera Foods Pvt. Ltd., FL-28, Sector-13, GIDA, Gorakhpur, UP*
- vii. *M/s Dr. Sandhu Hatchery, FL-28, Sector-13, GIDA, Gorakhpur, UP Report dated 29.07.2019 (Pp 2115-2132) on the subject of sand mining in District Jalaun and Hamirpur, Uttar Pradesh based on complaint of one Anchal Dwivedi to the effect that such sand mining was resulting in crisis of underground water and contamination of groundwater, e-flow of the river was adversely affected and damage was being caused to the river banks and river eco-system.*

II. *Additional Report of the Committee dated 03.08.2019 (page no. 2446) in respect of M/s Yash Paper Mills Ltd. & Rajepur Villaage Darshan Nagar, Ayodhya, Faizabad, Uttar Pradesh on the subject of industrial pollution alongwith report of the CPCB with regard to Tihura Drain near Yash Paper Mills Ltd. (Pp 2440-2445)*

III. *Summary of discussions and decisions of the Committee on the subject of wetlands dated 18.07.2019 (Pp 2093-2113)*

IV. *Summary of discussions and decisions of the Committee on the subject of compliance of Solid Waste Management Rules by M/s Amko, Bulandshahr Road, Ghaziabad, Radisson Blue Hotel, Kaushambi, Ghaziabad, Uttar Pradesh, Cantonment, Ayodhya, Sand Mining in Jalaun and Hamirpur, discharge of effluents in Gomti, recovery of compensation from hotels and industries in terms of order of this Tribunal dated 17.01.2019, in O.A No. 24/2018 and storage of 10 crore liters of effluent by Sardar Nagar Distillery and river pollution at Pilibhit, Lakhimpur Kheri, Hardoi, Sitapur, Lucknow, Raebareli, Pratapgarh, Jaunpur, Ghazipur, River Sai, River Sai Tributary of River Gomti dated 29.07.2019 (Pp 2245-2256).*

V. *Reports of the Committee regarding solid waste management (including Bio-medical waste):*

a) *dated 31.07.2019 (Pp 2135-2174) in respect of Agra;*

- b) dated 31.07.2019 (Pp 2177-2244) in respect of Mathura;
- c) dated 31.07.2019 regarding Common Bio Medical Waste Treatment Facility (CBWTF) in respect of M/s JRR Waste Management, Khasara No. 670, Mauja Dherera, Etmadpur, District Agra, U.P. (Pp 2258-2273)
- d) dated 31.07.2019 on the subject of Bio Medical Waste Management at Sahara Hospital, Gomti Nagar, Uttar Pradesh (Pp 2275-2310)
- e) dated 31.07.2019 on the subject of Bio Medical Waste Management at Dr. Ram Manohar Lohia Combined Hospital, Vibhuti Khand Gomti Nagar, Lucknow, Mayo Medical Centre, Vikas Khand-II, Gomti Nagar, Lucknow, St. Joseph's Hospital, Vishal Khand-5, Gomti Nagar, Lucknow, Nova (FORD) Hospital, Vikash Khand-1, Patrakarpuram, Gomti Nagar, Lucknow, Uttar Pradesh. (Pp 2312-2363)
- f) dated 01.08.2019 on the subject of Bio Medical Waste Management at S.N. Medical College & Hospital District Agra, Uttar Pradesh. (Pp 2305-2391)
- g) dated 05.08.2019 on the subject of Bio Medical Waste Management at (i) Super Specialty Pediatric Hospital & PG Teaching Institute, Sector-30, Noida and (ii) Jaypee Hospital (A Unit of Jaypee Healthcare Ltd.), Sector-128, Noida Uttar Pradesh. (Pp 2394-2438)

13. We have heard learned Counsel representing applicant, learned Counsel for CPCB, UPPCB, UP Jal Nigam and learned Counsel for the Yash Paper Mill. We have also heard learned Counsel appearing on behalf of the Gorakhpur Development Authority (GDA) in Review Application No. 47/2019 seeking review of order dated 19.07.2019.

14. While we propose to deal with the reports directly connected to the pollution of water bodies and other connected issues at Gorakhpur, or otherwise connected thereto, which have been dealt with in earlier orders, other issues such as Solid Waste Management at places other than Gorakhpur, sand mining and pollution of River Gomti may have to be dealt with in the first instance by concerned administrative authorities and report furnished to this Tribunal for further consideration.

15. The reports relating to Solid/Bio-medical Waste Management indicate violations. Such violations need to be remedies and action taken as per law for compliance of statutory Rules, including recovery of compensation on Polluter Pays principle. **In order to do so, we direct that reports relating to Solid Waste Management (including Bio-medical wastes) be forwarded to Chief Secretary, UP for appropriate further action and monitoring and a compliance report being filed in O.A No. 606/2018**

(Compliance of Municipal Solid Waste Rules by Uttar Pradesh) within one month by e-mail. Further consideration of the matter by this Tribunal will be in the said case. As regards reports relating to sand mining are concerned, the same may also be forwarded to the Chief Secretary U.P for appropriate further action with a direction that action taken report be furnished in O.A No. 360/2015 (dealing with the subject of Sand Mining) within one month via e-mail. The reports mentioned above at items IV and V stand dealt with accordingly, as far as this order is concerned, pending further separate consideration as above.

16. We may now deal with reports at items I, II and III mentioned above.

I. Reports filed by the CPCB and the SPCB

A. Action taken report filed by the CPCB on 17.09.2019 (Pp 2503-2517) in respect of M/s Malvika Cement Pvt. Ltd., Raebareli, Uttar Pradesh.

17. **In view of report of the CPCB that the unit is functioning without consent to operate and it has also installed tubewells without NOC, SPCB may take appropriate further action by way of stopping illegal activity, recovering compensation and initiating prosecution in accordance with law.**

18. **The Chief Secretary, Uttar Pradesh may have it examined as to how electricity connections are given without consent to operate merely on consent to establish and why tubewells are being allowed to be dug without permission of the CGWA. An appropriate mechanism be evolved to remedy such illegalities in future anywhere in the State.**

B. Report filed by UPPCB dated 13.09.2019 (Pp 2535-2567) in respect of M/s K.M. Sugar Mills (Distillery & Sugar Unit), Masaudha, Ayodhya.

19. **The Distillery and Sugar units of the industry have been found to be non-compliant. In view of the facts found, the units need to be immediately closed by the SPCB under Section 31(1)(c) of the Water (Prevention and Control of Pollution) Act, 1974 in accordance with law in view of the recommendations of the joint Committee.**

C. Action taken report filed by the UPPCB dated 23.09.2019 (Pp 2568-2590) in respect of M/s Yash Paper Ltd. and the conduct of the SDM, Ayodhya in dealing with the matter.

20. Effluents have been found to be discharged in the drain **connecting the river for which the State Pollution Control Board (SPCB) has proposed environmental compensation of Rs. 40 lakhs. It is stated that earlier defaults by the unit were considered by this Tribunal in the year 2016 and now notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 has been issued by the SPCB proposing closure for the violations.**

21. According to the farmers, bandh was erected to prevent polluting discharge damaging the agricultural fields. However, according to the SDM, the bandh was removed to check stoppage of flow of the drain. The drain needs to be kept clean and its flow need not be obstructed. An updated joint inspection report is required to be obtained from a joint Committee of CPCB and the SPCB which issue will henceforth be dealt with in O.A. No. 399/2019, **Mrs. Saraswati vs M/s Yash Paper Limited & Ors.**

D. Report of the UPPCB (Pp 2467-2471) on the subject of environmental compensation payable by M/s B.R.D. Medical College & Hospital (Nehru Chikitsalay), Gorakhpur.

22. The SPCB may proceed further in accordance with law in the light of its report.

E. Report of UPPCB dated 17.07.2019 (Pp 2087-2092) on the subject of environmental compensation to be recovered from said 7 industries in Gorakhpur.

23. The SPCB may proceed further in accordance with law.

II. Additional Report of the Committee in respect of M/s Yash Paper Mills Ltd. & Rajepur Villaage Darshan Nagar, Ayodhya, Faizabad, Uttar Pradesh pollution alongwith report of the CPCB with regard to Tihura Drain near Yash Paper Mills Ltd.

24. A joint Committee of CPCB and State PCB may take remedial action to ensure that the Tihura Drain is cleaned and freed from any industrial effluent or other pollutants. A status report in this regard may be filed as already directed above.

III. Discussions of the Committee relating to wetlands

25. A Joint Committee comprising the Secretaries, Urban Development, Environment and Forest and

Irrigation, Flood Control Department, Uttar Pradesh, UPPCB and the CPCB may take further action in accordance with law, in the light of the report and furnish an action taken report before the next date. The Nodal Agency will be Secretary, Irrigation for coordination, compliance and furnishing report to this Tribunal. The GDA is at liberty to furnish its view point to the said Joint Committee. Review Application No. 47/2019 stands disposed of.

List the matter for further consideration 09.12.2019.”

6. In pursuance of above, following reports have been filed:
- (a) ‘Action Taken Report’ filed on 27.11.2019 by UP Jal Nigam on the issue of capping of drains discharging pollutants in Ramgarh Lake and preventing pollution of River Gomti, Saryu and other concerned tributaries.
 - (b) ‘Compliance report’ of Chief Secretary, UP dated 28.11.2019 with regard to pollution of Ramgarh Lake, Ami River, Rapti River and Rohani River, pollution of River Gomti.
 - (c) Report filed by the UPPCB dated 12.06.2020 mentioning the status of steps taken to comply with the earlier orders of this Tribunal.
 - (d) ‘Action Taken Report’ filed on behalf of the Divisional Forest Office, Siddharth Nagar dated 10.02.2020 in the matter of plantation of indigenous trees on both sides of the Ami River upto a distance of 5 km etc.
 - (e) Further report dated 20.12.2019 filed by the UP State PCB.
 - (f) A compliance report has also been filed on 13.06.2020 by Yash Pakka Ltd. (formerly known as Yash Papers Limited).

7. Our attention has also been drawn to the following reports filed by the Committee headed by Justice D.P. Singh¹ not dealt with in the order dated 27.9.2019:

- (a) Report dated 30.09.2019 with regard to M/s Swaroop Chemicals Pvt. Ltd., Tewariganj, Chinhath, Lucknow, UP.
- (b) Report dated 30.09.2019 with regard to M/s Saraya Distillery, Sardar Nagar, Gorakhpur, UP.
- (c) Report dated 30.09.2019 with regard to STP Sahara Estate (Ramgarh Taal) at Gorakhpur, UP.
- (d) Report dated 12.09.2019 with regard to (a) River Saryu pollution through "Retiya drain" & "Kakrahi drain", (b) Ayodhya, Faizabad, Cantonment, Ayodhya, Faizabad and (c) Nagar Nigam, Ayodhya, Faizabad.
- (e) Report dated 30.09.2020 with regard to Chilua Taal, Sonauli Road, Gorakhpur, UP.
- (f) Report of the UPPCB dated 29.09.2019 with regard to pollution of River Gomti.
- (g) Report of the UPPCB dated 29.09.2019 on the subject of action taken against M/s Malvika Cement Pvt. Ltd. Industrial Area, Sultanpur Road, Raebareli.

8. The said reports may be forwarded to the current Oversight Committee headed by Justice SVS Rathore², who may obtain the latest status of the matter from the concerned authorities and file a consolidated and updated report in the matter before the next

¹ Constituted in terms of order dated 23.08.2018 in O.A. No. 116/2014, Meera Shukla v. Municipal Corporation, Gorakhpur & Ors.

² Constituted in terms of order dated 21.10.2019 and further modified vide order dated 16.03.2020 in O.A. No. 670/2018, Atul Singh Chauhan v. Ministry of Environment, Forest and Climate Change & Ors.

date by e-mail at judicial-ngt@gov.in (preferably in the form of searchable/OCR PDF and not image PDF).

9. Report dated 15.06.2020 filed by the Oversight Committee headed by Justice SVS Rathore, former Judge of the Allahabad High Court furnishes status of compliance of the orders of this Tribunal, including restoration of Ramgarh Taal. The concluding part thereof is as under:

“Recommendations:

In view of the above, we recommend as follows:

1. *Regarding untreated sewage and industrial effluents, for the existing 103 water bodies and groundwater especially Ramgarh lake, Ami river, Rapti river and Rohani river in and around district Gorakhpur which are suffering from untreated sewage and industrial effluent as well as improper management of solid waste, no tangible efforts appear to have been made by Departments concerned so far to check the pollution caused by untreated sewage and industrial pollutants flowing untreated in rivers. Despite the concern expressed by NGT for quite some time neither the STP at Magahar and Khalilabad have been sanctioned nor GIDA has commenced work on its CETP. Consequently, sewage and industrial effluents are going in the rivers without any treatments. Gorakhpur and the entire Terai area is highly sensitive to Japanese Encephalitis (JE) and Acute Encephalitis (AE) which cause deaths of thousands of children every year. The primary cause of JE/AE is pollution. It appears that the State Government is not starting the work on these CETP/STP by citing that the project is pending with NMCG for budgetary approval. Lack of funds is no excuse for inaction. The Supreme Court order in Paryavaran Suraksha Samiti & Anr. Applicant(s) Vs. Union of India & Ors. In W.P. (Civil) No. 375/2012, clearly mentions that the municipalities/local bodies cannot be permitted to shy away from discharging their onerous duty regarding establishment of CETP/STPs. The Supreme Court has directed that the Urban Local Bodies have to generate their own financial resources for meeting this obligation failing which the State Government shall cater to their financial requirements regarding CETP/STP. This order has been reproduced from NGT order dated 21.05.2020. Clearly not providing for STPs/CETPs is contempt of the Supreme Court as well as NGT. Supreme Court in its order has also*

mentioned that Secretary of Environment Department shall be answerable in case of default. The Secretaries to Government concerned shall be responsible for monitoring the progress and implementation of above directions. Not constructing these STPs/CETPs for lack of budgetary support from NMCG certainly is not a valid excuse. The Chief Secretary may be directed to ensure sufficient budgetary resources either from Government of India or from State budget within a month, so that work on these STPs/CETPs should commence immediately. NGT has mandated that any STP where work does not commence from 1.04.2020 will be liable to EC @5 Lakh per month. CPCB may issue notice to the Gorakhpur Municipal Corporation/ GIDA for EC.

2. No interim measures for the treatment of the wastewater in drains and sewages have been made yet. has mandated that bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.4.2020, failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB.
3. All the municipal corporations were supposed to abide by SWM Rules, 2016 by 1.04.2020. Any violation in following SWM Rules, beyond the deadline would entail penalty. Gorakhpur Municipal Corporation has so far not started work on landfill site/processing plant. Any default in commencing work before 1.04.2020 would attract penalties (EC). CPCB may work out EC and issue notice.
4. This area is very sensitive from JE/AE point of view. Besides BRD Medical college is the most important medical center in this area catering to medical requirements of large part of Eastern UP and Northern Bihar. The Primary cause of JE/AE is pollution. Hence it is most important that BRD medical college must follow BMW Rules, 2016. More so there is an influx of COVID-19 patients which will increase in the coming months Principal Secretary Medical Education shall ensure that in such critical times, BRD Medical College follows all the BMW norms. Any negligence on the part of concerned officers may be dealt with strictly and responsibility may be fixed.
5. There are a large number of drains going untapped in Ramgarh Taal. The state would do well to plan STPs for these drains. As an interim measure bioremediation /phytoremediation of all these drains shall be started immediately.
6. As far as polluting industries are concerned, we have been informed by SPCB that production has been

stopped in such units, prosecution has been recommended and RC has been issued against all such units. As per SPCB, only such units have been permitted which have deposited the EC and are complying with the norms. SPCB may be directed to continuously monitor such units.

7. *Regarding illegal electric connections given to units operating without consent or digging of tubewells without permission of Central Groundwater Authority, it has been mentioned by SPCB that the consent to establish an industry will be given only after prior groundwater clearance. It is recommended that since it is an inter-departmental matter, specific instructions may be issued to all the departments by Chief Secretary.*
8. *UPPCB has informed that detailed action plans related to polluted river stretches of Ghagra, Rapti, Varuna, Sai, Saryu, Ami and Tamsa have been prepared and approved by River Rejuvenation Committee. The implementation of these plans by District Environment Committee at District level and River Rejuvenation Committee at the State level may be continuously monitored. The minutes of the State level Committee may be uploaded on the State Environmental Portal and a copy may be made available to this committee.*
9. *We have been assured by Additional Chief Secretary (Irrigation) that the joint committee report on wetlands will be passed in the meeting on 15.06.2020 and made available to the committee. This committee would send a supplementary report on that after getting that report and studying it.”*
10. The above recommendations be acted upon and a report filed by the Chief Secretary with report in terms of earlier order. We also note the suggestion of the learned Counsel appearing for the CPCB that the Tihara drain needs to be cleaned and obstructions, if any, thereto removed. This aspect may also be looked into by the Oversight Committee.
11. We may generally observe that the action taken so far hardly meets the mandate of law and much remains to be done for compliance of orders of this Tribunal. Laxity by the officers

concerned is breach of their statutory and public duties to uphold rule of law and protect environment and public health. However, learned Counsel for the State PCB states that latest status could not be brought forward for which time is required. Let the same be done before the next date.

12. In view of prayer made, we grant further time for filing updated report by the Chief Secretary, UP, State PCB, DFO, Gorakhpur and the Oversight Committee. The Oversight Committee may obtain latest status report from the concerned Collectors and the concerned departments. Report may be filed on or before 30.09.2020 by e-mail at judicial-ngt@gov.in (preferably in the form of searchable/OCR PDF and not image PDF) which may also be uploaded on the website of the CPCB. Comments, if any thereto, by any other party may be filed within two weeks thereafter.
13. Time of the Oversight Committee will stand extended by six months.

List for further consideration on 05.11.2020.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

June 16, 2020
OA No. 116/2014
DV

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costs. We would clarify that this decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment. a

(1991) 1 Supreme Court Cases 598

(BEFORE K.N. SINGH AND N.D. OJHA, JJ.) b

SUBHASH KUMAR .. Petitioner;

Versus

STATE OF BIHAR AND OTHERS .. Respondents. c

Writ Petition (Civil) No. 381 of 1988, decided on January 9, 1991

Constitution of India — Article 21 — Right to pollution free water and air for full enjoyment of life, held, covered by Article 21

Constitution of India — Articles 32 and 21 — Public interest litigation against water or air pollution maintainable

Constitution of India — Article 32 — Public interest litigation — Petition in personal interest or to satisfy any grudge or enmity cannot be initiated in the garb of public interest litigation — On facts, writ petition being in personal interest, dismissed with costs d

A petition under Article 32 by way of public interest litigation was filed seeking a writ or direction preventing alleged pollution of the Bokaro river water from the sludge/slurry discharged from the washeries of the Tata Iron and Steel Co. Ltd. However, on a perusal of the counter affidavit filed on behalf of Directors of Collieries and TISCO it appeared that the petitioner, an influential businessman, had been purchasing slurry from them for last several years but when the respondent company refused to succumb to the petitioner's pressure of supplying more quantity of slurry he removed the company's slurry in an unauthorised manner and also initiated several proceedings before High Court under Article 226. There was intrinsic evidence in the petition itself that the primary purpose of filing this petition is not to serve any public interest; instead it is in self-interest as would be clear from the prayer made by the petitioner in the interim stay application for permitting him to arrest/collect sludge/slurry flowing out of the washeries and for a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/slurry and transporting the same. Dismissing the petition the Supreme Court e f g

Held :

Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. h i
(Para 7)

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a Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of the Supreme Court under Article 32 must approach the Court for the vindication of the fundamental rights of affected persons. Recourse to proceeding under Article 32 should be taken by a person genuinely interested in the protection of society on behalf of the community. Personal interest, grudge or enmity cannot be enforced through the process of the Court under Article 32 in the garb of public interest litigation. If such petitions under Article 32 are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from the Supreme Court. It is therefore, the duty of the Supreme Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of the Supreme Court for personal matters under the garb of the public interest litigation. (Para 7)

b The prayer for the interim relief made by the petitioner in this case clearly indicates that he was interested in collecting the slurry and transporting the same for the purpose of his business. The petition had been filed not in any public interest but for the petitioner's personal interest. Therefore, the petition is liable to be dismissed and the petitioner is directed to pay Rs 5000 as costs. (Para 8)

c *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161; (1984) 2 SCR 67; 1984 SCC (L&S) 389; *Sachindanand Pandey v. State of W.B.*, (1987) 2 SCC 295; *Ramsharan Autyanuprasi v. Union of India*, 1989 Supp 1 SCC 251; *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449, *relied on* *Kundori Labour Cooperative Society Ltd. v. State of Bihar*, AIR 1986 Pat 242; 1986 BBCJ 280 (HC); *Bharat Coking Coal Ltd. v. State of Bihar*, (1990) 4 SCC 557; JT (1990) 3 SC 533, *referred to*

R-M/AT/10425/C

d The Judgment of the Court was delivered by

K.N. SINGH, J.— We heard the arguments in detail on December 13, 1990 and dismissed the petition with costs amounting to Rs 5000 with the direction that the reasons shall be delivered later on. We are, accordingly, delivering our reasons.

e **2.** This petition is under Article 32 of the Constitution by Subhash Kumar for the issue of a writ or direction directing the Director of Collieries, West Bokaro Collieries at Ghatotand, District Hazaribagh in the State of Bihar and the Tata Iron & Steel Co. Ltd. to stop forthwith discharge of slurry/sludge from its washeries at Ghatotand in the District of Hazaribagh into Bokaro river. This petition is by way of public interest litigation for preventing the pollution of the Bokaro river water from the sludge/slurry discharged from the washeries of the Tata Iron and Steel Co. Ltd. The petitioner has alleged that the Parliament has enacted the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act') providing for the prevention and control of

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

3. The petitioner has alleged that the surplus waste in the form of sludge/slurry is discharged as an effluent from the washeries into the Bokaro river which gets deposited in the bed of the river and it also gets settled on land including the petitioner's land bearing Plot No. 170. He has further alleged that the sludge or slurry which gets deposited on the agricultural land, is absorbed by the land leaving on the top a fine carbonaceous product or film on the soil, which adversely affects the fertility of the land. The petitioner has further alleged that the effluent in the shape of slurry flows into the Bokaro river which is carried out by the river water to the distant places polluting the river water as a result of which the river water is not fit for drinking purposes nor it is fit for irrigation purposes. The continuous discharge of slurry in heavy quantity by

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- the Tata Iron and Steel Co. from its washeries pose risks to the health of people living in the surrounding areas and as a result of such discharge
- a the problem of pure drinking water has become acute. The petitioner has asserted that in spite of several representations, the State of Bihar and State Pollution Control Board have failed to take any action against the company instead they have permitted the pollution of the river water. He has further averred that the State of Bihar instead of taking any action
 - b against the company has been granting leases on payment of royalty to various persons for the collection of slurry. He has, accordingly, claimed relief for issue of direction directing the respondents which include the State of Bihar, the Bihar Pollution Control Board, Union of India and Tata Iron and Steel Co. to take immediate steps prohibiting the pollution
 - c of the Bokaro river water from the discharge of slurry into the Bokaro river and to take further action under provisions of the Act against the Tata Iron and Steel Co.

4. The respondents have contested the petition and counter-affidavit have been filed on behalf of respondents 2, 4 and 5 — State of Bihar, State Pollution Board, Directors of Collieries and Tata Iron and Steel Co. Ltd. In the counter-affidavits filed on behalf of the respondents, the petitioner's main allegation that the sludge/slurry is being discharged into the river Bokaro causing pollution to the water and the land and that the Bihar State Pollution Board has not taken steps to prevent the same is denied. In the counter-affidavit filed on behalf of the Bihar State Pollution Board it is asserted that the Tata Iron and Steel Co. operates open case and underground mining. The company in accordance to Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 applied for sanction from the Board to discharge their effluent from their outlets. The Board before granting sanction analysed their effluent which was being watched constantly and monitored to see that the discharge does not affect the water quality of the Bokaro river adversely. In order to prevent the pollution the Board issued direction to the Director of the Collieries to take effective steps for improving the quality of the effluent going into the Bokaro river. The State Pollution Board imposed conditions requiring the company to construct two settling tanks for settlement of solids and rewashing the same. The Board directed for the regular samples being taken and tested for suspended solids and for the communication of the results of the tests to the Board each month. The State Board has asserted that the company has constructed four ponds ensuring more storing capacity of effluent. The Pollution Board has been monitoring the effluent. It is further stated that on the receipt of the notice of the instant writ petition the
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- Board carried out an inspection of the settling tanks regarding the treatment of the effluent from the washeries on June 20, 1988. On inspection

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it was found that all the four settling tanks had already been completed and work for further strengthening of the embankment of the tanks was in progress, and there was no discharge of effluent from the washeries into the river Bokaro except that there was negligible seepage from the embankment. It is further stated that the Board considered all the aspects and for further improvement it directed the management of the collieries for removal of the settled slurry from the tanks. The Board has directed that the washeries shall perform de-sludging of the settling tanks at regular intervals to achieve the proper required retention time for the separation of solids and to achieve discharge of effluents within the standards prescribed by the Board. It is further asserted that at present there is no discharge from any of the tanks to the Bokaro river and there is no question of pollution of the river water or affecting the fertility of land. In their affidavits filed on behalf of respondents 4 and 5, they have also denied the allegations made in the petition. They have asserted that the effective steps have been taken to prevent the flow of the water discharge from the washeries into the river Bokaro. It is stated that in fact river Bokaro remains dry during 9 months in a year and the question of pollution of water by discharge of slurry into the river does not arise. However, the management of the washeries have constructed four different ponds to store the slurry. The slurry which settles in the ponds is collected for sale. The slurry contains highly carbonaceous materials and it is considered very valuable for the purpose of fuel as the ash contents are almost nil in the coal particles found in the slurry. Since, it has high market value, the company would not like to go in the river water. The company has taken effective steps to ascertain that no slurry escapes from its ponds as the slurry is highly valuable. The company has been following the directions issued by the State Pollution Control Board constituted under the 1974 Act.

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

6. On a perusal of the counter-affidavit filed on behalf of respondents 4 and 5 it appears that the petitioner has been purchasing slurry from respondents 4 and 5 for the last several years. With the passage of

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time he wanted more and more slurry, but the respondent-company refused to accept his request. The petitioner is an influential businessman, he had obtained a licence for coal trading, he tried to put pressure through various sources on the respondent-company for supplying him more quantity of slurry but when the company refused to succumb to the pressure, he started harassing the company. He removed the company's slurry in an unauthorised manner for which a Criminal Case

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b No. 178 of 1987 under Sections 379 and 411 of the Indian Penal Code read with Section 7 of the Essential Commodities Act was registered against the petitioner and Pradip Kumar, his brother at Police Station Mandu, which is pending before the Sub-Judge, Hazaribagh. One Shri Jugal Kishore Jayaswal also filed a criminal complaint under Sections 379

c and 411 of the IPC against the petitioner and his brother Pradip Kumar in the Court of Judicial Magistrate, First Class, Hazaribagh, which is also pending before the Court of Judicial Magistrate, 2nd Class Hazaribagh. The petitioner initiated several proceedings before the High Court of Patna under Article 226 of the Constitution for permitting him to collect

d slurry from the raiyati land. These petitions were dismissed on the ground of existence of dispute relating to the title of the land. The petitioner filed a writ petition C.W.J.C. No. 887 of 1990 in the High Court of Patna for taking action against the Deputy Commissioner, Hazaribagh for implementing the Full Bench judgment of the Patna

e High Court in *Kundori Labour Cooperative Society Ltd. v. State of Bihar*¹ wherein it was held that the slurry was neither coal nor mineral instead it was an industrial waste of coal mine, not subject to the provisions of the Mines and Mineral (Regulation and Development) Act, 1957. Consequently the collection of slurry which escaped from the washeries could

f be settled by the State Government with any person without obtaining the sanction of the Central Government. The petitioner has been contending before the High Court that the slurry which was discharged from washeries did not belong to the company and he was entitled to collect the same. Since the respondent-company prevented the petitioner from

g collecting slurry from its land and as it further refused to sell any additional quantity of slurry to him, he entertained grudge against the respondent-company. In order to feed fat his personal grudge he has taken several proceedings against the respondent-company including the present proceedings. These facts are quite apparent from the pleadings

h of the parties and the documents placed before the court. In fact, there is intrinsic evidence in the petition itself that the primary purpose of filing this petition is not to serve any public interest instead it is in self-interest as would be clear from the prayer made by the petitioner in the interim stay application. The petitioner claimed interim relief from this Court

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1 AIR 1986 Pat 242 : 1986 BBCJ 280 (HC)

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permitting him to arrest/collect sludge/slurry flowing out of the washeries of respondents 4 and 5 and with a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/slurry and transporting the same. The prayer for the interim relief made by the petitioner clearly indicates that he is interested in collecting the slurry and transporting the same for the purposes of his business. As already stated a Full Bench of the Patna High Court held that the slurry was not coal and the provisions of the Mines and Mineral (Regulation and Development) Act, 1957 were not applicable, the State Government was free to settle the same and the Tata Iron and Steel Co. had no right to collect the slurry which escaped from its washeries. The respondent-company filed an appeal before this Court. During the pendency of the aforesaid appeal, the petitioner filed the present petition. The appeal preferred by the Tata Iron and Steel Co. Ltd. and Bharat Coking Coal Ltd. was allowed by this Court and the judgment of Patna High Court was set aside. In the judgment of this Court in *Bharat Coking Coal Ltd. v. State of Bihar*² it has been held that the slurry/coal deposited on any land continues to be coal and the State Government has no authority in law to deal with the same and the slurry deposited on the company's land belongs to the company and no other person had authority to collect the same.

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

² (1990) 4 SCC 557 : JT (1990) 3 SC 533

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a tal rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation see *Bandhua Mukti Morcha v. Union of India*³; *Sachindanand Pandey v. State of W. B.*⁴; *Ramsharan Autyanuprasi v. Union of India*⁵ and *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*⁶

c 8. In view of the above discussion, we are of the opinion that this petition has been filed not in any public interest but for the petitioner's personal interest and for these reasons we dismiss[†] the same and directed that the petitioner shall pay Rs 5000 as costs. These costs are to be paid to respondents 3, 4 and 5.

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(BEFORE RANGANATH MISRA, C.J. AND KULDIP SINGH, J.)

e M.L. SACHDEV .. Petitioner;

Versus

f UNION OF INDIA AND ANOTHER .. Respondents.

Contempt (Civil) Petition No. 172 of 1990 in Writ Petition (Civil) No. 297 of 1990[†], decided on November 5, 1990

g **Contempt of Courts Act, 1971 — Sections 2(b) and 12 — Non compliance with Supreme Court's direction to Union of India to constitute the Commission under Section 5 of M.R.T.P. Act, 1969 by filling posts of Chairman and Members within a specified period — No further extension of the period for compliance with the direction sought — Explanation submitted by Secretary in the Ministry of Industry, Government of India not sufficient — Held, Union of India represented by the Secretary guilty of contempt of Supreme Court — Contemner was obliged under Article 144 to seek extension of time from the Court — However, in view of unqualified apology offered by the Secretary no punishment imposed — However, necessity to curb the growing tendency of non compliance with court's directions stressed — Constitution of India, Article 144**

3 (1984) 3 SCC 161 : 1984 SCC (L & S) 389 : (1984) 2 SCR 67

4 (1987) 2 SCC 295, 331

5 1989 Supp 1 SCC 251

6 (1990) 4 SCC 449

† Under Article 32 of the Constitution of India



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8. Faced with this situation, learned counsel for the appellant submitted that in the absence of any clear opinion of the ballistic expert in his report Ext. P-17, regarding the “working status” of the two live cartridges, the conviction of the appellant could not be sustained. This argument also needs a notice only to be rejected. In *Sanjay Dutt case*¹ it has been clearly laid down that with a view to hold an accused guilty of an offence under Section 5 of TADA, the prosecution is required to prove satisfactorily that the accused was in conscious possession, unauthorisedly, in a notified area, of any arm and ammunition of the specified description. The use of the word ‘and’ was explained by the Constitution Bench to be disjunctive and that to sustain the conviction for an offence under Section 5 TADA it is not necessary to establish that the accused possessed *both* the arm and ammunition. The unauthorised possession of either, in a notified area, attracts the provisions of Section 5 TADA. The absence of any expert opinion about the status of the recovered cartridges, therefore, cannot militate against the conviction of the appellant for the offence under Section 5 of TADA for being found unauthorisedly in possession of the specified firearm, (Article 1), in the notified area.

9. In our opinion the prosecution has satisfactorily established the case against the appellant. The trial court rightly convicted and sentenced him. This appeal has no merits. It fails and is accordingly dismissed.

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(BEFORE KULDIP SINGH AND S. SAGHIR AHMAD, JJ.)

DR B.L. WADEHRA .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 286 of 1994, decided on March 1, 1996

Constitution of India — Arts. 32 & 21 and 48-A, 51-A — PIL — Ecology — Non-performance of mandatory duties by Municipal Corporation — Garbage clearance, scavenging and cleaning Delhi city — Residents have constitutional as well as statutory right to live in a clean city — Authorities concerned have a mandatory duty to collect and dispose of the garbage/waste generated from various sources in the city — Non-availability of funds, inadequacy or inefficiency of staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations — MCD and NDMC remained wholly remiss in performance of their duties — Hence directions issued inter alia to MCD and NDMC to have the city scavenged and cleaned everyday; to the Govt. and the authorities concerned to construct and install incinerators in all hospitals/nursing homes with 50 beds and above under their administrative control; to AIIMS, New Delhi to install sufficient number of incinerators or equally effective alternate; to MCD and NDMC to issue notices to all private hospitals/nursing homes to make their own arrangements for disposal of garbage and hospital wastes; to Central Pollution Control Board and Delhi Pollution Committee to regularly make inspections; to the Govt. to appoint Municipal Magistrates for trial of offences under the Corporation Acts;

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to Doordarshan to undertake programmes of educating the residents regarding their civil duties etc. — Municipalities — Delhi Municipal Corporation Act, 1957, Ss. 42, 43, 59, 107-A, 108, 353, 354, 356, 465, 469, 486, 487 and 488 — New Delhi Municipal Council Act, 1994, Ss. 11, 12, 53, 261, 263, 264, 265, 266, 267 and 375 — Criminal Procedure Code, 1973, S. 133

Municipal Council, Ratlam v. Vardichan, (1980) 4 SCC 162 : 1980 SCC (Cri) 933 . AIR 1980 SC 1622, *relied on*

R-M/15890/C

b Chronological list of cases cited

in para(s)

1. (1980) 4 SCC 162 . 1980 SCC (Cri) 933 : AIR 1980 SC 1622, *Municipal Council, Ratlam v. Vardichan*

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The Judgment of the Court was delivered by

KULDIP SINGH, J.— Historic city of Delhi — the capital of India — is one of the most polluted cities in the world. The authorities, responsible for pollution control and environment protection, have not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more Delhiites are suffering from respiratory diseases and throat infections. River Yamuna — the main source of drinking water supply — is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. The Municipal Corporation of Delhi (the MCD) constituted under the Delhi Municipal Corporation Act, 1957 (Delhi Act) and the New Delhi Municipal Council (the NDMC) constituted under the New Delhi Municipal Council Act, 1994 (New Delhi Act) are wholly remiss in the discharge of their duties under law. It is no doubt correct that rapid industrial development, urbanisation and regular flow of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the authorities — entrusted with the work of pollution control — cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment. Apart from Article 21 of the Constitution of India, which guarantees “right to life”, Articles 48-A and 51-A(g) of the Constitution are as under:

“48-A. *Protection and improvement of environment and safeguarding of forests and wild life.*— The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

2. In this petition under Article 32 of the Constitution of India, the petitioner — an advocate of this Court — has sought directions to the MCD and the NDMC to perform their statutory duties in particular the collection, removal and disposal of garbage and other waste.



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3. This Court on 16-12-1994 passed the following order in the writ petition:

“We direct the Municipal Corporation of Delhi, Delhi Administration and Delhi Development Authority to place on record the list of all garbage dumping places and city garbage collection centres within six weeks from today. It shall also be stated as to what steps are being taken by these Authorities to keep these places clean and tidy. These Authorities shall also consider the possibility of making it mandatory that the garbage etc. should be dumped at these places in plastic/jute bags to be supplied by the Corporation at subsidised rates.”

4. Mr H.K. Handa, Executive Engineer, MCD, filed a short affidavit dated 30-1-1995 indicating that three statutory bodies function within their respective territories in the Union Territory of Delhi, covering following areas:

“(1)	Municipal Corporation of Delhi	1399.26 sq. km.	c
(2)	New Delhi Municipal Committee	42.40 sq. km.	
(3)	Delhi Cantonment Board	42.80 sq. km.	
		1484.46 sq. km.”	

5. At present about 4000 metric tons (MT) of garbage is collected daily by the MCD. The disposal of the garbage is done mainly by “Land Fill Method”. It is stated in the affidavit that at present the total number of garbage collection centres are 1804 (337 dhalaos, 1284 dustbins, 176 open sites and 7 steelbins). The garbage collection trucks collect the garbage from the collection centres and take it to the nearest Sanitary Land Fill (SFL). 19 hospitals, 156 dispensaries, 160 maternity and child welfare centres, 5 primary health centres and 14 clinics are functioning under the control of MCD. Except RBTB Hospital, no other hospital etc. has installed incinerator to burn the hospital waste. It is highlighted in the affidavit that about 45% of the total population of Delhi is living in slums, unauthorised colonies and clusters. There are about 4,80,000 jhuggies in Delhi. According to a rough estimate about 6 persons stay in each jhuggi. They throw their garbage on the road or nearby dustbins.

6. Mr S.C. Kumar, Executive Engineer has filed further affidavit dated 13-7-1995 on behalf of the MCD. The collection and disposal of the garbage is done by the “Solid Waste Department” of the MCD. The sanitation staff employed for this purpose has been indicated in the affidavit as under:

“Municipal Corporation of Delhi has divided the entire area under its jurisdiction into 12 zones. The Solid Waste Department is headed by Sanitary Suptd. (SS) in every zone, who inter alia, is responsible for over all sanitation within his zone. On the supervisory level the SS is assisted by Chief Sanitary Inspector (CSI), Sanitary Inspector (SI), Asstt. Sanitary Inspector (ASI) and Sanitary Guide (SG).

For containing the solid waste in dhalaos and cleanliness, Safai Karamcharis (SK) are deployed on each dhalaos and dustbin. The list of

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existing dustbins and dhalaos is already on the records of this Hon'ble Court filed with additional affidavit.

a The total number of sanitation staff of solid waste management is as follows:

1.	Sanitary Superintendent	21 Nos.
2.	Chief Sanitary Inspector	30 Nos.
3.	Sanitary Inspector	212 Nos.
b 4.	Assistant Sanitary Inspector	556 Nos.
5.	Sanitary Guide	603 Nos.
6.	Safai Karamcharis	38,311 Nos."

7. Regarding construction of additional dhalaos it is stated as under:

c "The zonewise list of 1252 Nos. (approx.) new dhalaos to be constructed and 708 Nos. existing dustbins/dhalaos to be repaired/renovated is attached at Annexure 'A'.

d The completion of work will, however, depend upon the availability of funds by Central Government and Delhi Government In anticipation of receipt of additional funds short notice tenders in most of the zones have been floated. A request for releasing funds to the tune of Rs 75.76 crores has already been sent to Principal Secretary (UD) by Commissioner, MCD vide letter No. 486 dated 5-6-1995. This estimate will also require revision in view of the drawing prepared by the Chief Architect, MCD for proposed construction of dhalaos."

e 8. Mr Kumar has further stated in his affidavit that composting is one of the solutions for disposal of garbage and getting soil conditioner through the process. According to him the MCD compost plant at Okhla had to be closed few years back since its running was not financially viable. There is a proposal to revive the same. The Jagmohan Committee has recommended for installation of 4 additional compost plants in Delhi. Regarding privatisation, it is stated as under:

f "As an effort to explore the alternative method, privatisation of sanitation work is also being considered to be adopted on trial basis. However final decision in this regard is yet to be taken."

g 9. It is stated in the affidavit that orders for purchase of 200 trucks have been placed with M/s Ordnance Factory, Jabalpur. Tenders for purchase of 35 suction machines, 50 front-end-loaders have been received and are under process. It is stated that 11 more bulldozers are required. It is further stated that 4 compactors of different capacities, 4 Nos. of poclairn on chain/tyre and some more tipper trucks are required.

10. Medical Officer of Health has filed affidavit dated 12-5-1995 on behalf of NDMC. Regarding "door to door garbage collection" the affidavit indicates as under:

h "NDMC has introduced a scheme of door to door collection of garbage on experimental basis in few colonies. Under this scheme, introduced on 1-5-1994, NDMC is supplying 25 polythene garbage bags

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of 19" x 25" capable of holding about 10-12 kgs. per month at the subsidised price of Rs 15 per house per month in the following areas:

1. North Avenue
2. South Avenue
3. D-I and D-II flats, Vinay Marg
4. C-I and C-II flats, Tilak Marg
5. Delhi Administration flats, Bhagwan Das Road
6. Pandara Road and Pandara Park
7. Ravinder Nagar and Bharti Nagar

The said garbage bags are collected on daily basis by our staff deployed and then deposited in the nearby dustbins for the purpose for further transporting them by our staff to the dumping ground maintained by Municipal Corporation of Delhi. It is stated that not more than 40% of the residents under the scheme avail the benefit of the scheme. It is specifically stated that NDMC does not have any dumping ground within its jurisdiction."

11. It is stated in the affidavit that average of 300-350 tons of garbage is generated everyday in the NDMC area. For the purpose of collection and disposal of garbage the area is divided into 13 parts (circles). There are 49 jhuggi-jhompri clusters having 12,500 jhuggies in the NDMC area. There are 944 garbage collecting places (550 trollies and 394 dustbins). The task is undertaken by a fleet of 1423 permanent Safai Karamcharis, 600 Muster-Roll workers and 149 part-time Safai Karamcharis.

12. This Court on 15-9-1995 passed the following order:

"We have heard the petitioner and the learned counsel assisting us. Mr Tusharia, Deputy Director, Municipal Corporation of Delhi, is personally present in Court. He has also assisted us. Mr H.K. Handa and Mr S.C. Kumar, Executive Engineers, Municipal Corporation of Delhi, have filed an affidavit in these proceedings. According to the affidavit, Municipal Corporation of Delhi has divided the area under its charge into 12 zones for the purposes of collection of garbage. It is further stated that there are 1804 garbage collection points in the said area. The garbage collection points consist of dhalaos, open sites and steelbins. Similarly, the area under the control of NDMC has been divided into 13 zones where there are 944 collection points. 394 are masonry dustbins and 500 are trollies. It cannot be disputed that the collection and disposal of garbage in the city of Delhi is causing serious problem. Statutory authorities like MCD and NDMC have been created to control this problem. It is not for this Court to keep on monitoring these problems. The officers who are manning these institutions must realize their responsibilities and show the end result. Keeping that in view, we issue the following directions:

- (1) We adjourn the hearing of this petition to 12-10-1995. On that day, the petitioner and other learned counsel shall assist this

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Court regarding the statutory duties and functions of various authorities in regard to the sanitation in the city of Delhi.

a (2) During this period, the officers who are concerned with this problem shall consider the various issues arising in this petition at their own level and shall give the following information to this Court on the next date of hearing:

b (a) final date by which these officers/authorities shall sort out the problem of collection and disposal of the garbage in the city of Delhi. In that respect, we make it clear that from the date which may be given by these authorities, not a drop of garbage is to be seen anywhere in the city of Delhi on early morning each day. The whole of the work of garbage collection must be completed overnight and the city is to be left absolutely clean for the residents for their use;

c (b) the authorities may, if they so wish, place before this Court the difficulties which are likely to come up in their way. This Court with the assistance of authorities concerned shall try to solve the same.

d We make it clear that any direction finally given by this Court after hearing the parties shall be binding and violation of any part of it shall attract the provisions of the Contempt of Courts Act.

Issue notice to the Secretary (Health), Delhi Administration, specially for the purposes of seeking assistance regarding nursing homes and hospitals under the control of Delhi Administration.

To be listed on 12-10-1995.”

e 13. Pursuant to the above-quoted order, Commander Mukesh Paul, Medical Officer of Health, NDMC has filed an affidavit dated 10-10-1995. It is stated in the affidavit that lack of civic sense, lack of dustbins, absenteeism among the staff, logistics problems, multiplicity of authorities, disposal of household garbage by the servants, problems of jhuggi-jhompri clusters, floating population and for various other reasons, it is not possible to give the time schedule regarding the cleaning of Delhi as directed by this Court. Various steps taken by the NDMC to improve sanitation/garbage disposal have also been indicated. An additional affidavit filed by Shri Anshu Prakash on behalf of NDMC indicates that the following measures for speedy removal of garbage and for maintenance of effective sanitation have been undertaken:

- g*
- a.* Strengthening of Safai Karamchari workforce.
 - b.* Lifting and removal of garbage.
 - c.* Regular inspection by Nodal Officers.
 - d.* Manning of Dhalaos.
 - e.* Door to door collection and NGO participation.

h 14. Mr C.P. Gupta filed affidavit dated 17-10-1995 on behalf of MCD wherein he stated as under:

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“It is, therefore, submitted that no specific date for making Delhi ‘absolutely garbage free’ every morning can be given at this stage. Nevertheless, the endeavours of MCD would be to achieve the spirit of the orders passed by this Hon’ble Court.” a

15. Under Secretary, Ministry of Health, Government of India in his affidavit has stated that Safdarjung Hospital, Ram Manohar Lohia Hospital and Lady Hardinge Medical College comprising Kalavati Hospital and Sucheta Kripalani Hospital are under the control and supervision of the Ministry of Health, Government of India. Safdarjung Hospital has installed incinerator with waste disposal capacity of 230 kgs per hour. The said hospital generates about 2000-2500 kgs of waste everyday. It is stated that the incinerator functions in two shifts for 10 hours for 7 days a week. It is not clear from the affidavit whether the incinerator is in working condition or out of order. The affidavit states that three vertical type incinerators have also been installed by the Safdarjung Hospital. Incinerators have not been installed in the other hospitals. It is stated that proposal to install incinerators in RML Hospital and Lady Hardinge Medical College is under consideration. b c d

16. According to the affidavit filed by Mrs Satbir Silas, Joint Secretary (Medical and Public Health), Government of National Capital Territory of Delhi, there are 13 hospitals which are functioning under the control of the said Government. Lok Nayak Jayaprakash Narayan Hospital has no incinerator of its own. It is using the incinerator located in G.B. Pant Hospital. There is an incinerator in Guru Tegh Bahadur Hospital with capacity of 125 kgs per hour. The incinerator is not enough to burn the entire hospital waste. It is stated that a second incinerator at the cost of Rs 44 lakhs is likely to be installed. Deen Dayal Upadhyay Hospital has installed an incinerator with capacity of burning 85 kgs of waste per hour. It is stated that the incinerator is meeting the need of the hospital. G.B. Pant Hospital has two incinerators with capacity of 60 kgs each. There are no incinerators in Civil Hospital, Nehru Memorial Medical College, Guru Nanak Eye Centre, Lal Bahadur Shastri Hospital, Rao Tulla Ram Memorial Hospital and Dr N.C. Joshi Memorial Hospital. The three remaining hospitals, namely, Babu Jagjivan Ram Memorial Hospital, Sanjay Gandhi Memorial Hospital and Maulana Azad Medical College have installed incinerators. e f

17. Mr C.P. Gupta has filed further affidavit (second) dated 6-11-1995 on behalf of MCD wherein it is stated that on experimental basis, initially MCD proposes to introduce the scheme of supplying plastic bags to the residents of Janakpuri, Shalimar Bagh, Jangpura Extension, Preet Vihar, Sarita Vihar, Derawal Nagar and Jain Colony. It is stated by the learned counsel appearing for the MCD that the administration is more than willing to take up the challenge of cleaning the city in the right earnest. g

18. The NDMC has also filed a proposed scheme which is in the following terms: h

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a “That the NDMC as per the directions of this Hon’ble Court intends to improve sanitation in a stepwise manner. Step I shall comprise of sweeping the roads/streets, collection of garbage and its storage at designated and identified places. Step II shall comprise of lifting of the garbage and its transportation to the MCD dumping site at Gazipur. NDMC is also utilising part of its garbage and horticulture waste for conversion into manure at the compost plant at Okhla.

b Regarding Step I, as directed by the Hon’ble Court, the NDMC has selected for intensive sanitation the following compact area consisting of the area around Parliament/Supreme Court, Central Vista Lawns and Circle No. 6 starting from the entire Rajpath up to National Stadium, C-Hexagon Road, Sher Shah Road cutting the Mathura Road up to Subramaniam Bharati Marg up to South End Road, Aurangzeb Road, Motilal Nehru Marg including Maulana Azad Road, Sunehri Masjid. On the other hand, site from National Stadium to part of C-Hexagon, Central Vista Lawn and also two important markets, i.e., Connaught Place and Sarojini Nagar located in NDMC area. Besides the important buildings as mentioned above, there are 1076 houses in Pandara Road and Pandara Park including MS flats. Ravinder Nagar has got 124 flats. Bapa Nagar has got 102 flats. Rest big bungalows are there. Circle No. 6 also includes the JJ clusters at Humayun Road and Darbhanga House and also the Khan Market, Lok Nayak Bhawan, Pandara Road Market, Prithvi Raj Market. The following number of major restaurants/hotels are existing in this circle:

	(i) Five Star Hotel	1
e	(ii) Three Star Hotel	1
	(iii) Restaurants	20

f It is proposed to deploy the workforce in night shift also for effective garbage removal in the area. Each and every household will be given polythene bag for garbage collection and each household will be expected to place the bags filled with garbage at designated collection points. In JJ clusters, the garbage will be collected at collection points designated for this purpose. It may not be feasible to give polythene bags for each jhuggi. Additional collection points will be made wherever necessary to suit the convenience of the public. All the collection points in the aforesaid areas will be effectively supervised by NDMC staff to ensure that garbage is not littered around the collection points.

g Initially the polythene bags will be given free of cost to the residents of aforesaid areas for one month by NDMC on experimental basis. Thereafter the supply of bags at subsidised cost may also be considered by the NDMC. NDMC has started door to door collection of garbage in polythene bags supplied by NDMC in certain colonies in the aforesaid areas. It will be gradually extended to other colonies also in consultation with the resident associations. The NDMC will also make efforts to find out if any better alternative to the polythene bags could be provided for

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this purpose. Other State Governments, Ministry of Environment, etc. will be contacted in this regard.”

19. It would be useful to mention that the MCD has a very large force of Karamcharis working for it. There are 38,311 Safai Karamcharis. The MCD has more than 1400 Sanitary Inspectors and other officials in that category. The total area which the MCD is supposed to keep clean and tidy is 1399.26 sq. km. The simple arithmetic shows that there are 27 Safai Karamcharis and one Sanitary Inspector for one sq. km. of area. We are of the view that with such a large manpower at its disposal there can be no excuse with the MCD for not controlling the disposal of garbage and keeping the city clean. The NDMC is still in a better position. It has 2172 Safai Karamcharis and the area under its control is 42.40 sq. km. which means that it has 50 Karamcharis to man one sq. km. There is no reason whatsoever why with such a huge manpower at their command the MCD and NDMC cannot present a neat and clean Delhi to its residents.

20. The MCD and NDMC have already started door to door collection of garbage on experimental basis. It is stated that polythene bags are also being distributed in the selected areas. We make it clear that the modalities in our interim orders from time to time have been in the nature of suggestions. We, however, reiterate that the MCD and the NDMC must keep the city clean by deploying all the means at their disposal. We are issuing binding directions in this respect in the operative part of the judgment.

21. It would be useful at this stage to examine the relevant provisions of the Delhi Act.

“42. *Obligatory functions of the Corporation.*— Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take, for each of the following matters, namely:

(a) the construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences;

* * *

(c) the scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters;

* * *

(e) the reclamation of unhealthy localities, the removal of noxious vegetation and generally the abatement of all nuisances;

* * *

(o) the lighting, watering and cleansing of public streets and other public places;

* * *

(t) the laying out or the maintenance of public parks, gardens or recreation grounds;



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	* * *	
a	(wa) the preparation of plans for economic development and social justice.	
	43. <i>Discretionary functions of the Corporation</i> * * *	
	(b) the establishment and maintenance of, and aid to, libraries, museums, art galleries, botanical or zoological collections;	
b	(c) the establishment and maintenance of, and aid to, stadia, gymnasia, <i>akharas</i> and places for sports and games;	
	(d) the planting and care of trees on roadsides and elsewhere;	
	* * *	
c	(i) the providing of music or other entertainments in public places or places of public resort and the establishment of theatres and cinemas;	
	* * *	
	(l) the construction and maintenance of—	
	(i) rest-houses;	
	(ii) poor-houses;	
d	(iii) infirmaries;	
	(iv) children's homes;	
	(v) houses for the deaf and dumb and for disabled and handicapped children;	
	(vi) shelters for destitute and disabled persons;	
	(vii) asylums for persons of unsound mind;	
e	* * *	
	(q) the provision for relief to destitute and disabled persons;	
	* * *	
	(s) the organisation, construction, maintenance and management of swimming pools, public wash-houses, bathing places and other institutions designed for the improvement of public health;	
f	* * *	
	(z) the provision of housing accommodation for the inhabitants of any area or for any class of inhabitants; and	
	(za) any measure not hereinbefore specifically mentioned, likely to promote public safety, health, convenience or general welfare.	
g	* * *	
	59. <i>Functions of the Commissioner.</i> — Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also—	
h	* * *	



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107-A. *Constitution of Finance Commission.*— (1) The Administrator shall, as soon as may be, within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter at the expiration of every fifth year constitute a Finance Commission to review the financial position of the Corporation and to make the recommendations to the Administrator as to,— a

(a) the principles which should govern,—

(i) the distribution between the National Capital Territory of Delhi and the Corporation of the net proceeds of the taxes, duties, tolls and fees leviable by the National Capital Territory of Delhi which may be divided between them; b

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the Corporation;

(iii) the grants-in-aid to the Corporation from the consolidated fund of the National Capital Territory of Delhi; c

* * *

108. *Constitution of special funds.*— (1) The Corporation shall constitute such special fund or funds as may be prescribed by regulations and such other funds necessary for the purposes of this Act as may be so prescribed. d

(2) The constitution and disposal of such funds shall be effected in the manner laid down by regulations.

* * *

353. *Duty of owners and occupiers to collect and deposit rubbish, etc.*— It shall be the duty of the owners and occupiers of all premises— e

(a) to have the premises swept and cleaned;

(b) to cause all filth, rubbish and other polluted and obnoxious matter to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice prescribes, in public receptacles, depots or places provided or appointed under Section 352 for the temporary deposit or final disposal thereof; f

(c) to provide receptacles of the type and in the manner prescribed by the Commissioner for the collection therein of all filth, rubbish and other polluted and obnoxious matter from such premises and to keep such receptacles in good condition and repair.

354. *Collection and removal of filth and polluted matter.*— It shall be the duty of the owner and occupier of every premises situate in any portion of Delhi in which there is not a latrine, or urinal connected by a drain with a municipal drain, to cause all filth and polluted and obnoxious matter accumulating upon such premises to be collected and removed to the nearest receptacle or depot provided for this purpose under Section 352 at such times, in such vehicle or vessel by such route g
h



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and with such precautions as the Commissioner may by public notice prescribe.

a * * *

356. *Removal of rubbish, etc., accumulated on premises used as factories, workshops etc.*— The Commissioner may, if he thinks fit,—

b (a) by written notice require the owner or occupier of any premises used for carrying on any manufacture, trade or business or used as a factory, workshop, trade premises or market or in any way so that rubbish, filth and other polluted and obnoxious matter are accumulated in large quantities, to collect all such rubbish, filth and other polluted and obnoxious matter accumulating thereon and to remove the same at such times and in such carts or receptacles and by such routes as may be specified in the notice to a depot or place provided or appointed under Section 352, or

c (b) after giving such owner or occupier notice of his intention, cause all rubbish, filth and other polluted and obnoxious matter accumulated in such premises to be removed, and charge the said owner or occupier for such removal such fee as may, with the sanction of the Standing Committee, be specified in the notice issued under clause (a).

d 357. *Prohibition against accumulation of rubbish, etc.*— No owner or occupier of any premises shall keep or allow to be kept for more than twenty-four hours or otherwise than in a receptacle approved by the Commissioner, any rubbish, filth and other polluted and obnoxious matter on such premises or any place belonging thereto or neglect to employ proper means to remove such rubbish, filth and other polluted and obnoxious matter from, or to cleanse, such receptacle and to dispose of such rubbish, filth and other polluted and obnoxious matter in the manner directed by the Commissioner, or fail to comply with any requisition of the Commissioner as to construction, repair, pavement or cleansing of any latrine, or urinal on or belonging to the premises.

f * * *

g 465. *General penalty.*— Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to one hundred rupees, and in case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.

h 469. *Municipal Magistrates.*— (1) The Government may appoint one or more Metropolitan Magistrates for the trial of offences against this Act and against any rule, regulation or bye-law made thereunder and may prescribe the time and place at which such Magistrate or Magistrates shall sit for the despatch of business.



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486. *Inspection.*— The Central Government or the Government may depute any person in the service of Government to inspect or examine any municipal department or office or any service or work undertaken by the Corporation or any of the municipal authorities or any property belonging to the Corporation and to report thereon and the Corporation and every municipal authority and all municipal officers and other municipal employees shall be bound to afford the person so deputed access at all reasonable times to the premises and properties of the Corporation and to all records, accounts and other documents the inspection of which he may consider necessary to enable him to discharge his duties. a
b

487. *Directions by Central Government.*— (1) If whether on receipt of a report or on receipt of any information or report obtained under Section 485 or Section 486 or otherwise, the Central Government is of opinion— c

(a) that any duty imposed on the Corporation or any municipal authority by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner, or

(b) that adequate financial provision has not been made for the performance of any such duty, it may direct the Corporation or the municipal authority concerned, within such period as it thinks fit, to make arrangements to its satisfaction for the proper performance of the duty, or as the case may be, to make financial provision, to its satisfaction for the performance of the duty and the Corporation or the municipal authority concerned shall comply with such direction: d

Provided that, unless in the opinion of the Central Government the immediate execution of such order is necessary, it shall before making any direction under this section give the Corporation or the municipal authority concerned an opportunity of showing cause why such direction should not be made. e

488. *Power to provide for enforcement of direction under Section 487.*— If, within the period fixed by a direction made under sub-section (1) of Section 487, any action the taking of which has been directed under that sub-section has not been duly taken, the Central Government may make arrangements for the taking of such action and may direct that all expenses connected therewith shall be defrayed out of the Municipal Fund.” f

22. Similarly, NDMC is governed by the New Delhi Act. Sections 11, 12, 53, 261, 263, 264, 265, 266, 267 and 375 are some of the provisions of the New Delhi Act which are *pari materia* to the relevant provisions of the Delhi Act. It is clear from various provisions of the Delhi Act and the New Delhi Act that the MCD and the NDMC are under a statutory obligation to scavenge and clean the city of Delhi. It is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city. We have no hesitation in observing that the MCD and the NDMC g
h

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a have been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in a clean city. The courts are justified in directing the MCD and NDMC to perform their duties under the law. Non-availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.

b **23.** In *Municipal Council, Ratlam v. Vardichan*¹ the question before this Court was whether the order of the trial court as upheld by the High Court directing the Ratlam Municipality to draft a plan within six months for the removal of nuisance caused by the open drains and public excretion by the nearby slum-dwellers could be sustained. This Court speaking through Krishna Iyer, J. dismissed the appeal of the municipality and held as under: (SCC p. 174, para 24)

c “Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do’s and Dont’s the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new ‘enforcement’ dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal.”

e Reminding the State Government of its duties under the Constitution of India, Krishna Iyer, J. observed as under: (SCC p. 174, para 24)

f “We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under this Order. The State will realise that Article 47 makes it a paramount principle of governance that steps are taken ‘for the improvement of public health as amongst its primary duties’. The Municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health. It is not our intention that the ward which has woken up to its rights alone need be afforded these elementary facilities. We expect all the wards to be benefited without litigation.”

g **24.** In the light of the facts and circumstances noticed above and also keeping in view the suggestions made by the learned counsel assisting us in this petition, we issue the following directions:

h 1. We approve the experimental schemes placed before this Court by MCD and NDMC whereunder certain localities have been selected for

¹ (1980) 4 SCC 162 . 1980 SCC (Cri) 933 : AIR 1980 SC 1622

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distribution of polythene bags, door to door collection of garbage and its disposal.

We direct the MCD through Commissioner appointed under Section 54 of the Delhi Act and all other officers of the MCD (particularly Mr Narang and Mr Tirath Raj, Joint Directors) to have the city of Delhi scavenged and cleaned everyday. The garbage/waste shall be lifted from collection centres every day and transported to the designated place for disposal. a

All receptacles/collection centres shall be kept clean and tidy everyday. The garbage/rubbish shall not be found spread around the collection centres and on the roads. b

We issue similar directions to the NDMC through S/Shri Baleshwar Raj, Administrator, Lal Chand, Chief Sanitary Inspector, Dr G.S. Thind, Deputy Medical Officer of Health and Dr V.N. Reu, Chief Medical Officer. c

2. We direct Government of India, through Secretary, Ministry of Health, Government of National Capital Territory of Delhi through Secretary, Medical and Public Health, MCD through its Commissioner and NDMC through its Administrator to construct and install incinerators in all the hospitals/nursing homes, with 50 beds and above, under their administrative control. This may be done preferably within nine months. A responsible officer of each of these authorities shall file an affidavit in this Court within two months indicating the progress made in this respect. d

3. We direct the All India Institute of Medical Sciences, New Delhi through its Director to install sufficient number of incinerators, or an equally effective alternate, to dispose of the hospital waste. The Director shall file an affidavit within two months to indicate the progress made in this respect. e

4. We direct the MCD and NDMC to issue notices to all the private hospitals/nursing homes in Delhi to make their own arrangements for the disposal of their garbage and hospital waste. They be asked to construct their own incinerators. In case these hospitals are permitted to use facilities (for collection, transportation and disposal of garbage) provided by the MCD and NDMC then they may be asked to pay suitable charges for the service rendered in accordance with law. f

5. We direct the Central Pollution Control Board and the Delhi Pollution Committee to regularly send its inspection teams in different areas of Delhi/New Delhi to ascertain that the collection, transportation and disposal of garbage/waste is carried out satisfactorily. The Board and the Committee shall file the reports in this Court by way of an affidavit after every two months for a period of two years. g

6. We direct the Government of the National Capital Territory of Delhi to appoint Municipal Magistrates (Metropolitan Magistrates) under Section 469 of the Delhi Act and Section 375 of the New Delhi Act for the trial of offence under these Acts. Residents of Delhi be h

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a educated through Doordarshan and by way of announcements in the localities that they shall be liable for penalty in case they violate any provisions of the Act in the matter of collecting and disposal of garbage and other wastes.

b 7. We direct Doordarshan through its Director General to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and the New Delhi Act. This shall be done by making appropriate announcements, displays on the television. The residents of Delhi shall be educated regarding their duties under Sections 354, 356 and 357 of the Delhi Act and similar duties under the New Delhi Act. They shall also be informed about the penalties which can be imposed under Section 465 of the Delhi Act and similar provisions under the New Delhi Act. The MCD and the NDMC shall also have announcements made by way of public address system in various areas in Delhi informing the residents of their duties and obligations under the Delhi Act and the New Delhi Act.

c 8. The MCD has placed order for the supply of about 200 tippers with the Ordnance Vehicle Factory, Jabalpur (Government of India) in May 1995. The tippers have not as yet been supplied. We direct Secretary, Ministry of Defence Production, Government of India to have the tippers supplied to the MCD as expeditiously as possible and preferably within three months. The Secretary shall file an affidavit in this Court within six weeks indicating the progress made in this respect.

d 9. The MCD has indicated that three SLF sites have already been approved by the Technical Committee of the DDA but the same have not been handed over to the MCD by the Development Commissioner, Government of NCT of Delhi. Since Bhatti mines are situated within the ridge area, we do not permit the same to be utilised for the disposal of the solid waste as at present. We, however, direct the Development Commissioner, Government of NCT, Delhi to hand over the two sites, near Badarpur on Jaitpur/Tejpur quarry pits and Mandi village near Jaunpur quarry pits. The sites shall be handed over to the MCD within three months. The Development Commissioner shall file an affidavit in this Court before 31-3-1996 indicating the progress made in this respect.

e 10. The compost plant at Okhla be revived and put into operation. The MCD shall start operating the plant, if not already operating, with effect from 1-6-1996. The MCD shall also examine the construction of four additional compost plants as recommended by Jagmohan Committee. The MCD shall file an affidavit in this Court within six weeks indicating the progress made in restarting the Okhla compost plant and in the construction of four new plants.

f 11. The MCD shall not use the filled-up SLFs for any other purpose except forestry. There are twelve such sites including Rajiv Gandhi Smriti Van. We direct the MCD to develop forests and gardens on these 12 sites. The work of afforestation shall be undertaken by the MCD with effect from 1-4-1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

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12. The MCD and NDMC shall construct/install additional garbage collection centres in the form of dhalaos/trolley/steelbins within four months. An affidavit in this respect shall be filed by a responsible officer of each of these authorities within two months indicating the progress. a

13. We direct the Union of India and NCT, Delhi Administration through their respective appropriate Secretaries to consider the requests from MCD and NDMC for financial assistance in a just and fair manner. These Governments shall consider the grant of financial assistance to the MCD and NDMC by way of subvention or any other manner to enable these authorities to fulfil their obligations under law as directed by us. b

14. After some time it may not be possible to dispose of garbage and solid waste by 'SLF' method due to non-availability of sites. We direct the NCT, Delhi Administration through its Chief Secretary and also the MCD and NDMC to join hands and engage an expert body like NEERI to find out alternate method/methods of garbage and solid waste disposal. The NCT, Delhi Administration shall file affidavit in this Court within two months indicating progress made in this respect. c

(1996) 2 Supreme Court Cases 610

(BEFORE J.S. VERMA AND K. VENKATASWAMI, JJ.) d
Writ Petition (Crl.) No. 19 of 1995[†]

R.M. TEWARI, ADVOCATE .. Petitioner;

Versus

STATE (NCT OF DELHI) AND OTHERS .. Respondents. e

With

Criminal Appeal No. 250 of 1996

GOVT. OF NCT, DELHI .. Appellant;

Versus

JUDGE, DESIGNATED COURT II (TADA) .. Respondent. f

And

Criminal Appeal No. 251 of 1996

MOHD. MEHFOOZ .. Appellant;

Versus

CHIEF SECRETARY AND ANOTHER .. Respondents. g

Writ Petition (Crl.) No. 19 of 1995 with Criminal Appeals Nos. 250 and
251 of 1996[‡], decided on February 20, 1996

**Criminal Procedure Code, 1973 — S. 321 — Withdrawal of charges under
TADA — Public Prosecutor seeking consent of court on the sole basis of**

[†] Under Article 32 of the Constitution of India h

[‡] From the Judgment and Order dated 12-12-1994 of the Designated Court-II (TADA), Delhi, in Misc Application No Nil of 1994

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(2011) 3 Supreme Court Cases 363

a (BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)
KRISHNADEVI MALCHAND KAMATHIA
AND OTHERS .. Appellants;

Versus

b BOMBAY ENVIRONMENTAL ACTION GROUP
AND OTHERS .. Respondents.

Interlocutory Application No. 23 of 2010 in Civil Appeal No. 4421 of
2010[†] with Contempt Petitions (C) Nos. 169 and 266 of 2010 in
Civil Appeal No. 4421 of 2010, decided on January 31, 2011

c **A. Environment Protection and Pollution Control — Forests —
Protection and conservation of forests — Mangrove forests — Destruction of
— Disregard of orders of Supreme Court and violating norms of
environmental law — Held, amounted to contumacious conduct in present
case since disobedience was deliberate**

d **— Land owned by appellants where salt used to be manufactured was
notified as “forest” since it fell under “mangrove areas” — Pending
challenge to said notification, on direction of Supreme Court, District
Collector permitted appellants to repair damaged old bund on condition
that mangroves or vegetation on said land shall not be destroyed —
Considering that appellants damaged mangroves by raising height and
expanding width of said bund in such a manner that mangroves would die
natural death, District Collector and original writ petitioner filed contempt
petitions for violation of orders of Supreme Court — As a counterblast,
e appellants filed contempt petition contending that authorities acted against
orders of Supreme Court by issuing orders to remove debris and reduce
height of bund to allow natural flow of seawater and appointing committee
to examine violation of conditional order of District Collector —
Sustainability**

f **— Held, Court cannot be blind to reality of situation — Appellants
knowingly and purposely damaged mangroves and vegetation of wetland of
CRZ-I area — Under garb of repairing old bund, appellants constructed
pukka bund using boulders and debris with huge platform violating norms
of environmental law and in flagrant violation and utter disregard of Court
orders — Hence, appellants were guilty of wilful defiance of orders of
Supreme Court — Time-bound directions issued to appellants to restore
g original height and width of bund, dismantle platforms and remove debris
to facilitate natural flow of seawater into land at their own cost —
Authorities directed to carry out said directions if appellants failed to
comply therewith and recover costs therefor as arrears of land revenue —
Coastal Area Classification and Development Regulations, 1991 — Forest
(Conservation) Act, 1980 — S. 3-A — Maharashtra Private Forests**

h [†] From the Judgment and Order dated 6-10-2005 of the High Court of Judicature at Bombay in
WP (Lodging) No. 3246 of 2004

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(2011) 3 SCC

(Acquisition) Act, 1975 (29 of 1975) — S. 21 — Environment (Protection) Act, 1986 — Ss. 15(1) and (2) — Contempt of Courts Act, 1971 — Ss. 2(b) and 12 — Constitution of India — Arts. 21 and 32 — Contempt of Court — Punishment for contempt — Remedial action at cost of contemnors as punishment (Paras 34 to 37)

a

B. Environment Protection and Pollution Control — Forests — Protection and conservation of forests — Salt harvesting in mangrove forests — Permissibility — Held, salt harvesting by solar evaporation of seawater not permitted in area that is home to mangrove forests — Mangroves fall squarely within the ambit of Category I (CRZ-I) — Salt harvesting by solar evaporation of seawater in CRZ-I areas is permitted only where such area is not ecologically sensitive and important — Coastal Area Classification and Development Regulations, 1991 — Salt harvesting (Paras 30 to 32)

b

C. Administrative Law — Administrative Action — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions — Effect of being void or voidable — When may such order or notification be ignored — Held, even if an order/notification is void or voidable, it requires to be declared so by competent forum — Unless an order is set aside, it is not permissible to ignore said order merely because it is void — Subordinate/Delegated legislation — Generally — Effect of notification being void/ voidable

c

d

Held :

Even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. Whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. (Para 16)

e

State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil, (1996) 1 SCC 435; *Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443; *M. Meenakshi v. Metadin Agarwal*, (2006) 7 SCC 470; *Sneh Gupta v. Devi Sarup*, (2009) 6 SCC 194, *relied on*

Once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity. (Para 18)

f

Sultan Sadik v. Sanjay Raj Subba, (2004) 2 SCC 377, *relied on*

Even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person. (Para 19)

g

h

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a *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287; *Smith v. East Elloe RDC*, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855, *relied on*

T.N. Godavarman Thirumulkpad v. Union of India, (1997) 2 SCC 267, *referred to* N-D/47266/C

Advocates who appeared in this case :

b Ram Jethmalani, Pramod Swarup, Dushyant A. Dave, A.Y. Chitale and Shekhar Naphade, Senior Advocates (Ms Pareena Swarup, Vijay Kumar, Abhindra Maheshwari, Vishwajit Singh, Ms Madhavi Divan, D. Bharat Kumar, Ms M. Indrani, Abhijit Sengupta, Ms Sunaina Dutta, Ms Snigdha Pandey, Ms Suchitra Atul Chitale, Nishantha Kumar, Sanjay V. Kharde, Ms Asha Gopalan Nair, Ms Anagha S. Desai, Ahmad Abadi and Ms Sangeeta Kumar, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

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|----------|---|--------|
| <i>c</i> | 1. (2009) 6 SCC 194, <i>Sneh Gupta v. Devi Sarup</i> | 369b |
| | 2. (2006) 7 SCC 470, <i>M. Meenakshi v. Metadin Agarwal</i> | 369b |
| | 3. (2004) 2 SCC 377, <i>Sultan Sadik v. Sanjay Raj Subba</i> | 369e |
| | 4. (1997) 3 SCC 443, <i>Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.</i> | 369b |
| | 5. (1997) 2 SCC 267, <i>T.N. Godavarman Thirumulkpad v. Union of India</i> | 368h |
| <i>d</i> | 6. (1996) 1 SCC 435, <i>State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil</i> | 369b |
| | 7. (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287, <i>State of Punjab v. Gurdev Singh</i> | 369c |
| | 8. 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855, <i>Smith v. East Elloe RDC</i> | 369c-d |

The Judgment of the Court was delivered by

e **DR. B.S. CHAUHAN, J.**— Civil Appeal No. 4421 of 2010 was disposed of by this Court vide judgment and order dated 7-5-2010 giving liberty to the appellants therein to approach the Bombay High Court to seek appropriate relief. During the pendency of the appeal, the appellants were given liberty to approach the District Collector concerned to seek permission to repair the bund. The Collector allowed the appellants to repair the bund subject to certain conditions. The parties in the appeal have filed three applications *f* alleging various violations of the orders passed by this Court, as well as by the District Collector.

IA No. 23 of 2010

g 2. This application has been filed by the District Collector, Mumbai Suburban District, to initiate the contempt proceedings against the appellants, Krishnadevi Malchand Kamathia and others for violating the order of this Court dated 7-5-2010 in Civil Appeal No. 4421 of 2010 and his own order dated 27-1-2010 in respect of Survey No. 344, CTS No. 1 of Village Dahisar, Taluka Borivali, Mumbai Suburban District and, to issue directions to remove the newly constructed bund and allow seawater to come in so as to save the mangrove forest. Further direction has been sought against the appellants to *h* remove the debris, soil, stones which were used to construct the bund, from

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the said Survey No. 344 to outside the area, within the stipulated period and further to restore the bund to its original position as seen in the Maharashtra Remote Sensing Application Centre map (hereinafter called “MRSAC”) and further to restrain the appellants from indulging in any activity which may result in the destruction of mangrove forest henceforth. a

Contempt Petition No. 169 of 2010

3. This contempt petition has been filed by the appellants to initiate contempt proceedings against the statutory authorities i.e. District Collector of Mumbai Suburban District for passing the order dated 20-5-2010 appointing the Committee to examine whether the appellants had violated the conditional order dated 27-1-2010 permitting the appellants to repair the bund in such a way that the mangroves may not die and order dated 26-5-2010 to ensure the compliance with the order dated 27-1-2010 and to remove the debris and reduce the height of the bund, etc. being in violation of the orders passed by this Court in the appeal. b
c

Contempt Petition No. 266 of 2010

4. This contempt petition has been filed by the original writ petitioner before the Bombay High Court i.e. Bombay Environmental Action Group and another (hereinafter called “the Action Group”) to initiate contempt proceedings against the appellants for wilful disobedience of the order of this Court dated 22-3-2010 passed in SLP (C) No. 29031 of 2009 and order dated 7-5-2010 passed in Civil Appeal No. 4421 of 2010 and further to recall the permission granted by this Court vide order dated 22-3-2010 in the said case and order dated 7-5-2010 in Civil Appeal No. 4421 of 2010. Further, to give directions to open the culverts, closed channels of water and to ensure removal of debris on the subject site at the cost of the appellants i.e. Contemnors 1 to 10. d
e

5. As all the aforesaid three applications have been filed alleging violation of the same orders, the applications were heard together and are all being disposed of by the common order. f

Facts

6. The Bombay High Court while disposing of the writ petition filed by the Action Group vide order dated 6-10-2005 issued several directions including:

“(xi) From the list of ‘mangrove areas’ so identified government-owned lands will automatically be declared/notified as ‘protected forest’. Likewise, privately-owned lands from the list of ‘mangrove areas’ so identified, the same will be declared/notified as ‘forest’.” g

7. In pursuance of the aforesaid direction issued by the High Court, the Divisional Commissioner, issued Notification being No. RB/Desk-II/Forest/CR-2211/Pvt./A-1 dated 18-2-2009, which included the land of the h

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- a appellants Krishnadevi Malchand Kamathia and others. In view of the said notification, the appellants could not restart the salt manufacturing, though the appellants had been manufacturing salt on the said land since 1959. It continued up to 1990 and their licence for manufacturing salt was valid up to 1993. The Coastal Area Classification and Development Regulations, 1991 (hereinafter called “the CRZ Regulations”) came into force which provide for classification of coastal regulatory zone, according to which it did not prohibit the manufacturing of salt.

- b
c **8.** Being aggrieved, the appellants filed special leave petition along with an application for condonation of delay of 1368 days challenging the Bombay High Court judgment and order dated 6-10-2005. However, in view of the fact that the appellants had not been heard by the High Court at the time of passing the order in pursuance of which the notification has been issued, the delay was condoned and the petition was entertained.

- d **9.** An application was filed by the appellants on 15-12-2009 seeking permission to repair the damaged bund along with the land in issue. The application was opposed by the respondents. However, this Court disposed of the said application vide order dated 5-2-2010 permitting the appellants to approach the District Collector for the said relief. It was clarified that pendency of the proceedings before this Court or any interim order passed therein would not stand in the way of the District Collector to pass an appropriate order so far as the repair of the bund was concerned.

- e **10.** In pursuance of the said directions the appellants approached the District Collector, who after holding inquiry passed a speaking and reasoned order dated 27-1-2010 giving full details and the case history of the dispute over the title of the land between the appellants and the Government, and the application of the provisions of the Coastal Regulatory Zone Regulations, 1991, the Forest Act, 1927 and the Forest (Conservation) Act, 1980. According to the order, the appellants would repair the bund without destroying the mangroves or vegetation on the said land.

- f **11.** This Court disposed of the appeal vide order dated 7-5-2010 wherein the parties were given liberty to agitate the issue before the High Court raising all factual and legal issues. So far as the repair of bund was concerned, this Court directed as under:

- g “By an interim order passed by this Court on 22-3-2010, this Court permitted the petitioners to repair the bund. This interim order is made absolute and the petitioners are permitted to maintain and upkeep the bund till final adjudication regarding Notifications dated 18-2-2009 and 15-6-2009 is made and violation of these orders by the parties or other authorities could be brought to the notice of this Court for appropriate directions.”

- h **12.** The contempt petitions have been filed by the District Collector and the Action Group making allegations that under the garb of repairing the

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bund, the appellants have raised the height and expanded the width of the bund in such a manner that mangroves would die a natural death without any attempt on the part of the appellants, and further that the appellants have destroyed the mangroves to a great extent. The appellants filed a contempt petition alleging that the Collector's order dated 27-1-2010 is being unnecessarily interfered with by the statutory authorities.

13. We have heard Shri Ram Jethmalani, Shri Shekhar Naphade, Shri Dushyant Dave, Shri Atul Yashwant Chitale, learned Senior Counsel appearing for the parties and perused the record. It may be pertinent to mention here that all the learned counsel appearing for the parties have suggested that the applications be heard without giving strict adherence to the procedure for contempt proceedings i.e. framing of charges, etc. as pleadings are complete and parties are fully aware as to what is the case against which of the parties. More so, all the documentary evidence required to decide the case is on record.

14. Shri Ram Jethmalani, learned Senior Counsel appearing for the appellants, submitted that in pursuance of the order of this Court dated 7-5-2010, the appellants have instituted a civil suit before the Bombay High Court, wherein notices had been issued to the respondent-defendants and which is still pending consideration and all factual and legal issues had been raised therein. The validity of the Notification dated 18-2-2009 is also under challenge therein to the extent that the said notification is void ab initio for the reason that the procedure prescribed in law has not been followed. More so, the notification does not disclose what are the statutory provisions which conferred the power/competence to issue the said notification.

15. Shri Shekhar Naphade and Shri Dushyant Dave, learned Senior Counsel, submitted that undoubtedly the notification does not disclose the source of power/competence under which it has been issued, however, the notification does not become invalid merely for want of such a statement. Further, it cannot be urged that the authority was denude of power to issue such notification as such powers are available under Section 21 of the Maharashtra Private Forests (Acquisition) Act, 1975. The said provisions provide that whenever it appears to the State Government that any tract of land not being the property of the Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declared, in public interest and for furtherance of the objects of the said Act, to be a private forest, the State Government would publish a notification in the Official Gazette to declare that it was a forest land after following the procedure prescribed therein. In fact records of the statutory authority reveal that the said notification has been published in view of the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulkpad v. Union of India*¹, wherein it has been held that the Forest (Conservation) Act, 1980, would apply to lands being forests, irrespective of who owned the land. For

¹ (1997) 2 SCC 267

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a that purpose, Shri Naphade has drawn our attention to Para 4.2 of the Report of the Committee, dated 19-5-2010 (Annexure R-5A) to IA No. 23 of 2010.

b 16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvi*², *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*³, *M. Meenakshi v. Metadin Agarwal*⁴ and *Sneh Gupta v. Devi Sarup*⁵, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

c 17. In *State of Punjab v. Gurdev Singh*⁶ this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*⁷, wherein Lord Radcliffe observed: (AC pp. 769-70)

d "... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

e 18. In *Sultan Sadik v. Sanjay Raj Subba*⁸, this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

f 19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of

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2 (1996) 1 SCC 435 : AIR 1996 SC 906

3 (1997) 3 SCC 443 : AIR 1997 SC 1240

4 (2006) 7 SCC 470

5 (2009) 6 SCC 194

h 6 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : AIR 1991 SC 2219

7 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855

8 (2004) 2 SCC 377 : AIR 2004 SC 1377

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waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.

20. Be that as it may, the matter regarding the validity of the said notification is still pending consideration in a suit before the Bombay High Court on its Original Side, it is not desirable on our part to consider the said submission raised on behalf of the appellants. a

21. The relevant part of the conditional order of the District Collector dated 27-1-2010 provides as under:

(i) The applicants will only carry out the repairs of the bund and shall not carry out any other construction activities on the said land. b

(ii) The applicants will not destroy mangroves and/or vegetation on the said land.

(iii) The applicants shall not raise the height of the bund above as in existence at present. c

22. On receiving numerous complaints from the public at large and officials, the District Collector passed the order dated 20-5-2010:

“* * *

The earlier order passed by this authority giving permission to repair the bund is hereby stayed and all the parties concerned should maintain status quo. d

* * *

This Committee will visit and check minutely the following important points in the matter:

(a) The permission given by the District Collector for the repair of Bund No. C/Desk-21 Mangrove/WS-610/2009 dated 27-1-2010, which was rendered by the Supreme Court in its orders dated 22-3-2010 and 7-5-2010, whether terms and conditions mentioned in the Collector’s order are followed by the applicant landowner or not? e

(b) Whether the applicant has committed any violation?

(c) Whether the landowner has kept water culverts open or not? If the Committee finds that the water is stopped which may ultimately cause destroying of mangroves, the Committee i.e. Area Officers should make the owner to open the culverts immediately. f

The Committee should make detailed enquiry and the consolidated report should be sent to the District Collector within 15 days.”

23. After receiving the report from the Committee duly constituted by the District Collector on 20-5-2010, the District Collector passed the order on 26-5-2010 directing the appellants as under: g

(1) All the material used for filling to increase the height be removed, maintain the earlier position of the bund as expected in the permission order dated 27-1-2010.

(2) Remove the rubble dumped in the open land in question. h

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a (3) Remove the rubble and filling and let the natural flow of seawater, which is at present obstructed, entering inside the survey number in question.

(4) Remove filling used for increasing the height of the bund to the height as expected in the permission order dated 27-1-2010.

The aforesaid order has been passed by the Collector after considering various reports of experts/officers.

b **24.** The report submitted by the Sub-Divisional Officer, Mumbai Suburban District dated 18-5-2010 (Annexure A-20 of Contempt Petition No. 266 of 2010) makes it clear that the Tahsildar, Borivali and the Additional Chitnis had visited the spot and found that a new bund had been made having the width of 10 ft and height of 4 ft and running to 1km to 1½ km. There had been culverts in the old bund which were filled up. The natural flow of water existing earlier had been closed. The closure of the water supply had adverse effect on the existing mangroves. The direction issued by the District Collector in his order permitting the construction of bund that adequate arrangement to ensure that mangroves are not damaged, has not been complied with and there has been a breach of the said condition.

c **25.** Report dated 19-5-2010 from the Committee appointed for inspection reveals that after having inspection of the site, the Committee reached the conclusion that the appellants have grossly violated the conditions incorporated in the order of the District Collector dated 27-1-2010, permitting them to repair the bund. They have not only raised the height of the bund but widened it so as to obstruct the flow of water in the creek which may cause damage to the mangroves. There has been a violation of the order of the Collector, the order of the Bombay High Court, and the order of this Court. The mangroves at places were destroyed during the construction of the new roads and the new bunds. Debris, garbage, mud and stones have been dumped along the new road. Large quantities of mud have been excavated from the site itself and used for construction of the bund. The Committee made the following recommendations:

f (1) That all illegal work should be immediately stopped by the Revenue Authority.

(2) The bund and the road that have blocked the smaller creeks should be immediately removed to prevent the destruction of the mangroves.

g (3) Proper action as per the law may be taken by the Revenue Authority. It is brought to the notice that in Writ Petition No. 3246 of 2004 the Maharashtra Government vide Circular dated 21-10-2005 clarified that the Collector should take care of the mangroves of the private land and government lands till the area is handed over to the Forest Department.

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26. There is another report of the Tahsildar, Borivali, Mumbai, Suburban District dated 22-5-2010 which reveals that earlier some culverts were in existence, the same had been closed and a new mud bund erected thereon. By making a huge filling, the width of the bund had been expanded by 12 ft to 15 ft. At the end of bund again filling of debris had been done. Branches of the adjacent mangroves had been cut. The report further reveals that a crime had been registered on 22-5-2010 in MHB Police Station under Sections 15(1) and (2) of the Environment (Protection) Act, 1986 against the owner of the land on account of the cutting of branches of mangroves, causing damage to mangroves and stoppage of the natural water flow of the nalla.

27. Another report dated 14-6-2010 of a Committee consisting of six State officials is on record. According to it, there have been flagrant violations of the order passed by the District Collector and the courts. The relevant part reads as under:

“CONCLUSIONS

<i>Conditions in the order dated 27-1-2010</i>	<i>Factual position observed by the Committee on the spot</i>
(i) The applicants will only carry out the repairs of the bund and shall not carry out any other construction activities on the said land.	No structural construction activities carried out on the site, but it is observed that the permission-holder has done massive filling work by dumping debris and garbage on the said land. Bund has been widened by mud and debris filling. Now the permission-holder converted existing bund into new road. The permission was only to repair the existing bund. But the landholder has constructed a new bund.
(ii) The applicants will not destroy mangroves and/or vegetation on the said land.	Destruction of mangroves and vegetation done in large scale.
(iii) The applicants shall not raise the height of the bund above as in existence at present.	The permission-holder has raised height of the existing bund by 1.5 m as well as width of the bund.
(iv) Upon completion of the repairs, the applicant shall file a completion report in the office of the Collector.	Compliance report of work has been submitted by the applicant. Despite that, work still going on at the site.
(v) The applicant will abide by the final orders that may be passed by the Hon'ble Supreme Court in the SLP to Appeal No. 29031 of 2009 in respect of the user of the land.	The applicant violated the conditions of the order dated 22-3-2010 passed by the Hon'ble Supreme Court in SLP No. 29031 of 2009.”

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- 28.** The issue has been agitated from time to time before this Court and
- a there have been various claims and counterclaims in respect of the activities of the appellants. This Court vide order dated 24-11-2010 requested the learned Principal Judge, City Civil Court, Mumbai to inspect the area i.e. the bund in the lands i.e. Survey No. 344 measuring 175 ha, situated in Village Dahisar and submit a report to this Court about the status and present position. It was further requested that he would ascertain and report whether
- b any damage has been caused to the mangroves/vegetation that existed on the said land.

29. In pursuance of the said order, the learned Principal Judge, City Civil Court submitted the report dated 10-12-2010 along with a large number of photographs to substantiate the contents of the report. Relevant part thereof reads as under:

- c “At the outset it may be briefly stated that during the course of visit it was noticed that the *debris and boulders including big broken pieces of RCC slabs were found lying at various places on the bund.* The debris and boulders were found used for pitching or reinforcement of the bund because of the *dumping of debris and boulders on a large scale.... Apart from dumping of debris and boulders in large quantities, what was*
- d *noticed was that there were about 12 to 13 places where big platforms were found made of debris and boulders.* The length of those platforms was something between 25 m to 35 m each and width was on an average 16 m to 20 m each.... That debris was being dumped beyond the area of the platform in property Survey No. 344 and there was an attempt to increase the width of the platforms. In the process the mangroves
- e *obviously were being destroyed.*

... the mangroves were destroyed at a considerable length from the bund in Survey No. 344 ... the destruction was at considerably large scale.

- f *... a large number of mangroves were found cut manually. It was possible that the mangroves were cut to increase width of the bund. The cut mangroves were found to have been used in increasing the height of the bund. Breathing roots and branches of mangroves were found stuck in the muddy area of the bund.*

- g *... The said bund appeared to have been erected after excavation of mud from both sides of the bund.... Mangroves were found cut at many places. The mangroves were found to have died because of removal of mud and stagnation of water....*

... There were 3-4 patches where mangroves appeared to have been destroyed manually.” (emphasis added)

- 30.** The CRZ Regulations define for regulating developmental activities, coastal stretches within 500 m of the landward side of the high tide line into
- h four categories. Category I (CRZ-I) is defined as under:

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“(i) Areas that are ecologically sensitive and important, such as, national parks/marine parks, sanctuaries, *reserved forests*, wildlife habitats, *mangroves*, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and other such areas as may be declared by the Central Government or the authorities concerned at the State/Union Territory level from time to time.” (emphasis added)

31. The regulation of *development* or *construction* activities in CRZ-I areas is to be in accordance with the following norms:

“CRZ-I

* * *

Between LTL and HTL in areas which are not ecologically sensitive and important, the following may be permitted: (a) exploration and extraction of natural gas; (b) activities as specified under proviso of sub-paras (i) and (ii) of Para 2; (c) construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants of the Sunderbans Biosphere Reserve Area, West Bengal, on a case-to-case basis, by the West Bengal State Coastal Zone Management Authority; (d) *salt harvesting by solar evaporation of seawater*; (e) desalination plants; (f) storage of non-hazardous cargo such as edible oil, fertilisers and foodgrain within notified ports; (g) construction of trans-harbour sea links.” (emphasis added)

32. From the above, it is evident that mangroves fall squarely within the ambit of CRZ-I. The Regulations allow for salt harvesting by solar evaporation of seawater in CRZ-I areas *only* where such area is not ecologically sensitive and important. In the instant case it has been established that mangrove forests are of great ecological importance and are also ecologically sensitive. Thus, salt harvesting by solar evaporation of seawater cannot be permitted in an area that is home to mangrove forests.

33. In view of the aforesaid discussion, we reach the following inescapable conclusions:

(1) The land in dispute has not been used for manufacturing of salt for more than two decades.

(2) The land in dispute stands notified as a reserve forest, though it may be a private land and requires to be protected.

(3) The High Court while disposing of the writ petition filed by the Action Group has issued several directions including the direction to identify mangrove area and declare/notify it as a forest.

(4) The Coastal Regulatory Zone Regulations, 1991 impose certain restrictions on the land in dispute.

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a (5) The District Collector while deciding the application of the applicants for according permission to repair the bund has explicitly incorporated the conditions that the appellants would only repair the old bund without raising its height and ensure full protection of mangroves.

b (6) This Court while disposing of the appeal filed by the appellants has directed to ensure compliance with the order of the District Collector and in case of any kind of violation to bring the matter to the notice of the Court.

c (7) In respect of the repairing of the bund, a large number of complaints had been made to the authorities concerned, by the public, representatives of the people and various officials and statutory authorities alleging that the appellants have violated the conditional order passed by the District Collector for permitting the appellants to repair the bund.

(8) Various reports submitted to the authorities concerned make it clear that there have been flagrant violations of the conditional order and that included:

d (i) Closing the natural flow of water which has adverse effect on existing mangroves;

(ii) A large number of mangroves had been cut/destroyed while repairing the bund and a large number of mangroves were found cut manually;

e (iii) Height and width of the bund had been increased to an unwarranted extent. The reports reveal that width of the bund had been extended by 12 ft to 15 ft while the old bund was not beyond 6 ft width;

(iv) Instead of mud, big boulders, concrete, debris had been used. Several platforms of 25 m to 30 m with the width of 16 m to 20 m have been constructed;

f (v) Debris was being dumped beyond the area of platform in the land in dispute making an attempt to increase the width of the platform;

(vi) The cut mangroves have been used to increase the height of the bund;

g (vii) Breathing roots and branches of mangroves were found sticking out of the muddy area of the bund; and

(viii) A large number of mangroves died because of removal of mud and stagnation of water.

h **34.** In view of the above, we have no hesitation to hold that the appellants are guilty of wilful defiance of the orders passed by this Court as well as by the District Collector and they have filed the contempt petitions using it as a legal thumbscrew to enforce their claims, though totally unwarranted and

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unfounded on facts. It is a crystal clear case of contumacious conduct, as the conduct of the appellants is not explainable otherwise, for the reason that disobedience is deliberate. The appellants cannot be permitted to make allegations against the authorities and drag them to the court alleging disobedience of the orders of this Court without realising that contempt proceedings are quasi-criminal in nature. They have knowingly and purposely damaged the mangroves and other vegetation of the wetland of the CRZ-I area, which could not have been disturbed. Under the garb of repairing the old bund, a sort of pukka bund using boulders and debris has been constructed along with a huge platform, violating the norms of environmental law and in flagrant violation and utter disregard of orders passed by the courts and the District Collector. No court can validate an action which is not lawful at its inception.

35. It is often reiterated that justice is only blind or blindfolded to the extent necessary to hold its scales evenly. It is not, and must never be allowed, to become blind to the reality of the situation, lamentable though that situation may be.

36. In view of the above, the contempt proceedings filed by the District Collector and the Action Group are allowed and the contempt petition filed by the appellants i.e. Contempt Petition No. 169 of 2010 is hereby dismissed with the following directions:

(1) The appellants are directed to restore the height and width of the bund as it was existing prior to the order passed by the District Collector dated 27-1-2010 within a period of 60 days from today by removing all debris, grit, boulders, etc., dismantling of platforms and reducing the height and width of the bund.

(2) All culverts and drains which existed prior to 27-1-2010 which could facilitate the natural flow of seawater into the land, shall be restored.

(3) In case the appellants fail to carry out the aforesaid directions within the stipulated period, the District Collector, Suburban District shall carry out the aforesaid directions and recover the cost from the appellants as arrears of land revenue and shall ensure in future that the appellants would not act in a manner detrimental to the ecology of the area and ensure the preservation of mangroves and other vegetation.

37. In the facts and circumstances of the case, we request the Bombay High Court to expedite the trial of the suit filed by the appellants. In view of the above, the contempt petitions and interlocutory application stand disposed of.

h

Public Interest Litigation No. 87 of 2006

Bombay Environmental Action Group v. State of Maharashtra

2018 SCC OnLine Bom 2680 : (2019) 1 Bom CR 1

In the High Court of Bombay
Ordinary Original Civil Jurisdiction
(BEFORE A.S. OKA AND RIYAZ I. CHAGLA, JJ.)

Public Interest Litigation No. 87 of 2006

Bombay Environmental Action Group and another Petitioners;

v.

The State of Maharashtra and others Respondents.

With

Writ Petition No. 2741 of 2017

Rajhans Estates And 5 Others Petitioner;

v.

Union of India And Ors. Respondents.

With

Writ Petition No. 2208 of 2004

Maharashtra Manav Seva Sangh Petitioner;

v.

The Tahasildar and Ors. Respondents.

Public Interest Litigation No. 87 of 2006, Writ Petition No. 2741 of 2017 and Writ
Petition No. 2208 of 2004

Decided on September 17, 2018, [Date on Which Submissions Were Lastly Heard:
02.08.2018]

Mr. Navroz Seervai, Sr. Counsel a/w Jai Chhabria & Ms. Shreya Parikh & Ms. Gulnar
Mistry i/b. M/s. M.V. Jayakar And Co. for the Petitioner in PIL/87/2006.

Mr. Saket Mone a/w Mr. Subit Chakrabarti a/w Mr. Vishesh Kalra and Ms. Neha Joshi
i/b Vidhi Partners for the Petitioner in WP/2741/2017 & the Applicant in
NMW/145/2018.

Mr. Rajshekhar V. Govilkar for the Respondent No. 3 in PIL/87/2006, Ms. Sharmila
Deshmukh for the Respondent No. 5 in WP/2741/2017 Mr. S.S. Pakle a/w Ms. Pallavi
Thakar for the Respondent - BMC.

Mr. Musharaf Shaikh i/b. Ms. Kiran Bagalia for the Respondent No. 7. Ms. Geeta
Shastri, Addl. G. P for the Respondent - State in PIL/87/2006 Mr. Rui Rodrigues a/w
Mr. Upendra Lokegaonkar and Mr. N.R. Prajapati for the Respondent-UOI in
PIL/87/2006.

Mr. Abhishek Patil for the Applicant in CHSW/196/2007.

Ms. Uma Palsule-Desai, AGP for the Respondent-State in NMW/372/pmw 2012 &
NMW/344/2012.

Mr. S.B. Gore, AGP for the Respondent - State in WP/2741/2017.

Ms. Pooja Tated & Ms. Raksha Thakkar i/by ALMT Legal for Third Party No. 5.

Mr. M.S. Bharadwaj a/w Mr. A.M. Sethna for the Respondent No. 5 in
WP/2208/2004.

Mr. Abhijeet Rane for the Respondent No. 15 & 16, 18 & 19.

Mr. Amol Desai a/w Mr. Avinash K. Jalisatgi for the Respondent No. 11. Mr. G.S. Hegde i/b. M.V. Kini And Co. for the Applicant in NMWL/171/2018.

Mr. S.D. Shetty a/w Mr. Rakesh Singh i/b. M.V. Kini and Co. in NMW/555/2017 for the Applicant.

Mr. Kunal Chheda with N.R. Bubna in NMW/145/2018 for the Applicant. Ms. Lata Desai a/w Ms. Pallavi Divekar and Mr. Salil Dabke i/b. Divekar and Co. in NMW/31/2018 for the Applicant.

The Judgment of the Court was delivered by

A.S. OKA, J.

MANGROVES

1. This Public Interest Litigation (PIL) concerns the issue of destruction of mangroves in the entire State of Maharashtra. The word "Mangrove" is considered to be a combination of the Portuguese word "Mangue" and the English word "grove". Mangroves are salt-tolerant plants of tropical and subtropical intertidal regions of the world. The specific regions where these plants occur are termed as 'mangrove ecosystem'. These are highly productive but extremely sensitive and fragile. It is said about the mangroves that they are living life on the edge, with one foot on land and one in the sea. They survive in a harsh environment, adapting well to the scorching heat, deep mud and saltwater that would otherwise kill other plants. Yet they are tenacious and very useful for the environment. The occasion for filing the main PIL is that the importance of very tenacious mangroves for the benefit of the mankind is ignored and mangroves are being destructed in the State on a very large scale.

FACTUAL ASPECTS AND PRAYERS IN PIL 87 OF 2006

2. The first petitioner is a society registered under the Societies' Registration Act, 1860. It is the case of the first petitioner that it is committed to protection and preservation of environment. It is pointed out that the State of Maharashtra has a coastline of 720 kilometers which is indented by numerous rivers, estuaries, creeks, small bays, rocky shores and muddy beaches. It is pointed out in the petition that there are 18 major estuaries along with coastline of Maharashtra harboring some of the biologically richest patches of mangroves along the entire western coast of India. It is stated that there are 52 creeks in the State along the coast which are covered by mangroves. The petitioners have relied upon a map annexed at Exhibit-A which is titled as "Mangroves Status 1997" which is said to be a satellite image of coast of Greater Mumbai in the year 1997. Basically, the petition is filed for inviting attention of the Court to the large scale destruction or denudation of mangroves. The petition seeks a declaration that the areas covered by mangroves in the State of Maharashtra in addition to those covered by mangroves forest should be declared as mangroves protection area.

3. In paragraph (i)4 of the petition, mangroves have been described. Paragraph (i)4 reads thus:—

"(i) What are 'mangroves'?"

4. Mangroves are intertidal (growing between the high tide and low tide line) evergreen forests growing on the soft marshy lands of a creek, estuary or a bay in the tropical and sub tropical regions. The expression 'mangrove' does not apply to a single species of plants, but to a complete ecosystem which is a conglomeration of several species of flora, fauna and biotic features in an area, and their interaction with each other. Mangroves are a peculiar habitat because they are found on the boundary between the land and the sea. They are found almost entirely in the tropical and sub tropical regions, that is, between 30 degrees north and 30 degrees south latitude, and are an extension of the tropical rain forests towards the sea. They are found largely in the estuarine

regions where a river meets the sea, the intertidal regions of shallow bays and creeks. As extensions of the tropical rain-forests in to the sea, mangroves are functionally as important as the tropical rain-forests. Moreover, they are additionally important for the protection of the seashores from erosion, wave action, high-winds and cyclones. Mangroves being intertidal forests are equal to tropical forests, however their importance is not merely in their forest value but due to their strategic location between the land and the sea. Mangroves are the life line of any coastal area and perform invaluable protective functions for the environment. The importance of mangroves is set out below: "

(emphasis added)

4. The petition sets out the functions and importance of mangroves which can be briefly summarized as under:—

- A] The mangroves play important role in protecting sea shores from erosion, high winds and cyclone;
- B] Mangroves are strategically located between the land and sea and therefore, their importance is not merely in their forest value. The mangroves act as a buffer between the land and sea and play a very important role in fighting tidal erosion. The presence of mangroves does away with the need for expensive sea walls. The loss of mangroves endangers the stability of the land;
- C] The mangroves facilitate reclamation of land from the sea;
- D] Sometimes mangroves act as flood control by absorbing excess water from the sea;
- E] Similarly, mangroves protect the land from storms and hurricanes;
- F] Apart from the fact that mangroves act as natural sewage water filter systems, the same act as natural pollution coastal checks. They absorb natural waste;
- G] The presence of mangroves on the fringes of the city like Mumbai which has one of the lowest open space ratios in the world ensures that some open spaces are kept open;
- H] The mangroves are breeding grounds for a number of marine organism, such as shrimps, crabs and fish. The presence of mangroves keeps the fish relatively free from industrial and other pollution; and
- I] The mangroves are also centres of biodiversity and are the most productive ecosystems. In Maharashtra, they house panthers, otters, jackals, wild cats, reptiles and birds of numerous varieties. It is pointed out that Thane creek is a home to about 1.5 million birds of 206 different species.

5. It is pointed out that Maharashtra has about 18 species of mangroves out of total 55 found in India. It is pointed out that out of 5 coastal districts Mumbai, Thane (now Thane and Palghar), Raigad, Ratnagiri and Sindhudurg, the mangroves in Thane district have undergone maximum destruction. It is pointed out that though comparatively there is no destruction of mangroves in District Sindhudurg, the said district is less favourable to the growth of mangroves because of its geological condition. It is pointed out that in Mumbai also there has been a large destruction of mangroves. It is pointed out that city of Mumbai has been reclaimed from the sea by joining seven islands and it is consistently under pressure from surrounding sea. It is pointed out as to how mangroves in Mumbai have vanished. It is pointed out that in dumping grounds at Gorai and Deonar, water supply to mangroves has been blocked which resulted in destruction of mangroves. It is pointed out that rapid erosions have been noticed in the said area.

6. The prayers in prayer clause (a) of PIL are relevant which read thus:

"(a) That this Hon'ble Court be pleased to pass a writ of mandamus or a writ in the nature of mandamus, or an other appropriate writ, order or direction directing

the Respondents:

- (i) to declare the areas covered by mangrove forests in the area of Greater Mumbai as per the 1997 satellite plan annexed hereto as Exhibit 'A' as a specifically designated "mangrove protection area" with such modifications as this Hon'ble Court may deem fit.
- (ii) to forthwith forbear from permitting any destruction or denudation of mangroves in the aforesaid mangrove protection area, inter alia, by dumping, obstructing water supply, cutting of mangroves or by any other method.
- (iii) to forthwith remove all existing obstructions blocking water supply to mangroves in the mangrove protection area.
- (iv) to forthwith remove all encroachments in the mangrove protection area as per the plan annexed as Exhibit 'A';
- (v) to restore mangroves in the mangrove protection area in accordance with the aforesaid 1997 plan by re-plantation thereof;
- (vi) to take steps for the preservation of the aforesaid mangrove protection area throughout, inter alia, the establishment of eco-tourism parks on the lines mentioned more particularly in Paragraph 4(ii) of this petition.
- (vii) to earmark a special mangrove restoration fund for the preservation of the mangrove protection area.
- (viii) to carry out a monthly satellite study to monitor any change of land use within the mangrove area.
- (ix) to account for the application of funds received by the 1st Respondent from the 2nd Respondent's National Committee on Mangroves & Coral Reefs for the preservation of mangroves in Maharashtra."

7. PIL refers to various statutory provisions. It also refers to Ramsar Convention which is an Inter-Governmental Treaty on Wetlands which requires the State to promote conservation of wetlands habitats in the territories.

DESTRUCTION OF MANGROVES

8. In paragraph 24 of the petition, it is pointed out that there is a systematic pattern adopted in destruction of mangroves. It is pointed out that the mangroves are either set on fire or cut down and the areas occupied by mangroves are cleared for settlements. The other method is by blocking water supply to mangroves by dumping debris and constructing embankments. If water supply to mangroves is blocked, it ensures that the mangroves do not survive. It is pointed out in the petition that though large number complaints are being made regarding the destruction of mangroves, none of the authorities have taken any cognizance of the complaints.

INTERIM ORDER OF 6TH OCTOBER 2005

9. On 6th October 2005, this Court passed a detailed order. Paragraphs 7 to 13 of the said order are relevant which read thus:

"7. The Maharashtra State using Satellite Remote Sensing is directed to prepare Phase-II of the mapping for carrying out mangroves study using high resolution satellite data of 65 cms. Spatial resolution/one meter spatial resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas. After receiving the satellite data, transfer of mangrove details on city survey/village maps (cadastral map) would be done. According to the learned Advocate General, this exercise is likely to take about six months. It has become imperative to pass interim order to protect the mangroves during the interregnum. We direct that this order shall not apply to all those cases which are specifically governed by injunction or stay order passed by the Courts of law before this date.

8. The State Government is directed to designate a Senior Officer not below the

rank of concerned District Magistrate and Collector and Deputy Commissioner of Police/Superintendent of Police to oversee the implementation of the following directions. They would entertain complaints from citizens in respect of mangrove destruction. The name, address and contact information of such officers shall be advertised prominently in one English newspaper and two Marathi newspapers, apart from the official websites of the Maharashtra Government and the Forest Department.

- (i) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. We take note of the fact that in *T.N. Godavarma Thirumulpad v. Union of India* [Writ Petition (C) No. 202 of 1995 and 171 of 1996], an affidavit was filed on behalf of the State of Maharashtra by the Chief Conservator of Forests (Administration), in which on the basis of a report of an Expert Committee, it was stated that in the Mumbai Urban Area alone, 1,534 hectares of land were, inter alia, classified as mangrove areas;
- (ii) All construction and rubble/garbage dumping on the mangrove areas shall be stopped forthwith;
- (iii) Regardless of ownership of the land, all construction taking place within 50 metres on all sides of all mangroves shall be forthwith stopped;
- (iv) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves;
- (v) The Municipal Commissioner of Greater Mumbai shall forthwith issue the necessary directions to the Municipal Corporation of Greater Mumbai Building Proposals Department not to entertain any applications for development (as defined in the Maharashtra Regional and Town Planning Act, 1966) on or in respect of the mangrove lands, regardless of the nature of ownership;
- (vi) The State Government and the Maharashtra Coastal Zone Management Authority (MCZMA) are directed to file monthly report on the above action plan to this Court. The first report will be submitted within four weeks from today. The report shall specifically state, in addition to the progress/action taken,
 - (a) the number of complaints received, if any,
 - (b) the action taken thereon, if any,
 - (c) the number of offenders named, and
 - (d) the details of prosecutions/action launched/taken against such offenders.
- (vii) The State of Maharashtra is directed to file in Court and furnish to the petitioners copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr. Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today;
- (viii) The areas shown as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried

out within a period of 6 months from today;

- (ix) After the aforesaid process in clause (viii) is completed, the areas so identified which are government owned shall be declared and notified as "protected forests" in accordance with law after carrying out ground survey etc. The areas so identified that are privately owned shall be declared and notified as "forests" in accordance with law, after carrying out ground survey etc. The said declaration/notification will be completed within a period of 8 weeks of the completion of Phase-II mapping;
- (x) The mangrove areas that are on government owned lands will be handed over to the Forest Department within a period of 12 weeks from the declaration of the same as "protected forests";
- (xi) From the list of "mangrove areas" so identified, Government owned lands will automatically be declared/notified as "protected forests". Likewise, privately owned lands from the list of mangrove areas so identified, the same will be declared/notified as "forests";
- (xii) The Secretary, Revenue Department, shall from the said date of taking over possession of the Government owned land by the Forest Department, update all the revenue records to ensure that the said Government lands are shown as "protected forests" in the said revenue records within a period of 12 weeks from the same being declared as "protected forests". In the case of lands that are private owned, the secretary, Revenue Department, shall update all the revenue records to ensure that the said private lands are shown as "forests" in the said revenue records within a period of 12 weeks of completion of the steps in clause (x) above;
- (xiii) In respect of Government lands, the Forest Department and other authorities of the State of Maharashtra shall take the following necessary steps of protection, conservation and regeneration of the areas that would be declared/notified as "protected forests: in terms of clause (x) above;
 - (a) Removal of all obstructions that are impeding the growth of mangroves as also the impediments which restrict the flow of sea water in the mangrove areas;
 - (b) Wherever mangrove growth is found to be sparse and denuded (i.e. with forest density less than 0.4 which means canopy less than 40%) within these identified areas, taking necessary steps for rejuvenation;
 - (c) On identification of the areas as forest, the Municipal Corporation of Greater Mumbai would remove garbage and debris within these areas within a period of three months as per the instructions of the Forest Department. These areas shall be rejuvenated with mangroves;
 - (d) The Forest Department is directed to take necessary action against the offenders in accordance with law for damaging or destroying mangroves.

9. The Officers so designated in paragraph 8 above shall submit a report on the above action plan every three months to this Court. The first of such reports shall be submitted within four weeks from the date of declaration/notification as "protected forest". In addition to the progress/action taken, the reports shall specifically state the action taken as regards (a) number of complaints received, if any, (b) the action taken thereon, if any, (c) the number of offenders named, and (d) the details of the prosecutions/action launched/taken against such offenders.

10. The State Government shall provide the necessary staff and funds for implementing the aforesaid directions to all concerned departments of the State.

11. The Principal Secretaries of (i) Environment, (ii) Revenue and (iii) Forest

Departments, Government of Maharashtra, shall be overall in-charge of ensuring total compliance of this order.

12. This order shall partly modify the order dated 9th June, 2004 of this Court passed in Writ Petition No. 2208 of 2004.

13. The Chief Secretary of the State of Maharashtra is directed to send a circular to all concerned Collectors/Deputy Commissioners of Police/Superintendents of Police and all other concerned officials to ensure meticulous compliance of this order."

THE STATUS OF COMPLIANCE WITH THE INTERIM DIRECTIONS IN THE ORDER
DATED 6TH OCTOBER 2005

10. For reporting compliance with the said directions, the State Government has filed an affidavit of Shri. Milind Panditrao, Divisional Forest Officer, Mumbai Mangrove Conservation Unit. The said affidavit records that by a circular dated 21st October 2005, the State Government issued various directions in terms of the orders dated 6th October 2005. Under the said circular, the Divisional Commissioner, Konkan Division was appointed as the officer responsible to oversee the implementation of the aforesaid directions issued by this Court. It is pointed out that from the year 2005, the Divisional Commissioner has submitted 147 monthly "Action Taken Reports" to this Court. It is pointed out that 695 complaints were received by the Divisional Commissioner for various violations out of which 575 have been disposed of and 120 are pending. It is pointed out that the Maharashtra Remote Sensing and Satellite Application Centre (for short "MRSAC") carried out the mapping of mangroves areas of Mumbai and Navi Mumbai. Based on this exercise, 5469 Hectares of mangroves on Government land in Mumbai were notified as forests and the said notified forest areas have been handed over to the Forest Department. It is stated that similar exercise of mapping of mangroves in the remaining coastal areas of Maharashtra was carried out by MRSAC. It is stated that in 7 coastal districts (Mumbai, Mumbai Suburban, Thane, Palghar, Ratnagiri, Sindhudurg and Raigad), 15,087.57 Hectares of mangroves on Government lands have been notified as "Reserved Forests" under Section 4 of the Indian Forest Act, 1927 (for short "the said Act of 1927"). Out of this area, total area of 12,263.72 Hectares constituting approximately 81.28% of the total area declared as a Reserved Forest has been transferred to the Forest Department. It is stated that in case of Thane and Mumbai Districts, the said percentage is 100% and in case of Mumbai Suburban and Ratnagiri Districts, it is more than 99%. It is pointed out that mangroves area of 1775 Hectares on private lands in Mumbai Suburban District has been declared as a "forest". In the said affidavit, certain difficulties have been expressed about the implementation of the direction of this Court to notify mangroves on private land as forests. We are dealing with the said issue in detail in the subsequent part of the judgment. It is submitted that the mangroves, irrespective of their ownership, receive protection under the Environment Protection Act, 1986 (for short "the said Act of 1986") and the Forest (Conservation) Act, 1980 (for short "the said Act of 1980"). Therefore, it was submitted that the failure to declare private lands as private forests within the meaning of the Maharashtra Private Forest (Acquisition) Act, 1975 (for short "the Private Forest Act") has not led to any adverse consequences.

11. Apart from the aforesaid statements made regarding the compliance with the directions issued under the order dated 6th October 2005, in the said affidavit, the following relevant steps taken by the State Government have been highlighted:—

- 1) So far approximately 541 Hectares of degraded mangrove areas have been brought under plantation;
- 2) On 5th January 2012, a dedicated unit called the "Mangrove Cell" was established for the protection and conservation of mangroves in Maharashtra. The officer of the rank of the Chief Conservator of Forests is heading the Mangrove Cell. From

April 2017, this post has been upgraded to the level of the Additional Principal Chief Conservator of Forests;

- 3) For protection of mangroves in Mumbai and adjacent urban areas, the State Government has created Mumbai Mangrove Conservation Unit (MMCUC) on 17th May 2013 which is headed by a Divisional Forest Officer who is assisted by several employees of the Forest Department. Six patrolling vehicles and two patrolling boats have been provided to MMCUC. It is stated that 91 personnel from Maharashtra Security Corporation have been deployed in 3 shifts round the clock in various vulnerable mangroves areas in Mumbai;
- 4) Over 3800 illegal structures constructed on mangroves land in different parts of Mumbai have been removed and offences have been registered;
- 5) Action has been taken against the vehicles involved in dumping of debris in mangrove areas. It is stated that District Collectors have lodged FIRs in respect of mangrove areas on non-forest land under the provisions of the said Act of 1986;
- 6) An area of 1690 Hectares having a rich cover of mangroves on the western bank of Thane Creek has been notified as Thane Creek Flamingo Sanctuary under Section 18 of the Wildlife Protection Act, 1972 with effect from 6th August 2015;
- 7) On 20th September 2017, the State Government has initiated a new scheme of Mangrove Conservation and Livelihood Generation in all coastal districts of Maharashtra;
- 8) It is claimed that in a report published by Forest Survey of India in the year 2015, it is stated that the mangrove cover in Maharashtra up to 2013 was having an area of 186 sq. km which jumped to 222 sq. km by 2015. District wise break-up of the growth of mangrove cover between 2013 and 2015 has been set out in the affidavit.

12. By the said affidavit, the State Government has sought time of six months for completing the transfer of remaining notified Reserved Forest land admeasuring about 2823.84 Hectares (of Government land) to the Forest Department.

13. There are other affidavits placed on record from time to time. There are large number of orders passed on Notices of Motion taken out granting permission for carrying out the work on mangroves land. There is a detailed additional affidavit filed to the Notice of Motion (L) No. 303 of 2015 on behalf of the petitioners by Shri. Debi Goenka.

SUBMISSIONS

14. The learned senior counsel appearing for the petitioners has taken us through the averments made in the petition, the affidavits on record as well as other material on record. He has taken us through a chart containing the details of the extent of the implementation so far made with the directions contained in the order dated 6th October 2005. As regards the direction to transfer mangroves areas to the Forest Department, it is pointed out that the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO") and the Mumbai Metropolitan Region Development Authority (for short "MMRDA") have not transferred mangroves land in their possession to the Forest Department. He also pointed out various aspects set out in the action taken reports. He pointed out that due to the failure in taking immediate action in respect of the destruction of mangroves, violators have not been identified and First Information Reports (for short "FIRs") have been filed against unknown persons. He also pointed out from the action taken reports that there is a frequent and rampant destruction of mangroves and dumping of garbage as well as debris in the mangroves area. He has relied upon statements made in various affidavits on record.

15. He further submitted that the FIRs are not taken to its logical end as the procedure under Section 19 of the said Act of 1986 is not being followed in most of the

cases. He pointed out that as per the direction issued in clause 8(vi), MCZMA has not submitted any report. He stated that copies of the maps referred in the affidavit dated 16th August 2005 of Shri. Gajanan Varade have not be supplied to the petitioners. He pointed out that there is no compliance with the direction contained in clause (xiii).

16. The learned senior counsel submitted that a direction should be issued to hand over all Reserved forests to the Forest Department within a time bound schedule. He submitted that remaining action of notifying mangroves areas as forests should be also completed in a time bound schedule. He submitted that there are certain mangrove areas which are vulnerable to encroachment. Such areas must be protected by constructing a fencing/boundary wall at a distance of 50 meters of the mangroves on its landward side. He invited our attention to wetland maps of Maharashtra prepared by MRSAC which are very useful for detection of destruction of mangroves. He pointed out several violations of the directions issued by this Court on 6th October 2005. He submitted that penal provisions under the said Act of 1986 have been rarely invoked. He also addressed the Court on the need for restoration and re-forestation. He submitted that there is a need to show mangroves areas in all Development Plans and Regional Plans along with 50 buffer zones. He made various suggestions as regards the working of the mangroves cell. He invited our attention to CRZ notifications as well as order of the Central Government approving the Coastal Zone Management Plan of Maharashtra (for short "CZMP"). The learned counsel appearing for the petitioner has also addressed us on the contents of the affidavit of Shri. Milind Panditrao.

17. He invited our attention to the Judgment and Order dated 29th July 2015 in Chamber Summons No. 172 of 2007 and other connected Notices of Motion. His basic submission is that the said Judgment and order does not lay down any proposition of law and considering the peculiar facts of the case, certain plots in the layout in respect of which environmental clearance was granted in the years 2003 to 2005 were exempted from the operation of 50 meters buffer zone requirement. He urged that while approving CZMP, a condition was imposed by the Central Government of keeping 50 meter buffer zone and therefore, the said condition was in existence from the year 1996. He submitted that it is not correct to say that the requirement of having 50 meter buffer zone was brought into picture for the first time by the interim order dated 6th October 2005. He also pointed out as to how the condition of maintaining the buffer zone was in existence even prior to the order dated 6th October 2005.

18. The learned senior counsel appearing for the petitioner also addressed us on implementation of the directions contained in clause (ix) regarding declaring privately owned lands having mangroves as forests in accordance with law. He also invited our attention to the issue of implementation of the directions contained in last part of clause (xi) as well as last part of clause (xii). Firstly, he invited our attention to the decision of the Apex Court in the case of *T.N. Godavarman Thirumulkpad v. Union of India*¹. He submitted that the Apex Court has given purposive interpretation to the said Act of 1980 by holding that any forest irrespective of its ownership or its classification is entitled to protection of the provisions of the said Act of 1980. He pointed out that the Apex Court while recording the said finding has held that the word "forest" must be understood according to its dictionary meaning and the term "forest land" occurring in Section 2 of the said Act of 1980 will not only include the word "forest land" in dictionary sense but also any area recorded as a forest in the Government record. He urged that considering the dictionary meaning of "forest" it will cover lands with mangroves and therefore, effect will have to be given to the the directions issued by the Apex Court in the case of *T.N. Godavarman Thirumulkpad v. Union of India* in case of privately owned lands having mangroves. He submitted that on such lands, non-forest activity is completely prohibited without seeking permission of the requisite authorities.

19. Thereafter, he invited our attention to the provisions of the Private forest Act and definition of "forest" in clause (c-i) of Section 2 of the Private Forest Act. He pointed out that the said definition is an inclusive definition. Inviting our attention to the definition of "private forest" in clause (f) of Section 2, he urged that even the said definition is inclusive which includes any forest which is not the property of the State Government. He would, therefore, submit that private lands having mangroves will be a private forest within the meaning of the Private Forest Act. He would, therefore, submit that by virtue of subsection (1) of section 3 of the Private Forest Act, all such lands will vest in the State of Maharashtra irrespective of any other provisions of law.

20. He also made submissions on the basis of the Wetlands (Conservation and Management) Rules, 2017 and definition of wetlands. He urged that in addition to the interim orders issued which are already in force, directions as contended by him may be issued apart from issuing direction regarding setting criminal law in motion against the offenders.

21. The learned Additional Government Pleader Ms. Geeta Shastri has taken us through the affidavit of Shri. Milind Panditrao, Divisional Forest Officer, Mumbai Mangrove Conservation Unit and submitted that almost all interim directions have been complied with in substance. As regards the direction sought by the learned senior counsel appearing for the petitioner as regards the mangroves on private forests, she submitted that recourse will have to be taken to Section 21 of the Private Forests Act which will involve acquisition of privately owned properties having mangroves. She pointed out that Sections 34 to 37 of the Forest Act which provide for Control and Management of Forest Lands not being property of the Government have been repealed for the State of Maharashtra on coming into force of the Private Forest Act. She submitted that except the said direction, the State Government has shown willingness to implement all the other directions. We have also heard the various learned counsel representing various respondents including MCZMA as well as the learned counsel appearing for the parties in the connected petitions. Though we are disposing of Writ Petition 2741 of 2017 by a separate order, we have heard the learned counsel appearing in the said petition on certain issues especially relating to the buffer zone. The learned counsel appearing for the Petitioners in Writ Petition 2741 of 2017 made submissions in support of the order dated 29th July 2015 in Chamber Summons No. 172 of 2007. He pointed out that the said order finally concludes the issue of 50 meter buffer zone. He pointed out that the said order has been confirmed by the Apex Court by order dated 20th January 2016. He pointed out the circular issued by the State Government on the basis of the order dated 29th July 2015.

CONSIDERATION OF SUBMISSIONS

22. We have given careful consideration to the submissions. We have perused the affidavits and compilation of documents on record.

THE INDIAN FOREST ACT, 1927

23. Firstly, the legal position will have to be dealt with. Section 3 of the said Act of 1927 reads thus:—

"3. Power to reserve forests. - The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided."

24. The word forest has not been defined under the said Act of 1927. In the case of *Laxman Ichharam v. Divisional Forests*², a Division Bench of the erstwhile Nagpur High Court held that the word forest has been used in its widest significance. The Division Bench observed in paragraph 13:—

"13. The term 'forest' has not been defined anywhere in the Forest Act. In the

absence of such a definition the word 'forest' must be taken in its ordinary dictionary sense. The *Shorter Oxford English Dictionary*, Vol. I, gives the following meaning to it:

- '1. An extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture
2. Law. A woodland district, usually belonging to the king, set apart for hunting wild beasts and game etc.,
3. A wild uncultivated waste.'

(emphasis added)

25. The definition of a tree in sub-section (7) of Section 2 is inclusive. Therefore, a land covered by mangroves will be a forest land within the meaning of Section 3 of the said Act of 1927. Section 3 confers a power on the State Government to declare a forest land which is the property of the Government as a Reserved forest. Section 4 contemplates a notification to be issued to constitute any land as a Reserved forest. Before issuing the notification, the procedure prescribed by chapter II of the said Act of 1927 is required to be followed. Section 23 provides that no right of any description shall be acquired in or over a Reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued. Section 20 contemplates a publication of a notification declaring a forest to be a Reserved forest from the date fixed by the notification. Section 26 of the said Act 1927 imposes several prohibitions in case of a Reserved forest.

26. Sections 29 and 30 of the said Act of 1927 read thus:

"29. Protected forests. - (1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which, is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

30. Power to issue notification reserving trees, etc. - The State Government may, by notification in the Official Gazette,

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by, the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such terms, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the right suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest."

27. The direction in clause 8(ix) of the order dated 8th October 2005 is to declare identified mangrove areas as "protected forest" within the meaning of section 29 of the said Act of 1927. The said direction has been accepted by the State Government. However, in a given case, the State Government can always declare a mangroves area as a reserved forest.

**THE CONCEPT OF "FOREST" UNDER THE
FOREST (CONSERVATION) ACT, 1980**

28. The said Act of 1980 is also very material and in particular Section 2 thereof which reads thus:—

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. -

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

[Explanation. - For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;
- (b) any purpose other than re-afforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

(emphasis added)

29. Section 2 thereof imposes a complete ban on the State Government or any other authority except with the prior approval of the Central Government making any order for the use of any forest land or any portion thereof for non-forest purposes. Similarly, the State Government or any other authority cannot pass any order except with the approval of the Central Government permitting any forest land or any portion thereof to be cleared of all trees which have been grown naturally in that land or any portion for the purpose of using it for reafforestation. The concept of forest in the said Act of 1980 is of a widest amplitude.

CONCEPT OF FOREST: THE DECISION IN THE CASE OF T.N. GODAVARMAN

30. In the decision in the case of *T.N. Godavarma* (supra), paragraph 4 dealt with

the concept of forest under the said Act of 1980. Paragraph 4 of the said decision reads thus:—

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213], *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority* [WP (C) No. 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

(emphasis added)

31. Various directions were issued under the said judgment and order. Paragraph 5 of the said decision reads thus:—

"5. We further direct as under:—

I. General

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.
2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban

on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.
4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.
5. Each State Government should constitute within one month an Expert Committee to:
 - (i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;
 - (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and
 - (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.
6. Each State Government should within two months, file a report regarding:
 - (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
 - (ii) the licensed and actual capacity of these mills for stock and sawing;
 - (iii) their proximity to the nearest forest; (iv) their source of timber.
7. Each State Government should constitute within one month, an Expert Committee to assess:
 - (i) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;
 - (ii) the number of existing saw mills which can safely be sustained in the State;
 - (iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.
8. The Expert Committee so constituted should be requested to give its report within one month of being constituted.
9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports."

(emphasis added)

32. If a reference is made to Cambridge dictionary, the meaning of forest therein is "a large area of land covered with trees and plants usually larger than the wood or trees and plants themselves". Considering the wide meaning given to "forest" by the Apex Court, a land covered by mangroves irrespective of its ownership is a forest within the meaning of the said Act of 1980. Hence, the embargo imposed by Section 2

of the said Act of 1980 and the directions issued by the Apex Court will apply with all the force to mangroves areas. It will apply to mangrove areas irrespective of the fact that the lands are privately owned. That is very clear from paragraph 5(i) above. Therefore, it is obvious that prior approval of the Central Government is required for doing any non-forest activity within the area of mangroves. In accordance with Section 2 of the Act, all ongoing non-forest activity within any mangroves area without the prior approval of the Central Government, must cease forthwith.

THE ENVIRONMENT (PROTECTION) ACT, 1986

33. Another important statute with which we are concerned is the said Act of 1986. Clause (a) of sub-section (2) of the said Act of 1986 defines "environment" which reads thus:—

"(a) "environment" includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;"

34. Hence, the definition of environment is very wide which includes not only water, air and land but also plants and micro-organism. Thus, it will include mangroves as well.

35. Section 3(1) of the said Act of 1986 reads thus:

"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."

(emphasis added)

CRZ NOTIFICATION OF 1991

36. A notification dated 19th February 1991 was issued by the Government of India which is known as CRZ notification of 1991 in exercise of powers under Section 3(1) and Section 3(2)(v) of the said Act of 1986. The notification lays down what constitutes a "Coastal Regulation Zone" (for short "CRZ"). The material part of the said CRZ notification declaring CRZ reads thus:—

"Now, therefore, in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation zone (CRZ). For purposes of this Notification, the High Tide Line (HTL) will be defined as the line upto which the highest high tide reaches at spring tides."

37. Clause 3 provides that all other activities except those which are prohibited will be regulated as provided therein. Annexure-I to the CRZ notification deals with Coastal Area Classification and Development Regulations. CRZ-I is defined thus:—

"Category I (CRZ-I):

- (i) Areas that are ecologically sensitive and important, such as national parks marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty historical heritage areas,

areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.

(ii) Area between the Low Tide Line and the High Tide Line."

(emphasis added)

38. Thus, mangroves fall in CRZ-I category. Annexure-I further lays down that no new structure shall be permitted within 500 meters from the High Tide Line (HTL) and no construction activities except as listed in sub-clause (xii) of clause 2 of the CRZ notification are permitted in CRZ-I area. Sub-clause (xii) of clause 2 reads thus:—

"(xii) facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification; and"

39. The CRZ notification of 1991 was further amended by a notification dated 18th August 1994. The relevant modification is in clause (a) which reads thus:

"(a) in paragraph 1, for the portion beginning with the words "For purposes of this notification, the High Tide Line" and ending with the words "width of the creek, river or back water whichever is less", the following shall be submitted, namely:—

"For the purposes of this notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India.

NOTE:—

The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and back waters and may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 50 metres or the width of the creek, river or back-water whichever is less. The distance upto which development along rivers, creeks and back-waters is to be regulated shall be governed by the distance upto which the tidal effect of sea is experienced in rivers, creeks or back-waters, as the case may be, and should be clearly identified in the Coastal Zone Management Plans."

40. Sub-clause (3)(i) of clause 3 of the CRZ notification of 1991 mandated that all coastal States shall prepare a Coastal Zone Management Plan (for short "CZMP") identifying and classifying CRZ areas within their respective territories in accordance with Annexures - I and II to the CRZ notification. Accordingly, CZMP for Maharashtra was submitted to the Government of India on 22nd November 1995. By a letter/order dated 27th September 1996, the Ministry of Environment and Forest of the Government of India communicated to the Chief Secretary of the Government of Maharashtra grant of approval to the CZMP subject to conditions incorporated therein. Condition No.(xiii) reads thus:—

"(xiii) All mangroves with an area of 1000 square metres or more would be classified as CRZ-I with a buffer zone of at least 50 metres."

41. The Mangroves were already included in CRZ-I in the CRZ notification of 19th February 1991. By the aforesaid order dated 27th September 1996, in case of mangroves with an area of 1000 square metres or more, a buffer zone of at least 50 metres along the mangroves was ordered to be included in CRZ-I in addition to mangroves.

42. An order was issued on 19th January 2000 by the Government of India

providing that 50 meter buffer zone around mangroves of area of 1000 square meters and above, will not be required on the landward side, provided a road abutting such mangroves was constructed prior to February, 1991. Thus, under the 1991 notification, mangroves were included in CRZ-I. In the CRZ notification of 1991, there was no provision for a buffer zone. The said provision came for the first time by virtue of the order dated 27th September 1996 which was amended by the order dated 9th January 2000.

CRZ NOTIFICATION OF 2011

43. The CRZ notification of 6th January 2011 was issued under section 3(1) of the said Act of 1986 which superseded the earlier CRZ notification of 1991. Relevant part of paragraph 7 reads thus:

"7. Classification of the CRZ - For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:—

(i) CRZ-I,-

A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50 meters along the mangroves shall be provided;

(b) Corals and coral reefs and associated biodiversity;

(c) Sand Dunes;

(d) Mudflats which are biologically active;

(e) National parks, marine parks, sanctuaries....."

(emphasis added)

44. Clause (xi) of paragraph 3 provides that all construction activities in CRZ-I are prohibited activities except those specified in paragraph 8. Paragraph 8 lays down the norms for regulation of the activities permissible in CRZ that:

"I. CRZ-I,-

(i) no new construction shall be permitted in CRZ-I except,-

(a) projects relating to Department of Atomic Energy;

(b) pipelines, conveying systems including transmission lines;

(c) facilities that are essential for activities permissible under CRZ-I;

(d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

(e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.

(f) development of green field airport already approved at only Navi Mumbai;

(ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:—

(a) exploration and extraction of natural gas;

(b) construction of dispensaries, schools, public rain-shelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere reserves after obtaining approval from concerned CZMA.

(c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;

(d) salt harvesting by solar evaporation of seawater;

(e) desalination plants;

(f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;

(g) construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water."

45. In the Guidelines for preparation for CZMP incorporated in the said notification of 2011, it is stated thus:

"3. Buffer zone along mangrove areas of more than 1000 sq mts shall be stipulated with a different colour distinguishing from the mangrove area.

4. The buffer zone shall also be classified as CRZ-I area."

46. In 1991 CRZ notification, it was provided that all mangrove areas will fall in CRZ-I. By virtue of the order dated 27th September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZ-I. By order dated 9th January 2000, it was provided that 50 meter buffer zone will not be required to be maintained, provided a road abutting the mangroves was constructed prior to February 1991 (prior to the date on which CRZ notification of 1991 was issued). Under the 2011 notification, all mangroves area fall in CRZ-I irrespective of its area and in case the said area is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of CRZ-I. Thus, the buffer zone of 50 meters abutting mangroves having an area of 1000 square meters or more was also included in CRZ-I from 27th September 1996.

47. The CRZ notifications are in the nature of orders or directions issued under the said Act of 1986. Hence, if there is any violation of the provisions of the CRZ notifications regarding mangroves area or its buffer zone or if there is any failure to comply with the same, it will attract the penal provisions under Section 15 of the said Act of 1986 which is attracted in case of the failure to comply with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 will have to be construed as an order or direction under the said Act of 1986 as CZMP is required to be approved by the Central government in view of the clause 3(i) in the CRZ notification of 1991. Hence, if there is any violation of the condition in the letter dated 27th September 1996 about the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986."

EFFECT OF THE DIRECTIVE PRINCIPLES OF STATE POLICY AND THE FUNDAMENTAL DUTIES OF CITIZENS

48. Article 48-A in Chapter IV under the title Directive Principles of State Policy of the Constitution of India reads thus:—

"48-A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

(emphasis added)

49. Article 48-A lays down that it is the duty of the State to make an endeavour to protect and improve environment and to safeguard forests. As stated earlier, environment includes plants. Mangroves are essential part of the environment. The land covered by mangroves is covered by the concept of forest. Under Article 51(A)(g) of the Constitution, it is the fundamental duty of every citizen of India to protect and improve the natural environment including forests, rivers and wildlife and to have compassion for living creatures. In view of the constitutional mandate under Article 51(A)(g), it is the fundamental duty of every citizen to protect and improve natural environment including forest which will include mangroves. If this is the obligation of every citizen, the public bodies which are constituted by the citizens are bound by the fundamental duties under Article 51(A). Thus, it is the duty of the State and citizens to ensure that the mangroves are preserved and protected.

PUBLIC TRUST DOCTRINE

50. In the case of *Nature Lovers Movement v. State of Kerala*^{2a}, in paragraph 2, the

Apex Court observed thus:

" 2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life."

(emphasis added)

51. In the case of *Association for Environment Protection v. State of Kerala*^{2b}, the Apex Court observed thus:

" 2. The ancient Roman Empire developed a legal theory known as the "doctrine of the public trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few."

(emphasis added)

52. In the case of *M.C. Mehta v. Kamal Nath*³, in paragraph 34 and 35, the Apex Court held thus:

"34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

(emphasis added)

53. In the case of *Fomento Resorts & Hotels Limited v. Minguel Martins*⁴, in paragraphs 53 to 55 and 65, the Apex Court held thus:

"53. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources.

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems."

(emphasis added)

54. Public at large has a right to enjoy and have a benefit of our forests including mangroves forest. The pristine glory of such forests must be protected by the State. The mangroves protect our environment. Therefore, apart from the provisions of various statutes, the doctrine of public trust which is very much applicable in India makes it obligatory duty of the State to protect and preserve mangroves.

PRECAUTIONARY PRINCIPLE

55. In the case of *M.C. Mehta (Badhkal and Surajkund Lakes matter) v. Union of India*⁵, the Apex Court held thus:

"10. In *M.C. Mehta v. Union of India* [(1987) 4 SCC 463] this Court held as under:

"The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry

which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public. Life, public health and ecology have priority over unemployment and loss of revenue problem."

The "Precautionary Principle" has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes."

(emphasis added)

56. It is not disputed by the State and it is also borne out from the material including the action taken reports on record submitted on behalf of the State Government that there have been instances of destruction of mangroves in the State. The photographs produced on record clearly show that there is a large scale destruction. The precautionary principle will apply to the destruction of mangroves and therefore, the State is under an obligation to anticipate, attack and prevent the reclamation of mangrove areas. It is duty bound to prevent degradation of mangroves.

ROLE OF RAMSAR CONVENTION

57. The 8th meeting of the contracting parties (which includes India) to the Convention on Wetlands at Ramsar in Iran in the year 1971, was held in Spain in November 2002. In the said meeting, a resolution was passed as regards the mangroves which reads thus:

"Resolution VIII.32: Conservation, integrated management, and sustainable use of mangrove ecosystems and their resources

1. RECOGNIZING the major importance of the wide range of ecological goods and services provided by mangrove ecosystems, including their vital role in acting as spawning and nursery areas for many species of economic importance, and the economic, social and environmental importance of mangroves for, *inter alia*, fishing, biodiversity, coastal protection, recreational activities, education, and coastal and shelf water quality;
2. ALSO RECOGNIZING that the survival of a large number of local communities and indigenous peoples depends upon the productivity and health of mangrove ecosystems;
3. RECOGNIZING FURTHER that mangrove ecosystems are important for regulation of natural processes and maintaining biological diversity in the coastal zones of the countries in which they occur, and that many species, notably, *inter alia*, fish, molluscs, crustaceans, migratory and resident waterbirds, and aquatic mammals, as well as threatened species, are ecologically dependent upon mangroves and their surrounding areas;
4. AWARE that healthy mangrove ecosystems, in conjunction with their associated coral reefs, seagrass beds, and intertidal flats, can play an important role in mitigating climate change and sea-level rise, including through carbon sequestration and the buffering of sea-level rise and storms, particularly in view of the current extent of coral bleaching and

Intergovernmental Panel on Climate Change (IPCC) predictions of future increase in coral bleaching, as is recognized in document COP8 DOC. 11 and Resolution VIII.3;

5. CONCERNED that, despite this widely-recognized importance of mangrove ecosystems, the area of mangrove ecosystems continues to decrease in many countries as the result of destruction and degradation through human activities that use mangroves and their surrounding areas, or that disrupt the flow of freshwater or tidal flows to mangrove ecosystems, without appropriate planning, management and control mechanisms;
6. AWARE of the increasing availability of knowledge about practices related to the sustainable use of mangrove ecosystems by the ancestral communities of users and that experiences and technical knowledge about the conservation and sustainable use of these ecosystems should receive wide dissemination at the national and global levels;
7. TAKING NOTE of the need to strengthen at the global level the mechanisms for exchanging good practices and technical knowledge about mangrove ecosystems and to benefit from those exchanges, while at the same time promoting and strengthening these activities among local communities, with the cooperation, where appropriate, of local people and national or international organizations with knowledge or interest in the sustainable use of the biological diversity of mangrove ecosystems;
8. AWARE that Contracting Parties to this Convention have concluded through Action 6.2.3 of its Strategic Plan 1997-2002 that mangrove ecosystems are under-represented in the List of Wetlands of International Importance, and that guidance on the identification and designation of mangrove ecosystems has been adopted by this meeting of the Conference of the Parties (Resolution VIII.11);
9. RECOGNIZING that mangrove ecosystems are dependent on ecological processes and influenced by socioeconomic processes that occur in river basins and the wider coastal zones in which they occur, and that their capacity to continue to provide their values and functions depends upon sustainable land-use management at the wider scale, as is recognized by Resolution VII.18 concerning river basin management and the guidance adopted by this meeting concerning site-based management planning (Resolution VIII.14), water allocation and management (Resolution VIII.1), and integrated coastal zone management (Resolution VIII.4);
10. RECALLING Resolution VII.21, which specifically refers to mangrove ecosystems as an integral part of intertidal wetlands which have been lost and degraded due to unsustainable activities; and
11. ALSO RECALLING the Annex to Resolution VIII.11 which refers to the principal factors causing loss and damage to mangrove ecosystems worldwide as a result of unsustainable exploitation practices, such as habitat destruction, hydrological changes, pollution, and unsustainable aquaculture;

THE CONFERENCE OF THE CONTRACTING PARTIES

12. REQUESTS Contracting Parties with mangrove ecosystems in their territories to review, and as appropriate to modify their national policies and strategies that could have harmful effects on these ecosystems, and to implement measures to protect and restore their values and functions for human populations, recognizing their rights, uses and traditional customs and the maintenance of biodiversity, and

-
- to cooperate at the international level to agree regional and global strategies for their protection;
13. ALSO REQUESTS the Contracting Parties with mangroves ecosystems in their territories to promote their conservation, integrated management and sustainable use within the context of the national policies and regulatory frameworks, and in accordance with environmental and strategic assessments of the activities that could affect, directly or indirectly, the structure and function of the mangrove ecosystems;
 14. EXHORTS relevant Contracting Parties to update information on mangrove ecosystem cover and their conservation status, as well as the forms and levels of their use, and to provide this information to the Ramsar Bureau and the Convention's Scientific and Technical Review Panel (STRP) so as to assist their work as called for in Resolution VIII.8 concerning status and trends in wetlands;
 15. ALSO EXHORTS those Contracting Parties with mangrove ecosystems within their territories to exchange information relating to their conservation, integrated management, and sustainable use, especially where this involves the full participation of local communities and indigenous peoples;
 16. REQUESTS the Ramsar Bureau and the STRP, as resources permit, and the Contracting Parties to contribute to the initiatives concerning the transfer of environmentally sound technologies for the sustainable management of mangrove ecosystems, and to make this available to the users;
 17. ALSO REQUESTS Contracting Parties with mangrove ecosystems within their territories, including those of their dependent territories, according to their capacities and internal regulations, to designate mangrove ecosystems that fulfill the criteria for their inclusion in the List of Wetlands of International Importance, in order to create a coherent national and international network of designated Ramsar sites as called for in the Strategic Framework and Vision for the List of Wetlands of International Importance (Resolution VII.11), and in doing so to emphasize particularly those Ramsar sites which are important for local communities and indigenous peoples in terms of their subsistence and cultural values;
 18. ALSO REQUESTS all relevant Contracting Parties to recognize the importance of mangrove ecosystems for migratory and non-migratory birds, and to designate such areas as Ramsar sites that qualify under Criteria 4, 5, and 6 of the Strategic Framework adopted by Resolution VII.11, in order to contribute to the establishment of coherent flyway-scale networks of Ramsar sites, in line, as appropriate, with the Joint Work Plan of the Ramsar Convention, Convention on Migratory Species, and African-Eurasian Migratory Waterbird Agreement (AEWA) as endorsed by Resolution VIII.5 and other conventions or related agreements;
 19. ENCOURAGES all relevant Contracting Parties to take into account in their management planning for Ramsar sites with mangrove ecosystems, applying the *New Guidelines for management planning for Ramsar sites and other wetlands* and other guidance adopted by this meeting (Resolutions VIII.1, VIII.4, and VIII.14), the ecological and socio-economic factors that occur in river basins and coastal zones to which they are related, and to ensure that their wider land-use planning and management does not adversely affect their mangrove ecosystems, such as through the introduction of pollutants, modification of water flows, sediment inputs, and exotic species;
 20. ALSO ENCOURAGES all relevant Contracting Parties to recognize fully the important role mangrove ecosystems can play in mitigating climate change

and sea-level rise, especially in low-lying areas and Small Island Developing States, and to plan their management, including required adaptation measures, so as to ensure that the mangrove ecosystems may respond to impacts caused by climate change and sea-level rise;

21. URGES all relevant Contracting Parties to identify the factors degrading their mangrove ecosystems and to seek to restore such ecosystems, using the guidance on this matter adopted by this meeting (Resolution VIII.16), so that they can deliver their range of values and functions; and
22. REQUESTS the Ramsar Bureau to make all possible efforts to secure financial resources and advance technical cooperation for promoting the conservation, integrated management, and sustainable use of mangrove ecosystems and their resources through appropriate existing partnerships and agreements with international and regional organizations."

(emphasis added)

58. The Government of India and the State Government will be under a duty to implement the aforesaid Covenants. Therefore, it is all the more necessary that both the State and Central Government to make all possible efforts to preserve and protect mangroves.

ARTICLE 21 VIOLATION

59. Mangroves ecosystems play a vital role in human life. In the subsequent part of this judgment, we have quoted a decision of the Apex Court which notes that the mangroves forests are of great ecological importance and are also ecologically sensitive. Considering the vital role played by the mangroves which can be seen from what is set out above, if a citizen is to lead a meaningful life as contemplated by Article 21 of the Constitution of India, the mangroves will have to be preserved and protected. Considering the drastic effects of destruction of mangroves on the environment, the destruction of mangroves and the failure of the State to take steps for its restoration will amount to violation of fundamental rights guaranteed by Article 21 of the Constitution.

CONTINUATION OF THE INTERIM DIRECTIONS AS THE FINAL DIRECTIONS

60. Now we turn to the interim directions contained in the order dated 6th October 2005. We have already quoted interim directions contained in the order dated 6th October 2005. One of the said direction is quoted by the Apex Court in its decision in the case of *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*⁵. Paragraph 6 quotes direction No.(xii) regarding notifying mangroves areas on Government owned lands as protected forests. It refers to the notification dated 18th February 2009 issued by the Divisional Commissioner notifying the lands of the appellant before the Apex Court as such. In paragraphs 30 to 32, the Apex Court held thus:—

"30. The CRZ Regulations define for regulating developmental activities, coastal stretches within 500 m of the landward side of the high tide line into four categories. Category I (CRZ-I) is defined as under:

"(i) Areas that are ecologically sensitive and important, such as, national parks/marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and other such areas as may be declared by the Central Government or the authorities concerned at the State/Union Territory level from time to time."

31. The regulation of *development* or *construction* activities in CRZ-I areas is to

be in accordance with the following norms:

"CRZ-I *Between LTL and HTL in areas which are not ecologically sensitive and important*, the following may be permitted: (a) exploration and extraction of natural gas; (b) activities as specified under proviso of sub-para (i) and (ii) of Para 2; (c) construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants of the Sunderbans Biosphere Reserve Area, West Bengal, on a case-to-case basis, by the West Bengal State Coastal Zone Management Authority; (d) *salt harvesting by solar evaporation of seawater*; (e) desalination plants; (f) storage of non-hazardous cargo such as edible oil, fertilisers and foodgrain within notified ports; (g) construction of trans-harbour sea links."

32. From the above, it is evident that mangroves fall squarely within the ambit of CRZ-I. The Regulations allow for salt harvesting by solar evaporation of seawater in CRZ-I areas only where such area is not ecologically sensitive and important. In the instant case it has been established that mangrove forests are of great ecological importance and are also ecologically sensitive. Thus, salt harvesting by solar evaporation of seawater cannot be permitted in an area that is home to mangrove forests."

(emphasis added)

61. The Apex Court observed that the mangroves forests are of great ecological importance and are also ecologically sensitive. This observation is made after observing that mangroves falls squarely within the ambit of CRZ-I. Thus, even if the area abutting the mangroves which were in existence when 1991 notification came into force was already developed, the mangroves area will fall in CRZ-I and not in CRZ -II. If there are mangroves in existence between the shoreline and the developed area, the mangroves will fall in CRZ-I under both the CRZ notifications. The Apex Court, therefore, did not permit salt harvesting activity on the mangroves areas. The Apex Court proceeded to issue several directions including the direction to restore *status-quo ante* against the appellant. It can be seen from the said decision that the Apex Court virtually approved the direction given by this Court in clause 8(xii) regarding mangroves areas on the Government owned lands to be declared as protected forests.

62. We must note here that none of the respondents have ventured to deny this factual statements made in the petition about the important role played by the mangroves eco-systems. On the contrary, the affidavit of the State of Shri. Milind Panditrao, Divisional Forest Officer shows that except for the directions regarding the mangroves on private lands, the State Government claims to have made a sincere effort to implement the directions issued by this Court under the order dated 6th October 2005. Whether the State has implemented all the directions issued or not is an altogether a different issue. What is important is that the State has shown willingness to abide by almost all directions including the direction regarding keeping buffer zone of 50 meters. Considering the applicability of the public trust doctrine and the statutory and constitutional duty of the State, the said direction for stopping all construction taking place within 50 meters on all sides of all mangroves will have to be maintained as this direction will protect the mangroves. If construction activity is permitted in the said buffer zone, it will inevitably cause damage to the mangroves. No construction/development permission can be granted in the buffer zone of 50 meters of mangroves having an area less than 1000 square meters, unless the concerned development authorities are fully satisfied that even if development is carried out, no damage whatsoever will be caused to the mangroves. As pointed out earlier, in case of mangrove area of 1000 square meters or more, 50 meter buffer zone

will be a part of CRZ-I and such a buffer zone will be subject to all the restrictions provided in CRZ Regulations.

63. Therefore, there is no difficulty in continuing the directions issued in the order dated 6th October 2005 as final directions with certain modifications. As far as the directions contained in relation to mangroves on private properties are concerned, we propose to deal with the same separately.

MANGROVES ON PRIVATE LANDS

64. Now, we turn to the issue of mangrove areas forming a part of the private lands. For that purpose, it will be necessary to make a reference to the provisions of the Private Forest Act. We have already held that a mangroves forest on a private land will be a forest within the meaning of the said Act of 1980 and therefore, necessary consequences will follow. The question is whether such areas can be transferred to the Forest Department and for that reason, it is necessary to make a reference to the provisions of the Private Forest Act.

65. Clause (f) of Section 2 defines "Private Forest" which reads thus:

"(f) "private forest" means any forest which is not the property of Government and includes, -

- (i) any land declared before the appointed day to be a forest under section 34A of the Forest Act;
- (ii) any forest in respect of which any notification issued under sub-section (1) of section 35 of the Forest Act, is in force immediately before the appointed day;
- (iii) any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the Collector may specify in this behalf;
- (iv) land in respect of which a notification has been issued under section 38 of the Forest Act;
- (v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;
- (vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto;"

66. Section 3 of the "Private Forest Act" is material which reads thus:—

"3.(1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-section (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest Act."

67. Sub-section (1) of Section 3 applies to a "private forest" defined under clause (f) of Section 2. Thus, vesting under sub-section (1) will apply only in case of a private

forest within the meaning of clause (f) of Section 2 of the Private Forest Act. Therefore, only those lands which are covered by clause (f) of section 2 will vest in the State Government in accordance with section 3 of the Private Forest Act. Such vesting will be automatic in view of sub-section (1) of Section 3. Hence, such private mangroves lands which are covered by the definition under section 2(f) will vest in the State Government on the appointed day which is 30th August 1975.

68. The second part of the direction given in clause 8(ix) of the order dated 6th October 2005 is to declare the mangrove areas which are privately owned as forests. Clause (xi) further provides that from the list of mangrove areas so identified, the Government lands shall be declared/notified as protected forests and likewise, privately owned lands from the list of mangroves areas so identified shall be declared/notified as forests. In view of the definition of forest in clause (c-i) of Section 2, a land covered by mangroves will be a "forest". But, no consequences as provided in section 3 will follow under the Private Forest Act unless such a land is a "private forest" under clause (f) of Section 2.

69. Continuation of the interim direction to declare privately owned mangrove area as forest and to transfer the same to Forest Department poses some difficulty. Under the said Act of 1927, there are two categories of forests which could be declared by the State Government. One is the protected forest under Section 29 to which we have already made a reference. The other is reserved forest. The power to declare reserved forest is under Section 3 of the said Act of 1927. A privately owned land cannot be declared as a protected forest or reserved forest over which the State Government has no proprietary rights. Moreover, sections 34A to 37 of the said Act of 1927 stand repealed for the State of Maharashtra by virtue of section 24 of the Private Forest Act with effect from 30th March 1975. Going back to the Private Forest Act, as observed earlier, every mangroves area which is privately owned will not fall in the definition of private forest in clause (f) of section 2. Another Section which is relevant in the Private Forest Act is Section 21. It confers a power on the State Government to declare a land which is not covered by clause (f) above as a private forest. Section 21 of the Private Forest Act reads thus:—

"21. Declaration of certain lands as private forests -

(1) Wherever it appears to the State Government that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declared in public interest and for furtherance of the objects of this Act. to be a private forest, the State Government shall publish a notification in the Official Gazette -

(a) declaring that it is proposed to declare such tract of land to be a private forest; and (b) specifying, as nearly as possible, the situation and limits of such tract.

(2) On the publication of such notification, the Collector or any other officer authorised in this behalf by the State Government shall issue a notice to the owner of such tract of land and to all other persons having an interest in such tract of land calling on them to show cause, within a reasonable period to be specified in such notice, why such declaration should not be made.

(3) After hearing the objections if any, of the owner and other persons and considering any evidence that they may produce in support of the same, the Collector, or as the case may be, the authorised officer shall submit his report to the State Government, along with the objections, proceeding and his opinion whether the tract of land should or should not be declared to be a private forest.

(4) After taking into consideration the objections, proceeding and report and the opinion of the Collector, or as the case may be of the authorised officer, the State Government shall decide, whether such tract of land or any part thereof should or

should not be declared to be a private forest, and such decision shall be final.

(5) If the State Government decides to declare such tract of land or any part thereof to be a private forest, it shall publish such decision by a notification in the Official Gazette.

(6) Upon publication of the notification under sub-section (5), the tract of land in question or any part thereof shall be deemed to be private forest and thereupon, all the provisions of this Act shall apply thereto, subject to the modification that the appointed day in relation thereto shall be deemed to be the date of the issue and publication of the notification in the Official Gazette under sub-section (5) in relation thereto.

(7) If the State Government decides not to declare such tract of land or any part thereof to be a private forest, it shall communicate its decision to all persons interested in such tract of land or any part thereof.

(8) On the publication of a notification under sub-section

(1) in respect of any tract of land, it shall not be lawful for the owner of such tract of land or any other person to do therein, except with the previous permission in writing of the Divisional Forest Officer, any of the following things, for a period of one year from the date of such publication, or till the date of the publication of the notification under sub-section (5), or as the case may be, till the date of communicating the decision under sub-section (7), whichever period expires earlier, namely:—

- (a) the breaking up or cleaning of the land for cultivation;
- (b) the pasturing of cattle;
- (c) the felling or cleaning of the vegetation;
- (d) the girdling tapping or burning of any tree or the stripping off the bark or leaves from any tree;
- (e) the lopping and pollarding of tree;
- (f) the cutting, sawing, conversion and removal of trees and timber; or
- (g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process.

(9) If any person contravenes the provision of sub-section (8), he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both."

70. Under Section 21, a private land not covered by clause (f) of Section 2 can be declared as a private forest. Thus, if a privately owned mangrove land is to be declared as private forest, the procedure under Section 21 will have to be undertaken. It cannot be said that every private land containing trees and shrimps or pasture lands should be declared as a private forest by exercising power under Section 21. It is ultimately left to the State Government to take recourse to Section 21. Therefore, a writ of mandamus cannot be issued directing the State Government to exercise the power under Section 21 of the Private Forest Act of declaring every privately owned mangrove area as a private forest. However, as held earlier, whether such area is declared as a private forest under Section 21 or not, it is a forest as held by the Apex Court in the case of *T.N. Godavarman* (supra) and therefore, the same cannot be used by the owner thereof for non-forest purposes. There is one more aspect of the matter. In case of a private forest which vests in the State Government under sub-section (1) of Section 3 of the Private Forest Act, certain amounts become payable to the owners under Section 7 of the Private Forest Act as compensation. Therefore, in case of a land in respect of which the power under Section 21 of the Private Forest Act is exercised, compensation will be payable by the State Government. Therefore, we are of the view that a blanket direction to declare private mangrove areas as a private forest under the

Private Forest Act cannot be issued. However, the Government will have to be directed to consider the cases where Section 21 deserves to be invoked and initiate action to invoke Section 21 in accordance with law.

MONITORING COMMITTEE TO BE CONSTITUTED

71. In paragraph 8 of the order dated 6th October 2005, a direction was issued by the State Government to designate a senior officer not below the rank of the District Magistrate and the Collector and Deputy Commissioner of Police to oversee the implementation of the directions issued. As per the circular dated 21st October 2005 issued by the State Government, the Divisional Commissioner, Konkan Division was entrusted with the responsibility of the implementation of the directions of this Court.

72. In PIL No. 218 of 2013, for the Navi Mumbai area in Thane District, a Committee headed by the Divisional Commissioner, Konkan Division has been constituted which has several members. The said Committee is entrusted with the task of coordinating the activity of protecting mangroves in the said area. The State Government by a letter dated 1st August 2018 (marked as "L 10 for identification") addressed to the learned Additional Government Pleader has agreed to constitute only one Committee headed by the Divisional Commissioner, Konkan Division for all the 7 coastal districts of Maharashtra. We accept the statements made in the said letter. It will be appropriate if such Committee consists of the District Collectors as suggested by the State Government, Nodal Police Officers for each District not below the rank of Deputy Superintendent of Police as may be nominated by the State Government, the Nodal Officers of appropriate higher rank appointed by all the Planning Authorities within the meaning of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") which are having coastal areas within its jurisdiction, Higher officers of the Forest Department, Officers of Mangroves Conservation Units/Mangroves Cell, Member Secretary of MCZMA, Regional officer/s of the Maharashtra Pollution Control Board, representatives of NGOs working in the field, the representatives of organizations of local fisher folk communities, experts in the field of conservation etc. The State Government may consider of including the Petitioners in this PIL and PIL no. 218 of 2013 in the Committee. As stated in the letter of the State Government, the Committee shall be responsible for coordinating the activity of protection and conservation of mangrove areas in all the coastal districts. Naturally, the same Committee should be given responsibility of monitoring the implementation of the directions issued by this Court for protection and conservation of mangroves and restoration of destructed mangroves. The function of the Committee will be to ensure that various agencies/authorities/officers who are vested with the statutory powers act promptly and effectively. The State Government shall establish a secretariat of the said Committee with a central control room to receive complaints and immediate action thereon. All the infrastructure and necessary funds should be provided to the Committee as per the requisitions issued by the Committee from time to time. The Divisional Commissioner will have to be authorised to constitute sub-committees at District/Taluka level. The Committee will have to submit quarterly action taken and compliance reports to this Court. The first report shall be submitted on 1st December 2018. The Committee shall be entitled to seek further directions by filing an application through the Government Pleader. The Committee shall regularly hold meetings. It will be open to hold meetings by use of video conferencing facility. The minutes of the meeting shall be published on the web site of the Commissioner or of the Committee.

SETTING UP GRIEVANCE REDRESS MECHANISM

73. The State Government will have to create a Grievance Redress Mechanism for enabling the members of the public to lodge complaints about the activity of destruction/removal/cutting of the mangroves or causing damage to a mangroves

area. An opportunity must be made available to file complaints about any acts or omissions which may ultimately result in destruction or causing damage to the mangroves area. The State Government shall make arrangements for receiving complaints on dedicated website, on toll free numbers and in physical form to the officers or offices nominated by the State Government in all coastal districts and especially in the areas where there are mangroves. A facility shall be made available for uploading the photographs by e-mail and by whats app or similar media by use of cell phone. The State Government must also create machinery to ensure that the said complaints are immediately transferred to the Committee headed by the Divisional Commissioner. The Committees will ensure that immediate action is taken of stopping the illegal destruction or acts amounting to causing damage to the mangrove areas, if necessary with the police help. Necessary register shall be maintained of the complaints received and action taken thereon. The State Government must lay down methodology by which the complainant is kept posted about the action taken on his or her complaint. On the request made by the complainant, the identity of the complainant shall be masked and the names of the complainant shall not be disclosed to violators of law.

DEVELOPMENT PLAN UNDER MRTP ACT

74. Now it will be necessary to refer to the provisions of the MRTP Act. The said Act contemplates preparation of Regional and Development Plans. The Regional Boards established under the said Act are entrusted with the responsibility of preparation of Regional Plans and making periodical revision of such plans. Section 14 provides for contents of a Regional Plan which reads thus:

"14. Subject to the provisions of this Act and any rules made thereunder for regulating the form of a Regional plan and the manner in which it may be published, any such Regional plan shall indicate the manner in which the Regional Board propose that land in the Region should be used, whether by carrying out thereon development or otherwise, the stages by which any such development is to be carried out, the net-work of communications and transport, the proposals for conservation and development of natural resources, and such other matters as are likely to have an important influence on the development of the Region; and any such plan in particular, may provide for all or any of the following matters, or for such matters thereof as the State Government may direct, that is to say—

- (a) allocation of land for different uses, general distribution and general locations of land, and the extent to which the land may be used as residential, industrial, agricultural, or as forest, or for mineral exploitation;
- (b) reservation of areas for open spaces, gardens, recreation, zoological gardens, nature reserves, animal sanctuaries, dairies and health resorts;
- (c) transport and communications, such as roads, highways, railways, waterways, canals and airports, including their development;
- (d) water supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas;
- (e) reservation of sites for new towns, industrial estates and any other large scale development or project which is required to be undertaken for proper development of the Region or new town;
- (f) preservation, conservation and development of areas of natural scenery, forest, wild life, natural resources, and land-scaping;
- (g) preservation of objects, features, structures or places of historical, natural, architectural or scientific interest and educational value;
- (h) areas required for military and defence purposes;

- (i) prevention of erosion, provision for afforestation, or reforestation, improvement and redevelopment of water front areas, rivers and lakes;
- (j) proposals for irrigation, water supply and hydro-electric works, flood control and prevention of river pollution;
- (k) providing for the relocation of population or industry from over-populated and industrially congested areas, and indicating the density or population or the concentration of industry to be allowed in any areas.

.....
....."

(emphasis added)

75. Every Planning Authority under the MRTTP Act is under a mandate to make a Development Plan and to make a revision at periodical intervals. The contents of the Development Plan are provided in section 22 which reads thus:

" 22. Contents of Development plan.— A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—

- (a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;
- (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;
- (c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;
- (d) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and air ports, including their extension and development;
- (e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;
- (f) reservation of land for community facilities and services;
- (g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;
- (h) preservation, conservation and development of areas of natural scenery and landscape;
- (i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value [and of heritage buildings and heritage precincts];
- (j) proposals for flood control and prevention of river pollution;
- (k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition for public purpose or as specified in a Development plan, having regard to the provisions of Section 14 or for development or for securing use of the land in the manner provided by or under this Act;
- (l) the filling up or reclamation of low lying, swampy or unhealthy areas or

levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority [including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of] conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act."

(emphasis added)

76. Thus, in a Development Plan, mangroves areas and buffer zones will have to be specifically shown in view of clause (c) of section 22. The Regulations framed as per clause (m) must provide for ban on construction on mangroves area and its buffer zones as laid down earlier. Mangroves areas have been already identified by using MRSAC. In any event, in view of Section 21, preparation of land use map is a condition precedent for preparation of a Development Plan. Section 14 deals with contents of a Regional Plan. Clause (b) of Section 14 is similar to clause (c) of Section 22 which provides for reservation for gardens, nature reserves etc. Therefore, The in a Regional Plan, mangroves areas and buffer zones will have to be specifically shown. The State Government will have to issue a direction under section 154 of the MRTP Act to all concerned Planning Authorities and Regional Boards, as the case may be, to implement the aforesaid directions while making or amending or revising Development Plans/Regional Plans.

RESTORATION OF MANGROVE AREAS

77. One more important issue is to restore mangroves areas which are illegally reclaimed. The said areas have to be restored to its original condition. That is the legal obligation of the State. In what manner restoration should be done should be decided by the Committee headed by the Divisional Commissioner after consulting experts in the field. It is necessary that the Committee identifies the vulnerable mangroves areas in the State and direct its constant surveillance either by the Police or Forest Guards or Security Guards of the Maharashtra Security Corporation. The Committee shall ensure that barricades are erected for entry of vehicles in such vulnerable area for preventing illegal dumping. The Committee shall also consider of installing CCTVs along the vulnerable stretches to keep a vigil. The Committee shall also cause to undertake satellite mapping of mangroves area at periodical intervals of not more than six months by using resolution as suggested in paragraph no. 28 of the note submitted by the learned senior counsel appearing for the petitioner. Any changes seen shall be considered by the Committee and remedial measures shall be immediately taken. The State Government shall sanction necessary funds for that purpose.

EFFECT OF THE ORDER DATED 29th JULY 2015 IN CHAMBER SUMMONS NO. 172 OF 2007

78. Now we must refer to the order dated 29th July 2015. The prayer made before this Court was that certain plots be excluded from the applicability of the direction contained in clause 8(iii) in the order dated 6th October 2005 regarding buffer zone of

50 meters. The said order dated 29th July 2015 is confirmed by the Apex Court. The order of the Apex Court dated 20th January 2016 shows that it is a summary dismissal. Therefore, the issue whether the said order of this Court is a binding precedent remains open. We find that on the plots subject matter of the said order, permissions were granted prior to the year 1996 for making public housing. Environmental clearances were granted prior to the order dated 6th October 2005. Before passing the said order, the attention of the Court was not invited to the condition (xiii) imposed in the letter/order dated 27th September 1996 of the Central Government by which CZMP of the State of Maharashtra was sanctioned. The condition is that in case of mangroves with an area of 1000 square meters and more, a buffer zone of 50 meters will form a part of CRZ-I. Moreover, the CRZ notification of 2011 specifically provides that in case of mangroves with an area of 1000 square meters, a buffer zone of 50 meters will form a part of CRZ-I. Interim direction in clause 8(iii) is applicable to all mangroves area irrespective of its area. One of the reasons set out by us for confirming the said interim direction is that if construction activity is permitted within 50 meters of mangroves area, it will cause damage to the mangroves it being an ecologically fragile area. The area of 50 meters around mangroves area of less than 1000 square meters will not be a part of CRZ-I though such mangrove area will be a part thereof under the both 1991 and 2011 notifications. Only in case of mangroves lands having an area of 1000 square meters or more, its 50 meter buffer zone will also be a part of CRZ-I.

79. The said order dated 29th July 2015 deals with the projects approved prior to the year 1996. The order ignores the provision regarding 50 meter buffer zone which was introduced on 27th September 1996. The said order dated 29th July 2015 was passed considering the peculiar facts in respect of the plots subject matter of the said order. By the said order, the issue of protecting mangroves was not finally decided. Hence, the said order cannot be held to be a binding precedent finally deciding the issue of buffer zone and CRZ classification. There is a circular/order dated 5th March 2018 issued by the Department of Environment of the State Government on the basis of the order dated 29th July 2015. The learned Counsel for the Petitioners in the connected writ petition has placed on record the said circular. However, now what will prevail is this Judgment and not the said circular which is based on the legal opinion of the Law Department.

PROCEDURE REGARDING SETTING CRIMINAL LAW IN MOTION

80. Whenever the offences punishable under section 15 of the said Act of 1986 are committed, criminal law has to be set in motion in accordance with section 19 of the said Act of 1986. In many cases, it is found that the police are straight-away registering First Information Reports by ignoring the provisions of section 19 of the said Act of 1986 which reads thus:—

"19. COGNIZANCE OF OFFENCES

No court shall take cognizance of any offence under this Act except on a complaint made by—

- (a) the Central Government or any authority or officer authorised in this behalf by that Government, or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid."

81. In the Judgment and Order dated 22nd December 2016 in PIL No. 218 of 2013 in the case of *Navi Mumbai Environment Preservation Society v. Ministry of Environment, Through the Secretary, Department of Environment*, this Court considered the procedural aspects regarding section 19 of the said act of 1986. Paragraphs 5 to 13 of the said Judgment and Order dated 22nd December 2016 in PIL

No. 218 of 2013 read thus:—

"5 As far as the officers authorised under clause (a) are concerned, a notification bearing No. 394(E) has been issued by the Government of India under which the District Collectors have been appointed as authority under clause (a) of the Section 19 for their respective Districts. Chairpersons, Member-Secretaries and Regional Officers of the State Pollution Control Board who have been delegated powers under Section 24 of the Air (Prevention and Control of Pollution) Act, 1974 have been also nominated as authorities under clause (a) of Section 19. The Chairman and Member-Secretary of the State Board have jurisdiction all over the State. The jurisdiction of the Regional Officers is confined to the notified area.

6 It is brought to our notice that in certain cases, First Information Reports have been registered for the offences punishable under Section 15 of the said Act of 1986 by the Police. The question is whether the Criminal Court can take cognizance of the offence on the basis of charge sheet filed on the basis of First Information Report registered by the Police.

7 Complaint is defined under the Code of Criminal Procedure, 1973 (for short "the said Code") under clause

(d) of Section 2 which reads thus:- (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

8 In the present case, only District Collectors and officers of the Maharashtra Pollution Control Board as set out above have been authorised under clause (a) of Section 19. It will be advisable if the information regarding commission of an offence punishable under Section 15 is immediately communicated to the District Collector or to the Regional Officers of the Maharashtra Pollution Control Board who are authorised officers under clause (a) of Section 19 who can set criminal law in motion. The question is whether registration of FIR at the instance of a person who is not authorised under clause (a) of Section 19 and the investigation carried out on the basis of the FIR becomes illegal.

9 In this behalf, it will be necessary to make a reference to a decision of the Apex Court in the case of *State (NCT of Delhi) v. Sanjay*⁶. In the said case, the Apex Court was dealing with the issue of taking cognizance of offences punishable under the Mines and Minerals (Development and Regulation Act) 1957 (for short "the said Act of 1957"). Section 22 of the said Act of 1957 provides that no Court shall take cognizance of any offence punishable under the said Act or Rules made thereunder except upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. One of the challenges before the Apex Court was to the decisions of Delhi High Court and Gujarat High Court dealing with the issue of legality of the First Information Reports registered by the Police. Paragraphs 9 to 12 of the said decision read thus:—

"9. The Delhi High Court after referring various provisions on the MMDR Act vis-à-vis the Code of Criminal Procedure disposed of the application directing the respondent to amend the FIR, which was registered, by converting the offence mentioned therein under Section 379/411/120B/34 of IPC to Section 21 of the MMDR Act. The High Court in para 18 of the impugned order held as under:—

"18. In view of the aforesaid and taking into consideration the provisions contained under Section 21 (6) of the said Act I hold that:

- (i) The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;
- (ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a

complaint filed by an authorized officer, which may be filed along with the police report;

- (iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer.

10. On the other hand the Gujarat High Court formulated the following question for consideration:—

- (1) Whether Section 22 of the Act would debar even lodging an FIR before the police with respect to the offences punishable under the said Act and Rules made thereunder?
- (2) In Case such FIR's are not debarred and the police are permitted to investigate, can the concerned Magistrate take cognizance of the offences on a police report?
- (3) What would be the effect on the offences punishable under the Penal Code in view of the provisions contained in the Act?

11. The Gujarat High Court came to the following conclusion:—

- (i) The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;
- (ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorized officer, which may be filed along with the Police report;
- (iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer.

12. The Gujarat High Court, therefore, held that:—

- 1. Section 22 of the Act does not prohibit registering an FIR by the police on information being given with respect to offences punishable under the said Act or the Rules made thereunder.
- 2. It is however, not open for the Magistrate to take cognizance of the offence punishable under the Act or the Rules made there under on a mere charge-sheet filed by the police. It would, however, be open for the officer authorized by the state or the Central Government in this behalf to file a complaint in writing before the Magistrate relying upon the investigating carried out by the police and the complaint may also include the papers of the police investigation.
- 3. With respect to offences punishable under the Penal Code, no such bar as indicated in para (2) would apply."

(emphasis added)

10 We must note here that the offence under Sub-Section (1) of Section 15 attracts imprisonment for a term which may extend to 5 years. Therefore, as per Part II of the First Schedule to the said Code, the offence will be cognizable and therefore, Police can register the same under Sub-Section (1) of Section 154 of the said Code. Perusal of the decision of the Apex Court in the aforesaid case shows that the Apex Court has not disturbed the view taken by the Delhi High Court and Gujarat High Court which we have quoted above. Therefore, if FIR is registered by the Police for the offences punishable under Section of Section 15 of the said Act of

1986, the registration of offence and investigation carried out by the Police is not *per se* vitiated. A complaint can be made/filed by authorised officer under clause (a) of Section 19 before the concerned Court. While filing complaint, the authorised officer can always rely upon the material collected by the Police during the investigation. The Complaint can include the material collected by the Police during the investigation carried out on the basis of the FIR.

11 Another issue is about of those cases where on the basis of the First Information Reports registered for the offences punishable under Sub-Section (1) of Section 15 of the said Act of 1986 and charge sheet filed by the Police, Criminal Courts have taken cognizance. The question is whether trial in such cases is vitiated. This issue is dealt with by the Apex Court in the case of *H.N. Rishbud and Inder Singh v. State of Delhi*². Paragraphs 9 and 10 of the said decision read thus:

“9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading “Conditions requisite for initiation of proceedings. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

“Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice”.

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have

brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu v. Emperor and Lumbhardar Zutshi v. King*. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case. When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537 of the Code of Criminal Procedure of making out that such an error has in fact occasioned a failure of justice. It is relevant in this context to observe that even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, explanation to Section 537 of the Code of Criminal Procedure indicates that the fact of the objection having been raised at an early stage of the proceeding is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused. It is true that the peremptory provision itself allows an officer of a lower rank to make the investigation if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the

Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."

12 Thus, in cases where charge sheets have been filed and the Courts have taken cognizance on the basis of Charge sheets, the proceedings of criminal case or trial will not *per se* stand vitiated. The same will stand vitiated only if there is a miscarriage of justice.

82. Thereafter, this Court proceeded to hold that registration of offences by the police under sub-section (1) of section 15 of the said Act of 1986 investigation carried out thereon is not *per se* illegal. While filing complaints, officers authorised under clause (a) of section 19 can always rely upon the material collected during the investigation and the material forming charge sheet prepared by the police. We concur with the view taken above. We must note here that the Committee headed by the Divisional Commissioner will have to ensure that recourse is promptly taken to section 19 for setting the criminal law in motion by the officers empowered under clause (a) of Section 19.

83. There is a need to hold regular awareness programs in schools and colleges and various educational institutions for making the students aware about the drastic effects of destruction of mangroves. The State shall take steps in that behalf for making the students aware about the dangers which may be caused to the ecology and environment in case the mangroves forests are destructed or damaged. To reiterate, the failure of the State and its agencies/instrumentalities to maintain and conserve the mangrove areas will amount to violation of rights of the citizens under Article 21 of the Constitution of India apart from other consequences. Though we are not issuing a writ, we hope and trust that the State Government will take such initiatives.

84. The State Government has not placed any material on record to show that compliance with clause 8(vii) of order dated 6th October 2005 has been made. We propose to direct the State Government to do so within two months by providing copies to the petitioners.

85. The mangroves lands held by the public authorities like CIDCO, MMRDA are also governed by sub-clauses (ix) to (xi) of clause 8 of the aforesaid order. Therefore, they must transfer the lands in their possession to the Forest Department.

86. Considering the prayers in the Writ Petition No. 2208 of 2004, no separate order is required to be passed therein. We are passing a separate order in Writ Petition No. 2741 of 2017.

SUMMARY OF IMPORTANT FINDINGS

87. The summary of some of the important conclusions read thus:

- (i) A land regardless of its ownership on which there are mangroves, is a forest within the meaning of the said Act of 1980 and therefore, the provisions of Section 2 of the said Act of 1980 and the law laid down by the Apex Court in the case of *T.N. Godavarman* will squarely apply to such land;
- (ii) A mangroves area on a Government land is liable to be declared as a protected forest or a reserved forest, as the case may be, within the meaning of the said Act of 1927;
- (iii) All mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications of 1991 and 2011;
- (iv) In 1991 CRZ notification, it is provided that all mangrove areas will fall in CRZ-I. By virtue of the order dated 27th September 1996, in case of mangrove areas of 1000 square meters or more, 50 meter buffer zone abutting it was also included in CRZ-I. By order dated 9th January 2000, it was provided that 50

meter buffer zone will not be required, provided a road abutting the mangroves was constructed prior to February 1991. Under the 2011 notification, all mangroves lands fall in CRZ-I and in case the area of such land is 1000 square meters or more, even a buffer zone of 50 meters along the said area shall be a part of CRZ-I. But, the buffer zone of 50 meters which is required to be kept free of constructions in respect of the mangroves area of less than 1000 square meters will not be a part of CRZ-I.;

- (v) if there is any violation of the CRZ notifications regarding mangroves area, it will attract penal provision under Section 15 of the said Act of 1986 which is attracted in case of the failure to comply with the provisions of orders or directions issued under the said Act of 1986. The conditions imposed in the the letter dated 27th September 1996 as amended will have to be construed as an order or direction under the said Act of 1986 as CZMP is required to be approved by the Central government in view of the clause 3(i) in the CRZ notification of 1991 which is an order or direction under the said Act of 1986. Hence, if there is any violation of the condition in the letter dated 27th September 1996 in respect of the 50 meter buffer zone, it will attract penal provision of Section 15 of the said Act of 1986.
- (vi) The destruction of mangroves offends the fundamental rights of the citizens under Article 21 of the Constitution of India.
- (vii) In view of the provisions of Articles 21, 47, 48A and 51A(g) of the Constitution of India, it is a mandatory duty of the State and its agencies and instrumentalities to protect and preserve mangroves;
- (viii) In view of applicability of public trust doctrine, the State is duty bound to protect and preserve mangroves. The mangroves cannot be permitted to be destroyed by the State for private, commercial or any other use unless the Court finds it necessary for the public good or public interest;
- (ix) The Precautionary Principle makes it mandatory for the State and its agencies and instrumentality to anticipate and attack causes and consequences of degradation of mangroves.

88. As far as Writ Petition No. 2741 of 2017 is concerned, we are deciding the same by a separate order. Writ Petition No. 2208 of 2014 will stand disposed of in terms of this Judgment.

89. For the reasons recorded above, we dispose of the PIL by passing the following order:—

ORDER

- (A) The following directions issued in the interim order dated 6th October 2005 shall continue to operate as final directions in following terms;
 - (I) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra;
 - (II) Dumping of rubble/garbage/solid waste on the mangrove areas shall be stopped forthwith;
 - (III) Regardless of ownership of the land having mangroves and the area of the land, all constructions taking place within 50 metres on all sides of all mangroves areas shall be forthwith stopped. The area of 50 meters shall be kept free of construction except construction of a compound wall/fencing for its protection.;
 - (IV) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves. All authorities including the Planning Authorities shall note that all mangroves lands irrespective of its area will fall in CRZ-I as per both the CRZ notifications

of 1991 and 2011. In case of all mangrove areas of 1000 sq. meter or more, a buffer zone of 50 meters along the mangroves will also be a part of CRZ-I area. Though buffer zone of 50 meters in case of mangroves area of less than 1000 meters will not be a part of CRZ-I, it will be subject to above restrictions specified in clause III above;

- (V) The State of Maharashtra is directed to file in this Court and furnish to the petitioner copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr. Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today. The soft or hard copies of the maps be supplied to the Petitioner within the same period;
- (B) The following direction issued in terms of clause 8(viii) of the order dated 6th October 2005 has been substantially complied with:
“The areas shown as mangrove area in the satellite study report “Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing” dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today”;
- (C) The directions in sub-clauses(ix) to (xiii) of clause 8 of the order dated 6th October 2005 shall continue to operate as final directions in respect of mangrove areas only on the government lands and the lands held by Planning Authorities like CIDCO, MMRDA etc. In respect of the lands admeasuring 2823.8493 Hectares as stated in the affidavit dated 14th February 2018 of Shri. Milind Panditrao, the direction regarding transfer of the lands to the Forest Department and consequential directions regarding making revenue entries shall be complied with within a period of three months from the date on which this Judgment and Order is uploaded. The State Government shall identify the mangroves lands which were vested in it by virtue of section 3(1) of the Private Forest Act and shall take appropriate steps in respect of such lands for transferring such lands to Forest Department within a period of 18 months from today. It will be also open for the State Government to take recourse to section 21 of the Private Forest Act in appropriate cases;
- (D) We direct the State Government to constitute a Committee headed by the Divisional Commissioner, as agreed by the State Government. The Committee and sub-committees shall be formed in accordance with the observations made in paragraph 68 above. The committee shall be responsible for the preservation and conservation of mangroves, for restoration of reclaimed mangroves areas set out in paragraph 73 above and for implementation of the directions in this Judgment. The Committee shall be constituted within a period of one month from today. The sub-committees as observed in paragraph 68 shall be constituted within two months from today. The Committee shall hold regular meetings and the minutes of the meeting shall be made available on public domain as observed in paragraph 68 above. As directed under the order dated 6th October 2005, the Principal Secretaries of (1) Environment, (2) Revenue and (3) Forest Department of the Government of Maharashtra shall be overall in-charge for ensuring total compliance with the directions issued under this Judgment and Order. They will monitor the working of the Committee headed by the Divisional

Commissioner;

- (E) The State Government shall create a Grievance Redress Mechanism for enabling the members of the public to lodge complaints about the activity of destruction/removal of the mangroves. An opportunity must be made available to file complaints about any acts or omission which may ultimately result in destruction or causing damage to the mangroves area. The State Government shall make arrangements for receiving complaints on dedicated website, on toll free numbers and in physical form to the officers or offices nominated by the State Government in all districts and especially in the areas where there are mangroves. A facility shall be made available for uploading the photographs of the affected area by e-mail and by whats app or similar media by use of cell phone. The State Government must also create a machinery to ensure that the said complaints are immediately transferred to the Committee headed by the Divisional Commissioner. The Committees will ensure that immediate action is taken of stopping the illegal destruction or acts amounting to causing damage to the mangrove areas, if necessary with the police help. Necessary register shall be maintained of the complaints received and action taken thereon. The State Government must lay down the procedure by which complainant is kept posted about the action taken on his or her complaint. On the request made by the complainant, the identity of the complainant shall be masked and the names of the complainant shall not be disclosed to the violators;
- (F) The Grievance Redress Mechanism shall be set up within a period of three months from today. Adequate publicity shall be given to the availability of the Grievance Redress Mechanism in leading newspapers as well as local newspapers. Information about availability of the Grievance Redress Mechanism shall be prominently displayed in the offices of District Collectors, Sub-Divisional Officers, Tahasildar in the Coastal Districts as well as in the offices of the Maharashtra Pollution Control Board and the Maharashtra Maritime Board in the coastal districts. The information shall be displayed prominently in the offices of the Municipal Corporations/Municipal Councils provided any coastal area forms part of the limits of such Municipal Corporation or such Municipal Council. Publicity shall be given at regular intervals of at least six months to the details of the grievance redress mechanism in leading newspapers having good circulation in the coastal areas;
- (G) We direct that it is the obligation of the State to replant destructed mangroves and to restore mangroves areas which are illegally reclaimed. The said areas shall be restored to its original condition. In what manner restoration shall be done must be decided by the Committee headed by the Divisional Commissioner after consulting experts in the field. The Committee shall identify the vulnerable mangroves areas in the State and direct its constant surveillance by the Police/Forest Guards/Security Guards of the Maharashtra Security Corporation. The Committee shall ensure that barricades are erected for preventing the entry of vehicles in such vulnerable area. The Committee shall also consider of installing CCTVs along the vulnerable stretches to keep a vigil. The Committee shall also cause to undertake satellite mapping of mangroves area in the state at periodical intervals of not more than six months by using resolution as suggested in paragraph no. 28 of the note submitted by the learned senior counsel appearing for the petitioner. Any changes seen shall be considered by the Committee and remedial measures shall be taken. The State Government shall sanction necessary amount for that purpose;
- (H) The State Government shall ensure that criminal law is set in motion against all those who commit offences punishable under section 15 of the said Act of 1986 as observed in the Judgment. The Committee shall monitor implementation of

this direction;

- (I) The State Government shall issue a direction under section 154 of the MRTP Act to all concerned Planning Authorities and Regional Boards under the MRTP Act to show mangroves areas and 50 meter buffer zone around it while making or revising Development Plans/Regional Plans. Such a direction shall be issued within a period of three months from today;
- (J) Quarterly Compliance reports shall be filed by the Committee reporting compliance with the aforesaid directions. The first of such reports shall be filed on or before 1st December 2018;
- (K) Rule issued in PIL No. 87 of 2006 is disposed of on above terms;
- (L) For reporting compliance, PIL shall be listed on 1st December 2018. It will be appropriate if PIL is placed for monitoring the compliance before this Bench or a Bench of which one of us is a party. The Prothonotary and Senior Master shall seek appropriate directions in this behalf from Hon'ble the Chief Justice;
- (M) Writ Petition No. 2208 of 2004 stands disposed of. No separate directions are required to be issued in this Petition. Writ Petition No. 2741 of 2004 stands disposed of by a separate order passed today;

¹ (1997) 2 SCC 267

² AIR 1953 Nag 51

^{2a} (2009) 5 SCC 373

^{2b} (2013) 7 SCC 226

³ (1997) 1 SCC 388

⁴ (2009) 3 SCC 571

⁵ (1997) 3 SCC 715

⁵ (2011) 3 SCC 363

⁶ (2014) 9 SCC 772

⁷ AIR 1955 SC 196

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