

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, AT NEW DELHI
ORIGINAL APPLICATION (O.A.) NO. 414 OF 2025**

IN THE MATTER OF:

Suraj Bali

...Applicant

Versus

State of Uttar Pradesh & Ors.

...Respondent (s)

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Applicant

Through



Date 03.02.2026

Place New Delhi

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Enrolment No. D/13653/2022

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**REJOINDER ON BEHALF OF APPLICANT IN RESPONSE TO REPLY IN
RESPONSE DATED 11.11.2025 FILED BY RESPONDENT NO.4 i.e. UPPCB**

Most Respectfully Showeth:

1. That Applicant files this Rejoinder to the Reply dated 11.11.2025 filed by Respondent No. 4 – Uttar Pradesh Pollution Control Board (hereinafter also referred as “UPPCB” / “Respondent”). The Applicant denies each and every averment contained in the Reply except where expressly admitted hereunder. The Reply is evasive, incomplete, and fails to disclose the true and correct status of compliance with the
2. That the Applicant is a bona fide resident of the affected area and has approached this Hon'ble Tribunal in public interest for protection of environment, public health and fundamental rights under Article 21 of the Constitution of India. Furthermore, it is pertinent to mention that the Applicant himself affected by illegal operation of Respondent no 6 i.e. M/s

Hapudia Leather Processing Society, (hereinafter also referred as “Respondent No. 6” or “Project Proponent”)

3. That through the present Original Application (O.A. 414 of 2025) Applicant raises serious and continuing issues of **environmental pollution, public health hazard, and failure of statutory enforcement** arising from illegal leather processing activities being carried out by Respondent No. 6 in Village Dungar, District Meerut. That the project Proponent situated in close proximity to residential houses, public roads, and educational institutions, thereby posing a grave threat to public health, safety, and environment.
4. That it is respectfully submitted that Project Proponent illegally operating Leather processing (hides skin to finished product) for decade is situated well within the prohibited distance from residential houses and surrounded by village abadi within distance of less than 500 meter, an approximate distance of 300 meter from the Upar Ganga Canal (Nahar), and on main public road. That such illegal siting itself renders the entire operation unlawful and liable for immediate closure and relocation. Copy of the satellite image of the project proponent is annexed herewith as **Annexure A**.
5. That it is further submitted that the Project Proponent is unlawfully extracting groundwater through as many as twelve (12) borewells installed within the project premises. The project proponent being operated continuously with the aid of twelve (12) generator sets functioning day and night, resulting in excessive and indiscriminate exploitation of groundwater resources, further, due to excessive exploitation of ground water, the water table has also depleted in the area in clear violation of environmental norms and in grave disregard of public interest.

6. That the case is not merely against a private violator, but also concerns **systemic failure and prolonged inaction** on part of Respondents, and Respondent No. 4 – Uttar Pradesh Pollution Control Board (UPPCB), despite admitted violations, closure orders, and repeated complaints over more than a decade.
7. Before adverting to a para wise rejoinder, it is important for the applicant to point out that, directly affected by the illegal environmental violations committed by respondents, particularly Respondent No. 6. Who is illegally and without any authorisation into leather processing Industries used of dead animals wide and skin. Despite the Respondent No. 4 i.e. Uttar Pradesh Pollution Control Board's notice dated 22.03.2013 and UP PCB directing them to closed their industries and shift outside from the population/education institutions/religious places/hospitals etc as per the CPCB guidelines.
8. That a letter dated 12.02.2025 by CPCB (Central Pollution Control Board) to all State Pollution Control Board Directing under section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 regarding harmonization of classification of industrial sectors under Red, Orange, Green, White and Blue categories. And as per the revised methodology, the category of the sector is decided based on the following ranges of Pollution Index:
 1. Red: $PI \geq 80$,
 2. Orange: $55 \leq PI < 80$,
 3. Green: $25 \leq PI < 55$,

4. White: $PI < 25$;

And that as per such categorization leather processing plants categorized under Tanneries Industrial sectors, and can be categorized “Red to Orange”,

9. Since **Project Proponent having operation of processing leather from raw (Hide Skin) to finished product, can be categorized from “Red to Orange”**. And such industries required to be inspection by SPCBs/PCCs and, such board/ committee may prioritize their environmental surveillance programs based on the categories of sectors. Also, SPCBs/PCCs are required to ensure inspection of red, orange, and green category of industries at least once in six-months, one-year, and two-years, respectively.
10. Further the report states that categorization may be used as a tool for deciding the location/siting of an industry in a particular location, help in planning of sector specific cluster, based on scoring of various pollutants and development of adequate environment management infrastructure facility, plans for control of pollution may be prepared and implemented on priority for the sectors having higher pollution index and overall higher pollution load. And Pollution index (PI) may be used for determining and levying environmental compensation on industries violating the environmental norms. Copy of the letter dated 12.02.2025 along with relevant report is annexed herewith as **Annexure B**.
11. That due to Leather processing by Respondent no. 6, particularly tanning, involves the use of numerous chemicals that can pose significant health risks to workers and other population and the environment. Occupational exposure to chemicals like chromium, dyes, and solvents can lead to various health issues, including respiratory problems, skin diseases, and cancers.

That tannery waste water, untreated, flow and stock other village Ajampur and can contaminate water sources and soil, affecting both human, crops, trees and ecological health.

12. That their highly hazardous process of manufacturing/industrial processes have caused and is continuing to cause substantial environmental degradation and demonstrable adverse health impact on the resident of the village abadi, and others village like Phooth Khas, Ajampur with particular detriment to minor children attending schools, the senior citizen and other population of the said village.
13. That the Respondent No. 4 has admitted through their Reply affidavit that the existence of illegal leather processing activities, repeated violations of closure orders, absence of valid consents and discharge of untreated effluent, yet seeks to avoid liability by shifting responsibility upon other authorities, which is impermissible in law. That the applicant has attached the closure order is annexed as Annexure D on page number 27 of Original Application. And page Annexure L of Reply Affidavit of Respondent no. 4 (UPPCB).
14. That the UPPCB is under a mandatory statutory obligation to prevent, control and abate pollution. Repeated issuance of letters without effective enforcement amounts to dereliction of duty

REJOINDER TO PARA-WISE TO THE REPLY AFFIDAVIT OF RESPONDENT NO. 4

15. That replying to the averments relating to inspection dated 24.10.2025, it is submitted that the mere conduct of inspection does not absolve UPPCB of its failure to prevent continued pollution despite closure orders passed as far back as 22.03.2013.

16. That the Respondent No. 4 has admitted that effluent treatment facilities are inadequate and require upgradation. Such admission itself establishes violation of Section 24 of the Water Act, 1974.
17. That the contention regarding “weak possibility of groundwater contamination” is misleading and contrary to the Precautionary Principle, which mandates prevention even in cases of scientific uncertainty.
18. That the Reply affidavit states that despite repeated inspections, complaints and closure orders, the illegal unit continued operations for more than a decade, operating illegally and causing irreparable environmental damage.
19. That every passing day of inaction **aggravates environmental loss**, making restoration more difficult and costly.
20. That it is submitted that the leather processing industries generate hazardous effluents containing heavy metals, organic pollutants and toxic chemicals, which contaminate water bodies, soil and air.
21. That resident, including children and elderly persons, are exposed to serious health risks including respiratory ailments, skin diseases and carcinogenic exposure. Photographs of Project proponent operational surroundings are annexed herewith as **Annexure C**.
22. Despite making several oral and written representations to the concerned authorities, no effective action was taken by the competent officials to address the grievances of the applicant. Left with no other efficacious remedy, the applicant was constrained to file a formal complaint on the UP IGRS (Jansunwai) portal, bearing Complaint No. **40013825047582**. In the said complaint, the applicant categorically brought to the notice of the authorities the illegal operation being carried out by Respondent No. 6, who

is engaged in the processing of raw hide and wet salted leather without adhering to environmental norms. It was specifically pointed out that untreated and hazardous waste generated from the said unit is being discharged in the surrounding area, resulting in serious contamination of the applicant's standing crops. Further, the irrigation land and soil of the applicant have been adversely affected, rendering the land vulnerable to long-term degradation and loss of agricultural productivity. The complaint clearly demonstrates that the issue is not speculative but based on visible and continuing damage caused by the illegal activities of Respondent No. 6. Copy of the complaint to UP IGRS (Jansunwai) is annexed herewith as **Annexure D.**

23. In order to substantiate the grievance with scientific and credible evidence, the applicant got the wastewater discharged from the unit of Respondent No. 6 tested through a **NABL-accredited and Government-approved laboratory on 11.12.2025.** The test results were alarming and revealed that several parameters were found to be far beyond the permissible limits prescribed under the applicable environmental standards. The levels of pollutants were not marginally higher but shockingly excessive, clearly indicating the discharge of untreated or poorly treated effluents. These results conclusively establish that the wastewater released from the said unit is highly hazardous in nature and unfit for discharge into the environment. Such blatant violation of statutory norms poses a serious threat to soil quality, groundwater, and agricultural sustainability in the surrounding area, thereby strengthening the applicant's claim of ongoing environmental damage. Below table depicting the findings of test results:-

RESULTS					
WATER QUALITY ANALYSIS					
S.No.	Parameter	Results	Unit	Standards (CPCB) (MAX)	Test method
				Inland Surface water	
1.	pH	11.88	—	5.5-9.0	IS:3025(Pt-11)
2.	Total Suspended Solids	2998.5	mg/l	100.0	IS:3025(Pt-17)
3.	Bio Chemical Oxygen Demand (at 27° C for 3 days)	840.0	mg/l	30.0	IS:3025(Pt-44)
4.	Chemical Oxygen Demand	2186.0	mg/l	250	IS:3025(Pt-58)
5.	Oil & Grease	42.8	mg/l	10.0	IS:3025(Pt-39)
6.	Turbidity	114.0	NTU	10.0	IS:3025(P-10)
7.	Colour	200.0	HU	—	IS:3025(P-4)
8.	Sulphide	2.8	mg/l	2.0	IS:3025(P-29)
9.	Sulphate (as SO ₄)	1947.6	mg/l	1000.0	IS:3025(P-24)
10.	Total Dissolved Solids	13110.0	mg/l	2100.0	IS:3025(P-16)
11.	Chloride (as Cl)	10918.6	mg/l	1000.0	IS:3025(P-32)
12.	Total Hardness (as CaCO ₃)	38316.0	mg/l	600.0	IS:3025(P-21)
13.	Cyanide	0.12	mg/l	0.5	IS:3025(P-27)
14.	Chromium	2.4	mg/l	< 0.5	IS:3025(P-52)
15.	Arsenic	0.28	mg/l	0.2	IS:3025(P-37)

Copy of the waste water lab test report is annexed herewith as **Annexure E**.

24. The continued operation of the said unit has caused severe hardship to the local residents, including children, elderly persons, and other vulnerable sections of society. Due to the discharge of contaminated wastewater and the persistent foul and unbearable odour emanating from the unit, residents are exposed to significant health risks on a daily basis. The polluted water has the potential to cause skin ailments, respiratory issues, and other long-term health complications, particularly among children and senior citizens. Moreover, the contamination poses a serious and imminent threat to standing crops, irrigation sources, and overall agricultural activity in the area, thereby endangering the livelihood of farmers. The unchecked discharge of waste not only degrades the environment but also violates the basic right of residents to live in a clean, safe, and healthy environment.
25. That due to operation of Respondent No. 6 i.e. Leather processing, generate hazardous effluents containing organic pollutants, including hazardous

materials like hexavalent chromium, ammonia, sulphides, and heavy metals. The Applicant and villagers have suffered:

- Contamination of water sources;
- Foul odour and air pollution;
- Skin diseases, respiratory ailments, and waterborne illnesses;
- Degradation of agricultural land and village pond ecosystem.

26. That due to business activities of respondent no.6 i.e. M/s Hapudia Leather Processing Society, the daily life of the villagers are adversely impacted, disallowing all villagers a clean environment. That continued pollution violates Article 21 of the Constitution of India which guarantees the right to a clean and healthy environment. In **Farhd K. Wadia v. Union of India, 2009 AIR SCW 1294 : 2009 (2) SCC 422**, it was held that the interference by the Court of noise pollution is premised on the basis that a citizen has certain rights being “necessity of silence”, “necessity of sleep”, “process during sleep” and “rest”, which are biological necessities and essential for health. Silence is considered to be golden. True Copy of judgment is annexed herewith as **Annexure F**.

27. That in the case of **Subhash Kumar v. State of Bihar, A.I.R. 1991 S.C. 420**, the Apex Court held that right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life. Under the ambit of the following, the government is a baby-sitter for groundwater. Copy of the judgment is annexed herewith as **Annexure G**.

28. That in case of **F.K. Hussain vs Union Of India And Ors, 1990**, recognising that right to health is a part of the right to live under Art. 21, the Hon'ble Kerala High Court has observed that the right to clean water and air are attributes of the right to life. Further, in the matter of **M.C. Mehta vs. Union of India**, the Hon'ble Supreme Court had stated that the right to live includes living in a pollution-free environment and being free from diseases. Copy of the Judgment **F.K. Hussain and MC mehta** is annexed herewith as **Annexure H**.
29. That the respondent no.6 are polluting the air and thus responsible to be closed down, and are called 'polluters' such that the liability of polluting the air is naturally imposed on the respondent no. 6. It was held that in **MC Mehta v. Kamal Nath & Ors AIR 2000 SC 1997** that "One who pollutes the environment must pay to reverse the damage caused by his acts". The Polluter Pays principle has been held to be a sound principle by this hon'ble Court in **Indian Council for Environ-Legal Action v. Union of India**. True Copy of the Judgment are annexed herewith as **Annexure I**.
30. Further, Hon'ble Supreme court in **Municipal Council, Ratlam vs. Vardichand, (1980) 4 SCC 162** observed that "Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems-not pompous and attractive, but in working condition and sufficient to meet the needs of the people-cannot be evaded if the municipality is to justify its existence." A true copy of the judgement is annexed herewith as **Annexure J**.
31. That in the case of **Vellore District Environment Monitoring Committee vs. The District Collector, Vellore District & Ors. 2025 INSC 131**, Hon'ble Supreme court observe that while the "Polluters Pay Principle"

focuses on directly penalizing offenders, its effectiveness is inherently tied to the vigilance and enforcement mechanisms of the Government and regulatory bodies, and thus, in situations where authorities fail to regulate polluters adequately, the resultant environmental degradation underscores a shared responsibility. The 'Government Pay Principle' emerges from this context, aiming to hold governments accountable for regulatory and enforcement lapses. Further, the Hon'ble Court compared the pollution from Vellore tanneries to an "**ecocide**" and a violation of fundamental rights. also highlighted emerging concept of Ecocide which is defined as 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment.' Acts such as the pollution of rivers with untreated sewage, illegal sand mining, large-scale deforestation etc. fall under this definition. The environmental damage occurring in Vellore District could even be categorized as Ecocide, underscoring the urgency of addressing and halting such activities. True Copy of the judgment is annexed herewith as **Annexure K**.

32. That it is pertinent to mention that a newspaper publication shows that inspection was only conducted after the issuance of notice by this Hon'ble Tribunal. whereas no effective action has been taken against the project proponent yet, despite far graver violations. Copy of the relevant News-paper article is annexed herewith as **Annexure L**.
33. That in view of admitted violations, the applicant prays this Hon'ble Tribunal to order immediate closure, environmental compensation, remediation and criminal action.

34. That it is most respectfully submitted that also an independent expert committee is necessary to assess damage and restoration cost.

35. That the Reply affidavit of Respondent No. 4 fails to rebut the Applicant's case and instead reinforces the necessity for strict action.

PRAYER

In view of the foregoing, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- a) Allow the Original Application;
- b) Direct immediate closure of the illegal unit;
- c) Impose environmental compensation;
- d) Order remediation at polluter's cost;
- e) Pass any other order deemed fit in the interest of justice.

Through



Date 03.02.2026

Place New Delhi

Tarun Cummra (ADVOCATE)

Enrolment No. D/13653/2022

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BENCH, AT NEW DELHI
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IN THE MATTER OF:

Suraj Bali

...Applicant

Versus

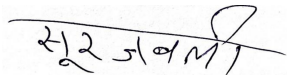
State of Uttar Pradesh & Ors.

...Respondent (s)

Affidavit

I Suraj Bali, S/o Sh. Kale, aged about 50 years, R/o Vill Puth khas, Vikash Khand Rohta, District Meerut, Uttar Pradesh, presently New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the applicant in the aforesaid Original Application (OA), and as such, in 'my said capacity, I am well conversant with the facts and circumstances of the case leading to the present OA and competent to swear this affidavit.
2. That the accompanying reply/rejoinder has been drafted by my counsel on my instructions. The contents of the accompanying reply/rejoinder are true and correct to my knowledge.
3. That I have read over the contents of the accompanying reply/rejoinder and the same is true and correct and drafted on my instruction.


DEPONENT

04 FEB 2026 **Verification**

Verified at New Delhi on ____ February 2026 that the contents of the above reply/rejoinder affidavit are derived from the official records and personal knowledge and are correct and true to the best of my knowledge and belief.

Nothing material has been concealed therefrom.



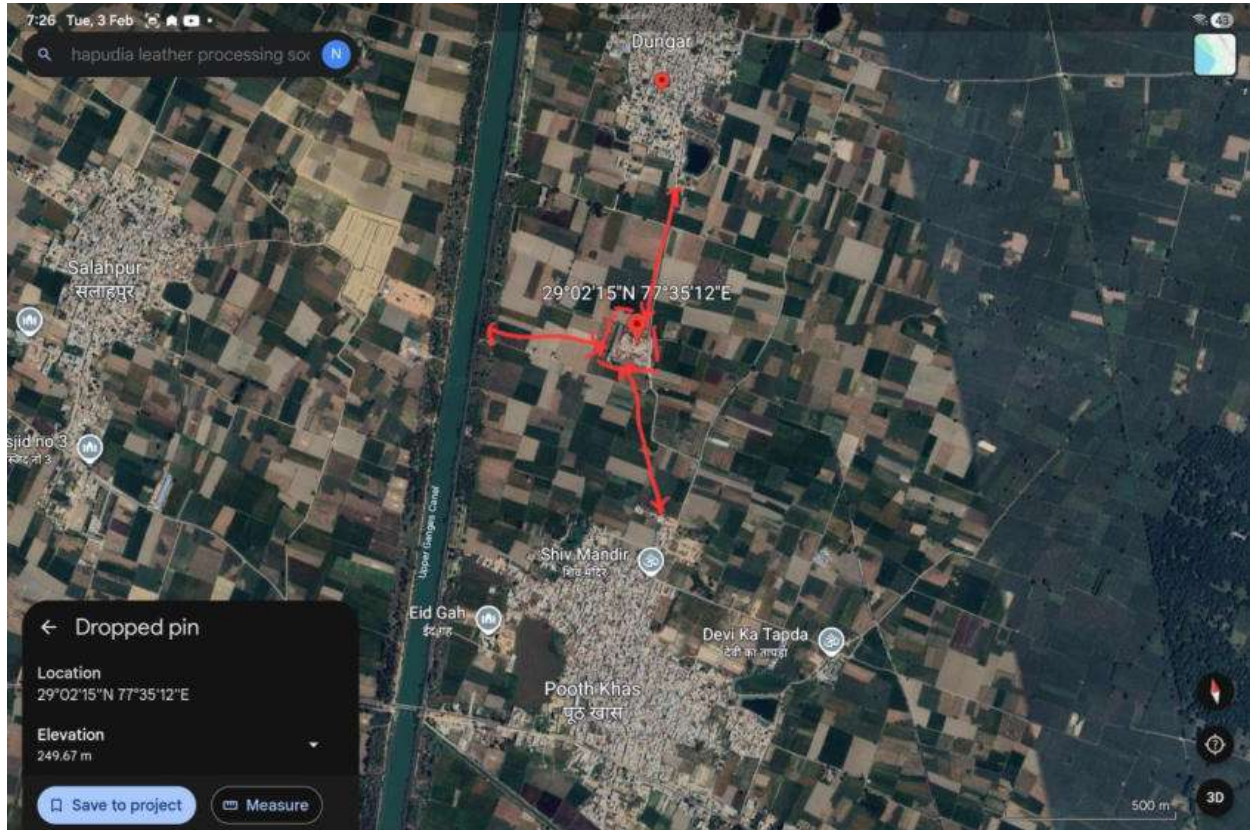
[Signature]
DEPONENT

*I identify the Deponent who has
Signed / put T.I. In my presence*

Solemnly sworn before me
Readover & Explained to the Deponent
who has signed before me.

[Signature]
KRISHNA KUMAR MISHRA
NOTARY PUBLIC (DELHI)
GOVT. OF INDIA

04 FEB 2026



Project Proponent satellite image, surrounded by agricultural land and close proximity to Canal and village abadi.

Signature

TRUE COPY



केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE, GOVT. OF INDIA

CP-18/1/2023-IPC-VI-HO-CPCB-HO

Date: 12.02.2025

To

The Chairman

State Pollution Control Board/Pollution Control Committee

(As per the list)

Sub: Directions under section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 regarding harmonization of classification of industrial sectors under Red, Orange, Green, White and Blue categories.

WHEREAS, under section 16 (2)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 16 (2)(c) of the Air (Prevention & Control of Pollution) Act, 1981, one of the functions of the Central Pollution Control Board (CPCB), constituted under the Water (Prevention and Control of Pollution) Act, 1974, is to coordinate activities of the State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs); and

WHEREAS, under section 16 (2)(c) of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 16 (2)(d) of the Air (Prevention & Control of Pollution) Act, 1981, one of the functions of the CPCB is to provide technical assistance and guidance to SPCBs and PCCs; and

WHEREAS, it was brought to the notice of CPCB, that different SPCBs/PCCs were following different criteria for the classification of industrial sectors under different categories. Therefore, in 2012, to have uniformity in classification throughout the country, CPCB vide letter no. B-29012/1/2012/ESS/1526-1563, dated 04.06.2012 issued directions under section 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 to SPCBs/PCCs to adopt and implement standardized list of Red, Orange and Green categories of industries; and

WHEREAS, in 2016, the Central Pollution Control Board (CPCB) developed a scoring methodology based on the Pollution Index (PI) to harmonize the criteria for classification of industrial sectors. The PI is determined based on Precautionary Principle- by evaluating potential of water pollution, air pollution, and hazardous waste generation from particular sector. CPCB vide letter no. B-29012/ESS(CPA)/2015-16, dated 07.03.2016 issued directions under section 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 to SPCBs/PCCs to adopt and implement revised classification. SPCBs/PCCs were also directed to categorize any new or left over sectors at their level by constituting a Committee and following the methodology prescribed by CPCB; and

Page 1 of 5

‘परिवेश भवन’ पृ

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TRUE COPY

(K)

WHEREAS, CPCB vide letter no. B-29016/ROGW/IPC-VI/2020-21, dated 30.04.2020, issued directions under section 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 to SPCBs/PCCs regarding segregated list of non-industrial sectors (activities/ facilities/ infrastructure/ services) such as sewage treatment plants, healthcare facilities, hotels, building and construction projects, airports, highways etc. Further, CPCB also classified few additional sectors from time to time; and

WHEREAS, based on the experience gained over the years in Pollution Index calculation, use of cleaner fuels like PNG/CNG etc., adoption of cleaner technology resulting in reduced emission/wastewater generation, a need was felt to revisit the classification methodology of 2016; and

WHEREAS, during July 2023, CPCB prepared a "Draft Report on Classification of Industrial Sectors into Red, Orange, Green and White Categories: A Tool for Progressive Environmental Management" which was uploaded on CPCB website for seeking comments/suggestions of the stakeholders/public on the same. The draft report was also circulated to SPCBs/PCCs/MoEF&CC for comments; and

WHEREAS, CPCB vide office order dated 26.09.2023 constituted a committee to critically examine and analyse the comments/suggestions and to make recommendations for suitable incorporation in the finalizing the methodology and classification; and

WHEREAS, based on the stakeholders' comments, a need was felt to promote/incentivize units for adopting measures resulting in better environmental performance. Additionally, a requirement was also felt for separate category – Blue Category- for essential environmental services for management of environmental pollution arising from domestic/household activities. Accordingly, CPCB prepared an "Addendum and substitution thereto in Draft Report on Classification of Sectors into Red, Orange, Green, White and Blue Categories", which was shared with SPCBs/PCCs and also uploaded on CPCB website on 11.07.2024 for seeking inputs/comments; and

WHEREAS, the amendment in Section-21 of the Air (Prevention and Control of Pollution) Act, 1981 through the Jan Vishwas (Amendment of Provisions) Act, 2023 and amendment in Section-25 of the Water (Prevention and Control of Pollution) Act, 1974 through the Water (Prevention and Control of Pollution) Amendment Act, 2024, grant exemption to certain categories of industries, as notified by Central Government, for obtaining consent under these Acts; and

WHEREAS, the Ministry of Environment, Forest and Climate Change, Government of India vide notification no. G.S.R. 702(E), dated 12.11.2024 granted exemption of consent under the Water Act, 1974 and the Air Act, 1981 to exemption of Consent to Establish (CTE) and Consent to Operate (CTO) to all industrial plants having pollution index score upto 20 (at present total 39 industrial sectors under white categories as per 2016 methodology) subject to



condition that such plant shall inform in writing to the concerned State Pollution Control Board (SPCB) or Pollution Control Committee (PCC); and

WHEREAS, the MoEF&CC vide letter no. Q-15012/2/2022/-CPW-Part (1)/e-240741, dated 14.11.2024 has issued Standard Operating Procedure for implementation of the said Notification dated 12.11.2024. The SOP includes the following provisions for White categories of industries:

- i. Industry to intimate to concerned SPCB/PCC about operations and self-declare the compliance with prevalent rules & regulations,
- ii. Concerned SPCB/PCC to maintain separate list of such industries/activities, and
- iii. Concerned SPCB/PCC to ensure that no activities other than those intimated, are carried out by exempted units.

WHEREAS, the Committee constituted by CPCB evaluated the comments, incorporated the suitable changes and finalized the revised methodology as well as classification of sectors. Final report in this regard titled as "Classification of sectors in to Red, Orange, Green, White and Blue Categories (A tool for progressive environmental management)" was submitted to Ministry of Environment, Forest and Climate Change (MoEF&CC) for concurrence. The MoEF&CC vide letter no. Q-16017-57-2015-CPA, dated 15.01.2025 granted concurrence to the revised classification; and

WHEREAS, as per the revised methodology, the category of the sector is decided based on the following ranges of Pollution Index:

- i. Red: $PI \geq 80$,
- ii. Orange: $55 \leq PI < 80$,
- iii. Green: $25 \leq PI < 55$,
- iv. White: $PI < 25$; and

WHEREAS, based on the revised methodology, CPCB has classified a total of 419 sectors and sub-sectors as under:

- i. The Red Category: 125
- ii. The Orange Category: 137
- iii. The Green Category: 94
- iv. The White Category: 54
- v. The Blue Category: 9; and

WHEREAS, the purpose of classification is to ensure that the industry is established in a manner consistent with the environmental objectives and also to prompt industrial sectors to adopt cleaner technologies, ultimately resulting in the generation of no or minimum pollutants. The revised classification system also defines criteria for incentivizing such industry. The industry may self-assess the PI score as per defined criteria and can submit application to respective SPCBs/PCCs for consideration; and



NOW, THEREFORE, in the exercise of the powers delegated under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and Section 18(1)(b) of the Air (Prevention & Control of Pollution), Act, 1981 the earlier directions dated 07.03.2016 and subsequent directions/letter in the context of categorization of industries are withdrawn with immediate effect and following '**Directions**' are hereby issued for compliance by all SPCBs and PCCs:

1. That SPCBs and PCCs shall immediately adopt the revised methodology for classification of sectors and list of 419 sectors/sub-sectors classified under Red, Orange, Green, White, and Blue categories as detailed in the **attached** report- "Classification of Sectors into Red, Orange, Green, White and Blue Categories (A tool for progressive environmental management)".
2. That all pending application for consideration of consent (CTE/CTO) and future such application shall be processed as per the revised classification. In case CTE granted before the revised classification, applicability of CTO will be as per revised classification.
3. That the revised sectors/subsectors classified under Red, Orange, Green, White, and Blue category of sectors as given in the attached document shall be used by the SPCBs and PCCs for consent management, inventorization of units under different categories, siting criteria, deciding environmental surveillance frequency, calculation of environmental compensation, etc., as per the guidelines issued from time to time.
4. That SPCBs and PCCs shall prepare the inventory of Red, Orange, Green, White and Blue categories of units operating in their jurisdictions, based on the revised classification. SPCBs and PCCs shall upload the category and sector-wise list of such units on their website. SPCBs and PCCs shall also forward such list to CPCB, latest by 30.06.2025 and thereafter updated list by 30th June every year.
5. That the classification of sectors shall not be linked to sanction of loans/finance of bank proceedings.
6. That any further addition of any new or left-out sector and their classification which is not listed in the revised list of Red, Orange, Green, and White categories, shall be done at the level of concerned SPCB /PCC by constituting a Committee and following revised criteria & guidelines as detailed in the attached report and no concurrence of CPCB shall normally be required. Intimation of same from time to time will suffice. However, addition in Blue Category Sectors-Essential Environmental Services for domestic waste management, will be done at the level of CPCB only. SPCBs/PCCs may forward their proposal, if any, to CPCB in this regard.
7. That SPCBs and PCCs are required to prepare and submit list of additional sector classified under white category to CPCB on annual basis, by 30th of June every year, in the prescribed format (Annexure-V) as given in the attached report, for further notification for exemption from consent as per the provisions of the Jan Vishwas (Amendment of Provisions) Act, 2023, the Water Act, and the Air Act as amended from time to time by MoEF&CC.
8. That SPCBs and PCCs shall constitute a committee as prescribed in the report to evaluate the applications of the units for incentives due to adopting measures resulting in better environmental performance and reduction in PI score. The SPCB/PCC shall

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place the separate list of such units on their website and also submit list of such units to CPCB on Annual Basis by 30th June every year.

The SPCBs/PCCs shall acknowledge the receipt of directions and submit the "Action Taken Report" in compliance with these directions to CPCB before 20.02.2025.

Encl. As above.



(Bharat Kumar Sharma)

Member Secretary



Copy to:

1. The Chief Secretary of all the States and UTs
(As per the list)
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3. The Secretary,
Ministry of Heavy Industries
Udyog Bhawan, Rafi Marg, New Delhi - 110 011
4. The Secretary,
Ministry of New and Renewable Energy
Block-14, CGO Complex,
Lodhi Road, New Delhi-110 003
5. The Joint Secretary (CP Division)
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan
Jor Bagh Road, New Delhi - 110 003
6. All Regional Directorates, CPCB
(As per the list)



(Bharat Kumar Sharma)

Member Secretary



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Classification of Sectors into Red, Orange, Green, White and Blue Categories

(A tool for progressive environmental management)



Central Pollution Control Board

“Parivesh Bhawan”, East Arjun Nagar

D. Gaurav

(JANUARY 2025)



सत्यमेव जयते

FOREWORD

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
CENTRAL POLLUTION CONTROL BOARD
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE, GOVT. OF INDIA

The concept of classifying industries into different pollution categories originated in 1989 with the Doon Valley (Uttarakhand) Notification issued by Ministry of Environment and Forests. Subsequently the concept of pollution index was developed by Central Pollution Control Board (CPCB) during 2016 to classify the sectors into different category. The 2016 classification helped State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) in streamlining consent management, prioritizing regulatory oversight & environmental monitoring, taking decision related to siting of units, etc. However, necessity felt for refining the concept of calculating Pollution Index to overcome certain limitation and to bifurcate sub-sectors based on pollution load, scale of operation etc.

Accordingly, draft methodology was prepared and widely circulated for inputs/comments/suggestions by placing the same on CPCB website (public domain) as well as by inviting comments from MoEF&CC/SPCBs/PCCs. As of 11.08.2024, i.e. the extended date for receipt of suggestions, CPCB received 170 representations, comprising over 700 comments from PSUs, NGOs, industries, industrial associations, including feedback from SPCBs of Kerala, Nagaland, Tamil Nadu, Mizoram, West Bengal, Punjab and Lakshadweep. The report has been finalised after examining all the comments by a working committee.

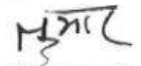
The 2025 classification methodology bifurcates sub-sectors based on pollution load, scale of operation, production technology, and type of fuel used into Red, Orange, Green, White and Blue categories. Red indicates the highest pollution potential, requiring stringent regulatory oversight, while White signifies minimal or no pollution, with much reduced compliance burden of merely intimation to the concerned SPCBs/PCCs. **A new Blue Category has also been introduced to distinguish the Essential Environmental Services** required for management of environmental concerns arising from anthropogenic pollution due to domestic/household activities which otherwise will have large littering potential. Additional 2 years validity for consent to operate (as per Pollution Index) is prescribed for the blue category.

This report also outlines the implementation pathway, which includes guidelines for State Pollution Control Boards/Pollution Control Committees to follow and implement the new classification system. Earlier classified 257 sectors have now been bifurcated and classified into 403 sectors (including sub sectors) and additionally, 16 new sectors have been introduced. Thus, the revised classification of 273 key sectors comprising of total 419 sectors/sub-sectors are further classified into Red Category (125 nos.), Orange Category (137 nos.), Green Category (94 nos.), White Category (54 nos.) and Blue Category (9 nos.). Progression between red, orange and green categories for the industrial sectors is also incorporated based on the use of less polluting available processes and technologies.

The report also comprises provisions for individual units to adopt cleaner technologies and practices resulting in reduction of pollution load in any sector. Incentives, such as extended validity for Consent to Operate (CTO) and reduced inspection frequencies, are outlined to encourage continual improvement of environmental performance. The incentive mechanism allowing progression between categories will thereby promote Ease of Doing Business by extended consent validity and enhance duration between inspections, thereby leading to reduced compliance burden.

To sum up, this report aims to create a more transparent, consistent, and incentivized regulatory mechanism for better environment management, promoting sustainable industrial development and better governance. I hope the report will be useful to all concerned in the field of industrial pollution control in the country and would incentivise the industries to switch over to cleaner process and technology leading to reduced air, water and soil pollution and also encourage setting up of blue category industries.

I would like to place on record my sincere appreciation for the hard work and valuable contributions by the CPCB team comprising of Shri Amit R. Thakkar, Add. Director, Shri Saubhagya Dixit, Scientist D, and Dr. Anantha N. S., SSA under the guidance of Shri Bharat Kumar Sharma, Member Secretary. I would also like to extend my thanks to Dr. Prashant Gargava, former Member Secretary, Shri P. K. Gupta, former Director and Shri Ajay Aggarwal, former Director, for their contribution. I would also express gratitude to the Working Committee, CPCB, MoEF&CC, SPCBs/PCCs and others for their contributions in the preparation of this report.


(Tanmay Kumar)



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EXECUTIVE SUMMARY

The concept of classification of industrial sectors into red, orange, and green categories based on the size of operations and consumption of resources was first introduced in 1989 for Doon Valley, Uttarakhand. This classification aimed to aid decisions regarding siting of industries. Over the period of time, this concept was extended nationwide to manage consents and establish norms for surveillance and inspection of industry. In 2012, to have uniformity in classification throughout the country, the Central Pollution Control Board (CPCB) issued a standardized list of 244 sectors, classified under red (85 sectors), orange (73 sectors) and green (86 sectors) categories.

In 2016, the Central Pollution Control Board (CPCB) developed a scoring methodology based on the Pollution Index (PI) to harmonize the criteria for categorizing industries. This PI was determined by evaluating water pollution, air pollution, and hazardous waste generation. Using this methodology, CPCB classified 257 industrial sectors into four categories: Red (63 sectors), Orange (91 sectors), Green (65 sectors), and White (38 sectors). The White category was introduced for sectors considered "practically non-polluting" during 2016. Additionally, State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs) were authorized to categorize any new or left over sectors according to the CPCB's 2016 methodology.

Further, based on the experience gained over the years, the increased use of cleaner fuels like PNG and bio-CNG, adoption of cleaner technology resulting into reduced wastewater generation, normalisation approach & different formula for calculating PI etc. a need was felt to revisit the classification methodology of 2016 for several such identified areas for improvement. Separate scoring for trade effluent and sewage effluent was also required due to differing characteristics and treatment methods.

Considering the scope of revision, CPCB published a draft report revising the methodology for calculating PI and accordingly classification of sectors into Red, Orange, Green, and White categories based on pollution index range was placed in the public domain for inputs/comments. Around 160 representations comprising more than 700 comments were received. Based on feedback/suggestions and examination of same by the working committee constituted for the purpose, the methodology was finalised. As per the final methodology, the scoring criteria for the following three major pollutant groups are as follows:

- i. Water Pollutant Score (PI_W): Assesses the water pollution potential considering the oxygen demand of wastewater, other pollutants in the wastewater and quantity of wastewater generated.
- ii. Air Pollutant Score (PI_A): Evaluates the potential air pollution due to process emissions (point source), work zone emissions (fugitive and odour) and type & quantity of fuel used.
- iii. Waste Pollutant Score (PI_H): Considering the type and quantity of waste (which are hazardous/toxic/infectious/bulk in nature) generated.

Each pollutant group is scored out of 100, and the Cumulative Pollution Index is calculated. The category of the sector is decided based on the pollution index range, if $PI \geq 80$ the category



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of sector is Red, if PI ranges between $55 \leq PI < 80$, the category of sector is orange, similarly for the range of PI between $25 \leq PI < 55$, the category is Green and for $PI < 25$, the category of the sector is white.

Further, based on the stakeholders' comments, a need was felt to introduce a separate "blue category" for Essential Environmental Services (ESS) required for management of waste generated from domestic/household activities and, an incentive mechanism to promote units in a particular sector, taking measures resulting into better environmental performance. An addendum was prepared, shared and presented to all SPCBs/PCCs. The addendum was also placed in the CPCB Website on 11.07.2024 for inputs/comments. 09 representations were received in the addendum. All representations were examined, and classification based on revised methodology is finalised. Based on the revised methodology, CPCB has classified total 419 sectors and sub-sectors under Red (125), Orange (137), Green (94), White (54) and Blue (9) categories.

The report introduced incentive mechanism for the units in any sector that adopt environment friendly practices such as treatment and recovery of 100% wastewater, use of 100% cleaner fuel/renewal energy etc. and ensuring continuous compliance. These incentives are designed to encourage continuous improvement in environmental performance and to reward units that demonstrate proven implementation of sustainable practices and compliances.

Following are the salient features of the revised classification methodology:

- Methodology focusses on "Potential to pollute the environment" by the sector.
- Simplified single formula for Cumulative Pollution Index for all cases.
- Equal weightage to all three pollutant groups- Air, Water, and Waste.
- Cumulative PI based on weighted proportionate scores of pollutant groups.
- Separate scoring criteria for sectors generating sewage (such as Building & construction projects, STPs, Airports, etc.) and bio-medical waste (Health Care Facilities).
- Introduced Blue Category for 9 sectors under Essential Environmental Services required for management of waste generated from domestic/household activities.
- Appropriate weightage to scale of operations by introducing more slabs to bifurcate sub-sectors based on pollution load, scale of operation, production technology and type of fuel used.
- Introduction of sub-categories for sectors based on cleaner technologies, fuel types, integrated/segregated operations etc.
- Motivation to industries for progressive environmental management.
- A tool to assess the Cumulative Pollution Index and category based on revised method.

This report, prepared by the Central Pollution Control Board (CPCB), presents a revised methodology for classifying sectors based on their pollution potential. The classification aims to enhance environmental management and regulatory oversight by classifying sectors into red, orange, green, white, and blue categories. The report covers in detail about the genesis of



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classification, need for the revision of 2016 methodology, scoring methodology for calculation of cumulative PI, etc.

The report also outlines guidelines for implementing the classification system. The classification may be used for consent management, inspection frequency, siting criteria, cluster development, pollution control plans, levying environmental compensation, promoting progressive environmental management, etc.



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LIST OF ABBREVIATION

CBG: Compressed Biogas
CNG: Compressed Natural Gas
CPI: Cumulative Pollution Index
CPCB: Central Pollution Control Board
CTE: Consent to Establishment
CTO: Consent to Operate
EC: Environment Compensation
ETP: Effluent Treatment Plant
EES: Essential Environmental Services
Gen-Set: Generator Set
HAPs: Hazardous Air Pollutants
HCFs: Health Care Facilities
HW: Hazardous Waste
MoEF&CC: Ministry of Environment, Forest & Climate Change
LNG: Liquefied Natural Gas
LPG: Liquefied Petroleum Gas
NGT: National Green Tribunal
NOC: No Objection Certificate
OCEMS: Online Continuous Effluent/Emission Monitoring System
PCC: Pollution Control Committee
PM: Particulate Matter
PI: Pollution Index
PI_A: Air pollutant score
PI_H: Waste pollutant score
PI_W: Water pollutant score
PNG: Piped Natural Gas
SPCB: State Pollution Control Board
TTZ: Taz Trapezium Zone
VOCs: Volatile Organic Compounds

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Genesis and Journey of Classification

1.1 Introduction

The notifications issued by the Ministry of Environment and Forest during 1989 for Doon Valley, Uttarakhand introduced the concept of classification of industries as red, orange, and green categories. The purpose of this classification was to facilitate decisions related to location of these industries. The criteria for classification of industries was primarily based on quantity of industrial effluent, quantity of fuel/coal, and the number of employees, and amount of waste generated. The notification included list of 129 sectors, classified under red (45), orange (35), and green (39) categories. The criteria used for Doon Valley Notification, 1989 is summarized in the **Figure I**.

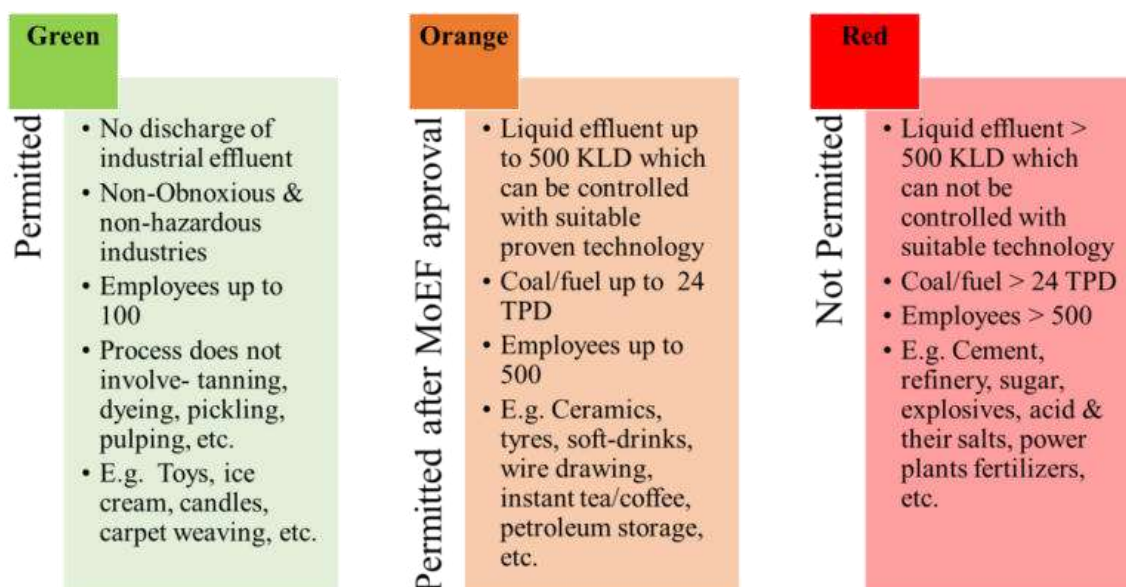


Figure I: Criteria for classification of industries in Doon Valley Notification, 1989

Subsequently, the application of this concept was extended to other parts of the country not only for the purpose of location of industries, but also for the purpose of consent management and formulation of norms related to surveillance/inspection of industries. As the State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs) were following different

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categorization of industries, to maintain the uniformity across the country, during 2012, CPCB issued a list of 244 sectors, classified under red (85), orange (73) and green (86) categories.

In order to harmonize the criteria for categorization, during the year 2016, CPCB developed the scoring methodology to classify the industries based on the Pollution Index (PI) which was a function of water pollution, air pollution and hazardous waste generation. Based on this methodology, CPCB has classified 257 sectors under red (63), orange (91), green (65) and white (38) categories and directed SPCBs/PCCs to adopt the same. During 2016, CPCB introduced white category as a new category for such sectors which are “practically non-polluting”. SPCBs/PCCs were also empowered to categorize any new/left-out sector at their own level, following the methodology prescribed by CPCB. Additionally, during 2020, CPCB also segregated the list of non-industrial operations/facilities. The overall journey of classification may be understood with the help of milestone chart shown in **Figure II**.

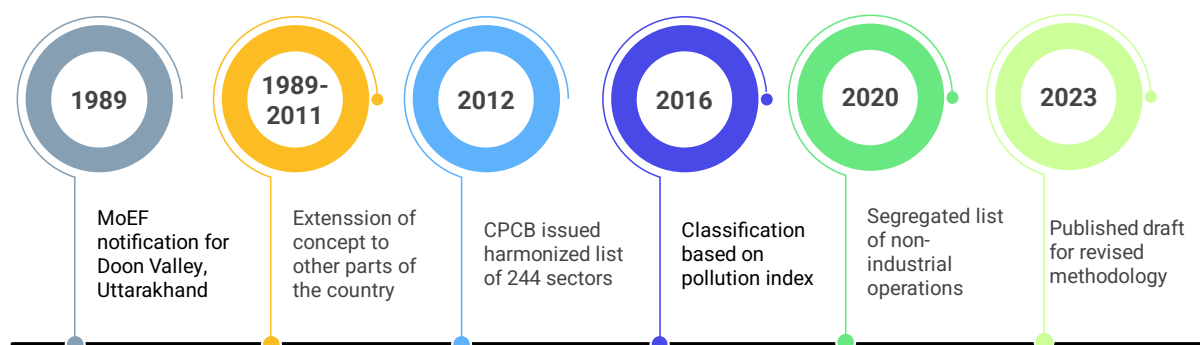


Figure II: Genesis and journey of classification of sectors

The concept of categorization is based on the “Precautionary Principle”, which focuses on potential of industries to pollute the environment. The purpose of categorization is to ensure that the industry is established in a manner consistent with the environmental objectives and to prompt industrial sectors to adopt cleaner technologies, ultimately resulting in generation of minimum pollutants.





Modified Methodology for Classification

2.1 Need and scope for revision of methodology

Based on the experience gained over the years, a need was felt to revisit the 2016 methodology for classification of sectors considering following scope of improvement:

i. Assessment of Pollution Index:

The category of any industrial sector depends on the Pollution Index (PI), which comprises of scores of three pollutant groups i.e., air pollution, water pollution and hazardous waste. The water and air pollutants were each assigned a weight of 40%. However, the hazardous waste generation was given 20% weightage in pollution index.

As per the classification methodology of 2016, in case of absence of any pollutant groups, pollution index was normalized to 100. As a result, different formulas were required to compute pollution index.

Further, the normalization method has certain limitations while comparing pollution potential among sectors having scores for all three pollutant groups verses score only for any one/two pollutant group(s). Moreover, it was also observed that in some sectors normalization involved subjectivity based on perception.

ii. Size of operations of industrial activities:

It was observed that, there was less variation in PI score of industry based on size of operation in same sector. Limited variables/slabs were considered for the quantity of wastewater discharge and fuel consumption. It was also observed that adequate weightage in the considered variables/slabs to account the variation in size of operations of industrial activities need to introduce.

iii. Consideration to segregated industrial activities:

Although there were differences in pollution potential of integrated and standalone units of a particular sector, the classification methodology (2016) classifies the integrated or standalone units in the same sector. For example, standalone cement grinding units will have less pollution potential than integrated cement plants, but both were classified under red category.

iv. Consideration of type of fuel used:

In industrial operations requiring fuels, the amount of emissions is governed by many factors such as the type of fuel and its calorific value, combustion efficiency, emission factors, etc. Use of biomass and cleaner gaseous fuels such as Piped Natural Gas (PNG), Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG), bio-CNG etc. have increased significantly in recent years. It was observed that adequate weightage based on type of fuel used is required.

v. Separate scoring for sewage and trade effluent:

It is desirable to have separate wastewater scoring criteria for the sectors generating trade effluent and sewage effluent, as characteristics, treatment method and impact are different for trade effluent generated from industrial sectors and sewage effluent generated from infrastructure & development sectors.

vi. Motivation to industries for progressive environmental management:

In the previous classification regime, there was no effective provision for change in category of industries based on the variation in pollution potential of a sector, even if the industries adopt cleaner technologies or switch over to cleaner raw material/cleaner fuel etc., resulting into reduction in pollution index.

2.2 Modified methodology for classification of sectors

Considering the scope of revision, CPCB prepared a draft report on “Classification of Industrial Sectors into Red, Orange, Green and White Categories: A Tool for Progressive Environmental Management”. As per the draft report, a revised methodology for the classification is proposed which incorporates, water pollutant score, air pollutant score and waste generation score, based on the pollution potential of a sector on the environment. Scores out of 100 were given to each three pollutant groups and formula for calculating cumulative score based on the impact pollutant is devised. These scores are used for computation of pollution index for deciding the



category of industrial sector. The cut-offs for deciding the category were based on the quartiles of pollution indices, pollution potential of sectors, etc. The draft report was placed on CPCB website in July 2023, for comments/feedback from stakeholders.

CPCB received 161 representations, comprising more than 700 comments from various State Pollution Control Boards, research and technical institutions, industrial associations, NGOs, individual industries, and the public. The stakeholder-wise representations are shown with the help of pie-chart in **Figure III**.

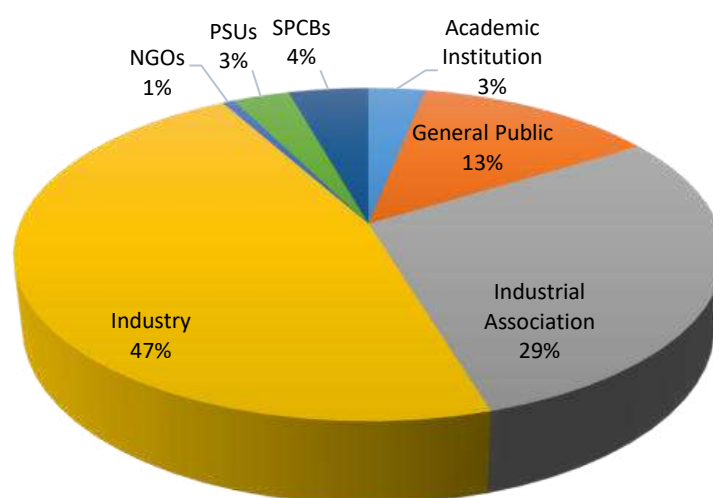


Figure III: Stakeholder-wise representations received

Subsequently, CPCB constituted a committee to critically examine and analyse the comments and to make recommendations for suitable incorporation in the final methodology and classification. After incorporating the feedback received from stakeholders, the Committee has finalized the basic methodology which can be used as a yardstick for classification of the sectors into Red, Orange, Green and White Categories.

Further, based on the stakeholders' comments, a need was felt to introduce a separate "blue category" for Essential Environmental Services (ESS) required for management of waste generated from domestic/household activities and, an incentive mechanism to promote units in a particular sector, taking measures resulting into better environmental performance. An addendum was prepared, shared and presented to all SPCBs/PCCs. The addendum was also placed in the CPCB Website on 11.07.2024 for inputs/comments. Till last date (i.e. 11.08.2024) 09 representations were received in the addendum. All representations were examined, and classification based on revised methodology is finalised.



It is worth to mention that to safeguard the environment, following the fundamental principle of classification i.e., "Precautionary Principle", scope is always available for application of mind and collective wisdom. As per the precautionary principle, when human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Therefore, variation from methodology is possible in case of projects having high chances of damage to the environment/eco-system such as river mining, etc. or having associated accidental risk such as major accident hazards installations wherein risk is associated with industrial activities having potential in terms of operation or process, manufacturing, transportation, and storage of one or more hazardous chemicals as prescribed by the Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989.

Considering the above issues, the classification methodology was modified based on the potential of three pollutant groups, namely, water pollutant, air pollutant and waste pollutant (which are hazardous/toxic/infectious/bulk in nature), which have been given scores out of 100, each. Slabs are assigned for selection of pollutant groups respectively for water, air, and waste. Score can be decided based on dominant pollutants in the pollutant groups and quantity as detailed in Table-I, Table-II and Table-III. These scores are used for computation of pollution index for deciding the category of sector. The scoring methodology is based on the pollution potential during generation and not at the end of pipe/ after treatment considering the fact that all pollutants need to be treated and disposed as per the provisions/rules notified under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 and as amended.

The details of scoring criteria for PI_W for "water pollutant," PI_A for "air pollutant" and PI_H for "waste generating sector" are as follows:

2.2.1 Scoring criteria for Water Pollutant " PI_W "

Water pollution score consider the potential water pollution load from any sector in terms of characteristics and quantity of untreated trade effluent (wastewater). The "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any [industry, operation or process, or treatment and disposal system], other than domestic sewage.

The water pollutant score (PI_W) is the addition of three sub-scores which are based on organic content in terms of oxygen demand of wastewater (W1), potential of other pollutants (W2) and





quantum of wastewater (W3). The weightages of W1, W2 and W3 in the water pollution score are 35%, 30% and 35%, respectively.

Proportionate higher scores are assigned to the sectors generating trade effluent of high BOD and/or high COD, heavy metals/toxic compounds, and large volume of wastewater. The scores are assigned considering the potential for causing damage to the environment. It may be noted that for sectors generating industrial effluent, dominant quantity of trade effluent is considered in score W3 (W3-1 to W3-5). Whereas, for sectors generating huge volume of sewage effluent such as railway stations, STPs, residential building projects, airports etc., the separate scores W3 (W3-6 to W3-10) are assigned. The term used, “Sewage effluent” means effluent from any sewerage system or sewage disposal works and includes sullage from open drains. The scoring criteria for water polluting sectors are given in **Table-I**.

Table I: Scoring Criteria for Water Polluting Sector

Water Pollutant Group	Description	Score
Score W1: Score based on the oxygen demand of wastewater (Maximum of the following scores to be considered)		
W1-1	BOD $\geq$ 5,000 mg/l or COD $\geq$ 10,000 mg/l	35
W1-2	1000 $\leq$ BOD < 5,000 mg/l or 5000 $\leq$ COD < 10,000 mg/l	30
W1-3	500 $\leq$ BOD < 1,000 mg/l or 1000 $\leq$ COD < 5,000 mg/l	25
W1-4	100 $\leq$ BOD < 500 mg/l or 250 $\leq$ COD < 1,000 mg/l	20
W1-5	10 $\leq$ BOD < 100 mg/l or 50 $\leq$ COD < 250 mg/l	10
Score W2: Score based on other pollutants in the wastewater (Maximum of the following scores to be considered)		
W2-1	Pollutants like pesticides, heavy metals, and toxic compounds: (Aluminium, Anionic detergents, Barium, Chloramines, Copper, Fluoride, Total residual chlorine, Iron, Manganese, Mineral oil, Phenolic compounds, Selenium, Silver, Sulphide, Cadmium, Cyanide, Lead, Zinc, Mercury, Tin, Vanadium, Antimony, Benzene, Benzo-a-pyrene, Molybdenum, Nickel, Phosphates, Polychlorinated biphenyls, Polynuclear aromatic hydrocarbons, Arsenic, Total/Hexavalent Chromium, Trichloroethane, Trichloroethylene, Adsorbable Organic Halogens (AOx), Pesticides compounds, Residual antibiotic, Radioactive materials, etc.)	30
W2-2	Pollutants like Nitrate Nitrogen, Nitrate, Ammonical Nitrogen, Total Kjeldahl Nitrogen (TKN), Oil & grease, pH < 5.5 or > 9	25
W2-3	Pollutants mainly in terms of inorganic dissolved solids and associated other impurities due to process e.g. wastewater generated from DM water rejects, boiler blowdowns, brine solution rejects, fresh-water RO rejects, etc.	20
W2-4	Pollutants mainly in terms of inorganic dissolved solids e.g. wastewater from cooling towers, cooling-re-circulation processes, etc.	15

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Score W3: Score based on quantity of wastewater generated		
A. For sectors generating Industrial Trade effluent (Maximum score to be considered)		
W3-1	Wastewater $\geq$ 500 KLD	35
W3-2	100 KLD $\leq$ Wastewater $<$ 500 KLD	30
W3-3	50 KLD $\leq$ Wastewater $<$ 100 KLD	25
W3-4	10 KLD $\leq$ Wastewater $<$ 50 KLD	20
W3-5	Wastewater $<$ 10 KLD	15
B. For sectors such as STPs, building projects, etc. generating/handling only high-volume Sewage (Maximum score to be considered)		
W3-6	Sewage $\geq$ 5,000 KLD	35
W3-7	2,000 KLD $\leq$ Sewage $<$ 5,000 KLD	30
W3-8	500 KLD $\leq$ Sewage $<$ 2,000 KLD	25
W3-9	100 KLD $\leq$ Sewage $<$ 500 KLD	20
W3-10	Sewage $<$ 100 KLD	15
Water Pollutant Score (PI_w) = $W1+W2+W3$		

2.2.2 Scoring criteria for Air Pollutant “ PI_A ”:

Air pollution score consider the potential air pollution load from any sector in terms of characteristics of emissions and its quantum/scale in terms of quantity of fuel. The air pollutant score is based on generation of emission. The “air pollutant” means any solid, liquid, or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

The air pollution score (PI_A) is the addition of three sub-scores which are based on the type of pollutants in emissions (A1), work zone emission/fugitive emissions & odour nuisance (A2), and fuel type & quantity (A3). The weightages of A1, A2 and A3 in air pollution score are 35%, 30% and 35%, respectively.

Proportionate higher scores are assigned to the sectors generating emissions with hazardous air pollutants, process-based fugitive emissions and using solid/liquid fuels, as such pollutants have higher potential to damage the environment.

The California Air Resources Board defines fugitive emissions as “Emissions not caught by a capture system which are often due to equipment leaks, evaporative processes and windblown disturbances.” The fugitive emissions from any process having acid mist, VOCs, etc. are given higher weightage (score $A2=30$) as compared to the fugitive emissions of inert material (score $A2=25$). Sectors having persistent foul odour issue, will get score $A2=20$. Sectors/units using solid/liquid fuel will get higher score-A3, compared to the sectors using cleaner gaseous fuel or electricity. The scoring criteria for air polluting sectors are given at **Table-II**.

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Table II : Scoring criteria for air polluting sectors

Air Pollutant Group	Description	Score
Score A1: Score based on Process emissions (point source) (Maximum of the following scores to be considered)		
A1-1	Hazardous Air Pollutants (HAPs) and heavy metals: <i>HAPs (Phosgene, Benzene, Benzo(a)pyrene, Butadiene, Toluene Di-isocyanate, Methylene-di-phenyl Di-isocyanate, Ethylene Oxide, Ethylene Di Chloride, Acrylonitrile, Propylene Oxide), Dioxins & Furans, Asbestos, Polycyclic Aromatic Hydrocarbons (PAHs), HCN, Cd, Th, Hg, Sb, As, Pb, Co, Cr, Cu, Mn, Ni, V, etc.</i>	35
A1-2	Halogens, acids, and pesticides-based pollutants: <i>H₂S, HF, HBr, P₂O₅ as H₃PO₄, NH₃, TOC, Cl, HCl, SO₃, CH₃Cl, Total Fluoride, PM having pesticide compounds/other organic compounds, Acid mist, etc.</i>	30
A1-3	Pollutants due to combustion of fuel or due to process: <i>PM, CO₂, CO, NO_x, SO₂, etc.</i>	25
A1-4	Volatile Organic Compounds (VOCs): <i>Ethyl benzene, Styrene, Toluene, Xylene, Aromatics, Propylene Glycol, Ethylene Glycol, etc.</i>	20
Score A2: Score based on fugitive emissions and odour nuisance (Maximum of the following scores to be considered)		
A2-1	Fugitive emissions of Particulate Matter (PM), acid mist, VOCs, etc. from process	30
A2-2	Fugitive emissions of Particulate Matter (PM), acid mist, VOCs, etc. due to storage and handling, etc.	25
A2-3	Odour nuisance, including odour due to the use of binding gums, cements, adhesives, enamels etc.	20
Score A3: Score based on quantity of fuel (Maximum of the following scores to be considered)		
	Coal or liquid fuels	
A3-1	Fuel consumption ≥ 24 TPD	35
A3-2	$12 \text{ TPD} \leq \text{Fuel consumption} < 24 \text{ TPD}$	30
A3-3	Fuel consumption < 12 TPD	25
	Biomass-based fuels	
A3-4	Fuel consumption ≥ 48 TPD	25
A3-5	$24 \text{ TPD} \leq \text{Fuel consumption} < 48 \text{ TPD}$	20
A3-6	Fuel consumption < 24 TPD	15
	Cleaner/gaseous fuels, such as, PNG, CNG, LPG, Compressed Biogas (CBG), propane, butane etc.	
A3-7	Fuel consumption ≥ 120 TPD	20
A3-8	$60 \text{ TPD} \leq \text{Fuel consumption} < 120 \text{ TPD}$	15
A3-9	Fuel consumption < 60 TPD	10
A3-10	Electricity	0
Air Pollutant Score (PI_A) = A1+A2+A3		
Note: In case, any sector/unit is using more than one type of fuel, the most polluting fuel category, will be considered.		

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2.2.3 Scoring criteria for Industrial Waste Generating Sector “PI_H”

Industrial waste generating sectors are considered based on the generation of hazardous waste/high volume low effect waste. As per the Hazardous and Other Wastes (Management & Trans-boundary Movement) Rules, 2016, the “hazardous waste” means any waste which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes or substances and shall include waste as per the Schedule I, Schedule II and Schedule III of the rule. Further, scores are also assigned to the high-volume low effect wastes such as fly ash, phosphogypsum, red mud, jarosite, slags from pyro-metallurgical operations, mine tailings and ore beneficiation rejects.

The score for waste comprises of two sub-scores H1 and H2. The H1 score is based on the different type of hazardous waste which are generated during the process, and which required to be managed/disposed through common facility OR based on the generation of high-volume low effect waste/ HW like contaminated bags/ drums etc. The H2 score is based on the total quantum of waste generated.

The desirable disposal method such as incineration, landfill after treatment, landfill etc. signifies the potency of hazardous waste. In recent time, the utilization of hazardous waste as per the Rule-9 of Hazardous and Other Wastes (Management & Trans-boundary Movement) Rules, 2016, as alternate fuel and raw material in cement kilns, as recyclable hazardous waste etc. has increased. The classification is based on the pollution potential due to generation of such types of hazardous waste from any sector. The score for the quantum of hazardous waste is total potential of generation of such hazardous waste by any sector., Score H1: Based on potency of hazardous waste and score H2: Based on quantum of hazardous waste, are given weightage of 30% and 70%, respectively. Considering the higher risk due to amount of hazardous waste generated rather than its disposal method, more weightage is given to the quantity. Overall waste generation score in case of waste generating sector will be $PI_H = H1 + H2$. The scoring criteria for hazardous waste generating sectors are given at **Table-III**.

A separate scoring criterion has been included for sectors generating bio-medical waste. Bio-medical waste means any waste, which is generated during the diagnosis, treatment or immunisation of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps, including the categories mentioned in Schedule-I appended to the Bio-Medical Waste Management Rules, 2016. As any Health Care

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Facilities (HCFs) generates all types of bio-medical waste (red, yellow, blue, and white) and quantities of such wastes may vary considerably based on the type of facility/location of facility (rural/urban), and other such factors. Therefore, scoring based on number of beds in a healthcare facility is considered as sole criteria for assigning waste score (H: B-1 to B-7) as tabulated in **Table-III**.

Least score of 25 is given to non-bedded healthcare facilities and maximum score of 100 is given to facilities having more than 1,000 beds. Overall waste generation score in case of bio-medical waste generating sector will be PI_H .

Table III: Scoring criteria for waste generating Sectors

Waste Pollutant Group	Description	Score
A. Score for sectors generating hazardous waste		
Score H1: Score based on the hazardous waste management/disposal method. (Maximum of the following scores to be considered)		
H1-1	Hazardous wastes which are flammable, ignitable, corrosive, oxidizing toxic, etc. and requiring disposal through incineration	30
H1-2	Hazardous wastes which are reactive, capable of yielding another material post disposal, etc. and requiring disposal in secured landfill after stabilization/treatment	25
H1-3	Hazardous wastes which are requiring direct disposal in secured landfill without stabilization	20
H1-4	High volume and low effect wastes, contaminated bags/ drums/ containers etc.	10
Score H2: Score based on quantity of hazardous waste generation. (Maximum of the following scores to be considered)		
H2-1	Hazardous Waste ≥ 5000 TPA	70
H2-2	$1000 \text{ TPA} < \text{Hazardous Waste} < 5000 \text{ TPA}$	50
H2-3	$200 \text{ TPA} \leq \text{Hazardous Waste} < 1000 \text{ TPA}$	30
H2-4	$10 \text{ TPA} \leq \text{Hazardous Waste} < 200 \text{ TPA}$	20
H2-5	Hazardous Waste $< 10 \text{ TPA}$	10
B. Scores for the sectors generating bio-medical waste		
B-1	No. of beds $\geq 1,000$	100
B-2	$500 \leq \text{No. of beds} < 1,000$	80
B-3	$200 \leq \text{No. of beds} < 500$	60
B-4	$50 \leq \text{No. of beds} < 200$	50
B-5	$10 \leq \text{No. of beds} < 50$	40
B-6	No. of beds < 10	30
B-7	Non-bedded facility	25
For sectors generating hazardous waste $PI_H = H1 + H2$ For sectors generating bio-medical waste $PI_H = B$		

2.3 Computation of Cumulative Pollution Index and criteria for deciding category of sector

In the revised methodology of classification (2025), all three pollutant scores due to water, air and industrial waste generation are taken into account while computing pollution index. The formula for computing cumulative pollution index (PI) is as follows:

$$PI = i_{max} + (100 - i_{max}) \left(\frac{i_2 + i_3}{200} \right)$$

Where, i_{max} , is the maximum score among Water (PI_W), Air (PI_A), and Waste (PI_H) pollutant scores and i_2 & i_3 are the remaining pollutant scores.

The category of the sector will be decided based on the pollution index ranges given at **Table-IV**.

Table IV: Ranges of Cumulative Pollution Index for different categories

Cumulative Pollution Index (PI)	Category of industrial sector
$PI \geq 80$	Red
$55 \leq PI < 80$	Orange
$25 \leq PI < 55$	Green
$PI < 25$	White

The purpose of classification is to have uniform consent mechanism, defined routine monitoring frequency by concerned SPCB/PCC, environmental protection plans etc. Modified methodology also considers the variation in pollution potential due to various type of activities and operations in a particular sector.

The scores/pollution index/category of any two sectors may be same, however, comparing two different sectors based on the category or pollution index is not desirable as the cumulative PI is a function of air pollutant, water pollutant, and waste pollutant and the cumulative score is arithmetically relates the maximum score of one pollutant with the remaining other two pollutants. Hence, PI/category of sectors may be same but may have different impact on environment.





2.4 Blue Category Projects- Essential Environmental Services for management of environmental pollution arising from domestic/household activities

Essential Environmental Services may be defined as those facilities which are essential to control, abate and mitigate pollution generated from Domestic and Industrial activities. Such Essential environment services for Industrial Activity includes CETP, CHWT/SDF, Effluent conveying system etc. and essential environment services for domestic activities includes STP, MSW etc. Both the type of EES plays a vital role in Environment Management. However, during the treatment of waste, some EES generates/handle hazardous waste/infectious waste. The EES which do not generate Hazardous Waste, and which otherwise have large littering potential can be categorised as Blue Category Projects. Further, there are past legal references wherein Hon'ble Apex court has also considered the importance and requirement of such Essential Environment Services.

Human settlements whether located in rural/urban/eco-sensitive area generate sewage, solid waste, and C&D waste, which are required to be managed to prevent adverse impact on environment and human health. Basic environment management facilities are required to be set-up to manage such waste which includes STP, C&D waste processing facility, MSW management facility like sanitary landfill, material recovery facility & waste processing units, bio-methanation, bio-composting, waste to energy, etc.

These facilities are basically essential environment services which play a vital role in protecting environment and human health. These facilities may also bring value addition by producing various by-products such as secondary raw material, compost, energy, etc. and promotes circular economy and sustainable development by converting waste into wealth. Moreover, these categories do not generate hazardous or infectious wastes.

As the role and importance of these facilities is different in nature as compared to other activities and industries in the sense that they are primarily set-up for prevention, control and abatement of soil, water and air pollution. It is more appropriate to have a separate colour category-Blue Category for essential environmental services facilitates related to environmental pollution arising from domestic/household activities. These activities are required to meet all the prescribed environmental norms/rules notified from time to time and the pollution index for such Essential Environmental Services (EES) shall continue to be calculated as per the formula and consent to operate will be governed based on the pollution index. However, the

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category of the EES will be termed “Blue Category sector” and as an incentive for the essential services, additional 2 years validity for consent to operate (as per PI) will be provided.

The list of EES facilities is given at [Annexure-II](#).

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3.2. Usage of classification of sectors

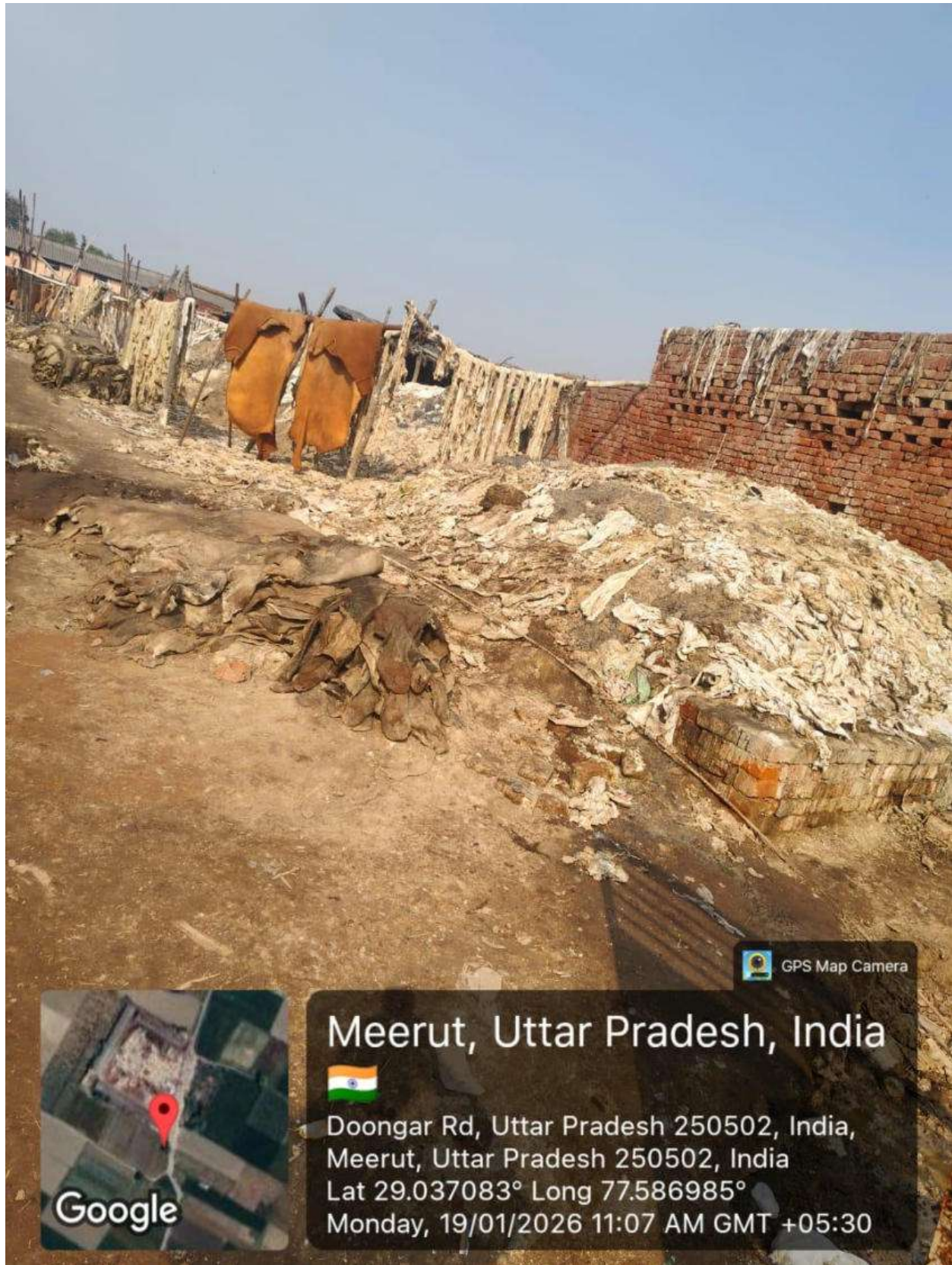
The classification of sectors may be used for the following purposes:

- i. **Consent management:** SPCBs/PCCs may grant Consent to Operate (CTO) to red, orange, and green categories of industries for validity up to 5 years, 10 years, and 15 years, respectively as per existing provisions which would be later governed as per the provisions/guidelines under Jan Vishwas (Amendment of Provisions) Act, 2023/Water Act, as amended. The validity of blue category sectors will be 2 years more than the category based on PI.
- ii. **Inspection frequency:** SPCBs/PCCs may prioritize their environmental surveillance programs based on the categories of sectors. SPCBs/PCCs are required to ensure inspection of red, orange, and green category of industries at least once in six-months, one-year, and two-years, respectively. Common facilities and 17 categories of industries are to be inspected at least once in every three-months.
- iii. **Siting criteria:** The categorization may be used as a tool for deciding the location/siting of an industry in a particular location.
- iv. **Development of cluster:** The classification will help in planning of sector specific cluster, based on scoring of various pollutants and development of adequate environment management infrastructure facility, accordingly.
- v. **Sector specific plans for pollution control:** The plans for control of pollution may be prepared and implemented on priority for the sectors having higher pollution index and overall higher pollution load.
- vi. **Levying environmental compensation:** Pollution index may be used for determining and levying environmental compensation on industries violating the environmental norms.
- vii. **A tool for progressive environmental management:** Industrial units may adopt cleaner technologies, cleaner fuels, etc. which may result in reduction of pollution index, thus, moving to lower pollution potential category. It will provide incentives to industries in terms of less consent renewal fees, less environmental surveillance/compliance burden, more validity period for consents/authorizations, etc.

3.3 Classification of left-out/new sectors

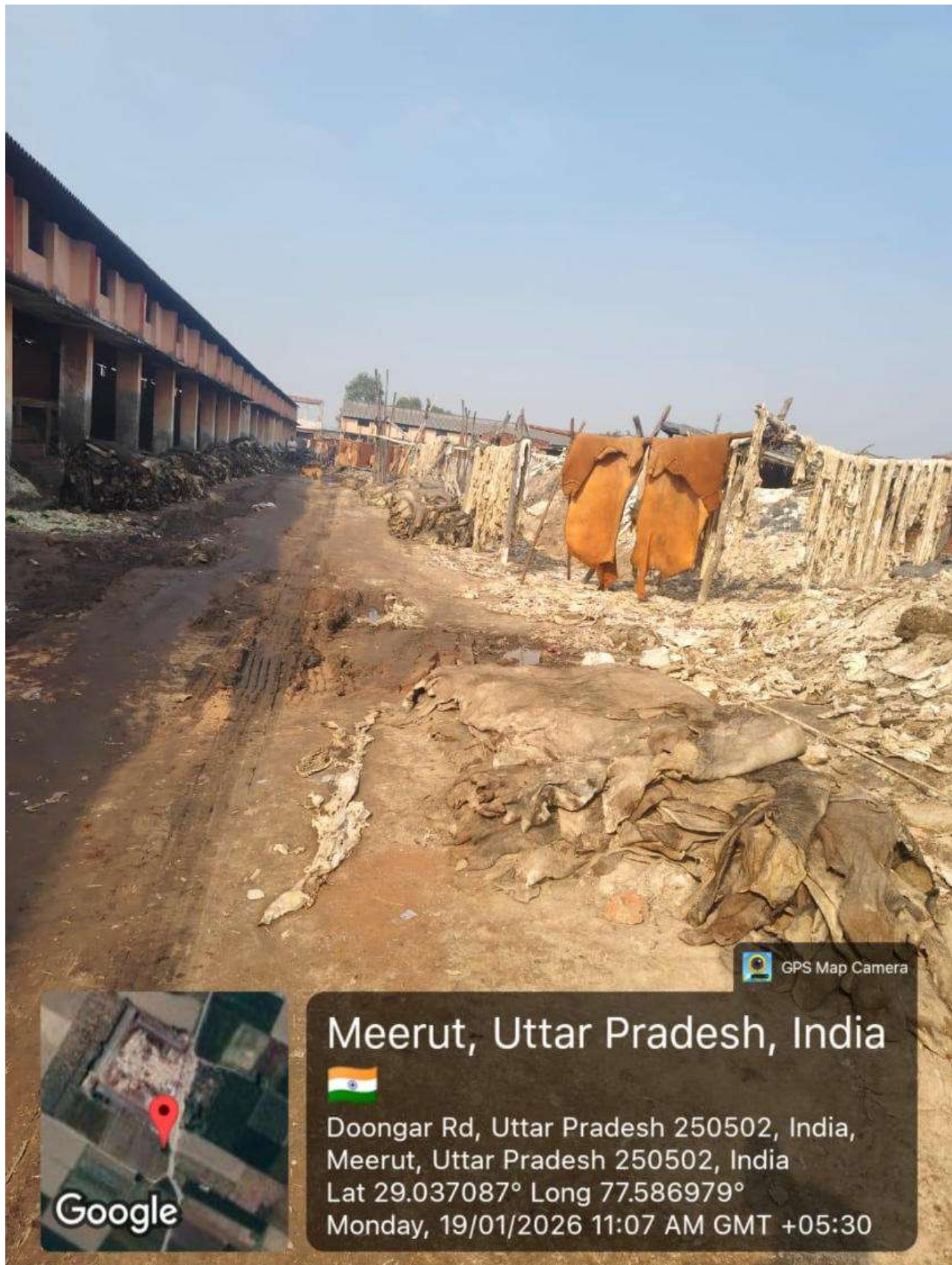
The revised methodology of classification (2025) and list of sectors classified by CPCB is required to be adopted and implemented by all SPCBs/PCCs. In case of any new or left-out

S. No.	Sector	W1	W2	W3	PI _W	A1	A2	A3	PI _A	H1	H2	PI _H	Pollution Index (PI)	Category	Remarks	Concerned Division
165	Spice grinding	0	0	0	0	0	30	0	30	0	0	0	30	Green		IPC-V
166	Cutting, Sizing and polishing of marble, granite and other stones	10	0	20	30	0	30	0	30	0	0	0	40.5	Green		IPC-V
167	Manufacturing of Solar module/ non-conventional energy apparatus	0	0	0	0	0	0	0	0	0	0	0	0	White		IPC-V
~T~																
168.0	TANNERIES															
168.1	Tanneries (Raw to finish)	35	30	25	90	0	20	0	20	25	30	55	93.8	Red		IPC-IV
168.2	Tanneries (Raw to wet blue)	35	30	25	90	0	20	0	20	25	30	55	93.8	Red		IPC-IV
168.3	Tanneries (Wet blue to finish)	35	30	20	85	0	20	0	20	25	30	55	90.6	Red		IPC-IV
168.4	Vegetable tanning	20	25	25	70	0	20	0	20	20	10	30	77.5	Orange		IPC-IV
169.0	MANUFACTURING OF TOOTH POWDER, TOOTHPASTE, TALCUM POWDER AND OTHER COSMETIC ITEMS															
169.1	Manufacturing of toothpaste and other cosmetic items	20	25	20	65	25	0	25	50	0	0	0	73.8	Orange		IPC-V
169.2	Manufacturing of tooth powder, talcum powder	0	0	0	0	0	25	0	25	0	0	0	25	Green		IPC-V
170.0	THERMOMETER MANUFACTURING															
170.1	Glass (mercury based) thermometer manufacturing	10	30	15	55	25	0	10	35	25	10	35	70.8	Orange	Process involves making of glass bulb, forming reservoir in the glass tube for fluid, inserting fluid, scale marking. Use of fuel to heat the glass tubes and hydrofluoric acid to seal the scaling. Small quantities of spent acids are generated.	IPC-V
170.2	Digital thermometer manufacturing	0	0	0	0	0	0	0	0	0	0	0	0	White		IPC-V



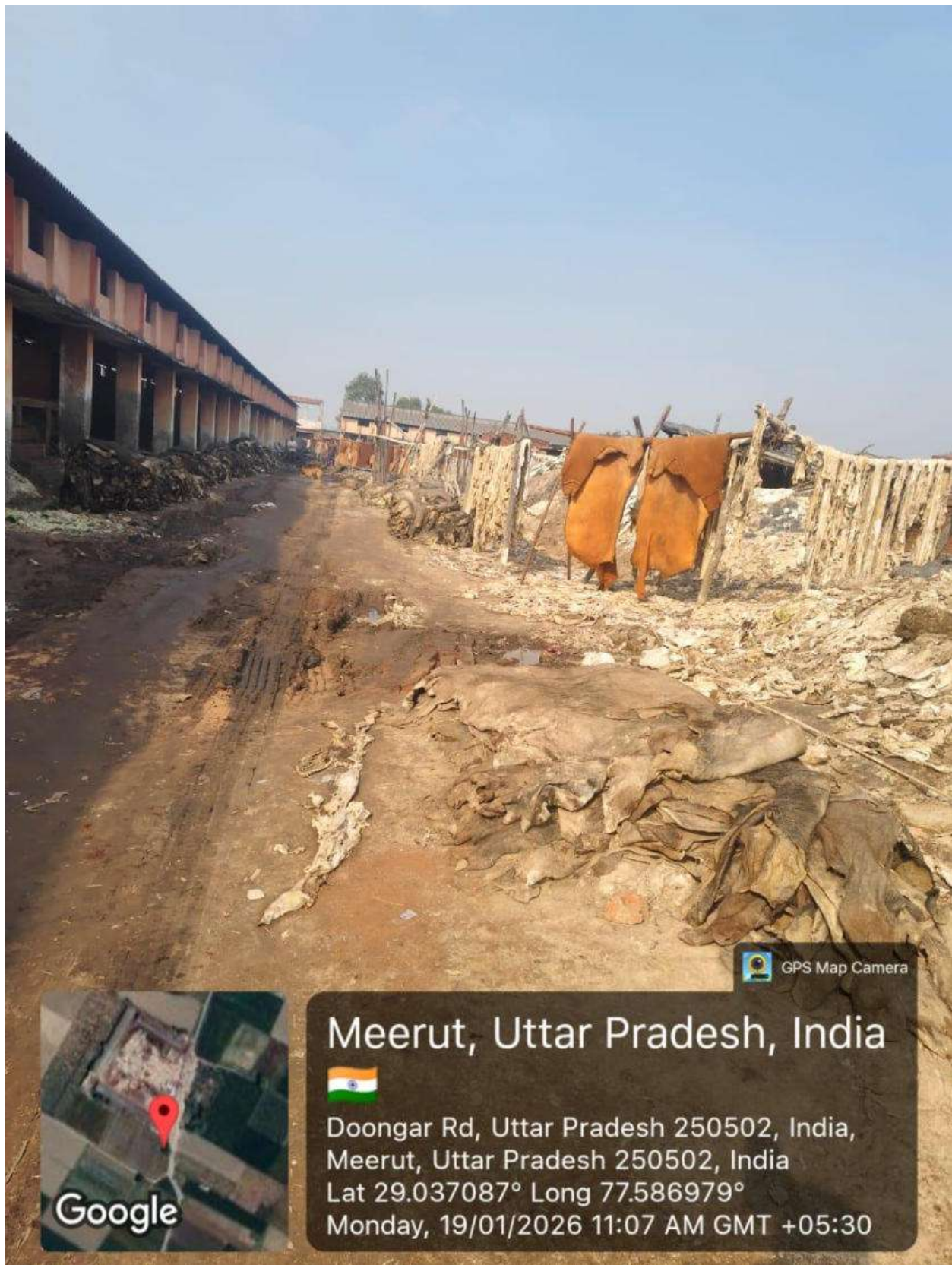
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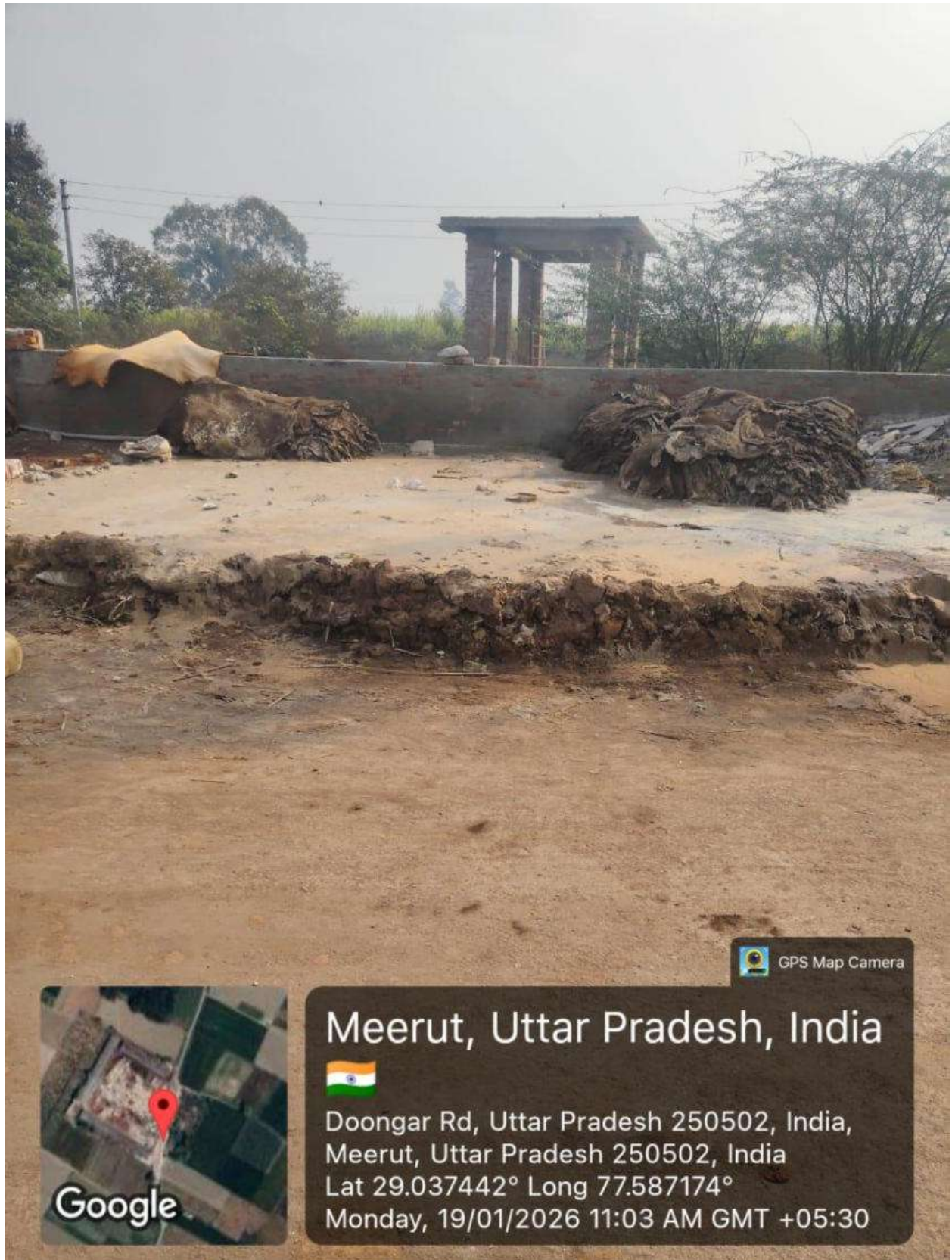
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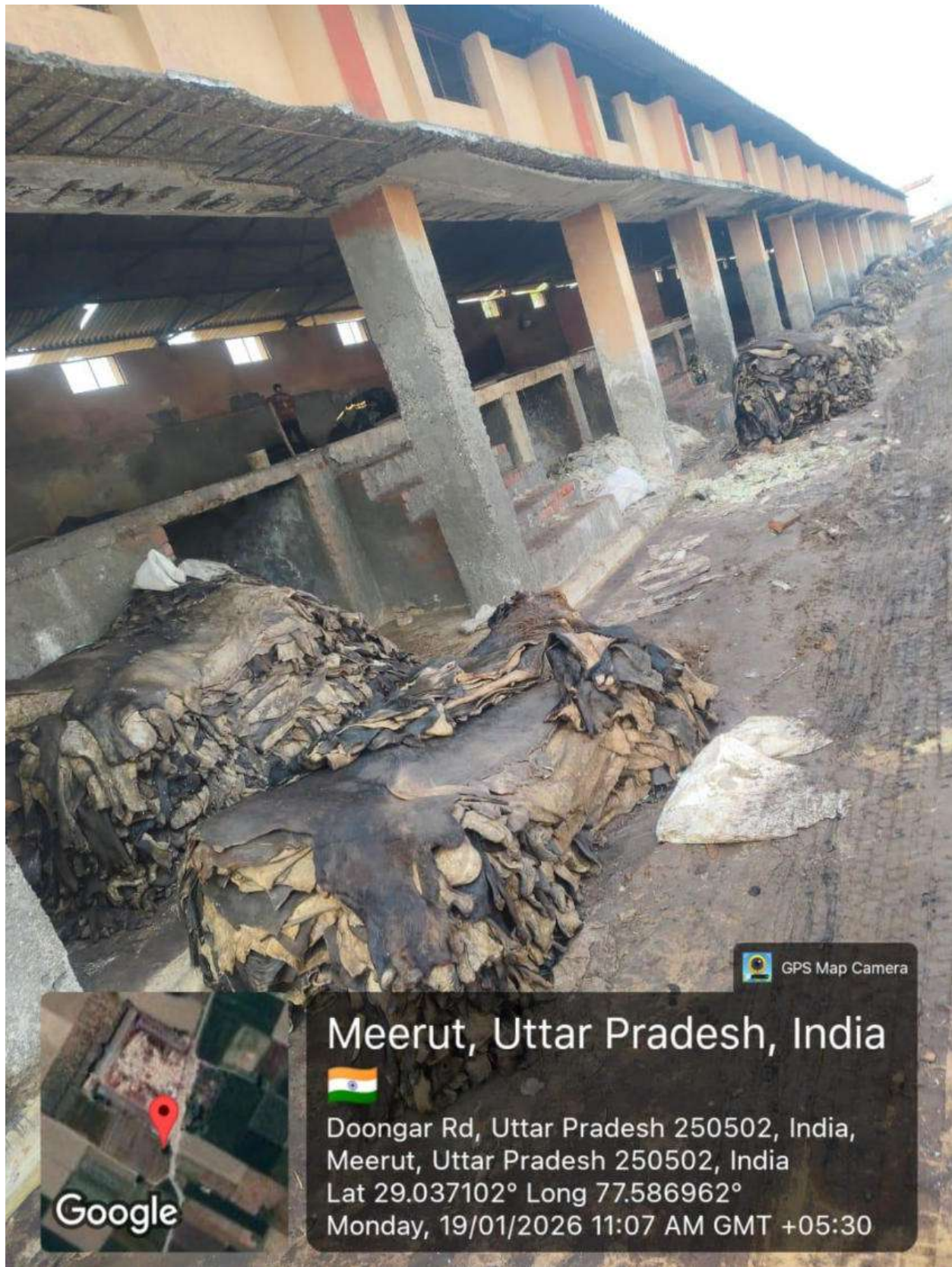
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Rawan

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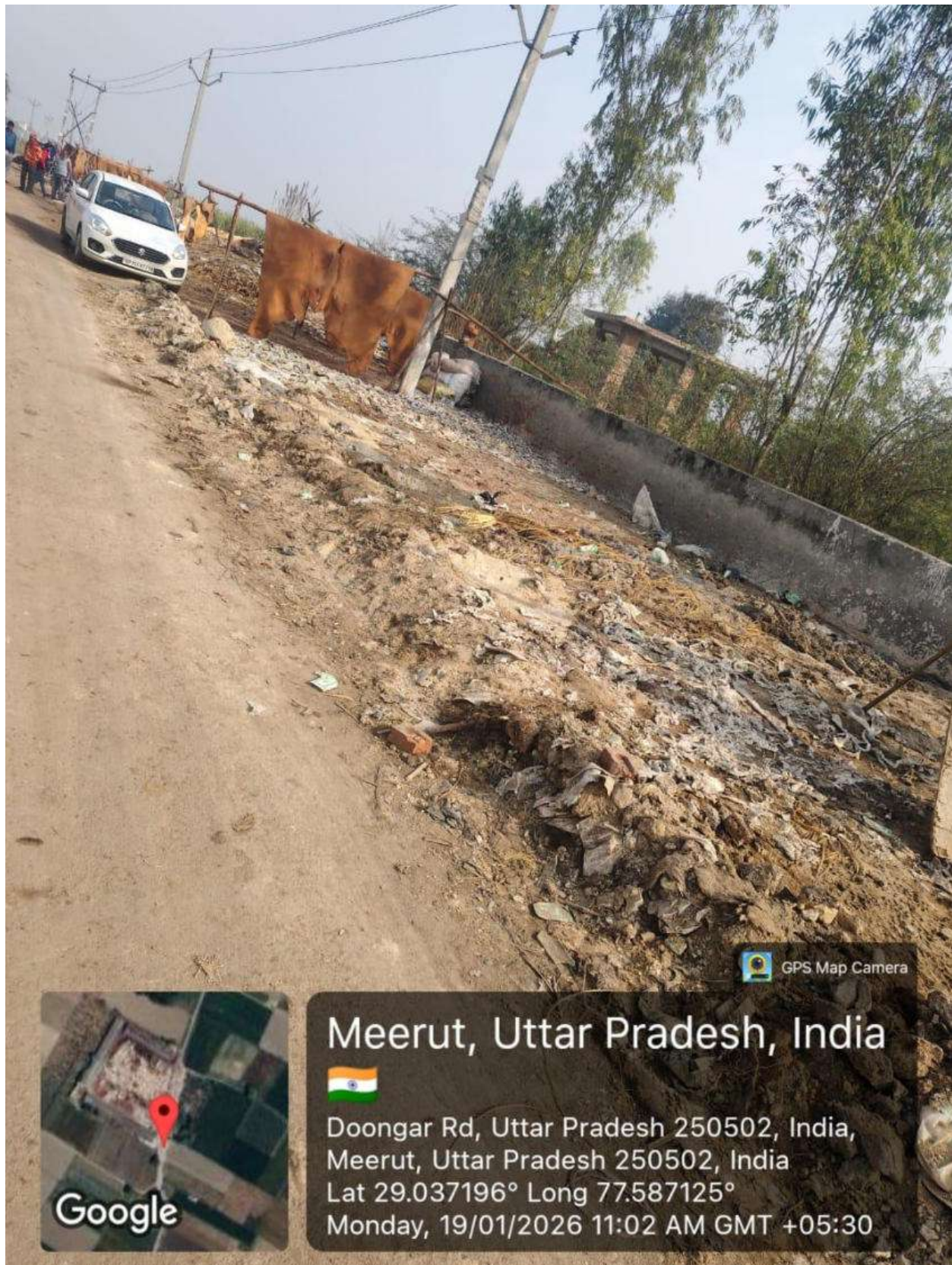
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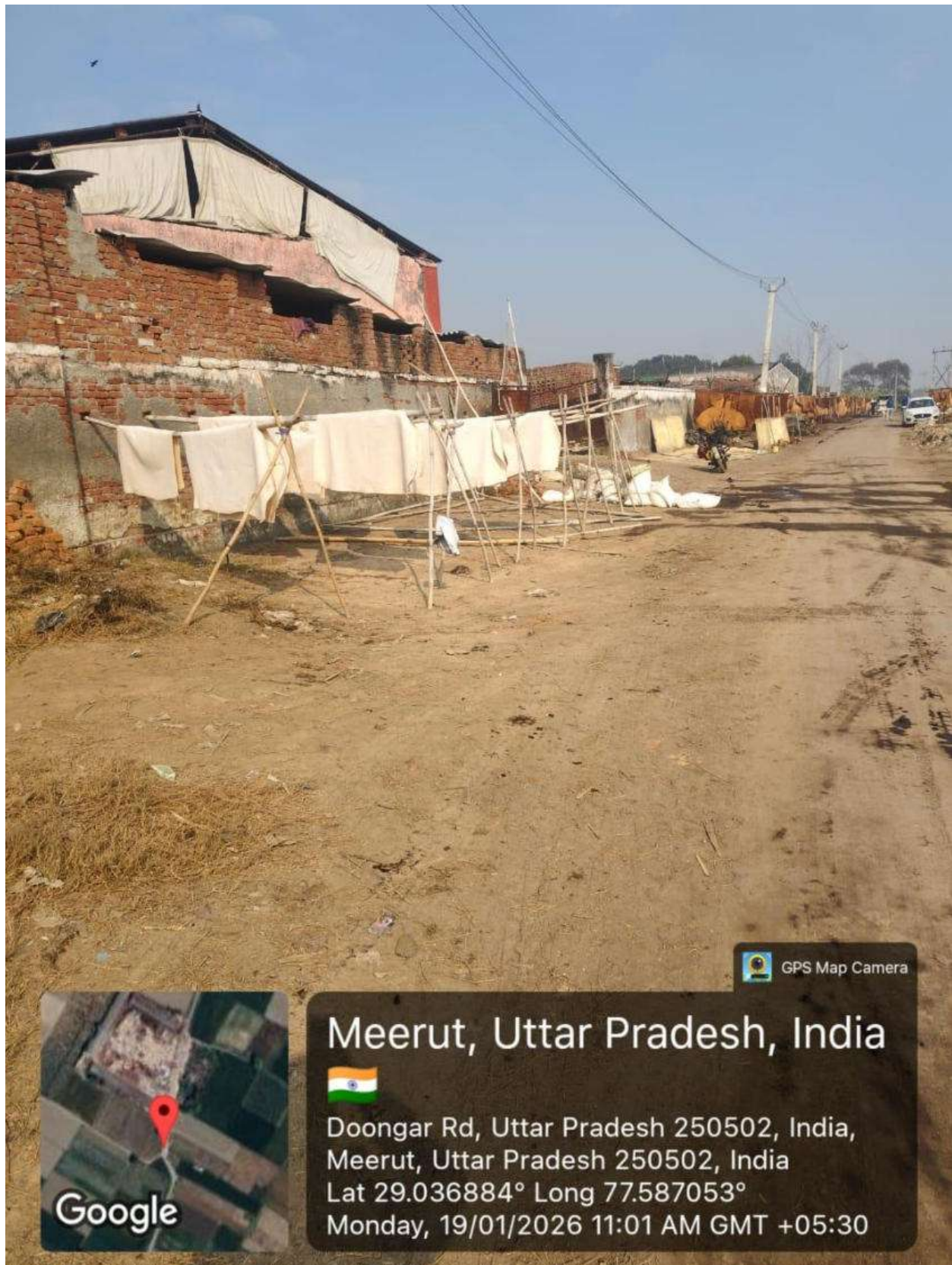
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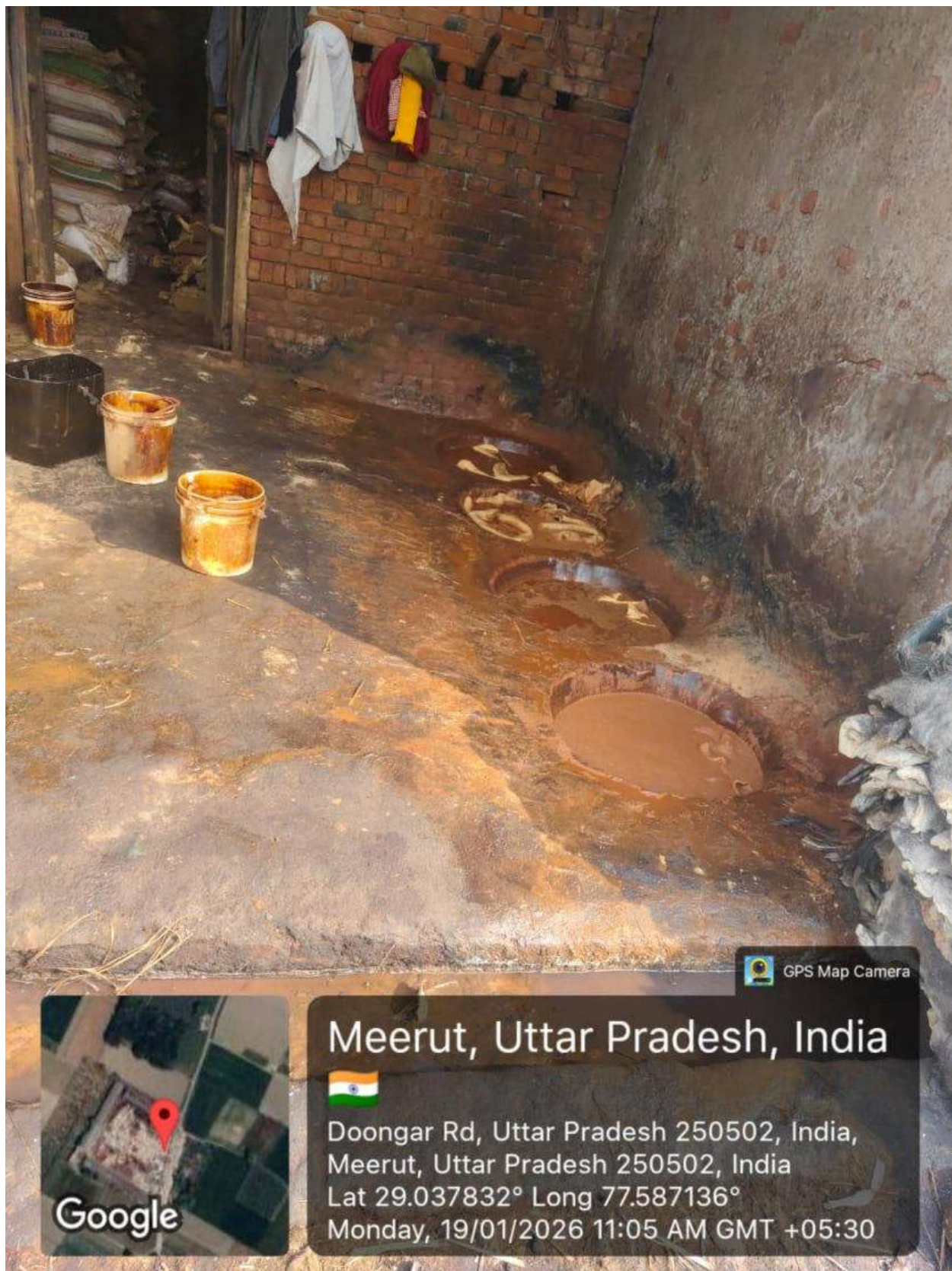
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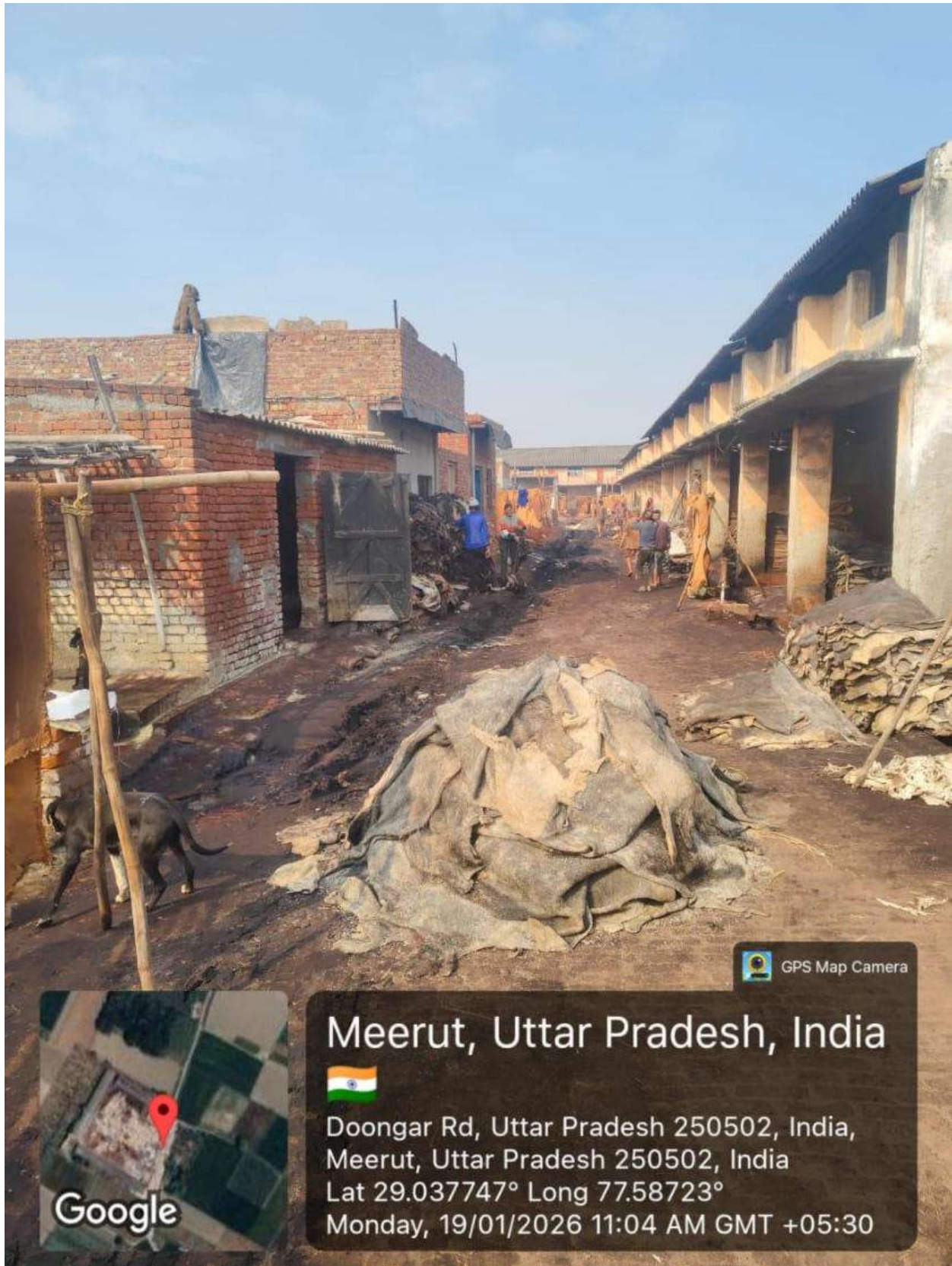


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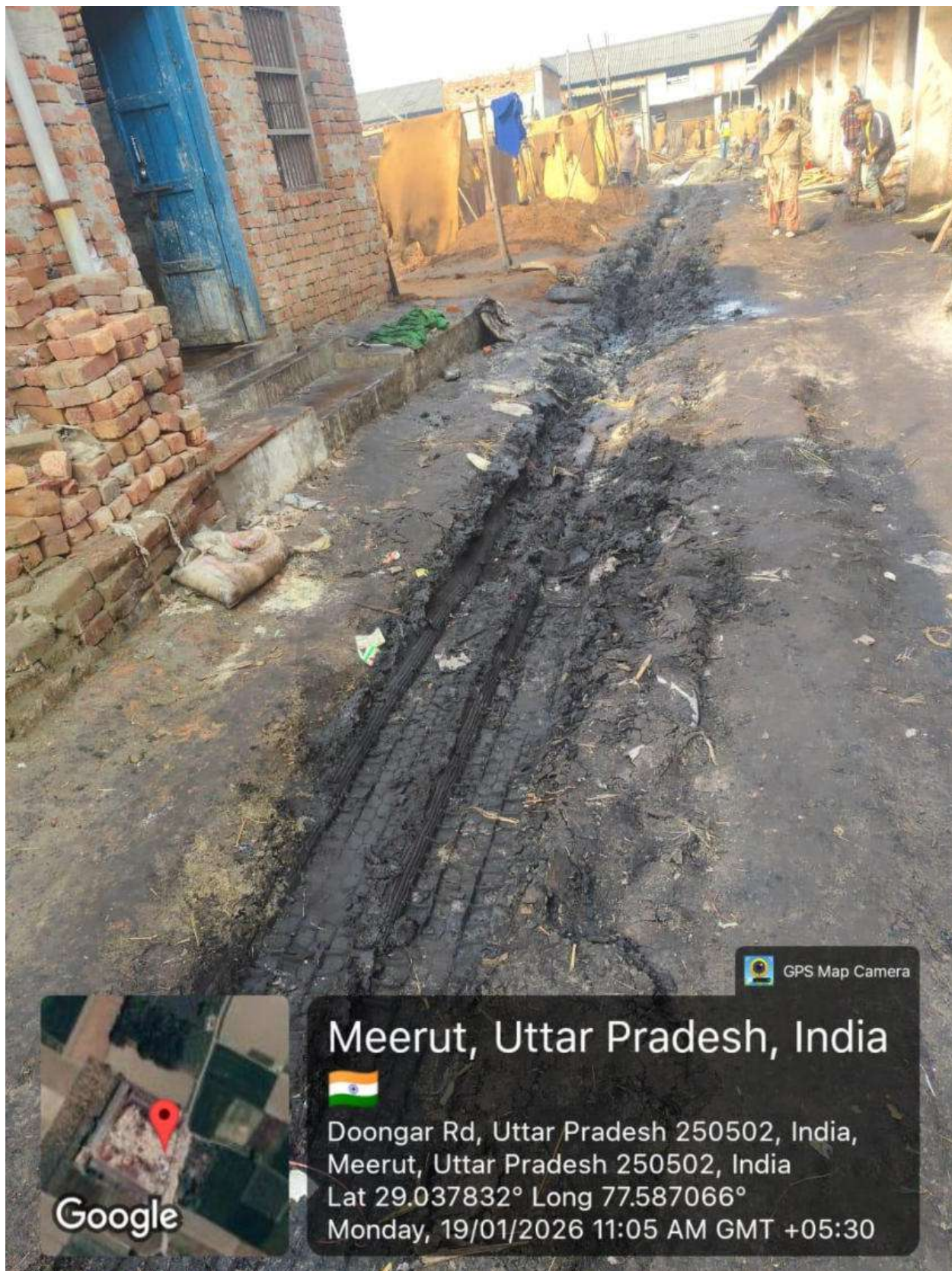


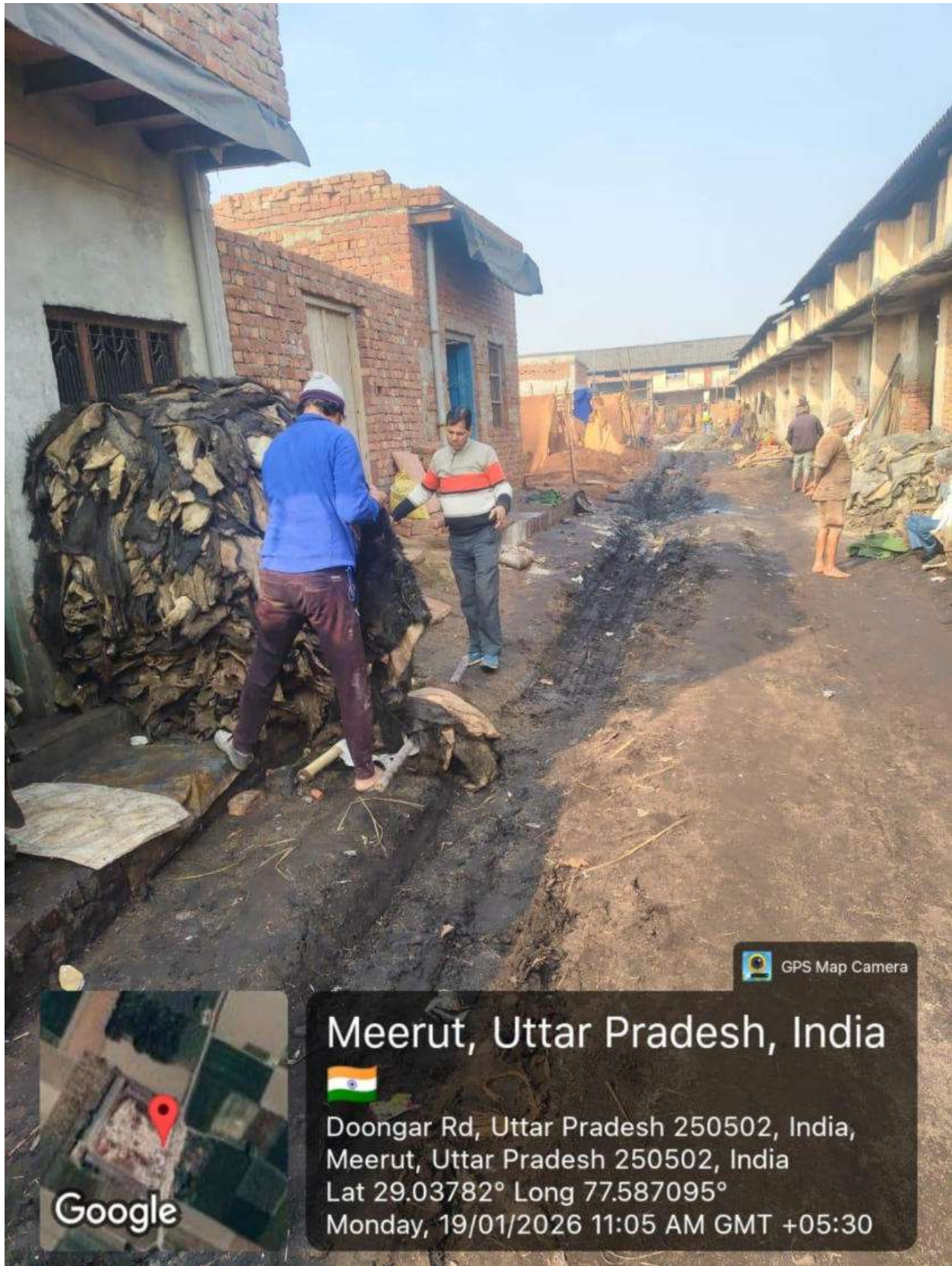






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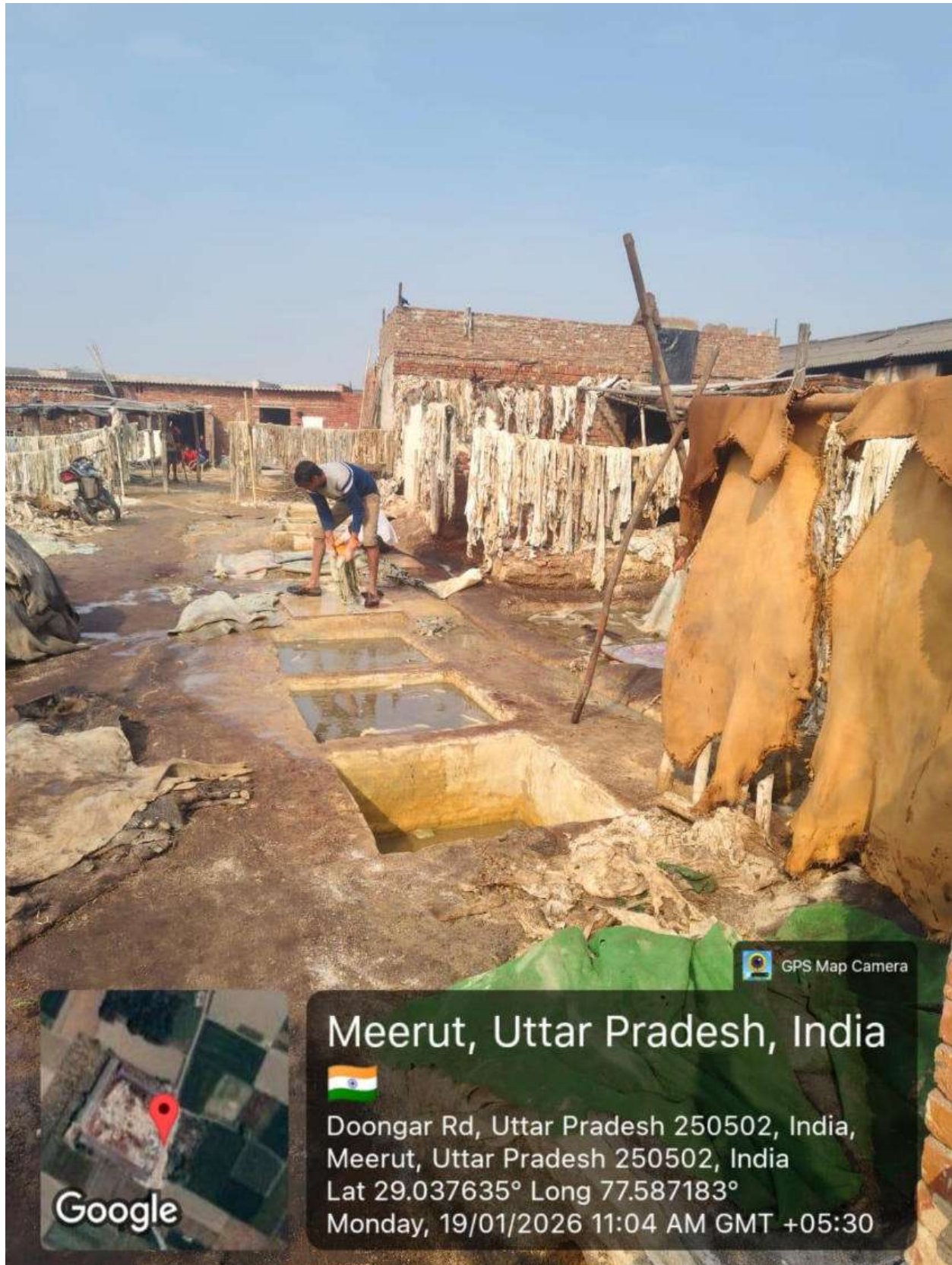


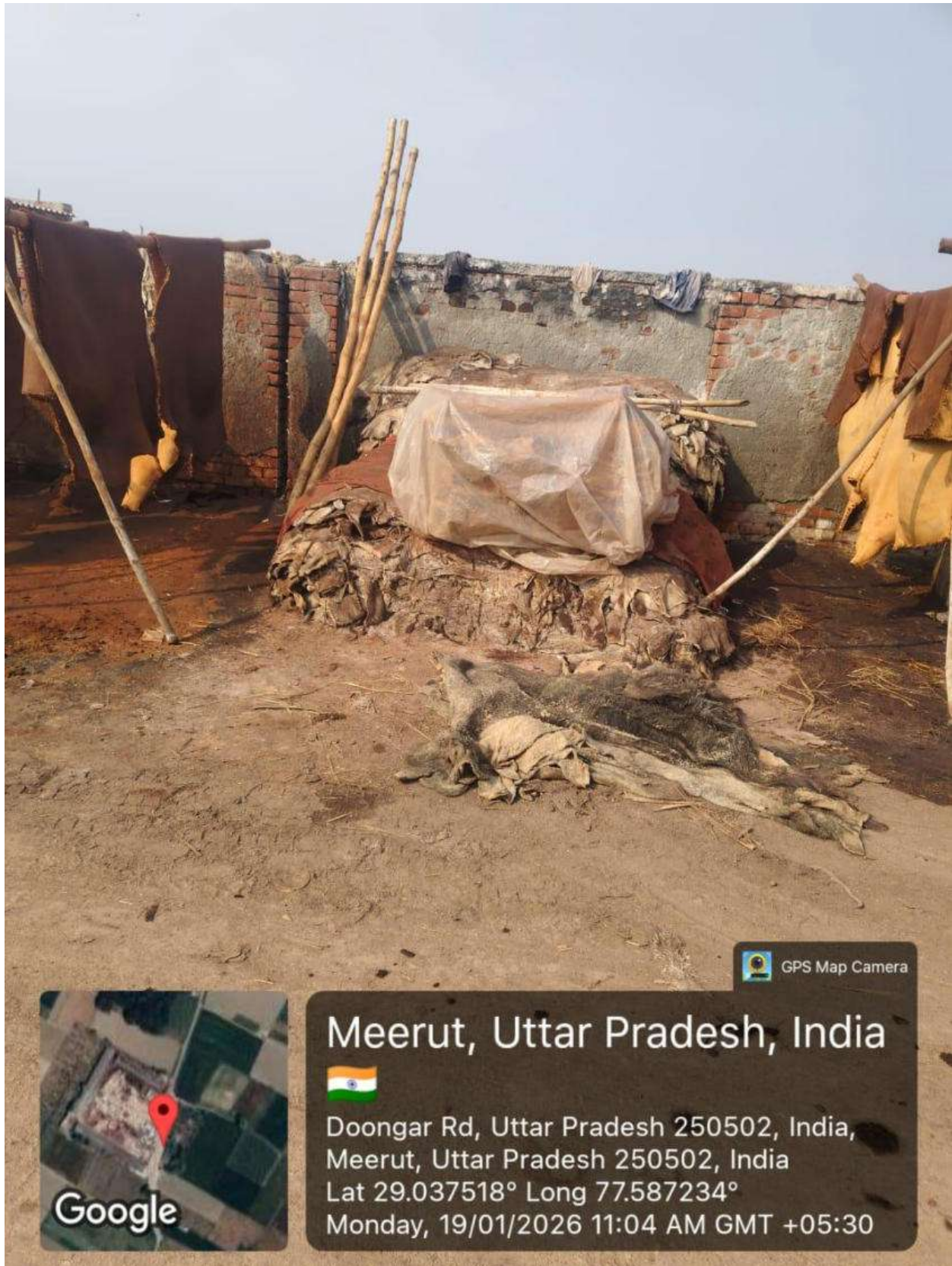
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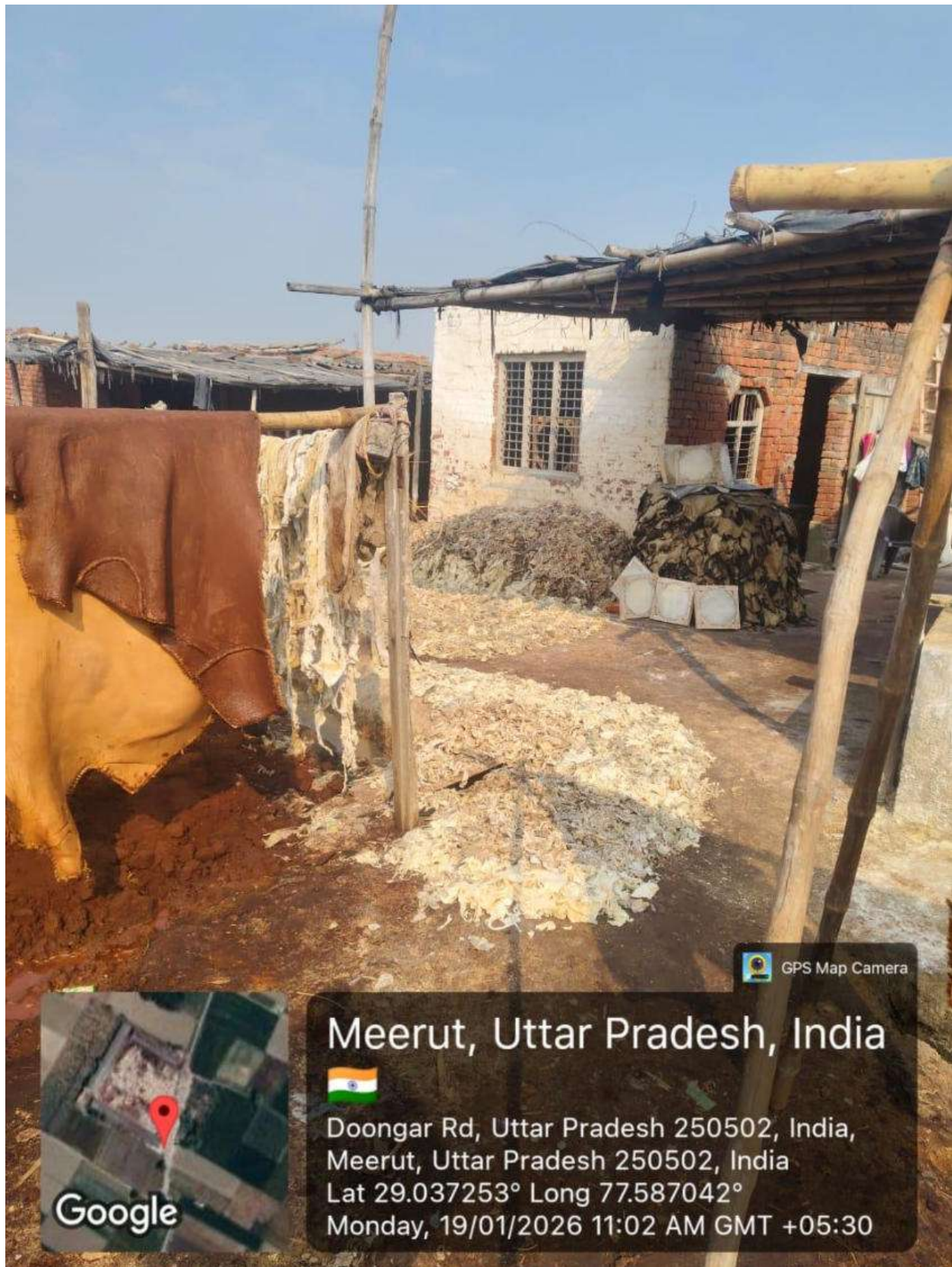
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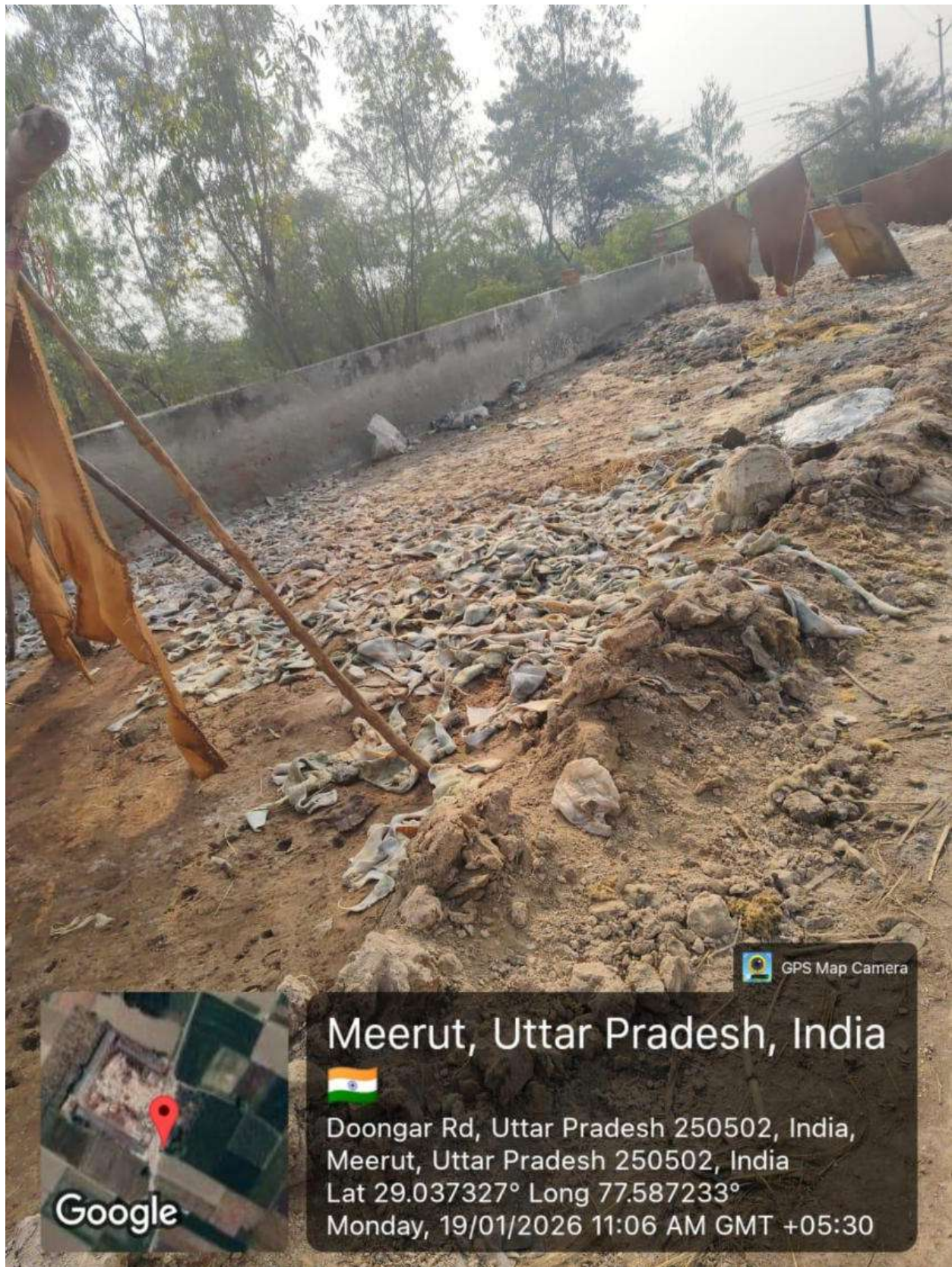
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Meerut, Uttar Pradesh, India



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Annexure D

वरिष्ठ पुलिस अधीक्षक

जनपद मेरठ

कृपया आईजीआरएस सन्दर्भ सं०- 40013825047582 का सन्दर्भ ग्रहण करने की कृपा करें, जो आवेदक श्री सूरजबली पुत्र काले निवासी ग्राम डूंगर थाना रोहटा जनपद मेरठ मो०नं०-9758924496 द्वारा प्रस्तुत शिकायती प्रार्थना पत्र में अंकित आरोपो के सम्बन्ध में जांच कर आख्या उपलब्ध कराये जाने विषयक है।

1. आवेदक/शिकायतकर्ता का नाम, पता व मोबाइल नम्बर: आवेदक श्री सूरजबली पुत्र काले निवासी ग्राम डूंगर थाना रोहटा जनपद मेरठ मो०नं०-9758924496
2. विपक्षी का नाम, पता व मोबाइल नम्बर: चर्म शोधन मैसर्स स्वयं सहायता समूह ग्राम डूंगर का मालिक
3. शिकायतकर्ता द्वारा की गयी शिकायत/आरोप का संक्षिप्त विवरण:- विपक्षी द्वारा अवैध रूप से चर्म शोधन कर आसपास के वातवरण को खराब किया जाना आदि आरोप अंकित कर कार्यवाही की मांग की गयी है।

4. जाँच करने वाले अधिकारी का नाम व पद:- क्षेत्राधिकारी सरधना जनपद मेरठ।

5. जाँच का सारांश-शिकायती पत्र में जिन आरोपो/शिकायतों का उल्लेख किया गया है, उन पर बिन्दुवार आख्या:- प्रकरण की जांच के क्रम में सूरजबली पुत्र काले निवासी ग्राम डूंगर थाना रोहटा जनपद मेरठ मो०नं०-9758924496 पर दिनांक 08.01.2026 समय करीब 14.40 बजे सम्पर्क कर जानकारी की गयी तो बताया कि मैं उपरोक्त पते का निवासी हूँ। यह शिकायत मेरे द्वारा की गयी थी। मेरे गांव के बगल में ग्राम डूंगर में स्थित मैसर्स स्वयं सहायता समूह चर्मशोधन संस्थान द्वारा अवैध रूप से संचालित हो रहा है जिसमें 12 समर्सिबल लगे हुए हैं जो चर्मशोधन के लिए उपयोग किया जा रहा है जिसका जल विभाग से अनुमति नहीं ली गयी है। उक्त चर्मशोधन संस्थान से अत्यधिक जल का दोहन किया जा रहा है। जिससे पर्यावरण को क्षति पहुँचाई जा रही है और आस-पास के क्षेत्र में अत्यधिक जलभराव होने के कारण कीट पतंगे उत्पन्न हो रहे हैं जिससे आम जनमानस गंभीर बीमारियों से ग्रसित हो रहे हैं। इसलिए महोदय से निवेदन है कि उक्त चर्मशोधन संस्थान से अवैध समर्सिबल व जनरेटर सेट को हटाया जाए ताकि आसपास के गाँव के रहने वाले लोगों को स्वच्छ जल मिल सके।

प्रकरण की जांच के क्रम में थाना प्रभारी रोहटा को निर्देशित कर आख्या प्राप्त की गयी प्राप्त आख्यानुसार प्रकरण की जांच उप निरीक्षक श्री राहुल गुप्ता द्वारा मौके पर जाकर की गयी तो स्वयं सहायता समूह चर्मशोधन संस्थान, ग्राम डूंगर विकास खण्ड रोहटा जनपद मेरठ आया जहाँ पर चर्म शोधन संस्थान की देखरेख करने वाले सुरेन्द्र सिंह पुत्र फूलसिंह मौजूद मिले जिनसे प्रार्थना पत्र में लगाए गए आरोपो के सम्बन्ध में पूछताछ की गयी तो बताया कि साहब मेरी यह फैक्ट्री हापुडिया लैडर प्रोसेसिंग सोसायटी ग्राम डूंगर पोस्ट पूठखास जिलामेरठ के नाम से रजिस्ट्रीकृत है जिसे केन्द्र सरकार द्वारा जारी मद से हथकरघा उद्योग के तहत वर्ष 2003 में बनाया गया था। और बताया कि यह काम हम लोगो द्वारा पुश्तैनी रूप से कई वर्षों से किया जा रहा है। यहाँ पंजाब/राजस्थान/दिल्ली की मंडियों / नगर निगम के सरकारी ठेको से रा हाईड वेट साल्टेड लैडर आदि क्रय करके उसका चर्मशोधन व साफ सफाई कर आस पास के मार्केट व सूरज कुंड मेरठ स्पोर्ट्स मार्केट आदि में विक्रय किया जाता है। क्रय विक्रय के संबंध में इस सोसायटी के पंजीकरण के कागजात / जीएसटी कागजात व चर्म शोधन का कार्य करने वाले महिला/पुरुषों के नाम की सूची आपको दे रहे हैं और चर्म शोधन से कारण निकलने वाले पानी की निकासी बराबर होती है क्योंकि इसकी बन्द नाली बनी है जो साफ तरीके से बाहर निकल जाती है और यह मामला मेरा एनजीटी दिल्ली में विचाराधीन है जिसमें अगली सुनवाई कि तारीख 05/02/2026 है बाकी मैं अपनी सफाई वकील के माध्यम से माननीय न्यायालय में दूँगे।

प्रकरण की जांच के क्रम में आवेदक व प्रतिपक्षी से की वार्ता व थाना रोहटा से प्राप्त जानकारी के अनुसार आया तो देखा तो उक्त स्थल ग्राम डूंगर से पहले पूठखास रोड पर स्थित है जहाँ पक्का निर्माण है उक्त संस्थान "हापुडिया लैडर प्रोसेसिंग सोसाइटी" ग्राम डूंगर पो०पूठखास जिला मेरठ के नाम से रजिस्ट्रीकृत है जिसे केन्द्र सरकार द्वारा जारी मद से हथकरघा उद्योग के तहत वर्ष 2003 में बनाया गया था उक्त लोगो द्वारा पूछताछ पर बताया कि इन लोगो का यह पुश्तैनी काम है जो कि वर्षों से इनके द्वारा किया जा रहा है तथा इन लोगो द्वारा बताया गया कि यहाँ पंजाब/राजस्थान/दिल्ली की मंडियों/नगर निगम के सरकारी ठेकों से "RAW HIDE WET SALTED LEATHER" आदि क्रय करके उसका चर्म शोधन व साफ सफाई कर आस पास के मार्केट व सूरजकुण्ड मेरठ स्पोर्ट्स मार्केट आदि में विक्रय किया जाता है। तथा प्रार्थना पत्र में लगाये गये आरोप आस-पास प्रदूषित जलभराव जैसी समस्या को देखने के लिए जांच कर्ता उप निरीक्षक श्री राहुल गुप्ता आवेदक के साथ खेत के पास पहुँचे तो वहाँ पर देखा कि चमड़ा फैक्ट्री (चर्मशोधन संस्थान) से निकलने वाले पाइप जो आगे चलकर आवेदक के खेत में सिविल बना है उसके पास गन्ने के कुछ फसल संक्रमित जैसी थी जिसके आस-पास की मिट्टी हल्का सफेद नुमा दिख रही थी जिसका मौके की फोटो निकाली गयी जो संलग्न आख्या है। प्रार्थना पत्र में लगाये गये अन्य आरोपो के सम्बन्ध में नियम व शर्तों हेतु सम्बन्धित विभाग से भी जांच कराया जाना अपेक्षित है। उक्त प्रकरण केस न० 414/2025 माननीय न्यायालय एनजीटी दिल्ली में विचाराधीन है जिसकी अगली सुनवाई कि नियत तिथि 05/02/2026 है। इसलिए माननीय न्यायालय एनजीटी दिल्ली से जारी आदेश/निर्देश के क्रम में अग्रिम विधिक कार्यवाही की जायेगी। मौके पर शान्ति व्यवस्था कायम है सतर्क दृष्टि रखी जा रही है। अन्य कोई पुलिस कार्यवाही अपेक्षित नहीं है। आवेदक को किये गये समाधान से अवगत कराया गया है।

6. आरोप सिद्ध हो रहे हैं या नहीं:- उपरोक्तानुसार।

7. पुलिस अधिकारी द्वारा की गयी कार्यवाही/प्रस्तावित कार्यवाही का विवरण:- उपरोक्तानुसार।

8. अन्य कोई तथ्य:- निला।

आख्या सादर अवलोकनार्थ प्रेषित है।

पत्रांक-एसटी-सीओएस-(आईजीआरएस)/2024

दिनांक-जनवरी, 10, 2026


(आशुतोष कुमार)
क्षेत्राधिकारी सरधना,
जनपद मेरठ।

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 GPS Map Camera

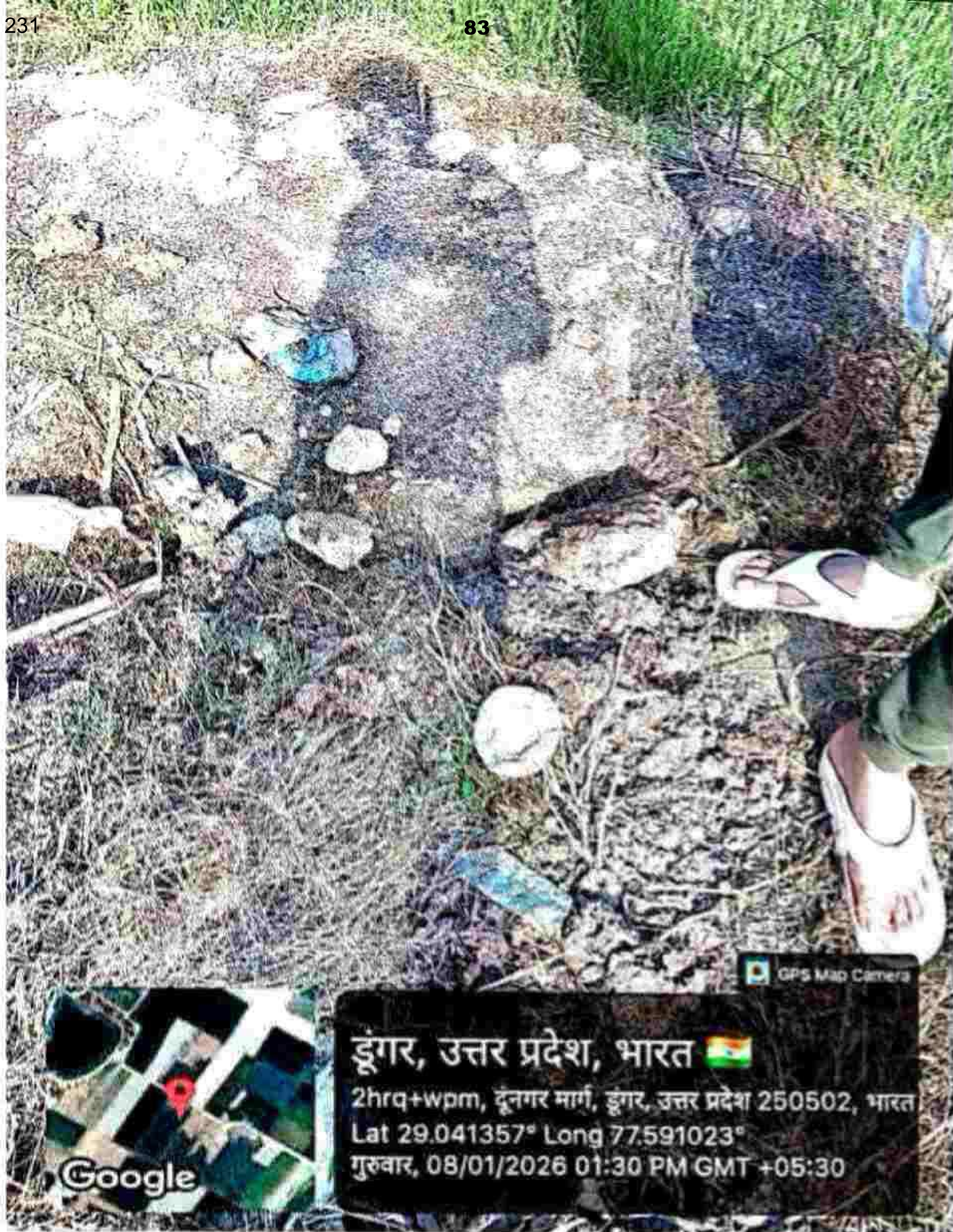
डूंगर, उत्तर प्रदेश, भारत 

2hrq+wpm, दूंगर मार्ग, डूंगर, उत्तर प्रदेश 250502, भारत

Lat 29.041357° Long 77.591023°

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(Formerly Known as Neon Industrial Testing & Research Laboratory)

NABL Accreditation Certificate TC-(9175), MOEF&CC Recognized Govt. approved Lab,

An ISO 9001 : 2015, ISO 14001 : 2015, ISO 45001 : 2018 Certified

Laboratory : 205 A-B, Rajpura, Mawana Road Near Subhash Inter College Meerut, www.nirlaboratory.in

Mobile : 8218221131, 8449335841, E-mail : nirlaboratory@gmail.com, neonitr@gmail.com

TEST REPORTS

SAMPLE CODE:	WW/NIR/20251211-03	PAGE	01 of 01
ULR: / NO.	TC917525000000231F	SERVICE REQUEST DATE	11.12.2025
REPORT ISSUE DATE	22.12.2025	SAMPLE RECD. ON	11.12.2025
NAME & ADDRESS OF CUSTOMER		SAMPLE DETAILS	
M/s – Surajbli Vill- Pooth Khas Vikashkhand- Rotha Distt Meerut-255002		Description : One waste water sample received us by client on 11.12.2025 Sample Marking : waste water Sample Procedure : IS:3025 Sample Quantity & Packing : 2 Ltr. & Plastic Bottle Analysis Done on : 11.12.2025 to 22.12.2025	

RESULTS

WATER QUALITY ANALYSIS

S.No.	Parameter	Results	Unit	Standards (CPCB) (MAX)	Test method
				Inland Surface water	
1.	pH	11.88	—	5.5-9.0	IS3025(Pt11)
2.	Total Suspended Solids	2998.5	mg/l	100.0	IS 3025(Pt-17)
3.	Bio Chemical Oxygen Demand (at 27° C for 3 days)	840.0	mg/l	30.0	IS 3025(Pt-44)
4.	Chemical Oxygen Demand	2186.0	mg/l	250	IS 3025(Pt-58)
5.	Oil & Grease	42.8	mg/l	10.0	IS 3025(Pt-39)
6.	Turbidity	114.0	NTU	10.0	IS:3025(P-10)
7.	Colour	200.0	HU	—	IS:3025(P-4)
8.	Sulphide	2.8	mg/l	2.0	IS:3025(P-29)
9.	Sulphate (as SO ₄)	1947.6	mg/l	1000.0	IS:3025(P-24)
10.	Total Dissolved Solids	13110.0	mg/l	2100.0	IS:3025(P-16)
11.	Chloride (as Cl)	10918.6	mg/l	1000.0	IS:3025(P-32)
12.	Total Hardness (as CaCO ₃)	38316.0	mg/l	600.0	IS:3025(P-21)
13.	Cyanide	0.12	mg/l	0.5	IS:3025(P-27)
14.	Chromium	2.4	mg/l	< 0.5	IS:3025(P-52)
15.	Arsenic	0.28	mg/l	0.2	IS:3025(P-37)

End of report

(Deepak Kumar)
Checked By

(Anchal Vats)
Authorized By



Drawn

Note:- 1. The Sample will be stored up to 21 days (in case of non perishable sample) from the date of issue of the test report. 2. The results given above are related to the tested sample and mentioned parameters. Endorsement of Product if neither inferred nor implied. 3. Total liability of our works is limited to invoiced Amount. 4. This report can not used as evidence in a court of law without the written approval of the lab. 5. Certificate shall not be reproduced except in full, without the written approval of the laboratory. 6. Any sort of play by the customer with the date of this certificate shall be illegal.

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Annexure F

Farhd K. Wadia vs Union Of India & Ors on 5 December, 2008

Equivalent citations: 2009 AIR SCW 1294, 2009 (2) SCC 442, 2009 (2) AIR BOM R 598, (2009) 1 CIVILCOURTC 671, (2009) 5 MAH LJ 1, (2009) 1 RECCIVR 502, (2009) 1 ICC 823, (2009) 1 SCALE 293, (2009) 1 JCR 193 (SC), (2009) 76 ALLINDCAS 254 (SC), (2009) 1 ALL WC 856, (2009) 1 CLR 435 (SC), (2009) 4 BOM CR 448

Author: **S.B. Sinha**

Bench: **Cyriac Joseph, S.B. Sinha**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7131 OF 2008
[Arising out of SLP (Civil) No. 22939 of 2004]

Farhd K. Wadia

...Appellant

Versus

Union of India & Ors.

...Respondents

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Whether musical functions in an open theatre being Rang Bhavan should be allowed to be carried on or not despite the fact that it is situate within 100 meters of an educational institution and a hospital, is the question involved in this appeal which arises out of a judgment and order dated 16.08.2004 passed by a Division Bench of the Bombay High Court in Writ Petition No. 2257 of 2004.

3. The basic fact of the matter is not in dispute.



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Rang Bhavan is an institution owned and run by the State of Maharashtra. It is the only open theatre in the city of Mumbai. It is let out on hire for the purpose of holding music and cultural programmes. It charges a meagre amount for allowing private parties to hold functions. It has a sitting capacity of 4000 persons. It is stated that the world's greatest artists, both Western and Indian, have performed therein.

Dr. Yeshwant Trimbak Oke & Ors. filed a public interest litigation for a direction to the State to curb noise pollution in general in the city of Mumbai and particularly during the festive season of Navratri and Ganesh Utsav.

4. On or about 25.09.2003, an order was passed by a Division Bench of the Bombay High Court, directing:

"(1) pending hearing and final disposal of this petition, i.e., Writ Petition No. 2053 of 2003, no loudspeaker permission be granted in respect of "Silence Zone" as defined and discussed in the Noise Pollution (Regulation & Control) Rules, 2000, as amended from time to time.

(2) Pending hearing and final disposal of the petition, the respondents are directed to issue loudspeaker permission verifying and certifying before granting permission that the loudspeaker will not be used in a designated Silence Zone.

(3) The authorities will also ensure implementation and observance of the conditions mentioned in the permission.

(4) It is also clarified that in case the petitioners point out that there is violation at any place, the authorities will take appropriate action in accordance with law."

5. A review application was filed thereagainst by the State of Maharashtra. The submission made by the learned Advocate General for the State therein as recorded by the High Court in its order dated 19.12.2003 is as under:

"4. The learned Advocate General submitted that reading Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as "the Rules") with the Schedule thereto, it is clear that the silence zone which has been defined in Note to the Schedule would not include hospitals, educational institutions, Courts, religious places or any other area which is declared as such by the Competent Authority, but the prohibition under Rule 6 would apply to the areas comprising not less than 100 metres around such institutions."

On the said review petition, it was held:

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"7. So far as first point is concerned, in our opinion, direction issued by us on September 25, 2003 is clear. Prima facie, it appears to us that the provisions of the Rules would apply to "an area comprising not less than hundred metres around"

hospitals, educational institutions, Courts, religious places or any other area which is declared as such by the competent authority. In our view, this would be in consonance with the phraseology used in clause (i) of Rule 6 which totally prohibits playing of "any music" or using of "any sound amplifiers". Had it been the intention of the Rule making authority, it would not have used the expression "an area comprising not less than 100 metres around hospitals, educational institutions, Court, religious places, etc. Moreover, such interpretation would also permit activities within those institutions in accordance with law.

8. At the same time, however, the apprehension voiced by the learned Counsel for the Petitioners has also been taken care of. It cannot be considered that with regard to such organizations, institutions, etc. there is neither any standard nor limit whatsoever. In respect of such institutions also, the general provisions laid down in Rule 5 which place restriction on the use of loud speaker/ public address system would apply."

6. While the said order was operating, the appellant made an application to book Rang Bhavan from 13th to 15th August, 2004 in regard to performance of Western Cultural Music. The said application was rejected by the State by an order dated 02.06.2004, stating:

"By the order of the Hon'ble High Court, Mumbai, dated 25/09/2003 under the Noise Pollution (Control & Regulation) Rules 2000, the use of loudspeakers in a silence zone has been banned. Also the Senior Inspector of Police, Azad Maidan Police Station, Mumbai has in accordance with the direction of the Hon'ble High Court, informed in writing that the use of loudspeakers during cultural programmes at Rangbhavan will not be permitted.

For the above-mentioned reasons, your request vide your letter dated 01/05/2004 to book Rang Bhavan for 3 days, i.e., on the 13th, 14th and 15th of August, 2004 is denied..."

7. The Directorate of Cultural Affairs in a letter dated 09.07.2004 addressed to the Secretary, Power Productions, also stated:

"You are hereby informed that, in accordance with the Hon'ble High Court's order no. 2503 dated 25/09/2003, Rangbhavan, Dhobi Talao, Mumbai, the open air theatre comes under the silence zone and hence the use of loudspeakers has been banned. For the above-mentioned reasons, your request cannot be considered."

8. Contending that the said Rang Bhavan had been lying closed for the past few years and the directions issued by the High Court are not in consonance with the rules governing noise pollution framed by the State of Maharashtra, a writ petition was filed by the appellant herein. It was furthermore pointed out that some educational institutions and hospitals have also been using loud speakers.

In the said writ petition, the following prayers were made:

"(a) that this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari calling for the records and proceedings relating to the obtaining of permission to host the Independence Rock Concert in the Rang Bhavan from Respondent Nos. 2 and 3 and after satisfying itself of the legality of the same to quash and set aside the impugned order dated 09.07.2004...;

(b) that this Hon'ble Court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction restraining the Respondents, their agents, servants and employees from acting in any manner in furtherance of the impugned order dated

09.07.2004...;

(c) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order compelling the Respondents to issue appropriate orders exempting Rang Bhavan from falling within the silence zone and further directing the Respondents to permit Rang Bhavan to stage concerts and other cultural and musical functions on its premises;

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate, writ, direction or order directing the Respondents to permit the Petitioner to hold the Independence Rock Festival on its premises on such suitable dates between 6 p.m. to 9 p.m. subject of course to the availability of such premises on such suitable dates;

(e) that this Hon'ble Court be pleased to declare that Rang Bhavan does not fall within the silence zone so as to be precluded from utilization of loudspeakers in hosting cultural and musical events."

9. As noticed hereinbefore, the said writ petition has been dismissed.

10. Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellant, drawing our attention to the relevant rules, would contend that as no silence zone has been notified in terms of the statutory rules, the High Court committed a serious error in passing the impugned judgment.

It was urged that, in any event, an exemption should be granted in respect of Rang Bhavan having regard to the fact that it is not possible to hold a musical event at any other place in the city of Mumbai at such cheap rates.

The State of Maharashtra, the learned Senior Counsel pointed out, has also been supporting the cause of the appellant.

11. Dr. R.G. Padia, learned Senior Counsel appearing on behalf of the Union of India, on the other hand, submitted that the cause of action for which the appellant filed the writ petition being rejection of one-time request, the writ petition became infructuous.

Our attention has furthermore been drawn to various orders and judgments passed by this Court in regard to control and regulation of noise pollution to contend that as the validity of the rules framed by the Central Government has been upheld by this Court, no interference with the impugned judgment is called for.

12. Appellant is the Chief Executive Officer of 'Power Productions', a leading Audio Studio in Mumbai. He does soundtracks for movies, ad films, etc. He is said to be a concert promoter in India for over 18 years. He in the said writ petition questioned the validity of the order dated 09.07.2004 passed by the respondents.

Dr. Yeshwant Trimbak Oke & Ors., who had filed the public interest litigation being Writ Petition (PIL) No. 2053 of 2003, were not impleaded as parties in the proceedings. An application for modification of the order passed therein had also not been filed in the second public interest litigation.

13. Whereas the public interest litigation was filed by Dr. Yeshwant Trimbak Oke & Ors. contending that noise pollution created by reason of use of loudspeakers be curbed in the areas which have been and should be declared as silence zone, the purported public interest litigation was filed by the appellant herein to seek an exception therefor.

14. The High Court in the earlier public interest litigation, being Writ Petition No. 2053 of 2003, admittedly passed an order of injunction. If the said order was required to be modified or clarified and/or relaxation was to be prayed for and granted in regard to Rang Bhavan, the appellant should have filed an application in the said proceeding. An independent public interest litigation to obtain a relief which would be contrary to and inconsistent with the order of injunction passed by the court was not maintainable. Inter alia, the doctrine of comity or amity demands the same.

15. It was not that the appellant was not aware of the said order. As indicated hereinbefore, the premise on which the appellant's application was rejected was the said order dated 25.09.2003 passed in the said Writ Petition No. 2053 of 2003.

The State of Maharashtra felt itself and in fact was bound by the order dated 25.09.2003 and as such filed an application for modification in the said Writ Petition No. 2053 of 2003, which, as noticed

hereinbefore, was not allowed.

We fail to understand as to on what premise the writ petition could have been entertained by the High Court. We are constrained to opine that the writ petition was filed to achieve a purpose indirectly which could not be achieved directly. The High Court, therefore, cannot be said to have committed any error in passing the impugned judgment.

16. The Noise Pollution (Regulation and Control) Rules, 2000 (for short "the Rules") have been framed by the Central Government in exercise of its power conferred by clause (ii) of sub-section (2) of Section 3, sub-section (1) and clause (b) of sub-section (2) of Section 6 and Section 25 of the [Environment \(Protection\) Act, 1986](#) read with Rule 5 of the Environment (Protection) Rules, 1986.

"Area/Zone" has been defined to mean all areas which fall in either of the four categories given in the Schedule annexed to the Rules.

"Educational institution" and "hospital" have been defined in Rules 2

(e) and 2(f) of the Rules in the following terms:

"(e) "educational institution" means a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral and physical development;

(f) "hospital" means an institution for the reception and care of sick, wounded, infirm or aged persons, and includes government or private hospitals, nursing homes and clinics."

Sub-rule (5) of Rule 3 of the Rules reads as under:

"(5) An area comprising not less than 100 meters around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules."

Rule 5 of the Rules reads as under:

"5. Restrictions on the use of loudspeakers/public address system.--(1) A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.

(2) A loudspeaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

(3) Notwithstanding anything contained in sub-

rule (2), the State Government may, subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loudspeakers or public address systems during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year."

Ambient air quality standards in respect of noise for silence zone have been prescribed in the Schedule. Note 3 appended thereto, however, reads as under:

"3. Silence Zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority."

17. Contention that the State Government has not declared the said zone as a silence zone, in our opinion, is besides the point. The High Court, while passing its interim order dated 25.09.2003, did not state that silence zone was required to be declared, but passed the order of restraint in respect of silence zone, as 'defined and discussed in the Rules'. The parties thereto and particularly the State of Maharashtra understood the said order in that light.

18. Interference by the court in respect of noise pollution is premised on the basis that a citizen has certain rights being 'necessity of silence', 'necessity of sleep', 'process during sleep' and 'rest', which are biological necessities and essential for health. Silence is considered to be golden. It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost. [See Noise Pollution, Laws & Remedies by Justice Bhagabati Prosad Banerjee]

19. The Calcutta High Court in several judgments and in particular in Om Birangana Religious Society v. State of West Bengal [decided on 11th August, 1998] issued various directions; some of them being:

"(a) there will be complete ban on the use of horn type loud-speakers within city residential areas and also prohibit the use of play back of pre-

recorded music etc. through such horn type loud- speakers unless used with sound-limiter.

(b) In cultural functions which are live functions, use of such pre-recorded music should not be used excepting for the purpose of announcement and/ or actual performance and placement of speaker boxes should be restricted within the area of performance facing the audience. No sound generating device should be placed outside the main area of performance.

(c) Cultural programmes in open air may be held excepting at least before three days of holding Board/ Council Examinations to till examinations are completed in residential areas or areas where educational institutions are situated.

(d) The distance of holding such functions from the silence zones should be 100 meters and in so far as Schools, Colleges, Universities, Courts are concerned, it will be treated as silence zones till the end of the office hours and/ or the teaching hours. Hospitals and some renowned and important Nursing Homes will be treated as silence zones round the clock."

[See Noise Pollution, Laws & Remedies by Justice Bhagabati Prosad Banerjee, pages 327-328]

20. This Court has also taken suo motu cognizance as regards noise pollution. It passed various orders from time to time in Noise Pollution, In [Re. v. Union of India and Another](#), which are reported in [(2005) 5 SCC 727], [(2005) 5 SCC 728], [(2005) 5 SCC 730] and [(2005) 5 SCC 731].

21. A detailed judgment was rendered by a Division Bench of this Court in the said writ petition, which has since been reported in [(2005) 5 SCC 733]. Several guidelines had been issued therein by this Court in exercise of its jurisdiction under [Articles 141](#) and [142](#) of the Constitution of India. Therein, the decision of the Calcutta High Court in *Om Birangana Religious Society v. State of West Bengal* [(1996) 100 CWN 617] has been taken note of.

As regards loudspeakers and amplifiers, it was directed:

"171. Loudspeakers and amplifiers or other equipment or gadgets which produce offending noise once detected as violating the law, should be liable to be seized and confiscated by making provision in the law in that behalf."

22. The matter again came up before this Court and an order passed therein has been reported in [(2005) 8 SCC 796]. The validity of the statutory rules framed by the Central Government and in particular Rule 5 amended by notification bearing No. S.O. 1088 (E) dated 11.10.2002 was taken note of. The decision rendered by this Court reported in [(2005) 5 SCC 733] was clarified. This Court noticed that the constitutional validity of sub-rule (3) of Rule 5 of the Rules had been upheld by the Kerala High Court by an order dated 14.03.2003 whereagainst an appeal was filed. The hearing of the civil appeal was, therefore, directed to be re-opened. An interim order was passed that until further orders, Rule 5 of the Rules, as reproduced therein, would continue to remain in operation. The said appeal was thereafter taken up for hearing by a Bench of this Court. It was disposed of on 28.10.2005. This Court held that the Rules framed by the Central Government were not unreasonable, stating:

"...The power to grant exemption is conferred on the State Government. It cannot be further delegated. The power shall be exercised by reference to the State as a unit and not by reference to districts, so as to specify different dates for different districts. It can be reasonably expected that the State Government would exercise the power with due care and caution and in the public interest. However, we make it clear that the scope of the exemption cannot be widened either by increasing the number of days or by increasing the duration beyond two hours. If that is attempted to be done, then the said sub-rule (3) conferring power to grant exemption may be liable to be struck down as violative of Articles 14 and 21 of the Constitution. We also make it clear that the State Government should generally specify in advance, the number and particulars of the days on which such exemption will be operative. Such specification would exclude arbitrariness in the exercise of power. The exemption, when granted, shall not apply to silence zone areas. This is only as a clarification as, this even otherwise is the position of law.

23. The State Government is bound also by the order of this Court besides the order passed by the High Court. If any order of relaxation and/ or modification is required to be passed, it is only to be passed by this Court and the Bombay High Court in the aforementioned two writ petitions. A separate writ petition, in our opinion, thus, was not maintainable.

24. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. In the facts and circumstances of the case, however, there shall be no order as to costs.

.....J. [S.B. Sinha] J. [Cyriac Joseph] New Delhi;

December 05, 2008 ⬆

Subhash Kumar vs State Of Bihar And Ors on 9 January, 1991

Equivalent citations: 1991 AIR 420, 1991 SCR (1) 5, AIR 1991 SUPREME COURT 420, 1991 (1) SCC 598, 1991 AIR SCW 121, (1991) 1 SCR 5 (SC), (1991) 1 JT 77 (SC), 1991 (1) JT 77, 1991 (1) UJ (SC) 533, 1991 (1) ALL CJ 424, 1991 (1) SCR 5, 1991 (1) BLJR 550, (1991) 1 COM LJ 209, 1992 (2) FAC 77, 1991 ALL CJ 1 424, (1991) 2 EFR 295, (1992) 2 FAC 77, (1991) 1 PAT LJR 69, (1991) 5 CORLA 97, (1991) 1 BLJ 381, (1991) 1 CIVLJ 719

Author: K.N. Singh

Bench: K.N. Singh, N.D. Ojha

PETITIONER:

SUBHASH KUMAR

Vs.

RESPONDENT:

STATE OF BIHAR AND ORS.

DATE OF JUDGMENT 09/01/1991

BENCH:

SINGH, K.N. (J)

BENCH:

SINGH, K.N. (J)

OJHA, N.D. (J)

CITATION:

1991 AIR 420	1991 SCR (1) 5
1991 SCC (1) 598	JT 1991 (1) 77
1991 SCALE (1) 8	

ACT:

Water (Prevention and Control of Pollution) Act, 1974: Sections 17, 24, 25 and 26.

Constitution of India, 1950: Article 21-Right to live includes right to enjoyment of pollution free water and air- A citizen has a right to invoke Article 32 for removing pollution.

Article 32- Writ petition in public interest-Allegation that West Bokaro Collieries and Tata Iron and Steel Company are polluting the river Bokaro by discharging slurry from their washeries into the river-No material to substantiate the allegations-Held petition is not in public interest but for personal interest.



Public Interest Litigation-Should be resorted to by a person genuinely interested in the protection of society- Personal interest cannot be enforced in the garb of public interest litigation-Entertainment of petitions satisfying personal grudge is abuse of process of the Court Duty of the court is to discourage such petitions.

HEADNOTE:

The petitioner filed a writ petition in this court by way of public interest litigation alleging that the respondents, West Bokaro Collieries and Tata Iron and Steel Company (TISCO) were polluting the river Bokaro by discharging surplus waste in the form of sludge/slurry as effluent from their washeries into river making the river water unfit for drinking and irrigation purposes thereby causing risk to the health of the people; the State of Bihar and the State Pollution Control Board have failed to take appropriate steps for prevention of the pollution and instead the State of Bihar has granted leases on payment of royalty to various persons for collection of slurry. Accordingly the petitioner prayed for directions to the respondents to take immediate steps prohibiting the pollution of the river and to take legal action against TISCO under the Water (Prevention and Control of Pollution) Act, 1974. The petitioner also claimed interim relief from this Court that he should be permitted to collect sludge/slurry flowing out of washeries of the respondents.

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The respondents contested the petition denying the petitioner's allegations. Bihar State Pollution Board asserted that directions have been issued to the Bokaro Collieries to take effective steps for improving the quality of the effluent going into the river Bokaro and that the TISCO Company has been granted permission to discharge their effluents from their outlets in accordance with sections 25 and 26 of the 1974 Act. On behalf of TISCO and the Bokaro Collieries it was contended that all effective steps have been taken to prevent the pollution and they have complied with the instructions of the State Pollution Board.

By an order dated 13.12.1990, this Court dismissed the writ petition with costs.

Giving reasons for dismissal of the petition, this Court,

HELD: 1. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extra-ordinary remedy to safeguard the fundamental rights of a citizen. Right to life 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 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 fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under 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

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discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra-ordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation. [13C-H; 14A]

Bandhua Mukti Morcha v. Union of India, [1984] 2 SCR 67; Sachindanand Pandey v. State of West Bengal, [1987] 2 SCC 295; Ramsharan Autyanuprasi & Anr. v. Union of India & Ors., [1989] Suppl. 1 SCC 251; Chetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Ors., [1990] 4 SCC 449, referred to.

2. The present petition is not filed in public interest instead the petition has been made by the petitioner in his own interest. Infact 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. The petitioner has been purchasing slurry from the respondents for the last several years. With the passage of time he wanted more and more slurry but the Company refused to accept his request. He removed the Company's slurry in an unauthorised manner for which criminal cases are pending against him and his brother. Since the respondent company refused to sell additional slurry he entertained a grudge against the company and in order to feed fat his personal grudge he resorted to several proceedings against the company

including the present one. The prayer for the interim relief made by the petitioner i.e. permitting him to arrest/collect sludge/slurry flowing out of the washeries of the respondents 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 also collecting the sludge/slurry and transporting the same clearly indicates that he is interested in collecting the slurry and transporting the same for the purposes of his business. Therefore, there is no 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 it is evident from records that the State Pollution Control Board has taken effective steps to check the pollution. [14B;12F-G]

Kundori Labours Cooperative Society Ltd. & etc. etc. v. State of Bihar & Ors., AIR 1986 Patna 242; Bharat Cokin Coal Ltd. v. State of Bihar & Ors. [1990] 3 SCR 744= Judgments Today, vol. 3, 1990 SCC 533, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (C) No. 381 of 1998.

(Under Article 32 of the Constitution of India). S.K. Sinha for the Petitioner.

D. Goburdhan, Ms. A. Subhashini, K.K. Lahiri, Ms. Lira Goswami and D.N. Misra for the Respondents.

The Judgement of the Court was delivered by SINGH,J. We heard the arguments in detail on 13.12.1990 and dismissed the petition with costs amounting to Rs. 5,000 with the direction that the reasons shall be delivered later on. We are, accordingly, delivering our reasons.

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 & 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 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 No.5 carries on mining operation in coal mines/washeries in the town of Jamshedpur. These coal mines and collieries are known as West Bokaro Collieries and the Collieries have two coal washeries where the coal after its extraction from the mines is brought and broken into graded pieces and there-

after it is processed for the purpose of reducing its ash contents. A chemical process is carried out which is known as 'froth floatation process'. Under this process the graded coal is mixed with diesel oil, pine oil and many other chemical ingredients and thereafter it is washed with the lacs of gallons of water. The end water is washed coal with reduced quantity of ash content fit for high graded metallurgical process for the purposes of manufacture of steel. In the process of washing large quantity of water is discharged through pipes which carry the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water, small particles of coal are carried away to the pond where the coal particles settle down on the surface of the pond, and the same is collected after the pond is de-watered. The coal particles which are carried away by the water is called the slurry which is ash free, it contains fine quality of coal which is used as fuel.

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 was 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 is flown into the Bokaro river which is carried out by the river water to the distant places polluting the river water as a result of which the river water is not fit for drinking purposes nor it is fit for irrigation purposes. The continuous discharge of slurry in heavy quantity by the Tata Iron & Steel Co. from its washeries posing risks to the health of people living in the surrounding areas and as a result of such discharge the problem of pure drinking water has become acute. The petitioner has asserted that inspite 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 against the Company has been granting leases on payment of royalty to various persons for the collection of slurry. He has, accordingly, claimed relief for issue of direction directing the respondents which include the State of Bihar, the Bihar Pollution Control Board, Union of India and Tata Iron & Steel Co. to take immediate steps prohibiting the pollution of Bokaro river water from the discharge of slurry into the Bokaro river and to take further action under provisions of the Act against the Tata Iron & Steel Co.

The respondents have contested the petition and counter-affidavits have been filed on behalf of the respondent Nos. 2, 4 and 5-State of Bihar, State Pollution Board, Directors of Collieries and Tata Iron & Steel Co. Ltd. In the counter-affidavits filed on behalf of the respondents, the 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 & Steel Co. operates open case and underground mining. The Company in accordance to Sections 25 and 26 of the Water (Prevention Control of Pollution) Act, 1974 applied for sanction from the Board of 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 discharges does not affect the water quality of the Bokaro river adversely. In order to prevent the pollution the Board issued direction to the Director of the Collieries to take effective steps for improving the quality of the effluent going into the Bokaro river. The State Pollution Board imposed conditions requiring the Company to construct two settling tanks for settlement of solids and rewashing the same. The Board directed for the regular samples being taken and tested for suspended solids and for the communication of the results of the tests to the Board each month. The State Board has asserted that the Company has constructed four ponds ensuring more storing capacity of effluent. The Pollution Board has been monitoring the effluent. It is further stated that on the receipt of the notice of the instant writ petition the Board carried out an inspection of the settling tanks regarding the treatment of the effluent from the washeries on 20th June, 1988. On inspection it was found that all the four settling tanks had already been completed and work for further strengthening of the embankment of the tanks was in progress, and there was no discharge of effluent from the washeries into 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 settle slurry from the tanks. The Board has directed that the washeries shall perform desludging 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 of the Bokaro river and there is no question of pollution of the river water of affecting the fertility of land. In their affidavits files on behalf of the respondent-

Nos. 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 infact 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 from different ponds to store the slurry. The slurry which settles in the pounds 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 it to go in the river water. The Company has taken effective steps to ascertain that no slurry escapes from its ponds at the slurry is highly valuable. The Company has been following the directions issued by the State Pollution Control Board constituted under the 1974 Act.

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 discharged 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.

On a perusal of the counter-affidavit filed on behalf of the respondent Nos. 4 and 5 it appears that the petitioner has been purchasing slurry from the respondent Nos. 4 and 5 for the last several years. With the passage of time he wanted more and more slurry, but the respondent- company refused to accept his request. The petitioner is an influential businessman, he had obtained a licence for coal trading, he tried to put pressure through various sources on the respondent-company for supplying him more quantity of slurry but when the Company refused to succumb to the pressure, he started harassing the Company. He removed the Company's slurry in an unauthorised manner for which a Criminal Case No., 173 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 Section 379 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 slurry from the Raiyati land. These petitions were dismissed on the ground of existence of dispute relating to the title of the land. The petitioner filed a writ petition C.W.J.C. No. 887 of 1990 in the High Court of Patna for taking action against the Deputy Commissioner, Hazaribagh for implementing the Full Bench judgment of the Patna High Court in Kundori Labours Cooperative Society Ltd. & etc. etc. v. State of Bihar & Ors., AIR 1986 Patna 242 wherein it was held that the slurry was neither coal nor mineral instead it was an industrial waste of coal mine, not subject to the provisions of the Mines and Mineral (Regulation and Development) Act, 1957. Consequently the collection of slurry which escaped from the washeries could be settled by the State Government with any person without obtaining the sanction of the Central Government. The petitioner has been contending before the High Court that the slurry which was discharged from washeries did not belong to the Company and he was entitled to collect the same. Since the respondent- company prevented the petitioner from collecting slurry from its land and as it further refused to sell any additional quantity of slurry to him, he entertained grudge against the respondent-company. In order to feed fat his personal grudge he has taken several proceedings against the respondent-company including the present proceedings. These facts are quite apparent from the pleadings of the parties and the documents placed before the Court. Infact, there is intrinsic evidence in the petition itself that the primary purpose of filling 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 claim interim relief from this Court permitting him to arrest/collect sludge/slurry flowing out of the washeries of the respondent Nos. 4 and 5 and with a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/slurry and transporting the same. The prayer for the interim relief made by the petitioner clearly indicates that he is interested

in collecting the slurry and transporting the same for the purposes of his business. As already state a Full Bench of the Patna High Court held that the slurry was not coal and the provisions of the Mines and Mineral (Regulation and Development) Act, 1957 were not applicable, the State Government was free to settle the same-

and the Tata Steel & Iron Co. had no right to collect the slurry which escaped from its washeries. The respondent-company filed an appeal before this Court. During the pendency of the aforesaid appeal, the petitioner filed the present petition. The appeal preferred by the Tata Iron & Steel Co. Ltd. and Bharat Coking Coal Ltd. was allowed by this Court and judgment of Patna High Court was set aside. The judgment of this Court is reported in Judgments today Vol. 3 1990 SC 533 wherein it has been held that the slurry/coal deposited on any and 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.

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 Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art, 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to preceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body or person 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 petitioner from this Court. Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb-

of the public interest litigation see *Bandhua Mukti Morcha v. Union of India*, [1984] 2 SCR 67; *Pandey v. State of West Bengal*, [1987] 2 SCC 295 at 331; *Ramsharan Autyanuprasi & Anr. v. Union of India & Ors.*, [1989] Suppl. 1 SCC 251 and *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Ors.*, [1990] 4 SCC 449.

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 dismissed the same

and directed that the petitioner shall pay Rs. 5,000 as costs. These costs are to be paid to the respondent Nos. 3,4 & 5.

T.N.A.

Petitions dismissed

Case Note: Case concerning a scheme formulated by the Government to augment drinking water supply involving the extraction of groundwater by pumps. The same was challenged by the petitioners on the ground that it would lead to an intrusion of salt water. The court held that the scheme should receive approval from the Ministry of Science and Technology and the Ministry of Environment and Forests before being implemented.

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AIR1990Ker321

IN THE HIGH COURT OF KERALA

Decided On: 26.02.1990

F.K. Hussain

v.

Union of India (UOI) and Ors.

Hon'ble Judges:

Chettur Sankaran Nair, J.

ORDER

Chettur Sankaran Nair, J.

1. The conflict in these cases, is the conflict of yesterdays and a new day the conflict of the lifestyle of a lotuseyed leisurely day gone by and the exacting demands of today on material resources.

2. The coral isles of Lakshadweep, with their wind swept beaches of silver sands washed by the soft ripples of the lagoons, lie scattered like pearls in the sapphire sea, to the west of the Malabar coast. The palm fringed isles are endowed with scenic loveliness; but are not endowed with enough material resources. According to petitioners, ground water resources in these islands are limited. Potable water is in short supply, and large scale withdrawals with electric or mechanical pumps can deplete the water sources, causing scopage or intrusion or saline water from the surrounding Arabian Sea. The administration has evolved a scheme to augment water supply, by digging wells and by drawing water from those existing wells to meet increasing needs. This, petitioners say, would upset the fresh water equilibrium leading to salinity in the available water resources. Pursuant to a scheme recommended by the Kerala Public Health Engineering Department, the administration is said to have taken this decision to extract ground water by using pumps. Action of the administration amounts to an invasion of the rights under Article 21, say petitioners and they seek to restrain the administration from implementing the scheme, by the issuance of appropriate writs or directions.



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3. Referring to the data available, petitioners submit that only Order 6 to Order 75 metres deep of ground water is available in the island. The potential for recharge is limited, and if available ground water is withdrawn, hydraulic head will be lowered and water lens, penetrated, by saline water causing diminution of potable water. Pristine form of hand withdrawal of water from wells alone will sustain the water resources, and the digging of radial wells would disturb the water equilibrium, according to them. They base their submissions on observations made by the Central Ground Water Board, the Indian Council of Agricultural Research, the Central Public Health Engineering and Environment Department and other expert bodies.

4. Petitioners place considerable reliance on passage from the report, on "Strategy for an Integrated Development of Lakshadweep" by Prof. M. G. K. Menon, then Scientific Advisor to the Prime Minister of India and Member of the Planning Commission. Prof. Menon observed:

"A hydrogeological survey of the islands is essential. Although the Kerala Public Health and Engineering Department and Central Public Health and Engineering Organisations have prepared a report, it needs to be carefully examined by a group of experts, particularly in terms of aquifer sizes, recharge rates, intrusion of saline water etc."

The Advocate General appearing for petitioners referred to the decision of the Supreme Court in *Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109 to highlight the risk in interfering with nature beyond the degree of tolerance. For every triumph that men make over nature, she takes her revenge. In answer, respondents submit that with the growing need for more water, it is not possible to content with the available sources of supply. It is further submitted that low environmental sanitary conditions and prevalence of water borne diseases, make it necessary to introduce a scheme of protected water supply. The available water is of bad quality and purification is necessary, according to respondents. They further submit that infiltration galleries pumps will be located only at shallow depths and that water will only be skimmed from the surface of available resources, guarding against excessive withdrawals. Water will be skimmed to collector wells, and from there pumped to distribution outlets. It is submitted that there will be no direct pumping, that the bottom of wells will be plugged, and that pumping would be restricted to half an hour, followed by a break for 2 1/2 hours, thus ensuring against excessive withdrawals. This method would not jeopardise fresh water equilibrium, and respondents rely on a Project Report of the National Environmental Engineering Research Institute, shortly called 'Neeri', and on another Report by the Centre for Earth Science Studies, shortly called 'Cess', to support their contention.

5. By orders on C.M.P. 5763/87 in OP 9736/86, this court directed the Central Ground Water Board to investigate into the various aspects raised in the writ petition, and submit a Report. A team consisting of Sarvashree V. C. Jacob, K. Rajagopalan, D. S. Thambi, K. M. Najeeb & K. Raman made a very detailed study of various aspects, and submitted a Report. They examined the question from different angles. Investigations were made with reference to physiography, climate, soil, agriculture & irrigation, Hydro-geological aspects, tidal and water level fluctuations, hydrology infiltration studies, aquifer

characteristics, hydrochemical studies, resources evaluation, recharge potential, water management concerns and other relevant matters.

6. Some of the findings of the team are :

1. Extractable ground water potential is around Order 23 MCM, of which the present draft is around Order 18 MCM.

2. Salt water intrusion is observed around pumping centres and that salt water fresh water interface was moving inland wherever pumping was more. Hence pumping of ground water should be stopped by legislation.

3. The ground water level and quality should be continuously monitored.

They categorically expressed the view that water supply scheme that is proposed is not feasible. The team estimated the volume of ground water that could be safely drawn as Order 23 cms. According to them, Order 525 MCM is the total dynamic reserve of ground water above mean sea level, and tidal fluctuation is between 0.03 and 0.39 m. To keep a buffer of 10 cm. water column above sea level, 0.05 MCM water is required which is approximately 10% of the reserve. According to them, by A.D. 2013, the water requirement will be around 0.35 MCM and this cannot be met by ground water resources. If withdrawals exceed 0.23 MCM, salinity will result. During test pumping it was noticed that water quality fell to 908/US/cm from 1100. Electrical conductivity varied from 3000 to 8000 during pumping.

7. They therefore suggested other means of augmenting water supply, mainly by harvesting rain water, desalination and reserve osmosis. More or less similar are the recommendations and findings of the 'Neeri', 'Cess' and the other agencies, relied on by the respondents. Thus, largely there is consensus between these agencies. All the agencies are agreed that existing ground water resources are limited, that excessive withdrawals will upset fresh water equilibrium, leading to salinity and diminution of potable water, and that new sources must be identified for augmentation. The sources indicated by all agencies are similar and they are, harvesting of rain water, desalination and reverse osmosis. But while the team that reported in pursuance of orders of this court is positively against use of mechanical devices, the 'Neeri' and 'Cess' are not against restricted extraction of ground water by use of infiltration galleries to collector wells, under controlled conditions. How and how much of ground water can be extracted is thus the issue to be determined. The question arises in an area, where administrative and technical aspects come into sharp focus. The Executive Government has onerous responsibilities in the matter of providing civic amenities. The Technocrat too has his role to play, in view of the impact the matter has on environmental and hydrogeological concerns. There must be an effective and wholesome interdisciplinary interaction. At once, the administrative agency cannot be permitted to function in such a manner as to make inroads, into the fundamental right under Article 21. The right to life is much more than the right to animal existence and its attributes are many fold, as life itself. A prioritisation of human needs and a new value system has been recognised in these areas.

The right to sweet water, and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself.

8. Consistent with these diverse concerns, a methodology has to be evolved for extraction of ground water. As already indicated, over exploitation of water resources has to be contained.

9. Water and rivers have dominated the destiny and fortunes of man. Plentiful rivers, have brought prosperity to those who lived on their banks. Great civilisations, going back to India's immemorial past, flourished along the banks of our great rivers. Regards and lores, linger around them. Along the banks of Indus and Ganges grow up the greatest civilisations, that mankind know of. If Bhageerathi brought salvation, Ganga sustains life. The Ganga rising in torrential springs from the foothills of Himalayas, runs like lifeline through India's Heartland and has brought plenty and prosperity. Ages have rolled by it, and it has remained eternal. In a way it has been a symbol. In the words of Jawaharlal Nehru, 'the Ganga has been to me a symbol and a memory of the past of India, running into the present, and flowing on to the great ocean of future'. Prof. Humayun Kabir in 'Men and Rivers' has portrayed life on the banks of Padma. The vicissitudes of life, varied happiness and sorrows -- with her moods and seasons.

10. Environmentalists and Scientists in other disciplines, have indicated the importance of water management in the present day. Perhaps water management, will be one of the biggest challenges in the opening decades of the next century. Water resources have therefore to be conserved.

11. Consistent with natural constraints, a Scheme, viable technically and meeting the requirements as nearly as possible has to be evolved. With changes in the way of life, even a basically conventional society, may go in for modern means and make use of pumps to draw water from private wells. Restrictions, comprehending the total situation, will be necessary, even in the shape of statutory regulations. Safeguards must be evolved to stop withdrawal of ground water at a cut off level, to impose restrictions and introduce a system of effective monitoring at all levels. To decide on the modalities the matter should receive a final look, at the hands of the competent Ministries of the Government of India, which may be the Ministry of Science and Technology and the Ministry of Environment.

12. The Scheme as envisaged shall not be implemented until it gets the final green signal from the aforesaid agencies. I say so, because some of the suggestions indicated by the administration in its counter-affidavit do not seem to be satisfactory. For example, to protest equilibrium, the Administration has suggested plugging of the bottom of wells. If plugging is done, recharge potential will be limited. These matters will be considered by the aforesaid Ministries and the Ministries will issue such directions as they consider appropriate, informed as they are of the technical aspects. If considered necessary, statutory regulations should be made and a responsible agency set up for monitoring the functioning of the system set up. The respondents will refer the matter to the Ministries aforesaid.

13. With these directions, writ petitions are disposed of. No costs.

14. I express appreciation of the thorough work done by the Committee constituted pursuant to the directions in C.M.P. 5763/87 in O.P. 9736/86. The reports of the 'NEERI' and 'CESS' have also helped this court considerably in considering the various questions raised in the writ petitions.

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PETITIONER:
M.C.MEHTA

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 14/03/1991

BENCH:
MISRA, RANGNATH (CJ)
BENCH:
MISRA, RANGNATH (CJ)
KANIA, M.H.
KULDIP SINGH (J)

CITATION:
1991 SCR (1) 866 1991 SCC (2) 353
JT 1991 (1) 620 1991 SCALE (1) 427

ACT:

Constitution of India, 1950-Articles 32, 51-A- Public Interest Litigation-Environment Pollution-Control-Measures. Environment (Protection) Act, 1986-Section, 3- Problem of Vehicular pollution in Delhi- Committee set up by Court.

HEADNOTE:

The petitioner, an Advocate and Chairman of the Environmental Protection Cell filed the petition under Article 32 asking the Court to issue directions for closing down of hazardous industries located in the densely populated areas of Delhi, and for regulation of air pollution caused by automobiles operating in the area as also the thermal units generating power for the Delhi Electric Supply Undertaking.

Making an interim order, and keeping the writ petition pending for the purpose of monitoring, the Court.

HELD: 1. The incorporation of protection of environment as an obligation of the State in the Directive Principles and the mandate in Article 51-A to the citizens of India as part of fundamental duty are indications of the Constitutional recognition of importance of environment of life-both the flora and the fauna. [870 A-B]

2. Law alone also cannot help in restoring a balance in the biospheric disturbance. Nor can funds help effectively. The situation requires a perception and imaginative planning. It also requires sustained effort and result oriented strategic action. Campaign for general awakening of the people using automobiles of different classification and among the people inhabiting the Capital is an indispensable preliminary. [871E-G]

3. All persons using automobiles should have a fair knowledge of the baneful effect on the community including those who use such vehicles on account of the emission from such vehicles. Until that is done in an effective way the appropriate attitude would not develop and cooperation for reducing pollution would not emerge. [871 F-H]

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4. A Committee is set up by this court to look into the problem of vehicular pollution in Delhi and for devising methods of solution of the problem. [872 H, 873 A]

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5. A retired Judge of this court to act as Chairman, the petitioner and the Chairman of the Central Pollution Control Board and the person representing the Association of Indian Automobiles Manufacturers could be the members of the Committee. The Committee would also have the power to co-opt experts not exceeding three for its efficient working from time to time. The Joint Secretary in the Ministry of Environment and Forests shall be the Convenor-Secretary of the Committee. [873A-D]

6. The Committee may be constituted with effect from 18th March, 1991, under an appropriate Notification of the Union Government. [873D]

7. The Committee shall furnish a report to this Court once in two months as to the steps taken in the matter. The Union Government and the Delhi Administration are directed to effectively cooperate with the Committee for its successful operation. [874B]

JUDGMENT:

ORIGINAL JURISDICTION: Write Petition No. 13029 of 1985. (Under Articles 32 of the Constitution of India).
Petitioner in person.

Altaf Ahmed, Additional Solicitor General, Sri Narain Mathur, R. Mohan, Ms. Anil Katiyar, Ms. Sushma Suri, K. Swamy, R.K. Maheshwari and S.M. Ashri for the Respondents.

The Judgement of the Court was delivered by.

RANGANATH MISRA, C.J. This is an application under Article 32 of the Constitution in the public interest litigation sector. A practising advocate who is the Chairman of the Environment Protection Cell operating at Delhi is the petitioner. This Court has been asked to issue directions for closing down of hazardous industries located in the densely populated areas of Delhi and for regulation of air pollution caused by automobiles operating in the area as also the thermal units generating power for the Delhi Electric Supply Undertaking, (here after referred to as 'DESU').

The Union Territory of Delhi has a total population of about 96

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lakhs, out of which the urban area consisting of old Delhi, New Delhi and the Cantonment has a population of around 90 lakhs. By 1947 when the country became independent, Delhi had a population of a little over 5 lakhs. In these little more than two scores of years the population has, thus, multiplied by 18 times. Though it is a spread-out city, in some pockets, the density of population is very high and these have become congested.

The problem of environmental pollution is global in a increasingly small world and concerns all countries irrespective of their size, level of development or ideology. Notwithstanding political division of the world into national units, the oceanic world in an inter-connected whole; the winds that blow over the countries are also one. Pollution is capable of moving from continent to continent. If USSR carries out a nuclear test, the fall-out may be carried by the winds to any part of the world and such fall-out or irresponsible disposal of radio-active waste from a remote energy plant in one country may turn out to have greater adverse effect on the neighbouring countries than the danger of full-fledged war. Informed public mind is already agitated over the polluting effect of the Gulf War and the common concern of the entire homosapien race is obsessed by the apprehension of acid rain, toxic effect on

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the seas and even on the atmosphere.

The awareness of interaction of man with his environment is of recent origin. The Declaration of the United Nations Conference on the Human Environment held in Stockholm in June, 1972 stated:

"Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights-even of life itself."

Principle No. 1 of the same Declaration went on to say:

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality

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that permits a life of dignity and well-being, and he bears solemn responsibility to protect and improve the environment for present and future generations..."

The closeness of the undeveloped and under-developed communities to nature is not found in the developed ones. Our ancestors had realised the importance of the tie between man and his environment. The Samaveda notes that Flute of Divine love by saying:

"Listen to the melodious music of the divine poet. He plays upon the flute of love, the notes soar to high heaven and reach the distant stars and dance on the raging waves of the sea."

The earth, the seas, the sky, the stars are all woven together by the soft strains of the divine music. Its vibrants echo through the corridors of time in the endless canopy of the sky."

Norman Myers quoted in Sir Edmond Hillary's Ecology 2,000' has rightly observed:

"The fate of African environments is thus determined not only by local circumstances. It is influenced, in part at least, by the lifestyles of the developed world. These economic-ecological linkages between different members of the international community are little recognized to date, but they represent a significant factor for land-use patterns in Africa's Savannas".

Our Constitution by the Forty-Second Amendment introduced Article 48A as also Article 51A into the Constitution. these Articles provide:

"48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

51A. It shall be the duty of every citizen of India:

(g) to protect and improve the natural environment including forests, rivers and wild life, and to have compassion for living creatures."

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The incorporation of protection of environment as an obligation of the State in the Directive Principles and the mandate in Article 51 A to the citizens of India as part of

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fundamental duty are indications of the Constitutional recognition of importance of environment on life-both the flora and the fauna.

Ours is a great country- territorywise, from the stand-point of population as also legacy-wise. Though politically divided into many States throughout the ages it has been bound by a common culture short-lived empires have grown up and Delhi became the capital of such empires of the north. Delhi was the capital of the Mughals too but the Britishers had in the initial period Calcutta as their capital and it was only 1911 that the Indian capital of the British empire was shifted from Calcutta to Delhi.

With the growth of importance of Delhi, on the outskirts of the then city gradually industries developed. Lack of vision and inadequate statesmanship allowed many of these industries to grow perilously close to human habitation and in the process of expansion of the city with the growth of population and activity, the industrial belt became a part of the city. Hindustan Insecticides Limited, which is respondent no. 6 before us, is one of such industries, DESU has three generating units-One known as the Indraprastha Power Station, the other as the GT Power Stations and the third as the RPR Power Station. These too are located within the densely populated area. The Delhi Transport Corporation (hereafter DTC) which provides the public transport facility to the residents of Delhi operates thousands of buses has been impleaded as respondent no. 5 on the allegation that it is one of the notorious polluting agencies.

A monitoring Committee on ambient and automotive emission levels was set up for examining the impact of surface transport on air environment of Delhi at the instance of the Director of Transport, Delhi Administration. The facts and figures available from the report may briefly be indicated. As on March 31, 1982. Delhi had a total number of 5,92,584 vehicles of which 65% were two-wheelers, 3.5% were three-wheelers, 25% cars, jeeps and other medium size vehicles and 1.5% were buses and the remaining 7% were goods carriers. The affidavit of the Deputy Director of Transport of the Delhi Administration indicates that the vehicular population of 1990 is 13.5 lakhs. This means that within about 8 years there has been an increase of about 8 lakhs of vehicles in Delhi which would work out to an addition of

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about 1 lakh every year. The proportion of the two wheelers has perhaps not been seriously disturbed. Though the Deputy director of Transport has indicated that the automobiles contribute about 50% of the polluting factor there is material to suggest that the proportion is still higher. Two-wheelers and three-wheelers contribute over sixty percent of the total emission of carbon monoxide and about eighty percent of the total hydrocarbons. To meet the challenging task of controlling pollution, Air (Prevention and Control of Pollution) Act, 1981 has been enacted.

Respondent 3 is the Central Board set up under the Act. The statute authorise Government in consultation with the Board to instruct the Transport Authorities for developing expertise by taking vehicular pollution survey covering all ramifications. The Union Territory of Delhi was chosen on selective basis because it maintains the highest traffic volume.

Under the Motor Vehicles Act of 1989 certain provision have been made for regulating emission resulting in pollution. Transport Authorities of the Delhi Administration had placed facts and figures relating to

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steps taken under the Act for regulating pollution. Emission checking, prosecution as also steps for canceling of registration are said to be the normal steps taken by the Administration in this behalf. We were, however, not satisfied that the action taken in this behalf was adequate and the challenging task of pollution control could not be successfully dealt with that way.

Law alone also cannot help in restoring a balance in the biospheric disturbance. Nor can funds help effectively. The situation requires a clear perception and imaginative planning. It also requires sustained effort and result oriented strategic action. Campaign for general awakening of the people using automobiles of different classifications and among the people inhabiting the capital is indispensable preliminary. All persons using automobiles should have a fair knowledge of the baneful effect on the community including those who use such vehicles on account of the emission from such vehicles. Until that is done in an effective way the appropriate attitude would not develop and cooperation for reducing pollution would not emerge.

A brief extract from the journal entitled 'Environmental Policy & law' vol. 13 nos. 1-2 Spring 1983) published from North-Holland describes the problem thus:

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"It became clear that all these measures are not themselves sufficient to come to grips with the problem of air pollution caused by road traffic. In every one of the towns and cities, the problem of air pollution from motor vehicle traffic is a considerable one, and it was more or less generally apparent that present norms for motor vehicle exhausts are not adequate so as to achieve the necessary reductions in a rapid space of time. In fact, the problem is, in part, on the increase. This is not only true of private cars, especially diesel-powered vehicles, but also of commercial vehicles ..."

"Despite the legal and other restrictions mentioned above, which hamper the towns and cities involved in pursuing effective policies aimed at limiting motor vehicle exhausts, some interesting strategies have been thought up which have either led to improvements in themselves or at least stimulated attitudes towards environmental policies. For example, in formulating their regulations in the event of smog, both Munich and Berlin offered positive stimulus for the purchase of vehicles fitted with catalytic converters. As far as city-owned motor vehicles are concerned, some authorities have pursued a deliberate policy of purchasing those automobiles with improved exhaust systems."

In course of the hearing of this matter we had called upon counsel to look at the problem not as an adversarial litigation but to come forward with useful deliberations so that something concrete could finally emerge for easing the situation. We were shown some literature and even gadgets which might help reduction of pollution. The question of eliminating use of motor spirit and replacement of battery operated two-wheelers was also mooted. The Association of Indian Automobile Manufacturers had made an application for intervention and was present in Court. Some of the aspects which came up for discussion were indeed sufficiently technical. Some other aspects require laboratory testing and probe into efficacy. Therefore, the question of setting up

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of a high-powered committee was also mooted. We are happy to find that the deliberations in course of the hearing have taken a concrete shape and the Ministry of Environment & Forests has ultimately instructed the learned Attorney General in writing (copy placed on the record) that a Committee could be set up by the Court to look into the problem of vehicular pollution in Delhi

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and for devising methods of solution of the problem. The Ministry has agreed that a retired Judge of this Court could act as Chairman and has suggested that Shri M.C. Mehta, the petitioner herein and Shri. N.S. Tiwana, Chairman of the Central Pollution Control Board may be made the Members of the Committee. We find this suggestion of the Ministry acceptable subject to certain modification. We are inclined to take the view that Shri Sudhakar Girdharlal Shah representing the Association of Indian Automobile Manufacturers could be taken as a member of the Committee and the Committee would also have the power to co-opt experts not exceeding three for its efficient working from time to time. Shri Justice K.N. Saikia who has recently retired as a Judge of this Court is appointed as the Chairman of the Committee with Shri N.S. Tiwana, Shri M.C. Mehta and Shri. S.G. Shah as Members. The Joint Secretary in the Ministry of Environment and Forests shall be the convenor Secretary of the Committee. Shri Justice Saikia shall be entitled to all the benefits to which a retired Judge of this Court while called back to duty is entitled.

The Committee may be constituted with effect from 18th March, 1991, under an appropriate Notification of the Union Government in the relevant Ministry. The terms of reference for the time being as recommended by the Ministry are the following:

- "(i) To make an assessment of the technologies available for vehicular pollution control in the world;
- (ii) To make an assessment of the current status of technology available in India for controlling vehicular pollution;
- (iii) To look at the low cost alternatives for operating vehicles at reduced pollution levels in the metropolitan cities of India.
- (iv) To examine the feasibility of measures to reduce/eliminate pollution from motor vehicles both on short term and long term basis and make appropriate recommendations in this regard;
- (v) To make specific recommendations on the administrative/legal regulations required for implementing the recommendations in (iii) above."

For the time being the Committee may proceed to consider these.

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other relevant aspects may be taken into consideration by the Committee.

This writ petition shall be deemed to be pending for the purpose of monitoring. The Committee shall furnish a report to this Court once in two months as to the steps taken in the matter. The Union Government and the Delhi Administration are directed to effectively cooperate with the Committee for its successful operation.

V.P.R.

Petition pending
for monitoring.

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M.C. Mehta vs Kamal Nath & Ors on 12 May, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1997, 2000 (6) SCC 213, 2000 AIR SCW 1854, 2000 (5) COM LJ 196 SC, 2000 (3) LRI 177, 2000 (5) SCALE 69, 2000 (2) UJ (SC) 1196, 2000 UJ(SC) 2 1196, (2000) 7 JT 19 (SC), 2000 (7) SRJ 210, (2000) 5 COM LJ 196, (2000) 5 SCALE 69, (2001) 1 MAD LW 449, (2000) 4 SUPREME 391, (2000) 3 RECCIVR 392, (2000) 4 ANDH LT 12

Author: S.Saghir Ahmad

Bench: S.S.Ahmad, Doraiswami Raju

PETITIONER:

M.C. MEHTA

Vs.

RESPONDENT:

KAMAL NATH & ORS.

DATE OF JUDGMENT:

12/05/2000

BENCH:

S.S.Ahmad, Doraiswami Raju

JUDGMENT:

S.SAGHIR AHMAD, J.

This case, which was finally decided by this Court by its Judgment dated December 13, 1996, has been placed before us for determination of the quantum of pollution fine. It may be stated that the main case was disposed of with the following directions:- 1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land. 2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated November 24, 1993 and the lease-deed dated April 11, 1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease-deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions. 3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the river bed and the banks of the river Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area. if necessary, and give an assessment of the cost which is likely to be incurred for reve  caused by the Motel to the environment and

ecology of the area. NEERI may take into consideration the report by the Board in this respect. 4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel. 5. The Motel shall construct a boundary wall at a distance of not more than 4 meters from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated September 29, 1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use. 6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel. 7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into river Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law. 8. The Motel shall show cause on December 18, 1996 why pollution-fine and damages be not imposed as directed by us. NEERI shall send its report by December 17, 1996. To be listed on December 18, 1996." Pursuant to the above Order, notice was issued requiring the Motel to show-cause on two points; (i) why the Motel be not asked to pay compensation to reverse the degraded environment and

(ii) why pollution fine, in addition, be not imposed. Mr. G.L. Sanghi, learned Senior Counsel, appearing for M/s Span Motel Private Ltd., has contended that though it is open to the Court, in proceedings under Article 32 of the Constitution, to grant compensation to the victims whose Fundamental Rights might have been violated or who are the victims of an arbitrary executive action or victims of atrocious behaviour of public authorities in violation of public duties cast upon them, it cannot impose any fine on those who are guilty of that action. He contended that the fine is a component of Criminal Jurisprudence and cannot be utilised in civil proceedings specially under Article 32 or 226 of the Constitution either by this Court or the High Court as imposition of fine would be contrary to the provisions contained in Article 20 and 21 of the Constitution. It is contended that fine can be imposed upon a person only if it is provided by a statute and gives jurisdiction to the Court to inflict or impose that fine after giving a fair trial to that person but in the absence of any statutory provision, a person cannot be penalised and no fine can be imposed upon him. Mr. M.C. Mehta, who has been pursuing this case with the usual vigour and vehemence, has contended that if a person disturbs the ecological balance and tinkers with the natural conditions of rivers, forests, air and water, which are the gifts of nature, he would be guilty of violating not only the Fundamental Rights, guaranteed under Article 21 of the Constitution, but also be violating the fundamental duties to protect environment under Article 51A(g) which provides that it shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to show compassion for living creatures. The planet Earth which is inhabited by human beings and other living creatures, including animals and birds, has been so created as to cater to the basic needs of all the living creatures. Living creatures do not necessarily mean the human beings, the animals, the birds, the fish, the worms, the sepents, the hydras, but also the plants of different varieties, the creepers, the grass and the vast forests. They survive on fresh air, fresh water and the sacred soil. They constitute the essential elements for survival of "life" on this

planet. The living creatures, including human beings, lived peacefully all along. But when the human beings started acting inhumanly, the era of distress began which in its wake brought new problems for survival. The industrial revolution brought an awakening among the men inhabiting this Earth that the Nature, with all its resources was not unlimited and forever renewable. The uncontrolled industrial development generating tonnes of industrial waste disturbed the ecological balance by polluting the air and water which in turn, had a devastating effect on the wildlife and, therefore, the early efforts to protect the environment related to the protection of wildlife. But then the two world wars, the first world war (1914-1918) and the second world war (1939 to 1945) during which atomic bombs were exploded resulting in the loss of thousands of lives and burning down of vast expanses of forests, made the man realise that if the environmental disturbances were not controlled, his own survival on this planet would become impossible. The United Nations, therefore, held a Conference on human environment at Stockholm in 1972. In the wake of the resolutions adopted at that Conference, different countries at different stages enacted laws to protect the deteriorating conditions of environment. Here in India, the Legislature enacted three Acts, namely, The Water (Prevention & Control of Pollution) Act, 1974; the Air (Prevention & Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986. It also enacted the Water (Prevention & Control of Pollution) Cess Act, 1977. Under these Acts, Rules have been framed to give effect to the provisions thereof. They are : The Water (Prevention and Control of Pollution) Rules, 1975; The Water (Prevention & Control of Pollution) Cess Rules, 1978; The Air (Prevention and Control of Pollution) Rules, 1982; The Air (Prevention & Control of Pollution) (Union Territories) Rules, 1983; The Environment (Protection) Rules, 1986; The Hazardous Wastes (Management and Handling) Rules, 1989; The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 and hosts of other Rules and Notifications. In addition to these Acts and Rules, there are, on the Statute Book, other Acts dealing, in a way, with the Environmental laws, for example, the Indian Forest Act, 1927; The Forest (Conservation) Act, 1980; The Wildlife (Protection) Act, 1972 and the Rules framed under these Acts. Various States in India have also made their Environmental laws and rules for the protection of environment. Apart from the above Statutes and the Rules made thereunder, Article 48A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two Articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to Fundamental Rights under Article 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect the "life", in order to protect "environment" and in order to protect "air, water and soil"

from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughter-house and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the Industries located in Delhi, the directions to Tanneries etc., are all judgments which seek to protect environment. In the matter of enforcement of Fundamental Rights under Article 21, under Public Law domain, the Court, in exercise of its powers under Article 32 of the Constitution, has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the "POLLUTER PAYS PRINCIPLE" which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter, is under an obligation to make good the damage caused to the environment. The recognition of the vice of pollution and its impact on future resources was realised during the early part of 1970. The United Nations Economic Commission for Europe, during a panel discussion in 1971, concluded that the total environmental expenditure required for improvement of the environment was overestimated but could be reduced by increased environmental awareness and control. In 1972, the Organisation for Economic Cooperation and Development adopted the "POLLUTER PAYS PRINCIPLE" as a recommendable method for pollution cost allocation. This principle was also discussed during the 1972 Paris Summit. In 1974, the European Community recommended the application of the principle by its member States so that the costs associated with environmental protection against pollution may be allocated according to uniform principles throughout the Community. In 1989, the Organisation for Economic Cooperation and Development reaffirmed its use and extended its application to include costs of accidental pollution. In 1987, the principle was acknowledged as a binding principle of law as it was incorporated in European Community Law through the enactment of the Single European Act, 1987. Article 130r.2 of the 1992 Maastricht Treaty provides that Community Environment Policy "shall be based on the principle that the polluter should pay." "POLLUTER PAYS PRINCIPLE" has also been applied by this Court in various decisions. In *Indian Council for Enviro Legal Action vs. Union of India*, AIR 1996 SC 1446 = 1996 (2) SCR 503 = (1996) 3 SCC 212 = JT 1996 (2) SC 196, it was held that once the activity carried on was hazardous or inherently dangerous, the person carrying on that activity was liable to make good the loss caused to any other person by that activity. This principle was also followed in *Vellore Citizens Welfare Forum vs. Union of India & Ors.*, AIR 1996 SC 2715 = (1996) 5 SCC 647 = JT 1996 (7) SC 375 which has also been discussed in the present case in the main judgment. It was for this reason that the Motel was directed to pay compensation by way of cost for the restitution of the environment ecology of the area. But it is the further direction why pollution fine, in addition, be not imposed which is the subject matter

of the present discussion. Chapter VII of the Water (Prevention and Control of Pollution) Act, 1974 contains the provisions dealing with penalties and procedure. This Chapter consists of Sections 41 to 50. Sub-section (2) and (3) of Section 41 provide for the punishment and imposition of fine. They are quoted below:- "41.(2) Whoever fails to comply with any order issued under clause (e) of sub-section (1) of Section 32 or any direction issued by a Court under sub-section (2) of Section 33 or any direction issued under Section 33A, shall in respect of each failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure. (3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine." Similarly, Section 42 provides that a person shall be liable to be punished with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both. Sub-section (2) of Section 42 also contemplates imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both. Section 43 contemplates penalty for contravention of the provisions of Section 24. Section 44 contemplates penalty for contravention of Section 25 or Section 26. They also contemplate imposition of fine. Section 45 provides that if a person who has been convicted of any offence under Section 24 or Section 25 or Section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine. Section 45A provides that whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of continuing contravention or failure, he may be punished with an additional fine. Section 47 contemplates offences by Companies while Section 48 contemplates offences by Government Departments. Section 15 of the Environment (Protection) Act, 1986 provides for penalty for contravention of the provisions of the Act and the rules, orders and directions made thereunder. Sub-section (1) of Section 15 speaks of imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. Section 16 of the Act contemplates offences by the Companies while Section 17 contemplates offences by Government Departments. Chapter VI of the Air (Prevention and Control of Pollution) Act, 1981 contains the provisions for penalties and procedure. This Chapter consists of Sections 37 to 46.

Section 37 provides penalties for failure to comply with the provisions of Section 21 or Section 22 or with the directions issued under Section 31A. It provides that the person shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day. Sub-section (2) of this Section provides that if the failure continues beyond the period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine. Section 38 also provides penalties for certain acts and it provides that for such acts as are referred to in that Section, a person shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both. Section 39 contemplates penalty for contravention of certain provisions of the Act and it provides for imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention. Section 40 speaks of offences by Companies while Section 41 speaks of offences by Government Departments. All the three Acts, referred to above, also contemplate the taking of the cognizance of the offences by the Court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone he can be punished with imprisonment and fine or both. The sine qua non for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty. In the instant case, a finding has been recorded that M/s Span Motel had interfered with the natural flow of river and thus disturbed the environment and ecology of the area. It has been held liable to pay damages. The quantum of damages is under the process of being determined. The Court directed a notice to be issued to show cause why pollution fine be not imposed. In view of the above, it is difficult for us to hold that the pollution fine can be imposed upon M/s Span Motel without there being any trial and without there being any finding that M/s Span Motel was guilty of the offence under the Act and are, therefore, liable to be punished with imprisonment or with FINE. This notice has been issued without reference to any provision of the Act. The contention that the notice should be treated to have been issued in exercise of power under Article 142 of the Constitution cannot be accepted as this Article cannot be pressed into aid in a situation where action under that Article would amount to contravention of the specific provisions of the Act itself. A fine is to be imposed upon the person who is found guilty of having contravened any of the provisions of the Act. He has to be tried for the specific offence and then on being found guilty, he may be punished either by sentencing him to undergo imprisonment for the period contemplated by the Act or with fine or with both. But recourse cannot be taken to Article 142 to inflict upon him this punishment. The scope of Article 142 was considered in several decisions and recently in Supreme

Court Bar Association vs. Union of India, AIR 1998 SC 1895 = (1998) 4 SCC 409, by which the decision of this Court in V.C. Mishra, Re, (1995) 2 SCC 584, was partly overruled, it was held that the plenary power of this Court under Article 142 of the Constitution are inherent in the Court and are "COMPLEMENTARY" to those powers which are specifically conferred on the Court by various statutes. This power exists as a separate and independent basis of jurisdiction apart from the statutes. The Court further observed that though the powers conferred on the Court by Article 142 are curative in nature, they cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant. The Court further observed that this power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly. Similarly, in M.S. Ahlawat vs. Union of India & Anr., AIR 2000 SC 168 = (2000) 1 SCC 278, it was held that under Article 142 of the Constitution, the Supreme Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. Thus, in addition to the damages which have to be paid by M/s Span Motel, as directed in the main Judgment, it cannot be punished with fine unless the entire procedure prescribed under the Act is followed and M/s Span Motel are tried for any of the offences contemplated by the Act and is found guilty. The notice issued to M/s Span Motel why pollution fine be not imposed upon them is, therefore, withdrawn. But the matter does not end here. Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Unfortunately, notice for exemplary damages was not issued to M/s Span Motel although it ought to have been issued. The considerations for which "fine" can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded. While withdrawing the notice for payment of pollution fine, we direct a fresh notice be issued to M/s Span Motel to show cause why in addition to damages, exemplary damages be not awarded for having committed the acts set out and detailed in the main judgment. This notice shall be returnable within six weeks. This question shall be heard at the time of quantification of damages under the main judgment.

PETITIONER:
INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.ETC.

DATE OF JUDGMENT: 13/02/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
KIRPAL B.N. (J)

CITATION:
1996 AIR 1446 1996 SCC (3) 212
JT 1996 (2) 196 1996 SCALE (2)44

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY, J.

WRIT PETITION (C) NO.967 OF 1989:

This writ petition filed by an environmentalist organization brings to light the woes of people living in the vicinity of chemical industrial plants in India. It highlights the disregard, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialization and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings - for that matter, for anything else. And the law seems to have been helpless. Systemic defects? It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them - particularly, if they are men with means. Strong words indeed - but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us. The facts of the case will bear out these opening remarks.

Bichhri is a small village in Udaipur district of Rajasthan. To its north is a major industrial establishment, Hindustan Zinc Limited, a public sector concern. That did not affect Bichhri. Its woes began somewhere in 1987 when the fourth respondent herein, Hindustan Agro Chemicals Limited started producing certain chemicals like Oleum [said to be the concentrated form of Sulphuric acid] and Single Super Phosphate. The real calamity occurred when a sister concern, Silver Chemicals [Respondent No.5], commenced production of 'H' acid in a plant located within the same complex. 'H' acid was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents - in particular, iron-based and gypsum-based sludge - which if not properly treated, pose grave threat to mother Earth. It poisons the earth, the water and everything that comes in

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contact with it. Jyoti Chemicals [Respondent No.8] is another unit established to produce 'H' acid, besides some other chemicals. Respondents Nos.6 and 7 were established to produce fertilizers and a few other products.

All the units/factories of Respondents Nos.4 to 8 are situated in the same complex and are controlled by the same group of individuals. All the units are what may be called "chemical industries". The complex is located within the limits of Bichhri village.

Because of the pernicious wastes emerging from the production of 'H' acid, its manufacture is stated to have been banned in the western countries. But the need of 'H' acid continues in the West. That need is catered to by the industries like the Silver Chemicals and Jyoti Chemicals in this part of the world. [A few other units producing 'H' acid have been established in Gujarat, as would be evident from the decision of the Gujarat High Court in Pravinbhai Jashbhai & Ors. v. State of Gujarat & Anr. (1995 (2) G.L.R.1210), a decision rendered by one of us, B.N.Kirpal, J. as the Chief Justice of that Court.] Silver Chemicals is stated to have produced 375 MT of 'H' acid. The quantity of 'H' acid produced by Jyoti Chemicals is not known. It says that it produced only 20mt., as trial production, and no more. Whatever quantity these two units may have produced, it has given birth to about 2400-2500 MT of highly toxic sludge [iron-based sludge and gypsum-based sludge] besides other pollutants. Since the toxic untreated waste waters were allowed to flow out freely and because the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances have percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams has turned dark and dirty rendering it unfit for human consumption. It has become unfit for cattle to drink and for irrigating the land. The soil has become polluted rendering it unfit for cultivation, the main stay of the villagers. The resulting misery to the villagers needs no emphasis. It spread disease, death and disaster in the village and the surrounding areas. This sudden degradation of earth and water had an echo in Parliament too. An Hon'ble Minister said, action was being taken, but nothing meaningful was done on the spot. The villagers then rose in virtual revolt leading to the imposition of Section 144 Cr.P.C. by the District Magistrate in the area and the closure of Silver Chemicals in January, 1989. It is averred by the respondents that both the units, Silver Chemicals and Jyoti Chemicals have stopped manufacturing 'H' acid since January, 1989 and are closed. We may assume it to be so. Yet the consequences of their action remain - the sludge, the long-lasting damage to earth, to underground water, to human beings, to cattle and the village economy. It is with these consequences that we are to contend with in this writ petition.

The present social action litigation was initiated in August, 1989 complaining precisely of the above situation and requesting for appropriate remedial action. To the writ petition, the petitioner enclosed a number of photographs illustrating the enormous damage done to water, cattle, plants and to the area in general. A good amount of technical data and other material was also produced supporting the averments in the writ petition.

COUNTER-AFFIDAVITS OF THE RESPONDENTS

On notice being given, counter-affidavits have been filed by the Government of India, Government of Rajasthan, Rajasthan Pollution Control Board [R.P.C.B.] and Respondents

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Nos.4 to 8. Since the earliest counter-affidavit in point of time is that of R.P.C.B., we shall refer to it in the first instance. It was filed on October 26, 1989. The following are the averments:

(a) Re. Hindustan Agro Chemicals Limited [R-4]: The unit obtained 'No-Objection Certificate' from the P.C.B. for manufacturing sulphuric acid and alumina sulphate. The Board granted clearance subject to certain conditions. Later 'No-Objection Certificate' was granted under the Water [Prevention and Control of Pollution] Act, 1974 [Water Act] and Air (Prevention and Control of Pollution) Act, 1981 [Air Act], again subject to certain conditions. However, this unit changed its product without clearance from the Board.

Instead of sulphuric acid, it started manufacturing Oleum and Single Super Phosphate [S.S.P.]. Accordingly, consent was refused to the unit on February 16, 1987. Directions were also issued to close down the unit. (b) Re.:Silver Chemicals [R-5]: This unit was promoted by the fourth respondent without obtaining 'No-Objection Certificate' from the Board for the manufacture of 'H' acid. The waste water generated from the manufacture of 'H' acid is highly acidic and contains very high concentration of dissolved solids along with several dangerous pollutants. This unit was commissioned in February, 1988 without obtaining the prior consent of the Board and accordingly, notice of closure was served on April 30, 1988. On May 12, 1988, the unit applied for consent under Water and Air Acts which was refused. The Government was requested to issue directions for cutting off the electricity and water to this unit but no action was taken by the Government. The unit was found closed on the date of inspection, viz., October 2, 1989.

(c) Re.:Rajasthan Multi Fertilizers [R-6]: This unit was installed without obtaining prior 'No-Objection Certificate' from the Board and without even applying for consent under Water and Air Acts. Notice was served on this unit on February 20, 1989. In reply where to, the Board was informed that the unit was closed since last three years and that electricity has also been cut off since February 12, 1988.

(d) Re.:Phosphates India [R-7]: This unit was also established without obtaining prior 'No-Objection Certificate' from the Board nor did it apply for consent under the Water and Air Acts. When notice dated February 20, 1989 was served upon this unit, the Management replied that this unit was closed for a long time.

(e) Re.:Jyoti Chemicals [R-8]: This unit applied for 'No-Objection Certificate' for producing ferric alum. 'No-Objection Certificate' was issued imposing various conditions on April 8, 1988. The 'No-Objection Certificate' was withdrawn on May 30, 1988 on account of non-compliance with its conditions. The consent applied for under Water and Air Acts by this unit was also refused. Subsequently, on February 9, 1989, the unit applied for fresh consent for manufacturing 'H' acid. The consent was refused on May 30, 1989. The Board has been keeping an eye upon this unit to ensure that it does not start the manufacture of 'H' acid. On October 2, 1989, when the unit was inspected, it was found closed.

The Board submitted further [in its counter-affidavit] that the sludge lying in the open in the premises of Respondents Nos.4 to 8 ought to be disposed of in accordance with the provisions contained in the Hazardous Wastes (Management and Handling) Rules, 1989 framed under Environment (Protection) Act, 1986. According to the Board, the responsibility for creating the said hazardous situation was squarely that of Respondents Nos.4 to 8. The Board

enclosed several documents to its counter in support of the averments contained therein.

The Government of Rajasthan filed its counter-affidavit on January 20, 1990. It made a curious statement in Para 3 to the following effect: "(T)hat the State Government is now aware of the pollution of under-ground water being caused by liquid effluents from the firms arrayed as Respondent Nos.4 to 8 in the writ petition. Therefore, the State Government has initiated action through the Pollution." The State Government stated that the water in certain wells in Bichri village and some other surrounding villages has become unfit for drinking by human beings and cattle, though in some other wells, the water remains unaffected.

The Ministry of Environment and Forests, Government of India filed its counter on February 8, 1990. In their counter, the Government of India stated that Silver Chemicals was merely granted a Letter of Intent but it never applied for conversion of the Letter of Intent into industrial licence. Commencing production before obtaining industrial licence is an offence under Industries [Development and Regulation] Act, 1951. So far as Jyoti Chemicals is concerned, it is stated that it has not approached the Government at any time even that in June, 1989, a study of the situation in Bichri village and some other surrounding villages was conducted by the Centre for Science and Environment. A copy of their Report is enclosed to the counter. The Report states the consequences emanating from the production of 'H' acid and the manner in which the resulting wastes were dealt with by Respondents Nos.4 to 8 thus:

"The effluents are very difficult to treat as many of the pollutants present are refractory in nature. Setting up such highly polluting industry in a critical ground water area was essentially ill-conceived. The effluents seriously polluted the nearby drain and overflowed into Udaisagar main canal, severely corroding its cement-concrete lined bed and banks. The polluted waters also seriously degraded some agricultural land and damaged standing crops. On being ordered to contain the effluents, the industry installed an unlined holding pond within its premises and resorted to spraying the effluent on the nearby hill-slope. This only resulted in extensive seepage and percolation of the effluents into ground water and their spread down the aquifer. Currently about 60 wells appear to have been significantly polluted but every week a few new wells, down the aquifer start showing signs of pollution. This has created serious problems for water supply for domestic purposes, cattle-watering crop irrigation and other beneficial uses, and it has also caused human illness and even death, degradation of land and damage to fruit, trees and other vegetation. There are serious

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apprehensions that the pollution and its harmful effects will spread further after the onset of the monsoon as the water percolating from the higher parts of the basin moves down carrying the pollutants lying on the slopes - in the holding pond and those already underground."

Each of the Respondent Nos.4 to 8 filed separate counter-affidavits. All the affidavits filed on behalf of these respondents are sworn-to by Lt.Gen. M.L.Yadava, who described himself as the President of each of these units. In the counter-affidavit filed on behalf of the fourth respondent, it is stated that it is in no way responsible for the situation complained of. It is engaged in the manufacture of sulphuric acid and had commenced its operations on January 6, 1987. It has been granted 'No-Objection Certificates' from time to time. The consent obtained from R.P.C.B. is valid upto August 15, 1988. Application for extension of consent has already been filed. This counter-affidavit was filed on January 18, 1990.

In the counter-affidavit filed on behalf of the fifth respondent [Silver Chemicals], it is stated that the manufacture of 'H' acid which was commenced in February, 1988 has been completely stopped after January, 1989. The respondent is fully conscious of the need to conserve and protect environment and is prepared fully to cooperate in that behalf. It is ready to comply with any stipulations or directions that may be made for the purpose. It, however, submitted that the real culprit is Hindustan Zinc Limited. The Archaeological Department of the Government of Rajasthan had issued environmental clearance for its unit [rather surprising statement]. 'No-Objection Certificates' had also been issued by the Executive Engineer [Irrigation], Udaipur Division and the Wild Life Warden. So far as the requirement of 'consent' under Water and Air Acts is concerned, it merely stated that it had applied for it. Its closure in January, 1989 was on account of promulgation of an order under Section 144 Cr.P.C. by the District Magistrate in view of wide-spread agitation by the villagers against its functioning.

In the counter-affidavit filed on behalf of the sixth respondent [Rajasthan Multi Fertilizers], it is stated that it commenced production on March 14, 1982 and closed down in December, 1985. Electrical connection to it was disconnected on February 13, 1988. It was submitted that since it is a small-scale industry, no consent was asked for from anyone. It denied that it was causing any pollution, either ground, air or water.

In the counter-affidavit filed on behalf of the seventh respondent [Phosphates India], it is stated that this unit commenced production on May 15, 1988 but was closed on and with effect from September 1, 1988 for want of support from the Central Government in the form of subsidies. It submitted that it has merged with the fourth respondent in 1987-88.

In the counter-affidavit filed on behalf of the eighth respondent [Jyoti Chemicals], it is stated that it has no electrical connection, that it had commenced production in April 1987 and closed down completely in January, 1989. It is stated that the unit produced 'H' acid to an extent of 20 MT as a trial measure for one month with the permission of the Industries Department. It is no longer manufacturing 'H' acid and, therefore, is not responsible for causing any

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pollution. It is further submitted that it is a small-scale industry and was registered with the District Industry Centre, Udaipur for the manufacture of ferric alum and 'H' acid. It began its operation simultaneously with the fifth respondent, Silver Chemicals, and several of the clearances are common to both, as both of them are located together. The trial production of 'H' acid, it is stated, took place in January, 1987.

Hindustan Zinc Limited was impleaded as the ninth respondent at the instance of Respondents Nos.4 to 8. It has filed a counter-affidavit denying that it is responsible in any manner for causing any pollution in Bichri village or the surrounding areas. According to it, its plants are situated downstream, towards north of Bichri village. We do not think it necessary to refer to this affidavit in any detail inasmuch as we are not concerned, in this writ petition, with the pollution, if any, caused by the ninth respondent in other villages but only with the pollution caused by Respondents Nos.4 to 8 in Bichhri or surrounding villages.

ORDERS PASSED AND STEPS TAKEN DURING THE PERIOD 1989-1992:

The first considered Order made, after hearing the parties, by this Court is of December 11, 1989. Under this Order, the Court requested the National Environmental Engineering Research Institute [NEERI] to study the situation in and around Bichri village and submit their report "as to the choice and scale of the available remedial alternatives". NEERI was requested to suggest both short-term and long-term measures required to combat the hazard already caused. Directions were also made for supply of drinking water to affected villages by the State of Rajasthan. The R.P.C.B. was directed to make available to the Court the Report it had prepared concerning the situation in Bichhri village.

On the next date of hearing, i.e., March 5, 1990, the Court took note of the statements made on behalf of Respondents Nos.4 to 8 that they have completely stopped the manufacture of 'H' acid in their plants and that they did not propose to resume its manufacture. The Court also took note of the petitioner's statement that though the manufacture of 'H' acid may have been stopped, a large quantity of highly dangerous effluent waste/sludge has accumulated in the area and that unless properly treated, stored and removed, it constitutes a serious danger to the environment. Directions were given to the R.P.C.B. to arrange for its transportation, treatment and safe storage according to the technically accepted procedures for disposal of chemical wastes of that kind. All reasonable expenses for the said operation were to be borne by Respondents Nos.4 to 8 [hereinafter referred to in this judgment as the "Respondents"]. So far as the polluted water in the wells was concerned, the Court noted the offer made by the learned counsel for the respondents that they will themselves undertake the de-watering of the wells. The R.P.C.B. was directed to inspect and indicate the number and location of the wells to be de-watered.

The matter was next taken up on April 4, 1990. It was brought to the notice of the Court that no meaningful steps were taken for removing the sludge as directed by this Court in its Order dated March 5, 1990. Since the monsoon was about to set in, which would have further damaged the earth and water in the area, the Court directed the respondents to immediately remove the sludge from the open spaces where it was lying and store it in safe places to avoid the risk of seepage of toxic substances into the soil during the rainy

season. The respondents were directed to complete the task within five weeks therefrom.

It is not really necessary to refer to the contents of the various Orders passed in 1990 and 1991, i.e., subsequent to the Order dated April 4, 1990 for the present purposes. Suffice it to say that the respondents did not comply with the direction to store the sludge in safe places. The dewatering of wells did not prove possible. There was good amount of bickering between the respondents on one side and the R.P.C.B. and the Ministry of Environment and Forests on the other. They blamed each other for lack of progress in the matter of removal of sludge. Meanwhile, years rolled by and the hazard continued to rise. NEERI submitted an interim Report. [We are, however, not referring to the contents of this interim Report inasmuch as we would be referring to the contents of the final Report presently after referring to a few more relevant orders of this Court.]

On February 17, 1992, this Court passed a fairly elaborate order observing that Respondents Nos.5 to 8 are responsible for discharging the hazardous industrial wastes; that the manufacture of 'H' acid has given rise to huge quantities of iron sludge and gypsum sludge - approximately 2268 MT of gypsum-based sludge and about 189 mt, of iron-based sludge; that while the respondents blamed Respondent No. 9 as the main culprit, Respondent No. 9 denied any responsibility therefor. The immediate concern, said the Court, was the appropriate remedial action. The report of the R.P.C.B. presented a disturbing picture. It stated that the respondents have deliberately spread the hazardous material/sludge all over the place which has only heightened the problem of its removal and that they have failed to carry out the Order of this Court dated April 4, 1990. Accordingly, the Court directed the Ministry of Environment and Forests, Government of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron-based sludge, to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was to be recovered from the respondents.

Pursuant to the above Order, a team of experts visited the area and submitted a Report alongwith an affidavit dated March 30, 1992. The report presented a highly disturbing picture. It stated that the sludge was found inside a shed and also at four places outside the shed but within the premises of the complex belonging to the respondents. It stated further that sludge has been mixed with soil and at many places it is covered with earth. A good amount of sludge was said to be lying exposed to sun and rain. The Report stated. "Above all, the extent of pollution in the ground water seems to be very great and the entire aquifer may be affected due to the pollution caused by the industry. The organic content of the sludge needs to be analysed to assess the percolation property of the contents from the sludge. It is also possible that the iron content in the sludge may be very high which may cause the reddish colorations. As the mother liquor produced during the process (with pH-1) was highly acidic in nature and was indiscriminately discharged on land by the unit, it is possible that this might have eroded soil and caused the extensive damage. It is also possible that the organic contents of the mother liquor would have gone into soil with water together with the reddish colour." The Report also suggested the mode of disposal of sludge and measures for re-conditioning the soil.

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In view of the above Report, the Court made an order on April 6, 1992 for entombing the sludge under the supervision of the officers of the Ministry of Environment and Forests, Government of India. Regarding revamping of the soil, the Court observed that for this purpose, it might become necessary to stop or suspend the operation of all the units of the respondent but that, the Court said, requires to be examined further.

The work of entombment of sludge again faced several difficulties. While the respondents blamed the Government officers for the delay, the Government officials blamed the said respondents of non-cooperation. Several Orders were passed by this Court in that behalf and ultimately, the work commenced.

ORDERS PASSED IN 1993, FILING OF WRIT PETITION (C) NO.76 OF 1994 BY RESPONDENT NO.4 AND THE ORDERS PASSED THEREIN:

With a view to find out the connection between the wastes and sludge resulting from the production of 'H' acid and the pollution in the underground water, the Court directed on 20th August, 1993, that samples should be taken of the entombed sludge and also of the water from the affected wells and sent for analysis. Environment experts of the Ministry of Environment and Forests were asked to find out whether the pollution in the well water was on account of the said sludge or not. Accordingly, analysis was conducted and the experts submitted the Report on November 1, 1993. Under the heading "Conclusion", the report stated:

"5.0 CONCLUSION

5.1 On the basis of the observations and analysis results, it is concluded beyond doubt that the sludge inside the entombed pit is the contaminated one as evident from the number of parameters analysed.

5.2 The groundwater is also contaminated due to discharge of H-acid plant effluent as well as H-acid sludge/contaminated soil leachates as shown in the photographs and also supported by the results. The analysis result revealed good correlation between the colour of well water and H-acid content in it. The analysis results show high degree of impurities in sludge/soil and also in well water which is a clear indication of contamination of soil and groundwater due to disposal of H-acid waste."

The report which is based upon their inspection of the area in September, 1993 revealed many other alarming features. It represents a commentary on the attitude and actions of the respondents. In Para-2, under the heading "Site Observations & Collection of Sludge/Contaminated Soil Samples", the following facts are stated:

"2.1. The Central team, during inspection of the premises of M/s.HACL, observed that H-acid sludge (iron/gypsum) and contaminated soil are still lying at different places, as shown in Fig.1, within the industrial premises (Photograph 1) which are

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the left overs. The area, where the solar evaporation pond was existing with H-acid sludge dumped here and there, was observed to have been levelled with borrowed soil (Photograph 2). It was difficult to ascertain whether the sludge had been removed before filling. However, there are visual evidences of contaminated soil in the area.

2.2 As reported by the Rajasthan Pollution Control Board (RPCB) representatives, about 720 tonnes out of the total contaminated soil and sludge scraped from the sludge dump sites is disposed of in six lined entombed pits covered by lime/flyash mix, brick soling and concrete (Photographs 3 & 4). The remaining scraped sludge and contaminated soil was lying near the entombed pits for want of additional disposal facility. However, during the visit, the left over sludge and contaminated soil could not be traced at site. Inspection of the surrounding area revealed that a huge heap of foreign soil of 5 metre height (Photograph 5) covering a large area, as also indicated in Fig.1, was raised on the slopy ground at the foot hill within the industry premises. The storm water run-off pathway over the area showed indication of H-acid sludge leachate coming out of the heap. Soil in the area was sampled for analysis.

2.3 M/s.HACL has a number of other industrial units which are operating within the same premises without valid consents from the Rajasthan Pollution Control Board (RPCB). These plants are sulphuric acid (H_2SO_4), fertilizer (SSP) and vegetable oil extraction. The effluent of these units are not properly treated and the untreated effluent particularly from the acid plant is passing through the sludge dump area playing havoc (Photograph 7). The final effluent was collected at the outlet of the factory premises during operation of these units, at the time of groundwater monitoring in September 1993, by the RBPC. Its quality was observed to be highly acidic (pH : 1.08, Conductivity : 37,100 mg/l, SO_4 : 21,000 mg/l, Fe : 392 mg/l, COD : 167 mg/l) which was also revealed in the earlier visits of the Central teams. However, these units were not in operation during

the present visit."

Under Para 4.2.1, the report stated inter alia:

"The sludge samples from the surroundings of the (presently non-existent) solar evaporation and the contaminated soil due to seepage from the newly raised dump site also exhibited very high values of the above mentioned parameters. This revealed that the contaminated soil is buried under the new dump found by the team."

So much for the waste disposal by the respondents and their continuing good conduct! To the same effect is the Report of the R.P.C.B. which is dated October 30, 1993.

In view of the aforesaid Reports, all of which unanimously point out the consequences of the 'H' acid production, the manner in which the highly corrosive waste water (mother liquor) and the sludge resulting from the production of 'H' acid was disposed of and the continuing discharge of highly toxic effluents by the remaining units even in the year 1993, the authorities [R.P.C.B.] passed orders closing down, in exercise of their powers under Section 33A of the Water Act, the operation of the Sulphuric Acid Plant and the solvent extraction plant including oil refinery of the fourth respondent with immediate effect. Orders were also passed directing disconnection of electricity supply to the said plants. The fourth respondent filed Writ Petition (C) No.76 of 1994 in this Court, under Article 32 of the Constitution, questioning the said Orders in January, 1994. The main grievance in this writ petition was that without even waiting for the petitioner's [Hindustan Agro Chemicals Limited] reply to the show-cause notices, orders of closure and disconnection of electricity supply were passed and that this was done by the R.P.C.B. with a malafide intent to cause loss to the industry. It was also submitted that sudden closure of its plants is likely to result in disaster and, may be, an explosion and that this consideration was not taken into account while ordering the closure. In its Order dated March 7, 1994, this Court found some justification in the contention of the industry that the various counter-affidavits filed by the R.P.C.B. are self-contradictory. The Board was directed to adopt a constructive attitude in the matter. By another Order dated March 18, 1994, the R.P.C.B. was directed to examine the issue of grant of permission to re-start the industry or to permit any interim arrangement in that behalf. On April 8, 1994, a 'consent' order was passed whereunder the industry was directed to deposit a sum of Rupees sixty thousand with R.P.C.B. before April 11, 1994 and the R.P.C.B. was directed to carry on the construction work of storage tank for storing and retaining ten days effluents from the Sulphuric Acid plant. The construction of temporary tank was supposed to be an interim measure pending the construction of an E.T.P. on permanent basis. The Order dated April 28, 1994 noted the Report of the R.P.C.B. stating that the construction of temporary tank was completed on April 26, 1994 under its supervision. The industry was directed to comply with such other requirements as may be pointed out by R.P.C.B. for prevention and control of pollution and undertake any works required in that behalf forthwith. Thereafter, the matter went into a slumber until October 13, 1995.

NEERI REPORT:

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At this juncture, it would be appropriate to refer to the Report submitted by NEERI on the subject of "Restoration of Environmental Quality of the affected area surrounding Village Bichhri due to past Waste Disposal Activities". This Report was submitted in April, 1994 and it states that it is based upon the study conducted by it during the period November, 1992 to February, 1994. Having regard to its technical competence and reputation as an expert body on the subject, we may be permitted to refer to its Report at some length:

At Page 7, the Report mentions the industrial wastes emerging from the manufacture of 'H' acid. It reads:

"Solid wastes generated from H-acid manufacturing process are:

Gypsum sludge produced during the neutralization of acidic solution with lime after nitration stage (around 6 tonnes/tonne of H-acid manufactured)

Iron sludge produced during the reduction stage (around 0.5 tonnes/tonne of H-acid manufactured)

Gypsum sludge contains mostly calcium sulphate along with sodium salts and organics. Iron sludge constitutes unreacted iron powder, besides ferric salts and organics.

It is estimated that, for each tonne of H-acid manufactured, about 20 m³ of wholly corrosive wastewater was generated as mother liquor, besides the generation of around 2.0 m³ of wash water. The mother liquor is characterised by low pH (around 2.0) and high concentration of total dissolved solids (80 - 280 g/L). High COD of the wastewater (90 g/L) could be attributed to organics formed during various stages of manufacture. These include naphthalene trisulphonic acid, nitro naphthalene sulphonic acid, Koch acid and H-acid, besides, several other intermediates."

At Pages 8 and 9, the Report describes the manner in which the sludge and other industrial wastes were disposed of by the respondents. It states inter alia:

"The total quantities of wastes water and that of sludge generated were around 8250 m³ and 2440 tonnes respectively for a production of 375 tonnes by M/s. Silver Chemicals Ltd. and M/s. Jyoti Chemicals Ltd.....

- * Majority of sludge brought back from disposal sites located outside the plant was transferred inside a covered shed.
- * The sludge lying in the plant premises was entombed in the underground pit by RPCB as per the directions of the Hon'ble

Supreme Court. It may be mentioned that only 720 MT of sludge out of the estimated quantity of 2440 MT could be entombed as the capacity of the underground tanks provided by the industry for the purpose was only to that extent.

* Remaining sludge and sludge mixed soil were, however, present in the plant premises as these could not be transferred into underground tanks. It has also been observed that only sludge above the soil was removed from the six sites and transferred to the plant site. Subsurface soil of these sites appears to have been contaminated as the soil has reddish colour akin to that of the sludge.

* A fertilizer plant (single superphosphate), a sulphuric acid plant and an oil extraction and oil refining plant were in operation in the same premises where H-acid was earlier manufactured. The acidic wastewater (around pH 1.0) presently generated from these units was flowing over the abandoned dumpsite. This leaches the sludge mixed soil from the abandoned dumpsite and the contaminated water flows by gravity towards east and finds its way into a nallah flowing through the compound and conveys the contaminated water to an irrigation canal which originates from Udaisagar lake (Pate 1.4)."

(Emphasis added)

At Page 10, the Report mentions the six dump sites outside the 'H' acid plant premises where the sludge was lying in the open. At Pages 26 and 27, the Report states on the basis of V.E.S. investigations that while certain wells were found contaminated, others were not. At Page 96, the Report states thus:

"Damage to Crops and Trees

The field surveys in contaminated fields in zone I and II showed that no crops were coming in the fields particularly in low lying areas. On some elevated areas, crops like jowar, maize were growing; however the growth and yield were very poor.

Further it was also observed that even trees like eucalyptus planted in contaminated fields show leaf

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burning and stunted growth. Many old trees which were badly affected due to contamination are still growing under stress conditions as a result of soil contamination.

The top soils at the old dump sites outside the plant premises are still contaminated and require decontamination before the land is used for other purposes.

It was observed that even after the operation of hauling the sludge back to the industry premises, some sludge mixed soil was still lying in the premises of a primary school (Table 1.1), which needs decontamination."

In Chapter-6, the Report mentions the remedial measures. Para 6.1, titled "Introduction", states:

"As could be seen from the data reported in Chapter 4 and 5, the ground water and soils within 2 km from the plant have been contaminated. After critically scrutinising the data, it was concluded that there is an urgent need to work out a decontamination strategy for the affected area. This strategy includes the decontamination of the soil, contaminated ground water and abandoned dump sites. This chapter details the remedial measures that can be considered for implementation to restore the environmental quality of the affected area."

The Chapter then sets out the various remedial measures, including land treatment, soil washing, revegetation, control over the flow of the contaminated water to adjoining lands through canals, leaching of soluble salts, design of farm to development Agroforestry and/or forestry plantation with salt tolerant crops/plants and ground water decontamination. Inter alia, the Report states:

"The entire contaminated area comprising of 350 ha of contaminated land and six abandoned dump sites outside the industrial premises has been found to be ecologically fragile due to reckless past disposal activities practiced by M/s. Silver Chemicals Ltd. and M/s. Jyoti Chemicals Ltd. Accordingly, it is suggested that the whole of the contaminated area be developed as a green belt at the expense of M/s. Hindustan Agrochemicals Ltd. during the monsoon of 1994."

Under Para 6.3.2, the Report suggests "Decontamination Alternatives for Groundwater" including Bioremediation, Degradation of H-acid by Azotobacter Vinelandii, Isolation of Bacterial Population from H-acid Contaminated Soil and several other methods.

Under Para 6.4.2, the Report mentions the several

decontamination alternatives including containment of contaminated soil, surface control, ground water control, leachate collection and treatment, gas migration control and direct waste treatment.

At Pages 157 and 158, the report mentions the continuing discharge of effluents in an illegal and dangerous manner. It reports:

"It was also observed by NEERI's team during the current study that the industry has not provided adequate effluent treatment facilities and the wastewaters (pH.1.5) from the existing plants (Sulphuric acid, Fertilizer, and Oil extraction) are being discharged, without treatment, on land within the plant premises. This indiscriminate and willful disposal activity is further aggravating the contamination problem in the area. Acidic effluent leaches the pollutants from the dumped sludge and the contaminated soil and facilitates their penetration through the ground and thereby increasing the concentration of sulphates and dissolved solids in groundwater. What is most serious is the fact that the industry produced chlorosulfonic acid for a few months during late 1992 which is a hazardous and toxic substance as per MEF Notification titled 'Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, and even floated public shares for the manufactures of this obnoxious chemical. The production was however ceased due to the intervention of the Rajasthan Pollution Control Board in December 1992 as the industry was operating without obtaining site clearance, No Objection Certificate (NOC)/Consent from the concerned appropriate regulatory authorities (regulatory?) and without providing for any pollution control measures. It is, therefore, essential for M/s. Hindustan Agrochemicals Ltd. to comply with these requirements for carrying out the present industrial activities. The abatement of further contamination warrants the closure of all industrial operations till an appropriate effluent treatment plant is installed, and certified by RPCB for its functions of Water Act."

The Report adds:

"The Industry management in the past [during 1988-89] has shown scant respect for Pollution Control

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and Environment Protection Acts. Not only this, the management continues industrial activity producing obnoxious waste waters and dumping the same without any treatment, contaminating land and ground water without any concern for ecology and public health. It is necessary that the provisions of relevant legislations are imposed on the industry to avoid environmental damage and harm to public welfare."

(Emphasis added)

We do not think that the above Report requires any emphasis at our hands. It speaks for itself - and it speaks volumes of the 'high regard' the respondents have for law!

At Pages 179 onwards, the Report refers to the damage to the crops and the land and to the psychological and mental torture inflicted upon the villagers by the respondents and suggests that the principle of 'Polluter Pays' should be applied in this case inasmuch as "the incident involved deliberate release of untreated acidic process wastewater and negligent handling of waste sludge knowing Fully well the implication of such acts." The Report suggests that compensation should be paid under two heads, viz., (a) for the losses due to damage and (b) towards the cost of restoration of environmental quality. It then works out the total cost of restoration of environmental quality at Rs.3738.5 lakhs - i.e., Rs.37.385 crores.

Para 7.4 states the conclusions flowing from the material in Chapter-6 thus:

"The cost of damage to be disbursed to the affected villagers is estimated at Rs.342.8 lakhs and remediation of impacted well waters and soil at Rs.3738.5 lakhs. This cost needs to be borne by the management of the industry in keeping with the Polluter Pays principle and the doctrine of Strict/Absolute liability, as applied to Sri Ram Food and Fertilizers Industry in the case of Oleum leak in 1985."

REPORT OF R.P.C.B. SUBMITTED IN JANUARY, 1996 DURING THE FINAL HEARING OF THESE MATTERS:

When all these matters were posted before the Court on October 13, 1995, we realised that the matter requires to be heard on a priority basis. Having regard to the voluminous data gathered by this Court and the several Orders passed from time to time, the matter was listed for regular hearing. We heard all the parties at length on 10th, 11th, 16th and 17th January, 1996. We have been taken through the voluminous record. Submissions have also been made on the questions of law arising herein.

At the end of the first day of regular hearing, we made an Order calling upon the R.P.C.B. to send a team of high officials to the spot and report to us the latest position on the following aspects:

(i) Whether the factories of Silver Chemicals, Rajasthan Multi Fertilizers and Jyoti Chemicals are still working and whether the machinery installed in the said plant is still existing? [This information was required to check the

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statement of the respondents that the said units are lying closed since last several years.]

(ii) To report whether the factory or factories of Respondent No.4, Hindustan Agro-Chemicals Limited, are working and if they are working, what are the products being manufactured by them? The Board was also directed to report whether the seventh respondent, Phosphate India, which was said to have merged with the fourth respondent, is having a separate factory and if so, what is being produced therein?

(iii) The approximate quantity of sludge - whether 'iron sludge' or 'gypsum sludge' - lying in the area. The report was to indicate what quantity was entombed pursuant to the Orders of this Court and whether any further sludge was lying in the area or in the premises of the respondents' complex, its approximate quantity and the time, effort and cost required to remove the same.

(iv) The Board was also to take samples of the water in wells and tanks in the area and have them analysed and tell us whether it is fit for drinking by cattle and/or fit for irrigation purposes.

Accordingly, the R.P.C.B. officials visited the site and have filed a Report dated January 16, 1996 along with an affidavit. The Report discloses the following facts:

(1) The two units, Silver Chemicals and Jyoti Chemicals, do not exist now. There is no machinery. A godown and a Ferric Alum plant have been constructed at the site of the said plant. The Ferric Alum plant was not in operation at the time of inspection though plant and machinery for manufacturing it was found installed therein. Certain old stock of Ferric Alum was also found lying within the plant premises.

(2) Hindustan Agro-Chemicals Limited [R-4] has seven industrial plants, viz., Rajasthan Multi Fertilizers [manufacturing Granulated Single Super Phosphate (G.S.S.P.)], a Sulphuric Acid Plant, a Chlorosulphonic Acid Plant, Edible Oil Solvent Extraction Plant, Edible Oil Refinery and a Ferric Alum Plant (known as M/s. Jyoti Chemicals), all of which are located within the same premises. All these seven plants were found not operating on the date of inspection by the R.P.C.B. officials though in many cases the machinery and the other equipment was in place. So far as the sludge still remaining in the area is concerned, the report stated:

"3. Village Bicchidi and other adjoining areas were visited by the undersigned officials to know whether gypsum and iron sludge is still lying in the aforesaid area. In area adjoining the irrigation canal, sludge mixed with soil were found on an area of about 3000 sq.ft. The area was covered with foreign soil. Sample of the sludge mixed soil was collected for the perusal of the Hon'ble Court. Entire premises of M/s. Hindustan Agro Chemicals Ltd. was also inspected and sludge mixed with soil was observed in a large area. It was further observed that fresh soil in the varying depth has been spread over in most of the area. In view of the fact that sludge was mixed with the soil and difficult to separate out of the soil it is

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very difficult to estimate the exact quantity of the sludge required to be removed. Samples of sludge mixed with soil were collected from different part of this area after serving due notices under Environment Protection Act, 1986."

So far as the water in the wells was conceded, the Report mentioned that they took samples from the wells from Bichhri and other surrounding villages, i.e., from thirty two different locations and that water in sixteen location was found to "contain colour of varying intensities ranging from very dark brown to light pink which apparently shows that these wells/handpumps are still polluted".

Sri K.N.Bhat, learned counsel for the respondents, however, submitted that the R.P.C.B. officials have throughout been hostile to the respondents and that, therefore, the Reports submitted by them should not be acted upon. He also submitted that respondents have had no opportunity to file objections to the said Report or to produce material to contradict the statements made therein. While taking note of these submissions, we may, however, refer to the letter dated January 13, 1996 written by the fourth respondent to the R.P.C.B. In this letter, the particulars of the stocks remaining in each of its seven plants are mentioned along with the date of the last production in each of those plants. The last dates of production are the following: Sulphuric Acid Plant - November 10, 1995, S.S.P. Plant [Phosphate India] - November 11, 1995, G.S.S.P. Plant [Rajasthan Multi Fertilizers] - July 7, 1995, Solvent Extraction Plant and Refinery - December 2, 1993, Jyoti Chemicals- October, 1990 and Chlorosulphonic Acid Plant - September 29, 1995. It is worthy of note that these dates are totally at variance with the dates of closure mentioned in the counter-affidavits filed by these units in 1990-91.

CONTENTIONS OF THE PARTIES:

Sri M.C.Mehta, learned counsel appearing for the petitioner, brought to our notice the several Reports, orders and other material on record. He submitted that the abundant material on record clearly establishes the culpability of the respondents for the devastation in village Bichhri and surrounding areas and their responsibility and obligation to properly store the remaining sludge, stop discharge of all untreated effluents by taking necessary measures and defray the total cost required for remedial measures as suggested by NEERI [Rupees forty crores and odd]. Learned counsel suggested that in view of the saga of repeated and continuous violation of law and lawful orders on the part of the respondents, they must be closed forthwith. So far as the legal propositions are concerned, the learned counsel relied strongly upon the Constitution Bench decision in M.C.Mehta v. Union of India [Oleum Gas Leak Case] (1987 (1) S.C.C.395) as well as the recent Order of this Court in Indian Council for Enviro-Legal Action v. Union of India [1995 (5) SCALE 578]. Learned counsel also invited our attention to quite a few foreign decisions and text books on the subject of environment. Sri Altaf Ahmed, learned Additional Solicitor General appearing for the Union of India, also stressed the need for urgent appropriate directions to mitigate and remedy the situation on the spot in the light of the expert Reports including the one made by the central team of experts.

The learned counsel for the State of Rajasthan, Sri

Aruneshwar Gupta, expressed the readiness of the State Government to carry out and enforce such orders as this Court may think fit and proper in the circumstances.

Sri K.B.Rohtagi, learned counsel for the R.P.C.B., invited our attention to the various Orders passed, action taken, cases instituted and Reports submitted by the Board in this matter. He submitted that until recently the Board had no power to close down any industry for violation of environmental laws and that after conferment of such power, they did pass orders of closure. He denied the allegations of malafides or hostile intent on the part of the Board towards the respondents. Learned counsel lamented that despite its best efforts, the Board has not yet been successful in eradicating the pollution in the area and hence asked for stringent orders for remedying the appalling conditions in the village due to the acts of the respondents.

Sri K.N.Bhat, learned counsel for the respondents, made the following submissions:

(1) The respondents are private corporate bodies. They are not 'State' within the meaning of Article 12 of the Constitution. A writ petition under Article 32 of the Constitution, therefore, does not lie against them.

(2) The R.P.C.B. has been adopting a hostile attitude towards these respondents from the very beginning. The Reports submitted by it or obtained by it are, therefore, suspect. The respondents had no opportunity to test the veracity of the said Reports. If the matter had been fought out in a properly constituted suit, the respondents would have had an opportunity to cross-examine the experts to establish that their Reports are defective and cannot be relied upon.

(3) Long before the respondents came into existence, Hindustan Zine Limited was already in existence close to Bichhri village and has been discharging toxic untreated effluents in an unregulated manner. This had affected the water in the wells, streams and aquifers. This is borne out by the several Reports made long prior to 1987. Blaming the respondents for the said pollution is incorrect as a fact and unjustified.

(4) The respondents have been cooperating with this Court in all matters and carrying out its directions faithfully. The Report of the R.P.C.B. dated November 13, 1992 shows that the work of entombment of the sludge was almost over. The Report states that the entire sludge would be stored in the prescribed manner within the next two days. In view of this report, the subsequent Report of the Central team, R.P.C.B. and NEERI cannot be accepted or relied upon. There are about 70 industries in India manufacturing 'H' acid. Only the units of the respondents have been picked upon by the Central and State authorities while taking no action against the other units. Even in the matter of disposal of sludge, the directions given for its disposal in the case of other units are not as stringent as have been prescribed in the case of respondents. The decision of the Gujarat High Court in Pravinbhai Jashbhai Patel shows that the method of disposal prescribed there is different and less elaborate than the one prescribed in this case.

(5) The Reports submitted by the various so-called expert committees that sludge is still lying around within and outside the respondents' complex and/or that the toxic wastes from the Sulphuric Acid Plant are flowing through and leaching the sludge and creating a highly dangerous situation is untrue and incorrect. The R.P.C.B. itself had constructed a temporary E.T.P. for the Sulphuric Acid Plant

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pursuant to the Orders of this Court made in Writ Petition (C) No.76 of 1994. Subsequently, a permanent E.T.P. has also been constructed. There is no question of untreated toxic discharges from this plant leaching with sludge. There is no sludge and there is no toxic discharge from the Sulphuric Acid Plant.

(6) The case put forward by the R.P.C.B. that the respondents' units do not have the requisite permits/consents required by the Water Act, Air Act and the Environment [Protection] Act is again unsustainable in law and incorrect as a fact. The respondents' units were established before the amendment of Section 25 of the Water Act and, therefore, did not require any prior consent for their establishment.

(7) The proper solution to the present problem lies in ordering a comprehensive judicial enquiry by a sitting Judge of the High Court to find out the causes of pollution in this village and also to recommend remedial measures and to estimate the loss suffered by the public as well as by the respondents. While the respondents are prepared to bear the cost of repairing the damage, if any, caused by them, the R.P.C.B. and other authorities should be made to compensate for the huge losses suffered by the respondents on account of their illegal and obstructionist policy adopted towards them.

(8) The decision in Oleum Gas Leak Case has been explained in the opinion of Ranganath Misra, C.J., in the decision in Union Carbide Corporation v. Union of India (1991 (4) S.C.C.584). The law laid down in Oleum Gas Leak Case is at variance with the established legal position in other Commonwealth countries.

Sri Bhat suggested that in the larger interests of environment, industry and public, this Court may direct the Government of India to constitute, by proper legislation, environment courts all over the country - which courts alone should be empowered to deal with such cases, to give appropriate directions including orders of closure of industries wherever necessary, to make necessary technical and scientific investigations, to suggest remedial measures and to oversee their implementation. Proceedings by way of a writ in this Court under Article 32 or in the High Court under Article 226, the learned counsel submitted, are not appropriate to deal with such matters, involve as they do several disputed questions of fact and technical issues.

Before we proceed to deal with the submissions of the learned counsel, it would be appropriate to notice the relevant provisions of law.

RELEVANT STATUTORY PROVISIONS:

Article 48A is one of the Directive Principles of State Policy. It says that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A sets out the fundamental duties of the citizens. One of them is "(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.....".

The problem of increasing pollution of rivers and streams in the country - says the Statement of Objects and Reasons appended to the Bill which became the Water [Prevention and Control of Pollution] Act, 1974 - attracted the attention of the State Legislatures and the Parliament. They realised the urgency of ensuring that domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment and that pollution of rivers and streams was causing damage to the country's

economy. A committee was set up in 1962 to draw a draft enactment for prevention of water pollution. The issue was also considered by the Central Council of Local Self-Government in September, 1963. The Council suggested the desirability of having a single enactment for the purpose. A draft Bill was prepared and sent to various States. Several expert committees also made their recommendations meanwhile. Since an enactment on the subject was relatable to Entry 17 read with Entry 6 of List-II in the Seventh Schedule to the Constitution - and, therefore, within the exclusive domain of the States - the State Legislatures of Gujarat, Kerala, Haryana and Mysore passed resolutions as contemplated by Article 252 of the Constitution enabling the Parliament to make a law on the subject. On that basis, the Parliament enacted the Water [Prevention and Control of Pollution] Act, 1974. [The State of Rajasthan too passed the requisite resolution.] Section 24(1) of the Water Act provides that "subject to the provisions of this section, (a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter whether (directly or indirectly) into any stream or well.....". Section 25(1), before it was amended by Act 53 of 1988, provided that "(1) subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well." As amended by Act 53 of 1988, Section 25 now reads: "25(1) Subject to the provisions of this section, no person shall without the previous consent of the State Board, (a) establish or take any steps to establish any industry, operation or process or any treatment and disposal system or an extension or an addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land [such discharge being hereafter in this section referred to as 'discharge of sewage']; or (b) bring into use any new or altered outlets for the discharge of sewage or (c) begin to make any new discharge of sewage.....". [It is stated that the Rajasthan Assembly passed resolution under Article 252 of the Constitution adopting the said amendment Act vide Gazette Notification dated May 9, 1990.] Section 33 empowers the Pollution Control Board to apply to the court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, to restrain any person causing pollution if the said pollution is likely to prejudicially affect water in a stream or a well. Section 33A, which has been introduced by Amendment Act 53 of 1988, empowers the Board to order the closure of any industry and to stop the electricity, water and any other service to such industry if it finds such a direction necessary for effective implementation of the provisions of the Act. Prior to the said amendment Act, the Pollution Control Board had no such power and the course open to it was to make a recommendation to the Government to pass appropriate orders including closure.

The Air [Prevention and Control of Pollution] Act, 1981 contains similar provisions.

In the year 1986, Parliament enacted a comprehensive legislation, Environment (Protection) Act. The Act defines "environment" to include "water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property." The preamble to the Act

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recites that the said Act was made pursuant to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India also participated. Section 3 empowers the Central Government "to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". Sub-section (2) elucidates the several powers inhering in Central Government in the matter of protection and promotion of environment. Section 5 empowers the Central Government to issue appropriate directions to any person, officer or authority to further the objects of the enactment. Section 6 confers rule-making power upon the Central Government in respect of matters referred to in Section 3. Section 7 says that "no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards, as may be prescribed".

The Central Government has made the Hazardous Wastes (Management and Handling) Rules, 1989 in exercise of the power conferred upon it by Section 6 of the Environment (Protection) Act prescribing the manner in which the hazardous wastes shall be collected, treated, stored and disposed of.

CONSIDERATION OF THE SUBMISSIONS:

Taking up the objections urged by Sri Bhat first, we find it difficult to agree with them. This writ petition is not really for issuance of appropriate writ, order or directions against the respondents but is directed against the Union of India, Government of Rajasthan and R.P.C.B. to compel them to perform their statutory duties enjoined by the Acts aforementioned on the ground that their failure to carry out their statutory duties is seriously undermining the right to life [of the residents of Bichhri and the affected area] guaranteed by Article 21 of the Constitution. If this Court finds that the said authorities have not taken the action required of them by law and that their inaction is jeopardizing the right to life of the citizens of this country or of any section thereof, it is the duty of this Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, this Court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder. This is a social action litigation on behalf of the villagers of Bichhri whose right to life, as elucidated by this Court in several decisions, is invaded and seriously infringed by the respondents as is established by the various Reports of the experts called for, and filed before, this Court. If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, can it be suggested with any modicum of reasonableness that this Court has no power to intervene and protect the fundamental right to life and liberty of the citizens of this country. The answer, in our opinion, is self-evident. We are also not convinced of the plea of Sri Bhat that R.P.C.B. has been adopting a hostile attitude towards his clients throughout and, therefore, its contentions or the Reports prepared by its officers should not be relied upon. If the respondents establish and operate their plants contrary to law, flouting all safety norms provided by law, the R.P.C.B. was bound to act. On that account, it cannot be said to be acting out of

animus or adopting a hostile attitude. Repeated and persistent violations call for repeated orders. That is no proof of hostility. Moreover, the Reports of R.P.C.B. officials are fully corroborated and affirmed by the Reports of central team of experts and of NEERI. We are also not prepared to agree with Sri Bhat that since the Report of NEERI was prepared at the instance of R.P.C.B., it is suspect. This criticism is not only unfair but is also uncharitable to the officials of NEERI who have no reason to be inimical to the respondents. If, however, the actions of the respondents invite the concern of the experts and if they depict the correct situation in their Reports, they cannot be accused of any bias. Indeed, it is this Court that asked NEERI to suggest remedial measures and it is in compliance with those orders that NEERI submitted its interim Report and also the final Report. Similarly, the objection of Sri Bhat that the Reports submitted by the NEERI, by the Central team [experts from the Ministry of Environment and Forests, Government of India] and R.P.C.B. cannot be acted upon is equally unacceptable. These Reports were called by this Court and several Orders passed on the basis of those Reports. It was never suggested on behalf of Respondents Nos.4 to 8 that unless they are permitted to cross-examine the experts or the persons who made those Reports, their Reports cannot be acted upon. This objection, urged at this late stage of proceedings - after a lapse of several years - is wholly unacceptable. The persons who made the said Reports are all experts in their field and under no obligation either to the R.P.C.B. or for that matter to any other person or industry. It is in view of their independence and competence that their Reports were relied upon and made the basis of passing Orders by this Court from time to time.

Now coming to the question of alleged pollution by Hindustan Zinc Limited [R-9], it may be that Respondent No.9 is also responsible for discharging untreated effluents at one or the other point of time but that is not the issue we are concerned with in these writ petitions. These writ petitions are confined to the pollution caused in Bichhri village on account of the activities of the respondent. No Report among the several Reports placed before us in these proceedings says that Hindustan Zinc Limited is responsible for the pollution at Bichhri village. Sri Bhat brought to our notice certain Reports stating that the discharges from Hindustan Zinc Limited were causing pollution in certain villages but they are all down stream, i.e., to the north of Bichhri village and we are not concerned with the pollution in those villages in these proceedings. The bringing in of Hindustan Zinc Limited in these proceedings is, therefore, not relevant. If necessary, the pollution, if any, caused by Hindustan Zinc Limited can be the subject-matter of a separate proceeding.

We may now deal with the contentions of Sri Bhat based upon the affidavit of R.P.C.B. dated November 13, 1992 which has been repeatedly and strongly relied upon by the learned counsel in support of his submission that the entire sludge has been properly stored by or at the expense of his clients. It is on the basis of this affidavit that Sri Bhat says that the subsequent Reports submitted showing the existence of sludge within and outside their complex should not be accepted or acted upon. Let us turn to the affidavit of R.P.C.B. dated November 13, 1992 and see how far does it support Sri Bhat's contention. It is in Para 2(b) that the sentence, strongly relied upon by Sri Bhat occurs, viz., "remaining work is likely to be completed by 15th November,

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1992". For a proper appreciation of the purport of the said sentence, it would be appropriate to read the entire Para 2(b), which is to the following effect: "(b) that all the six tanks have been entombed with brick toppings. Roofing is complete on all tanks which have also been provided with proper outlets for the exit of gases which may form as a result of possible chemical reactions in the sludge mass. The tanks have also been provided with reinforced concrete to prevent propping of the roof. Remaining work is likely to be completed by 15th November, 1992." We find it difficult to read the said sentence as referring to the storage of the remaining about 1700 MT of sludge. When the storage of 720 MT itself took up all the six tanks provided by the respondent, where was the remaining 1700 tonnes stored? Except relying upon the said sentence repeatedly, Sri Bhat has not been able to tell us where this 1700 MT has been stored, whether in tanks and if so, who constructed the tanks and when and how were they covered and sealed. He is also not able to tell us on what dates the remaining sludge was stored. It is evident that the aforesaid sentence occurring in clause 2(b) refers to the proper sealing and completion of the said tanks wherein 720 MT of sludge was stored. If, in fact, the said 1700 MT has also been entombed, it was not difficult for the respondents to give the particulars of the said storage. We are, therefore, unable to agree with Sri Bhat that the subsequent Reports which repeatedly and uniformly speak of the presence of sludge within and outside the complex of the respondents should not be accepted. It may be recalled that the Report of the team of Central Experts was submitted on November 1, 1993 based upon the inspection made by them in September/October, 1993. To the same effect is the affidavit of R.P.C.B. dated October 30, 1993 and the further affidavit dated December 1, 1993. These Reports together with the report of NEERI clearly establish that huge quantities of sludge were still lying around either in the form of mounds or placed in depressions, or spread over the contiguous areas and covered with local soil to conceal its existence. It is worth reiterating that the said sludge is only part of the pernicious discharges emanating from the manufacture of 'H' acid. The other part, which is unfortunately not visible now [except in its deleterious effects upon the soil and underground water] is the 'mother liquor' produced in enormous quantities which has either flowed out or percolated into the soil.

So far as the responsibility of the respondents for causing the pollution in the wells, soil and the aquifers is concerned, it is clearly established by the analysis Report referred to in the Report of the Central experts team dated November 1, 1993 [Page 1026 of Vol.II]. Indeed, number of Orders passed by this Court, referred to hereinbefore, are premised upon the finding that the respondents are responsible for the said pollution. It is only because of the said reason that they were asked to defray the cost of removal and storage of sludge. It is precisely for this reason that, at one stage, the respondents had also undertaken the de-watering of polluted wells. Disclaiming the responsibility for the pollution in and around Bichhri village, at this stage of proceedings, is clearly an afterthought. We accordingly held and affirm that the respondents alone are responsible for all the damage to the soil, to the underground water and to the village Bichhri in general, damage which is eloquently portrayed in the several Reports of the experts mentioned hereinabove. NEERI has worked out the cost for repairing the damage at more than

Rupees forty crores. Now, the question is whether and to what extent can the respondents be made responsible for defraying the cost of remedial measures in these proceedings under Article 32. Before we advert to this question, it may perhaps be appropriate to clarify that so far as removal of remaining sludge and/or the stoppage of discharge of further toxic wastes are concerned, it is the absolute responsibility of the respondents to store the sludge in a proper manner [in the same manner in which 720 MT of sludge has already been stored] and to stop the discharge of any other or further toxic wastes from its plants including Sulphuric Acid Plant and to ensure that the wastes discharged do not flow into or through the sludge. Now, turning to the question of liability, it would be appropriate to refer to a few decisions on the subject.

In Oleum Gas Leak Case, a Constitution Bench discussed this question at length and held thus:

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all responsible care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profits, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently

dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not.....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Ryland v. Fletcher* [supra].

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the entire, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

Sri Bhat, however, points out that in the said decision, the question whether the industry concerned therein was a 'State' within the meaning of Article 12 and, therefore, subject to the discipline of Part-III of the Constitution including Article 21 was left open and that no compensation as such was awarded by this Court to the affected persons. He relies upon the observations in the concurring opinion of Ranganath Misra, C.J., in *Union Carbide Corporation* [1991 (4) S.C.C. 584]. The learned Chief Justice, referred in the first instance, to the propositions enunciated in *Oleum Gas Leak Case* and then made the following observations in Paras 14 and 15:

"14. In *M.C.Mehta* case, no compensation was awarded as this Court could not reach the conclusion that Shriram (the delinquent company) came within the meaning of 'State' in Article 12 so as to be liable to the discipline

of Article 21 and to be subjected to a proceeding under Article 32 of the Constitution. Thus what was said was essentially obiter.

15. The extracted part of the observations from M.C.Mehta case perhaps is a good guidelines for working out compensation in the cases to which the ratio is intended to apply. The statement of the law ex-facie makes a departure from the accepted legal position in Rylands v. Fletcher. We have not been shown any binding precedent from the American Supreme Court where the ratio of M.C.Mehta decision has in terms been applied. In fact Bhagwati,C.J., clearly indicates in the judgment that his view is a departure from the law applicable to western countries."

The majority judgment delivered by M.N.Venkatachaliah, J. [on behalf of himself and two other learned Judges] has not expressed any opinion on this issue. We on our part find it difficult to say, with great respect to the learned Chief Justice, that the law declared in Oleum Gas Leak Case is obiter. It does not appear to be unnecessary for the purposes of that case. Having declared the law, the Constitution Bench directed the parties and other organizations to institute actions on the basis of the law so declared.** Be that as it may, we are of the considered opinion that even if it is assumed [for the sake of argument] that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and

**A distinction between the Oleum Gas Leak Case and the present case may be noticed. That was not a case where the industry was established or was being operated contrary to law as in the present case. That was also not a case where the orders of lawful authorities and Courts were violated with impunity as in this case. In this case, there is a clear violation of law and disobedience to the Orders of this Court apart from the orders of the lawful authorities. The facts stated above and findings recorded by us hereinafter bear it out. This Court has to ensure the observance of law and of its Orders as a part of enforcement of fundamental rights. That power cannot be disputed. If so, a question may arise why is this Court not competent to make Orders necessary for a full and effective implementation of its Orders - and that includes the imposition and recovery of cost of all measures including remedial measures. Above all, the Central Government has the power under the provisions of Sections 3 and 5 of the Environment (Protection) Act, 1986 to levy and recover the cost of remedial measures - as we shall presently point out. If the Central Government omits to do that duty, this Court can certainly issue appropriate directions to it to take necessary measures. Is it not open to the Court, in an appropriate situation, to award damages against private parties as part of relief granted against public authorities. This is a question upon which we do not wish to express any opinion in the absence of a full debate at the Bar.

recover the cost of remedial measures from the

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respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2(a), Sections 3 and 5 clothe the central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. We find that similar directions have been made in a recent decision of this Court in Indian Council for Enviro-Legal Action and Ors. [supra]. That was also a writ petition filed under Article 32 of the Constitution. Following is the direction:

"It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharge of their effluents into Nakkavagu. They were responsible to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers."

It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

Sri K.N.Bhat submitted that the rule of absolute liability is not accepted in England or other Commonwealth countries and that the rule evolved by the House of Lords in Rylands v. Fletcher [1866 (3) H.L.330] is the correct rule to be applied in such matters. Firstly, in view of the binding decision of this Court in Oleum Gas Leak Case, this contention is untenable, for the said decision expressly refers to the rule in Rylands but refuses to apply it saying that it is not suited to the conditions in India. Even so, for the sake of completeness, we may discuss the rule in Rylands and indicate why that rule is inappropriate and unacceptable in this country. The rule was first stated by Blackburn, J. [Court of Exchequer Chamber] in the following words:

"We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can

excuse himself by shewing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major, or the act of God;.....and it seems but reasonable and just that the neighbor, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property."

The House of Lords, however, added a rider to the above statement, viz., that the user by the defendant should be a "non-natural" user to attract the rule. In other words, if the user by the defendant is a natural user of the land, he would not be liable for damages. Thus, the twin tests - apart from the proof of damage to the plaintiff by the act/negligence of the defendants - which must be satisfied to attract this rule are "foreseeability" and "non-natural" user of the land.

The rule in Rylands has been approved by the House of Lords in the recent decision in Cambridge Water Company v. Eastern Counties Leather, PLC [1994 (2) W.L.R.53]. The plaintiff, Cambridge Water Company, was a statutory corporation engaged in providing public water supply within a certain area including the city of Cambridge. It was lifting water from a bore well situated at some distance from Sawstyn. The defendant-company, Eastern Leather, was having a tannery in Sawstyn. Tanning necessarily involves decreasing of pelts. For that purpose, the defendant was using an organo chlorine called P.C.E. P.C.E. was stored in a tank in the premises of the defendant. The plaintiff's case was that on account of the P.C.E. percolating into the ground, the water in its well became contaminated and unfit for human consumption and that on that account it was obliged to find an alternative source at a substantial cost. It sued the defendant for the resulting damages. The plaintiff based his claim on three alternative grounds, viz., negligence, nuisance and the rule in Rylands. The Trial Judge (High Court) dismissed the action in negligence and nuisance holding that the defendant could not have reasonably foreseen that such damage could occur to the plaintiff. So far as the rule in Rylands was concerned, the Trial Judge held that the user by the defendant was not a non-natural user and hence, it was not liable for damages. On appeal, the Court of Appeal declined to decide the matter on the basis of the rule in Rylands. It relied strongly upon the ratio in Ballard v. Tomlinson [(1885) 29 Ch.D.115] holding that no person having a right to use a common source is entitled to contaminate that source so as to prevent his neighbor from having a full value of his right of appropriation. The Court of Appeal also opined that the defendant's use of the land was not a natural use. On appeal by the defendant, the House of Lords allowed the appeal holding that foreseeability of the harm of the relevant type by the defendant was a pre-requisite to the right to recover damages both under the heads of nuisance and also under the rule in Rylands and since that was not established by the plaintiff, it has to fail. The House of Lords, no doubt, held that the defendant's use of the land was a non-natural

use but dismissed the suit, as stated above, on the ground that the plaintiff has failed to establish that pollution of their water supply by the solvent used by the defendant in his premises was in the circumstances of the case foreseeable by the defendant.

The Australian High Court has, however, expressed its disinclination to treat the rule in Rylands as an independent head for claiming damages or as a rule rooted in the law governing the law of nuisance in *Burnie Port Authority v. General Jones Pty Ltd.* [(1994) 68 Australian Law Journal 331]. The respondent, General Jones Limited, has stored frozen vegetables in three cold storage rooms in the building owned by the appellant, Burnie Port Authority [Authority]. The remaining building remained under the occupation of the Authority. The Authority wanted to extend the building. The extension work was partly done by the Authority itself and partly by an independent contractor [Wildridge and Sinclair Pty.Ltd.]. For doing its work, the contractor used a certain insulating material called E.P.S., a highly inflammable substance. On account of negligent handling of E.P.S., there was a fire which inter alia damaged the rooms in which General Jones had stored its vegetables. On an action by General Jones, the Australian High Court held by a majority that the rule in Rylands having attracted many difficulties, uncertainties, qualifications and exceptions, should now be seen, for the purposes of Australian Common Law, as absorbed by the principles of ordinary negligence. The Court held further that under the rules governing negligence, if a person in control of a premises, introduces a dangerous substance to carry on a dangerous activity, or allows another to do one of those things, owes a duty of reasonable care to avoid a reasonably foreseeable risk of injury or damage to the person or property of another. In a case where a person or the property of that other is lawfully in a place outside the premises, the duty of care varies in degree according to the magnitude of the risk involved and extends to ensuring that such care is taken. Applying the said principle, the Court held that the Authority allowed the independent contractor to introduce or retain a dangerous substance or to engage in a dangerous activity in its premises which substance and activity caused a fire that destroyed the goods of General Jones. The evidence, the Court held, established that the independent contractor's work was a dangerous activity in that it involved real and foreseeable risk of a serious conflagration unless special precautions were taken. In the circumstances, it was held that the Authority owed a non-delegable duty of care to General Jones to ensure that its contractor took reasonable steps to prevent the occurrence of a fire and the breach of that duty attracted liability pursuant to the ordinary principles of negligence for the damage sustained by the respondent.

On a consideration of the two lines of thought [one adopted by the English Courts and the other by the Australian High Court], we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in *Oleum Gas Leak Case* is by far the more appropriate one - apart from the fact that it is binding upon us. [We have disagreed with the view that the law stated in the said decision is obiter.] According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact

whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not." The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise [carrying on the hazardous or inherently dangerous activity] alone has the resource to discover and guard against hazards or dangers - and not the person affected and the practical difficulty [on the part of the affected person] in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

Once the law in Oleum Gas Leak Case is held to be the law applicable, it follows, in the light of our findings recorded hereinbefore, that Respondents Nos.4 to 8 are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area [by affected area, we mean the area of about 350 he, indicated in the sketch at Page 178 of NEERI Report] and also to defray the cost of the remedial measures required to restore the soil and the underground water spruces. Sections 3 and 4 of Environment [Protection] Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case.

The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle.

"The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'polluter pays' principle was promoted by the Organization for Economic Co-operation and Development [OECD] during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies

and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.

Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] O.J.C328/1) makes it clear that 'the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay."

["Historic Pollution - Does the Polluter Pay?" By Carolyn Shelbourn - Journal of Planning and Environmental Law, Aug.1974 issue.]

Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.

The next question is what is the amount required for carrying out the necessary remedial measures to repair the damage and to restore the water and soil to the condition it was in before the respondents commenced their operations.

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The Report of NEERI has worked out the cost at more than Rupees forty crores. The estimate of cost of remedial measures is, however, not a technical matter within the expertise of NEERI officials. Moreover, the estimate was made in the year 1994. Two years have passed by since then. Situation, if at all, must have deteriorated further on account of the presence of - and dispersal of the sludge - in and around the complex of the respondents by them. They have been discharging other toxic effluents from their other plants, as reported by NEERI and the central team. It is but appropriate that an estimate of the cost of remedial measures be made now with notice to the respondents, which amount should be paid to Central Government and/or recovered from them by the Central Government. Other directions are also called for in the light of the facts and circumstances mentioned above.

CONCLUSIONS:

From the affidavits of the parties, Orders of this Court, technical Reports and other data, referred to above [even keeping aside the latest Report of the R.P.C.B.], the following facts emerge:

(I) Silver Chemicals [R-5] and Jyoti Chemicals [R-8] had manufactured about 375 MT of 'H' acid during the years 1988-89. This had given rise to about 8250 m³ of waste water and 2440 tones of sludge [both iron-based and gypsum-based]. The waste water had partly percolated into the earth in and around Bichhri and part of it had flowed out. Out of 2440 tones of sludge, about 720 tones has been stored in the pits provided by the respondents. The remaining sludge is still there either within the area of the complex of the respondents or outside their complex. With a view to conceal it from the eyes of the inspection teams and other authorities, the respondents have dispersed it all over the area and covered it with earth. In some places, the sludge is lying in mounds. The story of entombing the entire quantity of sludge is untrue.

The units manufacturing 'H' acid - indeed most of the units of the respondents - had started functioning, i.e., started manufacturing various chemicals without obtaining requisite clearances/consents/licences. They did not instal any equipment for treatment of highly toxic effluents discharged by them. They continued to function even after and inspite of the closure orders of the R.P.C.B. They did never carry out the Orders of this Court fully, [e.g., entombing the sludge] nor did they fulfil the undertaking given by them to the Court [in the matter of removal of sludge and de-watering of the wells]. Inspite of repeated Reports of officials and expert bodies, they persisted in their illegal course of action in a brazen manner, which exhibits their contempt for law, for the lawful authorities and the Courts.

(II) That even after the closure of 'H' acid plant, the fourth respondent had not taken adequate measures for treating the highly toxic waste water and other wastes emanating from the Sulphuric Acid Plant. The untreated highly toxic waste water was found - by NEERI as well as the Central team - flowing through the dumps of iron/gypsum sludge creating a highly potent mix. The letter of the fourth respondent dated January 13, 1996, shows that the Sulphuric Acid Plant was working till November 10, 1995. An assertion is made before us that permanent E.T.P. has also been constructed for the Sulphuric Acid Plant in addition to the temporary tank which was constructed under the Orders of this Court. We express no opinion on this assertion, which even if true, is valid only for the period subsequent to

April, 1994.

(III) The damage caused by the untreated highly toxic wastes resulting from the production of 'H' acid - and the continued discharge of highly toxic effluent from the Sulphuric Acid Plant, flowing through the sludge [H-acid waste] - is undescrivable. It has inflicted untold misery upon the villagers and long lasting damage to the soil, to the underground water and to the environment of that area in general. The Report of NEERI contains a sketch, at Page 178, showing the area that has been adversely affected by the production of 'H' acid by the respondents. The area has been divided into three zones on the basis of the extent of contamination. A total area of 350 he has become seriously contaminated. The water in the wells in that area is not fit for consumption either by human beings or cattle. It has seriously affected the productivity of the land. According to NEERI Report, Rupees forty crores is required for repairing the damage caused to men, land, water and the flora.

(IV) This Court has repeatedly found and has recorded in its Orders that it is respondents who have caused the said damage. The analysis Reports obtained pursuant to the directions of the Court clearly establish that the pollution of the wells is on account of the wastes discharged by Respondents Nos.4 to 8, i.e., production of 'H' acid. The Report of the environment experts dated November 1, 1993 has already been referred to hereinbefore. Indeed, several orders of this Court referred to supra are also based upon the said finding.

(V) Sections 3 and 5 of the Environment [Protection] Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Environment [Protection] Act. This power includes the power to prohibit an activity, close an industry, direct and/or carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The principle "Polluter Pays" has gained almost universal recognition, apart from the fact that it is stated in absolute terms in Oleum Gas Leak Case. The law declared in the said decision is the law governing this case.

DIRECTIONS:

Accordingly, the following directions are made:

1. The Central Government shall determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of Respondents 4 to 8, in the area affected in village Bichhri and other adjacent villages, on account of the production of 'H' acid and the discharges from the Sulphuric Acid Plant of Respondents 4 to 8. Chapters-VI and VII in NEERI Report [submitted in 1994] shall be deemed to be the show-cause notice issued by the Central Government proposing the determination of the said amount. Within six weeks from this day, Respondents 4 to 8 shall submit their explanation, along with such material as they think appropriate in support of their case, to the Secretary, Ministry of Environment and Forests, Government of India, [M.E.F.]. The Secretary shall thereupon determine the amount in consultation with the experts of his Ministry within six weeks of the submission of the explanation by the said Respondents. The orders passed by the Secretary, [M.E.F.] shall be communicated to Respondents 4 to 8 and all

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concerned - and shall also be placed before this Court. Subject to the Orders, if any, passed by this Court, the said amount shall represent the amount which Respondents 4 to 8 are liable to pay to improve and restore the environment in the area. For the purpose of these proceedings, the Secretary, [M.E.F.] and Respondents 4 to 8 shall proceed on the assumption that the affected area is 350 ha, as indicated in the sketch at Page 178 of NEERI Report. In case of failure of the said respondents to pay the said amount, the same shall be recovered by the Central Government in accordance with law. The factories, plant, machinery and all other immovable assets of Respondents 4 to 8 are attached herewith. The amount so determined and recovered shall be utilised by the M.E.F. for carrying out all necessary remedial measures to restore the soil, water sources and the environment in general of the affected area to its former state.

2. On account of their continuous, persistent and insolent violations of law, their attempts to conceal the sludge, their discharge of toxic effluents from the Sulphuric Acid Plant which was allowed to flow through the sludge, and their non-implementation of the Orders of this Court - all of which are fully borne out by the expert committees' Reports and the findings recorded hereinabove - Respondents 4 to 8 have earned the dubious distinction of being characterised as "rogue industries". They have inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land, their water sources and their entire environment - all in pursuance of their private profit. They have forfeited all claims for any consideration by this Court. Accordingly, we herewith order the closure of all the plants and factories of Respondents 4 to 8 located in Bichhri village. The R.P.C.B. is directed to seal all the factories/units/plants of the said respondents forthwith. So far as the Sulphuric Acid Plant is concerned, it will be closed at the end of one week from today, within which period Respondent No.4 shall wind down its operations so as to avoid risk of any untoward consequences, as asserted by Respondent No.4 in Writ Petition (C) No.76 of 1994. It is the responsibility of Respondent No.4 to take necessary steps in this behalf. The R.P.C.B. shall seal this unit too at the end of one week from today. The re-opening of these plants shall depend upon their compliance with the directions made and obtaining of all requisite permissions and consents from the relevant authorities. Respondents 4 to 8 can apply for directions in this behalf after such compliance.

3. So far as the claim for damages for the loss suffered by the villagers in the affected area is concerned, it is open to them or any organization on their behalf to institute suits in the appropriate civil court. If they file the suit or suits in forma pauperize, the State of Rajasthan shall not oppose their applications for leave to sue in forma pauperize.

4. The Central Government shall consider whether it would not be appropriate, in the light of the experience gained, that chemical industries are treated as a category apart. Since the chemical industries are the main culprits in the matter of polluting the environment, there is every need for scrutinizing their establishment and functioning more rigorously. No distinction should be made in this behalf as between a large-scale industry and a small-scale industry or for that matter between a large-scale industry and a medium-scale industry. All chemical industries, whether big or small, should be allowed to be established only after taking

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into considerations all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them. It appears that most of these industries are water-intensive industries. If so, the advisability of allowing the establishment of these industries in arid areas may also require examination. Even the existing chemical industries may be subjected to such a study and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under Sections 3 and 5 of the Environment Act. The Central Government shall ensure that the directions given by it are implemented forthwith.

5. The Central Government and the R.P.C.B. shall file quarterly Reports before this Court with respect to the progress in the implementation of Directions 1 to 4 aforesaid.

6. The suggestion for establishment of environment courts is a commendable one. The experience shows that the prosecutions launched in ordinary criminal courts under the provisions of the Water Act, Air Act and Environment Act never reach their conclusion either because of the work-load in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. Those proceedings take years and years to reach conclusion. Very often, interim orders are granted meanwhile which effectively disable the authorities from ensuring the implementation of their orders. All this points to the need for creating environment courts which alone should be empowered to deal with all matters, civil and criminal, relating to environment. These courts should be manned by legally trained persons/judicial officers and should be allowed to adopt summary procedures. This issue, no doubt, requires to be studied and examined indepth from all angles before taking any action.

7. The Central Government may also consider the advisability of strengthening the environment protection machinery both at the Center and the States and provide them more teeth. The heads of several units and agencies should be made personally accountable for any lapses and/or negligence on the part of their units and agencies. The idea of an environmental audit by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers may be considered. The idea of an environmental audit conducted periodically and certified annually, by specialists in the field, duly recognised, can also be considered. The ultimate idea is to integrate and balance the concern for environment with the need for industrialisation and technological progress.

Respondents 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this Court within two weeks from today. It shall be paid over to the petitioner.

Writ Petition (C) No.967 of 1989 is allowed with the above directions with costs as specified hereinabove.

WRIT PETITION (C) NO.76 OF 1994:

In view of the decision in Writ Petition (C) No.967 of

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1989, the writ petition is dismissed.

No costs.

WRIT PETITION (C) NO.94 OF 1990:

In view of the decision in Writ Petition (C) No.967 of 1989, no separate Orders are necessary in this petition. The writ petition is accordingly dismissed.

No costs.

WRIT PETITION (C) NO.824 OF 1993:

In view of the decision in Writ Petition (C) No.967 of 1989, no separate Orders are necessary in this petition. The writ petition is accordingly dismissed.

No costs.

JUDIS

This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

Publisher has only added the Page para for convenience in referencing.

PETITIONER:
MUNICIPAL COUNCIL, RATLAM

Vs.

RESPONDENT:
SHRI VARDHICHAND & ORS.

DATE OF JUDGMENT 29/07/1980

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
REDDY, O. CHINNAPPA (J)

Annexure J

CITATION:
1980 AIR 1622 1981 SCR (1) 97
1980 SCC (4) 162
CITATOR INFO :
RF 1981 SC 344 (45)
R 1982 SC 149 (15,607,968)
RF 1986 SC 847 (12)
RF 1991 SC 1902 (24)
R 1992 SC 248 (17)

ACT:
Code of Criminal Procedure 1973, s. 133 & M. P. Municipalities Act 1961, s. 123-Municipality not providing sanitary facilities and construction of public conveniences for slum dwellers-Whether Courts can compel municipal body to carry out its duty to the community to provide amenities and abate nuisance.

HEADNOTE:

The residents (respondents) of a prominent residential locality of the Municipality (petitioner) in their complaint under s. 133 Criminal Procedure Code to the Sub-Divisional Magistrate averred that the Municipality had failed despite several pleas, to meet its basic obligations, like provision of sanitary facilities on the roads, public conveniences for slum dwellers who were using the road for that purpose, and prevention of the discharge from the nearby Alcohol Plant of malodorous fluids into the public street, and that the Municipality was oblivious to the statutory obligation envisaged in s. 123 M. P. Municipalities Act, 1961

The Municipal Council contested the petition on the ground that the owners of houses had gone to that locality on their own choice, fully aware of the insanitary conditions and therefore they could not complain. It also pleaded financial difficulties in the construction of drains and provision of amenities.

The Magistrate found the facts proved, and ordered the municipality to provide the amenities and to abate the nuisance by constructing drain pipes with flow of water to wash the filth and stop the stench and that failure would entail prosecution under s. 188 I.P.C.

The order of the Magistrate was affirmed by the Sessions Court, but upheld by the High Court.

In the Special Leave Petition by the Municipality to this Court on the question whether a court can by affirmative action compel a statutory body to carry out its

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duty to the community by constructing sanitation facilities at great cost and on a time-bound basis.

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HELD : 1. Wherever there is a public nuisance, the presence of s. 133 Criminal Procedure Code must be felt and any contrary opinion is contrary to the law. [112D]

2. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance and so he shall exercise, it when the jurisdictional facts are present. [107G]

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3. The Magistrate's responsibility under s. 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by s. 188 I.P.C. [109C-D]

4. The Municipal Commissioner or other executive authority bound by the order under s. 133 Criminal Procedure Code shall obey the direction because disobedience, if causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. [109E]

5. Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. [110C]

6. The imperative tone of s. 133 Criminal Procedure Code read with the punitive temper of s. 188 I.P.C. make the prohibitory act a mandatory duty. [109E]

7. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. [108H]

8. Section 123 M. P. Municipalities Act 1961 has no saving clause when the municipal council is penniless. [108H]

9. Although the Cr.P.C. and I.P.C. are of ancient vintage the new social justice orientation imparted to them by the Constitution of India makes them a remedial weapon of versatile use. Social Justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under s. 133 Criminal Procedure Code. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution. [109F-G]

10. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people-cannot be evaded if the municipality is to justify its existence. [110E]

11. The Court, armed with the provisions of the two Codes and justified by the obligation under s. 133 of the

Act, must adventure into positive directions as it has done in the present case. Section 133 Criminal Procedure Code authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give specific directives. [111A-B]

Govind Singh v. Shanti Sarup, [1979] 2 SCC 267, 279 referred to.

12. The state will realise that Art. 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

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low priority items and elitist projects to use the savings on sanitation and public health. [114C]

13. Where Directive Principles have found statutory expression in Do's and Don'ts 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 have 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. [114G-115A]

[The Court approved a scheme of construction work to be undertaken by the Municipality for the elimination of the insanitary conditions and directed that the work be commenced within two months and that the Magistrate inspect the progress of the work every three months and see that it is implemented. [113 D-114 B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Crl.) No. 2856 of 1979.

From the Judgment and Order dated 6-8-1979 of the Madhya Pradesh High Court in Crl. Revision No. 392/76.

Sobhag Mal Jain and S. K. Jain for the Petitioner.

C. S. Chhazed, Miss Manisha Gupta and M. S. Gupta for Respondents 1-5.

S. K. Gambhir for the State.

The Order of the Court was delivered by

KRISHNA IYER, J.-'It is procedural rules', as this appeal proves, 'which infuse life into substantive rights, which activate them to make them effective'. Here, before us, is what looks like a pedestrian quasi-criminal litigation under s. 133 Cr.P.C., where the Ratlam Municipality-the appellant-challenges the sense and soundness of the High Court's affirmation of the trial court's order directing the construction of drainage facilities and the like, which has spiralled up to this Court. The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be

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considered. In that sense, the case before us between the Ratlam Municipality and the citizens of

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a ward, is a path-finder in the field of people's involvement in the justicing process, sans which as Prof. Sikes points out, (1) the system may 'crumble under the burden of its own insensitivity'. The key question we have to answer is whether by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time-bound basis. At issue is the coming of age of that branch of public law bearing on community actions and the court's power to force public bodies under public duties to implement specific plans in response to public grievances.

The circumstances of the case are typical and overflow the particular municipality and the solutions to the key questions emerging from the matrix of facts are capable of universal application, especially in the Third World humandscape of silent subjection of groups of people to squalor and of callous public bodies habituated to deleterious inaction. The Ratlam municipal town, like many Indian urban centres, is populous with human and sub-human species, is punctuated with affluence and indigence in contrasting co-existence, and keeps public sanitation a low priority item. What with cesspools and filth menacing public health. Ward No. 12, New Road, Ratlam town is an area where prosperity and poverty live as strange bedfellows. The rich have bungalows and toilets, the poor live on pavements and litter the street with human excreta because they use roadsides as latrines in the absence of public facilities. And the city fathers being too busy with other issues to bother about the human condition, cesspools and stinks, dirtied the place beyond endurance which made the well-to-do citizens protest, but the crying demand for basic sanitation and public drains fell on deaf ears. Another contributory cause to the insufferable situation was the discharge from the Alcohol Plant of malodorous fluids into the public street. In this lawless locale, mosquitoes found a stagnant stream of stench so hospitable to breeding and flourishing, with no municipal agent disturbing their stinging music at human expense. The local denizens, driven by desperation, at long last, decided to use the law and call the bluff of the municipal body's bovine indifference to its basic obligations under s. 123 of the M. P. Municipalities Act, 1961 (the Act, for short). That provision casts a mandate:

123. Duties of Council.-(1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to

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undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:

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(b) cleansing public streets, places and sewers, and all places, not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances:

(c) disposing of night-soil and rubbish and preparation of compost manure from night-soil and rubbish.

And yet the municipality was obvious to this obligation towards human well-being and was directly guilty of breach

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of duty and public nuisance and active neglect. The Sub Divisional Magistrate, Ratlam, was moved to take action under s. 133 Cr.P.C., to abate the nuisance by ordering the municipality to construct drain pipes with flow of water to wash the filth and stop the stench. The Magistrate found the facts proved, made the direction sought and scared by the prospect of prosecution under s. 188 I.P.C., for violation of the order under s. 133 Cr.P.C., the municipality rushed from court to court till, at last, years after, it reached this Court as the last refuge of lost causes. Had the municipal council and its executive officers spent half this litigative zeal on cleaning up the street and constructing the drains by rousing the people's sramdan resources and laying out the city's limited financial resources, the people's needs might have been largely met long ago. But litigation with other's funds is an intoxicant, while public service for common benefit is an inspiration; and, in a competition between the two, the former overpowers the latter. Not where a militant people's will takes over people's welfare institutions, energises the common human numbers, canalises their community consciousness, forbids the offending factories from polluting the environment, forces the affluent to contribute wealth and the indigent their work and thus transforms the area into a healthy locality vibrant with popular participation and vigilance, not neglected ghettos noisy with squabbles among the slimy slum-dwellers nor with electoral 'sound and fury signifying nothing.'

The Magistrate, whose activist application of s. 133 Cr.P.C., for the larger purpose of making the Ratlam municipal body to do its duty and abate the nuisance by affirmative action, has our appreciation. He has summed up the concrete facts which may be usefully quoted in portions:

"New Road, Ratlam, is a very important road and so many prosperous and educated persons are living on this Road. On

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the southern side of this Road some houses are situated and behind these houses and attached to the College boundary, the Municipality has constructed a road and this new Road touches the Government College and its boundary. Just in between the said area a dirty Nala is flowing which is just in the middle of the main road i.e. New Road. In this stream (nala) many a time dirty and filthy water of Alcohol Plant having chemical and obnoxious smell, is also released for which the people of that locality and general public have to face most obnoxious smell. This Nala also produces filth which causes a bulk of mosquitoes breeding. On this very southern side of the said road a few days back municipality has also constructed a drain but it has (?) constructed it completely but left the construction in between and in some of the parts the drain has not at all been constructed because of this the dirty water of half constructed drain and septic tank is flowing on the open land of applicants, where due to insanitation and due to non-removing the obstructed earth the water is accumulated in the pits and it also creates dirt and bad smell and produces mosquitoes in large quantities. This water also goes to nearby houses and causes harm to them. For this very reason the applicants and the other people of that locality are unable to live and take rest in their respective houses. This is also injurious to health".

There are more dimensions to the environmental pollution which the magistrate points out:

"A large area of this locality is having slums where no

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facility of lavatories is supplied by the municipality. Many such people live in these slums who relieve their lateral dirt on the bank of drain or on the adjacent land. This way an open latrine is created by these people. This creates heavy dirt and mosquitoes. The drains constructed in other part of this Mohalla are also not proper it does not flow the water properly and it creates the water obnoxious. The Malaria Department of the State of M.P. also pays no attention in this direction. The non-applicants have not managed the drains, Nallahs and Naliyan properly and due to incomplete construction the non-applicants have left no outlet for the rainy water. Owing to above reasons the water is accumulated on the main road, it passes through living houses, sometimes snakes and scorpions come out and this obstruct the people to pass through this road. This also causes financial loss to the people of this area. The road constructed by Nagarpalika is on a high level and due to this, this year more

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water entered the houses of this locality and it caused this year more harm and loss to the houses also. This way all works done by the non-applicants i.e. construction of drain, canal and road come within the purview of public nuisance. The non-applicants have given no response to the difficulties of the applicants, and non-applicants are careless in their duties towards the public, for which without any reason the applicants are facing the intolerable nuisance. In this relation the people of this locality submitted their returns, notices and given their personal appearance also to the non-applicants but the non-applicants are shirking from their responsibilities and try to avoid their duty by showing other one responsible for the same, whereas all the non-applicants are responsible for the public nuisance."

Litigation is traumatic and so the local people asked first for municipal remedies failing which they moved for magisterial remedies:

"At the last the applicants requested to remove all the nuisance stated in their main application and they also requested that under-mentioned works must be done by the non-applicants and for which suitable orders may be issued forthwith:

1. The drains constructed by Municipality are mismanaged and incomplete, they should be managed and be completed and flow of water in the drains should be made so that the water may pass through the drain without obstruction.

2. The big pits and earthen drains which are situated near the College boundary and on the corners of the road where dirty water usually accumulates, they should be closed and the filth shall be removed therefrom.

3. The big 'Nala' which is in between the road, should be managed and covered in this way that it must not create overflow in the rainy season.

4. The Malaria Department should be ordered to sprinkle D.D.T. and act in such a manner and use such means so that the mosquitoes may be eradicated completely from the said locality."

The proceedings show the justness of the grievances and the indifference of the local body:

"Both the parties heard. The court was satisfied on the facts contained in their application dated 12-5-72 and granted conditional order against non-applicants

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No. 1 and 2 u/s 133 of Cr. P.C. (Old Code). In this order all the nuisances were described (which were there in their main application) and the court directed to remove

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all the nuisances within 15 days and if the non-applicants have any objection or dissatisfaction against the order then they must file it on the next date of hearing in the court."

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"The applicants got examined the following witnesses in their evidence and after producing following documents they closed their evidence."

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"No evidence has been produced by the non-applicants in spite of giving them so many opportunities. Both the parties heard and I have also inspected the site."

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"The non-applicant (Municipal Council) has sought six times to produce evidence but all in vain. Likewise non-applicant (Town Improvement Trust) has also produced no evidence."

The Nallah comes into picture after the construction of road and bridge. It has shown that Nallah is property of Nagarpalika according to Ex.p. 10. Many applications were submitted to remove the nuisance but without result. According to Sec. 32 to 43 of the Town Improvement Trust Act, it is shown, that it has only the provisions to make plans. Many a time people tried to attract the attention of Municipal Council and the Town Improvement Trust but the non-applicants always tried to throw the responsibility on one another shoulder.

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It is submitted by non-applicant (Municipality) that the said Nallah belongs to whom, it is still disputed i.e. whether it belongs to non-applicant 1 or 2. Shastri Colony is within the area of Town Improvement Trust. The Nagarpalika (non-applicant No. 1) is financially very weak. But Municipal Council is not careless towards its duties.

Non-applicant (Town Improvement Trust) argued that primary responsibility lies with the Municipal Council only. There is no drainage system.

At the end of it all, the Court recorded:

..... after considering all the facts I come to this conclusion that the said dirty Nallah is in between the main road of Ratlam City. This dirty Nallah affects the Mohalla of New

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Road, Shastri Colony, Volga Talkies and it is just in the heart of the city. This is the very important road and is between the Railway Station and the main city. In these mohallas, cultured and educated people are living. The Nallah which flows in between the New Road and Shastri Colony the water is not flowing rapidly and on many places there are deep pits in which the dirty water is accumulated. The Nallah is also not straight that is also the reason of accumulation of dirty water. The Nallah is not managed properly by the non-applicants. It is unable to gush the rainy water and due to this the adjoining areas always suffer from over-flowing of the water and it causes the obstruction to the pedestrians.

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It is also proved by the evidence given by the applicants that from time to time the Power Alcohol factory which is situated outside the premises of the Municipal Council and it flows its dirty and filthy water into the said Nallah, due to this also the obnoxious smell is spreading throughout the New Road or so it is the bounden duty of the Municipal Council and the Town Improvement Trust to do the needful in this respect.

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The dirty water which flows from the lavatories and urinals of the residential houses have no outlet and due to this reason there are many pits on the southern side of the New Road and all the pits are full of dirty and stinking water. So it is quite necessary to construct an outlet for the dirty water in the said locality.

In this area many a places have no drainage system and if there is any drain it has no proper flow and water never passes through the drain properly. That causes the accumulation of water and by the time it becomes dirty and stink and then it produces mosquitoes there.

The Magistrate held in the end:

Thus after perusing the evidence I come to this conclusion and after perusing the applications submitted by the persons residing on the New Road area from time to time to draw the attention of the non-applicants to remove the nuisance, the non-applicants have taken no steps whatsoever to remove all these public nuisances.

He issued the following order which was wrongly found unjustified by the Sessions Court, but rightly upheld by the High Court:

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Therefore, for the health and convenience of the people residing in that particular area of all the nuisance must be removed and for that the following order is hereby passed:

(1) The Town Improvement Trust with the help of Municipal Council must prepare a permanent plan to make the proper flow in the said Nallah which is flowing in between Shastri Colony and New Road. Both the non-applicants must prepare the plan within six months and they must take proper action to give it a concrete form.

(2) According to para 13 a few places are described which are either having the same drains and the other area is having no drain and due to this the water stinks there; so the Municipal Council and the Town Improvement Trust must construct the proper drainage system and within their own premises where there is no drain it must be constructed immediately and all this work should be completed within six months.

(3) The Municipal Council should construct drains from the jail to the bridge behind the southern side of the houses so that the water flowing from the septic tanks and the other water flowing outside the residential houses may be channellised and it may stop stinking and it should have a proper flow so that the water may go easily towards the main Nallah. All these drains should be constructed completely within six months by the Municipal Council.

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(4) The places where the pits are in existence the same should be covered with mud so that the water may not accumulate in those pits and it may not breed mosquitoes. The Municipal Council must complete this work within two months.

A notice under Section 141 of the Criminal Procedure Code (Old Code) may be issued to the non-applicants Nos. 1 and 2 so that all the works may be carried out within the stipulated period. Case is hereby finalised.

Now that we have a hang of the case we may discuss the merits, legal and factual. If the factual findings are good- and we do not re-evaluate them in the Supreme Court except in exceptional cases- one wonders whether our municipal bodies are functional irrelevances, banes rather than booms and 'lawless' by long neglect, not leaders of the people in local self-government. It may be a cynical obiter of pervasive veracity that municipal bodies minus the people and plus the bureaucrats are the bathetic vogue-no better than when the British were here:

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We proceed on the footing, as we indicated even when leave to appeal was sought, that the malignant facts of municipal callousness to public health and sanitation, held proved by the Magistrate, are true. What are the legal pleas to absolve the municipality from the court's directive under s. 133 Cr.P.C. ? That provision reads:

s. 133(1) whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public;

XX XX XX
such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

XX XX XX
(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided.

why the order should not be made absolute.

So the guns of s. 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "All power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist."(i) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.

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If the order is defied or ignored, s. 188 I.P.C. comes into penal play:

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188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to obtain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction

and if such disobedience causes or tends to cause danger to human life health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

There is no difficulty in locating who has the obligation to abate the public nuisance caused by absence of primary sanitary facilities. Section 123, which is mandatory, (we repeat), reads:

123. Duties of Council :-(1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:-

(a).....

(b) cleansing public streets, places and sewers, and all places not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances;

(c) disposing of night-soil and rubbish and preparation of compost manure from night-soil and rubbish.

The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under s. 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, s. 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate

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statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

Section 133 Cr.P.C. is categorical, although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the sub-Divisional Magistrate, Ratlam, has, before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall,

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passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under s. 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by s. 188 I.P.C. Therefore, the Municipal Commissioner or other executive authority bound by the order under s. 133 Cr.P.C. shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the Section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of s. 133 Cr.P.C. read with the punitive temper of s. 188 I.P.C. make the prohibitory act a mandatory duty.

Although these two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under s. 133 Cr.P.C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution. This brings Indian public law, in its processual branch, in line with the statement of Prof. Kojima : (1) "the urgent need is to focus on the ordinary man-one might say the little man..." "Access to Justice" by Cappelletti and B. Garth summarises the new change thus: (2)

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"The recognition of this urgent need reflects a fundamental change in the concept of "procedural justice"... The new attitude to procedural justice reflects what Professor Adolf Homburger has called "a radical change in the hierarchy of values served by civil procedure"; the paramount concern is increasingly with "social justice," i.e., with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people. While the implications of this change are dramatic-for instance, insofar as the role of the adjudicator is concerned-it is worth emphasizing at the outset that the core values of the more traditional procedural justice must be retained. "Access to justice" must encompass both forms of procedural justice."

Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems- not pompous and attractive, but in working condition and sufficient to meet the needs of the people-

cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear.

In this view, the Magistrate's approach appears to be impeccable although in places he seems to have been influenced by the fact that "cultured and educated people" live in this area and "New Road, Ratlam" is a very important road and so many prosperous and educated persons are living on this road. In India 'one man, one value' is the democracy of remedies and rich or poor the law will call to order where people's rights are violated. What should also have been emphasised was the neglect of the Malaria Department of the State of Madhya Pradesh to eliminate mosquitoes, especially with open drains, heaps of dirt, public excretion by humans for want of lavatories and slums nearby, had created an intolerable situation for habitation. An order to abate the nuisance by taking affirmative action on a time-bound basis is justified in the circumstances. The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only.

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Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile. Therefore, the court, armed with the provisions of the two Codes and justified by the obligation under s. 123 of the Act, must adventure into positive directions as it has done in the present case. Section 133 Cr.P.C. authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give specific directives. We see no reason to disagree with the order of the Magistrate.

The High Court has taken a correct view and followed the observations of this Court in *Govind Singh v. Shanti Sarup*(1) where it has been observed:

"We are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery."

We agree with the High Court in rejecting the plea that the time specified in the order is unworkable. The learned judges have rightly said.

"It is unfortunate that such contentions are raised in 1979 when these proceedings have been pending since 1972. If in seven year's time the Municipal Council intended to remedy such a small matter there would have been no difficulty at all. Apart from it, so far as the directions are concerned, the learned Magistrate, it appears, was reasonable. So far as direction No. 1 is concerned, the learned Magistrate only expected the Municipal Council and the Town Improvement Trust to evolve a plan and to start planning about it within six months: the learned Magistrate has rightly not fixed the time limit within which that plan will be completed. Nothing more reasonable could be said about direction No. 1."

A strange plea was put forward by the Municipal Council before the High Court which was justly repelled, viz., that the owners of houses had gone to that locality on their own choice with eyes open and, therefore, could not complain if human excreta was flowing, dirt was stinking, mosquitoes were multiplying and health was held hostage. A public body constituted for the principal statutory duty of ensuring

sanitation and health cannot outrage the court by such an ugly plea.

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Luckily, no such contention was advanced before us. The request for further time for implementation of the Magistrate's order was turned down by the High Court since no specific time-limit was accepted by the municipality for fulfillment of the directions. A doleful statement about the financial difficulties of the municipality and the assurance that construction of drains would be taken up as soon as possible had no meaning. The High Court observed:

"Such assurances, it appears, are of no avail as unfortunately these proceedings for petty little things like clearing of dirty water, closing the pits and repairing of drains have taken more than seven years and if these seven years are not sufficient to do the needful, one could understand that by granting some more time it could not be done."

The High Court was also right in rejecting the Additional Sessions Judge's recommendation to quash the Magistrate's order on the impression that s. 133 Cr.P.C. did not provide for enforcement of civic rights. Wherever there is a public nuisance, the presence of s. 133 Cr.P.C. must be felt and any contrary opinion is contrary to the law. In short, we have no hesitation in upholding the High Court's view of the law and affirmation of the Magistrate's order.

Before us the major endeavour of the municipal council was to persuade us to be pragmatic and not to force impracticable orders on it since it had no wherewithal to execute the order. Of course, we agree that law is realistic and not idealistic and what cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle it may well be that while upholding the order of the Magistrate, we may be inclined to tailor the direction to make it workable. But first things first and we cannot consent to a value judgment where people's health is a low priority. Nevertheless, we are willing to revise the order into a workable formula the implementation of which would be watch-dogged by the court.

Three proposals have been put forward before us in regard to the estimated cost of the scheme as directed by the Magistrate. The Magistrate had not adverted to the actual cost of the scheme nor the reasonable time that would be taken to execute it. As stated earlier it is necessary to ascertain how far the scheme is feasible and how heavy the cost is likely to be. The Court must go further to frame a scheme and then fix time-limits and even oversee the actual execution of the scheme in compliance with the court's order.

Three schemes placed before us, together with tentative estimates of the costs, have been looked into by us. Judges are laymen and cannot put on expert airs. That was why we allowed the municipality

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and the respondents to produce before us schemes prepared by expert engineers so that we may modify the directions issued by the Magistrate suitably. Scheme 'A' is stated to cost an estimated amount of Rs. 1.016 crores. The State Government has revised this proposal and brought down the cost. In our view, what is important is to see that the worst aspects of the insanitary conditions are eliminated, not that a showy scheme beyond the means of the municipality must be undertaken and half done. From that angle we approve scheme 'C' which costs only around Rs. 6 lakhs. We fix a time limit of one year for completing execution of the work according

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to that scheme. We further direct that the work shall be begun within two months from to-day and the Magistrate shall inspect the progress of the work every three months broadly to be satisfied that the order is being implemented bona fide. Breaches will be visited with the penalty of s. 188 I.P.C.

We make the further supplementary directions which we specifically enjoin upon the municipal authority and the State Government to carry out.

1. We direct the Ratlam Municipal Council (R1) to take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution. The Sub Divisional Magistrate will also use his power under s. 133 I.P.C., to abate the nuisance so caused. Industries cannot make profit at the expense of public health. Why has the Magistrate not pursued this aspect?
2. The Municipal Council shall, within six months from to-day, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a report, at the end of the six-monthly term, that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition. Conscious cooperation of the consumers is too important to be neglected by representative bodies.
3. The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward 12. The Sub Divisional Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.
4. The municipality will not merely construct the drains but also fill up cesspools and other pits of filth and use its sanitary

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staff to keep the place free from accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

5. We have no hesitation in holding that if these directions are not complied with the Sub Divisional Magistrate will prosecute the officers responsible. Indeed, this court will also consider action to punish for contempt in case of report by the Sub Divisional Magistrate of willful breach by any officer.

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 Art. 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. The

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pressure of the judicial process, expensive and dilatory, is neither necessary nor desirable if responsible bodies are responsive to duties. Cappelletti holds good for India when he observes :(1)

"Our judicial system has been aptly described as follows:

Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.

This "beautiful" system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims."

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

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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.

We dismiss this petition subject to the earlier mentioned modifications.

N.V.K.

Petition dismissed.

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**REPORTABLE**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. _____ OF 2025
(Arising out of SLP (C) Nos. 23633 – 23634 of 2010)

VELLORE DISTRICT ENVIRONMENT MONITORING
COMMITTEE REP. BY ITS SECRETARY
MR. R. RAJEBDRAN

... APPELLANT(S)

VERSUS

THE DISTRICT COLLECTOR,
VELLORE DISTRICT & OTHERS

... RESPONDENT(S)

WITH
CIVIL APPEAL No. _____ OF 2025
(Arising out of SLP (C) No. 26608 of 2011)

ALL INDIA SKIN AND HIDE TANNERS AND
MERCHANTS ASSOCIATION

... APPELLANT(S)

VERSUS

LOSS OF ECOLOGY
(PREVENTION & COMPENSATION
AUTHORITY) REP. BY ITS MEMBER SECRETARY
AND OTHERS

... RESPONDENT(S)

J U D G M E N T

R.MAHADEVAN, J.

Leave granted. Heard all the parties and also perused the materials placed before us, including status reports / affidavits / responses filed by them. For the sake of clarity and better understanding, this judgment has been divided into the following heads:

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I. PREFATORY NOTE

2. Nature and its elements are worshipped as Gods since time immemorial. Our forefathers knew the importance of preserving the environment both for their own well-being and for the benefit of future generations. However, over time, human greed has led us to forget this wisdom, treating nature as expendable at our expense and that of future generations. The degradation of the natural resources and pollutions of different kinds have a cascading effect on the environment, which now is a global issue and poses a threat to the very existence of our planet. Such degradation is the catalyst for the drastic climatic changes and challenges that we are facing now. The pollution and depletion of water resources, more particularly groundwater, is a foreseeable threat to all living beings. India produces 13 percent of the world's leather and the leather market in India is valued at approximately Rs.40,000 crores¹. It is a key foreign exchange earning sector for India being the 2nd largest global exporter and provides employment to lakhs. Tannery clusters are often located in areas with limited opportunities for livelihood. Not only does this industry contribute significantly to the national economy, but the States of Tamil Nadu, Uttar Pradesh, West Bengal and Punjab also have heavy economic dependencies on it. Despite its economic importance, a heavy price is being paid by the residents of areas surrounding tanneries and the workers employed therein, particularly, in terms of health impact, land degradation and an overall decreased quality of life. For years, environmental

¹ CLRI Report

degradation has been rampant and it is time that a final lid be put to such activities that degrade the environment in violation of law. While acknowledging the economic importance of the industry, this Court shall not be a mute spectator to the environmental consequences and the loss of life and health caused by the waste generated by tanneries. There is an urgent need to strike a balance between competing interests, evolving and implementing sustainable solutions. Development which threatens the existence will serve no purpose. The sustainable development is an imminent requirement. The policies of the States and the actions must thrive towards striking a balance between socio-economic development and preservation of the natural resources for the benefit of the future generations.

II. RELIEF SOUGHT

3. The challenge made in these appeals (arising out of SLP Nos.23633-23634 of 2010) is to the common order dated 28.01.2010 passed by the High Court of Judicature at Madras², in WP Nos. 8335 of 2008 and 19017 of 2009, whereby, the High Court dismissed the first writ petition filed by the appellant herein *viz.*, Vellore District Environment Monitoring Committee and disposed of the latter writ petition filed by the appellant *viz.*, All India Skin and Hide Tanners and Merchants Association³. Besides, the AISHTMA

² Hereinafter shortly referred to as “the High Court”

³ For short, “the AISHTMA”

has preferred an appeal (arising from SLP(C)No.26608 of 2011) against the order dated 08.02.2010 passed by the High Court in dismissing W.P.No.22683 of 2009 filed by them.

4. For ease of reference, the reliefs sought in the aforesaid writ petitions are quoted below:

W.P.No.8335 of 2008:

To issue a Writ of Mandamus, directing the respondents to ensure that the compensation payable to all affected individuals/families as contained in the report and Award dated 07.03.2001 passed by the Loss of Ecology (Prevention and Payment of Compensation) Authority⁴ for the State of Tamil Nadu is paid and all industries in default being subject orders of closure and initiate proceedings under the Revenue Recovery Act, 1890, for recovery of compensation and that compensation be assessed for the further loss caused to individual/families from 31.12.1998 till date and implementation of appropriate scheme for reversal of damage to ecology and infrastructure be effected within a reasonable time frame and to ensure that there are no discharges from any tanneries in and around Ambur and Vaniyambadi land/water body.

W.P.No.19017 of 2009:

To issue a Writ of Certiorari to call for the records relating to the order passed by the respondent / LoEA, dated 05.05.2009 with regard to the assessment of damage to ecology

⁴ For short, "the LoEA"

in Vellore District beyond 1998 and quash the same.

W.P.No.22683 of 2009:

To issue a writ of certiorari to call for the records relating to the award and report for Vellore District, dated 24.08.2009 passed by the respondent / LoEA and quash the same.

III. FACTUAL OVERVIEW

(A) GENESIS OF THE LITIGATION

5. Vellore District is one of the oldest and largest Districts in Tamil Nadu lying on the banks of River Palar. Palar River is the source of drinking water for 30 towns and 50 villages along its banks. This river which was celebrated in literature, poetry, music, is now sullied by the operation of industries, especially, the tanning industry, which has been discharging effluents and dumping solid waste directly into the river and its channels, thereby making it unfit for drinking or agricultural purposes. Tanning industries which are the main source of income for the Vellore District, convert animal hides and skins into leather. Around 45% of the total tanneries in India are located in Tamil Nadu. More than 600 tanneries are situated in various clusters of Vaniyambadi, Ambur, Ranipet, Pernambut in the Vellore District. Though these industries have significant socio-economic impacts through employment and earnings, they have gained a negative image in society due to the pollution they generate.

6. Leather processing involves a series of unit operations, including pre-tanning, tanning, and post-tanning/finishing. At each stage, various chemicals are used, and a variety of materials are expelled, in addition to 35 - 40 litres of water used per kilogram of hide processed. Moreover, excessive amounts of chemicals are used in treatment drums, and it has been reported that 50% of the chemicals used in these processes become wastewater or sludge. The tanning process is almost wholly a wet process that consumes high amount of water, estimated at 34 - 56m³ of water per ton of hides or skin processed with 85% of the total water consumed being discharged as wastewater. Processed water consumption and consequently wastewater effluent discharge varies greatly between tanneries, depending on the processes involved, raw materials, and products. A survey⁵ reports that tannery wastewater is highly polluted in terms of suspended solids, nitrogen, sulphate, sulphide, chloride, Biological Oxygen Demand (BOD), Chemical Oxygen Demand (COD), and chromium. The tanning industries have been operating with little or no pollution control for more than a century. It was only after 1980 that the treatment of the tannery wastewater was carried out⁶.

⁵ [Mondal, N., Saxena, V. and Singh, V. (2005) Impact of Pollution due to Tanneries on Groundwater Regime. Current Science, 88, 1988-1994]

⁶ Journal of Chemical and Pharmaceutical Sciences - Tannery process and its environment impacts a case study : Vellore District, Tamil Nadu ISSN::0974-2115

(B) VELLORE CITIZENS WELFARE FORUM CASE

7. Highlighting the pollution caused by untreated effluents discharged by tanneries and other industries in the State of Tamil Nadu into the River Palar, which is posing a great threat to the ecosystem and resulting in the non-availability of potable water in the area, a Non-Governmental Organization viz., Vellore Citizens Welfare Forum filed a Public Interest Litigation in W.P.(C)No.914 of 1991 before this Court, praying to issue a Writ of Mandamus, directing the respondents therein viz., Union of India and the State of Tamil Nadu, to immediately pay adequate compensation to the victims of pollution and to those who lost their lives, food crops, vegetation, trees, agricultural land, wells and suffered severe hardship due to irresponsible and negligent act of polluting tanneries and recover the amount to be paid in compensation to the affected people from the polluting tanneries. By judgment dated 28.08.1996⁷, the said writ petition was disposed of by this Court with the following directions:

"1. The Central Government shall constitute an authority under S.3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired judge of the High Court and it may have other members preferably with expertise in the field of pollution control and environment protection to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under 5.5 of the Environment Act and for taking measures with respect to the matters referred to in Cls. (v), (vi), (vii), (viii), (ix), (x) and (xii) of subsection (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.

⁷ Vellore Citizens Welfare Forum v. Union of India & others, AIR 1996 SC 2715 : 1996 (5) SCC 647

2. *The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.*

3. *The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.*

4. *The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refused to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.*

5. *An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.*

6. *We impose pollution fine of Rupees 10,000/- each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.*

7. *The authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.*

8. *We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.*

9. *We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.*

10. *The Government order No.213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure-1 to the Notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to authority to direct the relocation of any of such industries.*

11. *The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board."*

8. In Paragraph 25 of the aforesaid judgment, this Court further observed as follows:

"We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view

that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by us. We may mention that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We direct the Registry of this Court to send the records to the registry of the Madras High Court within one week. The High Court shall treat this matter as a petition under Art.226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary."

(C) AFTERMATH OF VELLORE CITIZENS WELFARE FORUM JUDGMENT

9. On transfer, the case was re-numbered as W.P.No.13433 of 1996 and pursuant to the directions of this Court, the Loss of Ecology (Prevention and Payment of Compensation) Authority⁸ was constituted by the Government of India, *vide* its Notification in S.O.671 (E), dated 30.9.1996 with the Honourable Mr. Justice P. Bhaskaran, a retired Judge of the High Court, as its Chairperson, *inter alia* directing to assess the loss to the ecology/environment in the affected areas and also to identify the individuals/families who had suffered because of the pollution and determine the compensation payable to them.

10. By Award dated 07.03.2001, the LoEA identified 29,193 affected individuals /families and determined the compensation at Rs.26,82,02,328/- for the period from 12.08.1991 to 31.12.1998 in respect of 15,164.96 hectares across 186 villages in 7 Taluks of Vellore District. Further, it was made clear that the liability of the polluting industries

⁸ For short, "the LoEA"

to compensate the affected individuals/families would continue beyond 31.12.1998 until the damage caused to the ecology and environment by pollution is reversed.

11. Subsequently, the aforesaid award, particularly with reference to apportionment of compensation, was challenged by some of the aggrieved parties in W.P.No.512 of 2002; and the validity of the Notification dated 30.09.1996, appointing the LoEA was also challenged by the AISHTMA by filing W.P.No.7015 of 2000. The High Court disposed of the said writ petitions by order dated 22.03.2002, the relevant portion of which reads as follows:

"This matter relates to the polluters-paying the liability. Pursuant to the enquiries made by the authority, which has been constituted consequent to the judgment rendered by the Supreme Court in Vellore Citizens' Welfare Forum Vs. Union of India (1996) 5 SCC 647, amounts have been determined, and this writ petition has been filed by the Association consisting of 334 tanners. Now, all the learned Senior Counsel appearing for the petitioner submit that they are not contesting the quantum fixed by the authority, but because of the financial strain, the entire amount cannot be deposited in lump sum. Facility to pay in installments is, therefore, pleaded. The Number of tanneries as stated above are 334, of which 151 tanneries are smaller ones. Likewise, there are other two categories also. Having regard to the plea made to facilitate the payment in installments and having regard to the facts and circumstances and also taking the welfare of the affected parties into consideration, as the challenge now ends, because of the acceptance of the persons manning tanneries to pay the amount as determined by the authority, the installments as fixed as follows:

Tanners (151 in number) who are ordered to pay up to Rs.2 lakhs, have to pay the amount in a bi-monthly installments of Rs.21,22,672/- each. For the category, whose liability is between Rs.2 lakhs and Rs.20 lakhs (159 in number), the amount shall be payable in 12 bi-monthly installments of Rs.88,35,675/- each. The third category (24 in number), whose liability is over and above Rs.20 lakhs shall pay the amount in 18 bi-monthly installments of Rs.96,37,863/- each. The above schedule is effective from 1st April 2002 and the first of such payment shall be made on or before 10th April 2002, and every bi-monthly installment shall be made after two months thereof, for instance, on or before 10th June 2002, and so on. It is made clear that in default of

payment of even one bi-monthly installment, the Collector shall be entitled to realize the balance amount in lump sum from the concerned defaulters. It is needless to mention that this arrangement facilitating the payment in installments is in modification of the earlier order passed on 22.1.2002. The writ petition is disposed of accordingly."

12. Thereafter, the Vellore Citizens Welfare Forum preferred WP No.23291 of 2006 for a mandamus directing the Ministry of Environment and Forest and the State of Tamil Nadu to make the LoEA a permanent body for the State of Tamil Nadu and to appoint a Managing Committee, Chairperson and members to the same. On 20.12.2007, when the said writ petition came up for hearing, the High Court passed the following order:

"Learned counsel appearing for the Loss of Ecology Authority states that the Authority will consider all the applications filed before the cut-off-date, which are pending as well as the applications which are filed after the cut-off-date and decide them in accordance with law and grant compensation wherever the case is made out.

Adj to 02.1.2008 to consider the report of the Loss of Ecology Authority relating to location of the hazardous units covered under G.O.Ms.No.213, dated 30.3.1989."

13. In the meanwhile, alleging that no scheme has been implemented for the reversal of the damage caused to the ecology and environment and that no compensation has been paid for the period from 31.12.1998, the Vellore District Environment Monitoring Committee filed W.P.No.8335 of 2008 as a Public Interest Litigation. Along with the said writ petition, a Miscellaneous Petition in M.P.No.1 of 2008 was also filed praying to direct the LoEA to close down all industries that have not complied with the report and Award dated 07.03.2001, pending disposal of the writ petition. The High Court passed the following order, on 10.04.2008 in the said miscellaneous petition:

“(i) The Authority shall make enquiries as to whether the polluters have complied with the condition after 1999 as per the award and fix the compensation payable within four months.

(ii) The Authority shall assess the damage caused to the ecology since 1999.

(iii) The Authority shall frame a scheme for reversal of the damage to ecology within eight weeks and issue the same to the District Collector, who is directed to implement the scheme.

(iv) The District Collector shall recover the compensation as assessed by the earlier order from the polluters and pay the same to the affected parties and shall file a status report into this Court. The District Collector shall also strictly and expeditiously comply with the scheme framed and the directions of the Authority.”

14. Seeking to vacate the aforesaid order dated 10.04.2008 passed in MP.No.1 of 2008 in W.P.No.8335 of 2008, the AISHTMA filed M.P.No.2 of 2008, in which, the High Court *inter alia* directed the LoEA to hear the AISHTMA before proceeding with the exercise directed in the order dated 10.04.2008. The High Court further clarified that the said directions should not be construed by the LoEA as conclusive findings, but should be taken up only to enable it to hold / conduct an enquiry. Thereafter, upon issuing due notice to all the parties, the LoEA passed the order dated 05.05.2009 assessing the damage caused by the tanning industry to the ecology beyond 1998 in the Vellore District. Aggrieved by the same, the AISHTMA preferred WP.No.19017 of 2009 to quash the said order dated 05.05.2009.

15. Consequently, the LoEA passed the order and award dated 24.08.2009, determining a total sum of Rs.2,91,01,278/- as compensation payable to 1377 affected individuals by the same 547 polluters as identified in the original award dated 07.03.2001. Challenging the same, the AISHTMA preferred W.P.No.22683 of 2009 before the High Court.

16. After hearing all the parties, the High Court passed the common order on 08.02.2010 in WP.Nos.8335 of 2008 and 19017 of 2009 and the operative portion of the same reads as follows:

“18. In view of the above stated reasons, we do not find any reason to entertain W.P.No.8335 of 2008 and therefore, the same is liable only to be dismissed. Accordingly, W.P.No.8335 of 2008 is dismissed and the consequential proceedings initiated and the order dated 5.5.2009 passed by the third respondent therein viz., the Loss of Ecology (Prevention & Payment of Compensation) Authority, pursuant to the directions in the said writ petition, also stand quashed. In view of the dismissal of W.P.No.8335 of 2008, we do not propose to go into various other aspects argued on either side in respect of the other writ petition in W.P.No.19017 of 2009, since by the dismissal of W.P.No.8335 of 2008, the impugned order in W.P.No.19017 of 2009 is already held to be invalid. With this observation, W.P.No.19017 of 2009 stands disposed of....”

By separate order dated 08.02.2010, WP No.22683 of 2009 filed by the AISHTMA came to be dismissed by the High Court, observing that there was no infirmity or illegality in the report and award passed by the LoEA on 24.08.2009.

17. Being dissatisfied with the orders dated 08.02.2010 so passed by the High Court, the appellants are before us with the present appeals.

IV. RECORD OF PROCEEDINGS AND AFFIDAVITS/REPORTS FILED BY THE RESPONDENT AUTHORITIES

18. These matters were listed before this Court right from 2010 and various directions have been passed from time to time and in compliance of the same, the authorities have filed affidavits/ reports then and there, to which, the contesting parties filed their respective replies. For effective adjudication of the issue involved herein, we may state the relevant orders and the affidavits / reports filed by the parties, which read as under:

18.1. Keeping in view the fact that the High Court had passed order as early as in 1998 for payment of compensation and the directions given by this court from time to time, this Court by order dated 20.02.2013⁹, directed the State Government to pay the amount of Rs.4.48 crores to the farmers within a period of eight weeks and recover the same from the defaulting tanneries.

18.2. Pursuant to the order of this Court dated 20.02.2013, the Additional Chief Secretary to Government, Environment & Forest Department, Govt. of Tamil Nadu, in his supplementary affidavit dated 29.11.2013 stated that total compensation amount to be collected from the 547 tanneries as determined by the LoEA *vide* two awards (Rs.26.82 +

⁹ We have heard Shri T. Mohan, learned counsel for the petitioner, Shri Gurukrishna Kumar, learned Additional Advocate General for the State of Tamil Nadu and Shri Rajagopalan, learned senior advocate for the petitioners in the connected special leave petition. We have also perused supplementary affidavit dated 19.02.2013 of Shri P. Sankar, Collector, Vellore District, which reveals that a sum of Rs. 4.48 crores is still to be paid to the farmers.

Keeping in view the fact that the High Court had passed order as early as in 1998 for payment of compensation and the directions given by this Court from time to time, we direct the State Government to pay the amount of Rs.4.48 crores to the farmers within a period of eight weeks from today.

For consideration of other issues, the cases are adjourned to 17.04.2013.

It is needless to say that the State Government shall be free to recover the amount from the defaulter tanneries.

Rs.2.91 crores) was 29.73 crores; the amount to be collected from the tanneries for reversal of ecology was Rs.3.66 crores; the total amount recovered as on 22.08.2013 was Rs.27.67 crores; and thus, there was a balance of Rs.5.72 crores, out of which, Rs.4.85 crores were recoverable from the polluting units; after taking earnest steps through the revenue machinery, Rs.1.13 crores were collected and 63 tanneries cleared their balance; and as a result, the remaining amount to be collected is Rs.3.72 crores. The affidavit further proceeds to state that out of 547 tanneries, 359 tanneries cleared their balance, 168 tanneries partially paid their dues and the amount due from 20 tanneries could not be collected in view of the court stay order, closure of tanneries running in the rented premises, bank attachments, and liquidation proceedings; however, the Tahsildars were instructed to invoke Revenue Recovery Act and take qualitative steps to identify the defaulters and collect the balance amount. It was also stated that in order to comply with the order dated 20.02.2013, the Government by G.O(Ms)No.57, Environment and Forests (EC.1) Department, dated 19.04.2013, sanctioned an advance sum of Rs.2.77 crores and disbursed the same along with sum of Rs.1.71 crores collected by the District Administration, to the affected farmers and that, the remaining amount of Rs.1.15 crores is available with the Divisional officers and the same would be disbursed as and when the issues are settled either through court of law or out of court.

18.3. This Court by order dated 05.08.2014, directed the TNPCB and its authorities to file an affidavit within a week giving the time frame by which they intended to stop the

pollution of Palar River. Further, liberty was given to the TNPCB to take necessary action against the industries causing pollution in the river and if required, to seal such industries. Pursuant to the aforesaid order dated 05.08.2014, the TNPCB filed a detailed status of 8 CETPs and 26 IETPs in the Vellore District by its report dated 13.08.2014. However, this Court by order dated 09.09.2014¹⁰ directed the TNPCB to make fresh inspection regarding the pollution of the Palar River and file a status report within four weeks. In compliance of the same, the TNPCB carried out inspection of six stretches of Palar River and filed its report on 28.10.2014.

18.4. By order dated 20.02.2015¹¹, the Central Pollution Control Board (CPCB), New Delhi, was impleaded as a party Respondent to the present appeals and was directed to

¹⁰ It appears that second respondent - Tamil Nadu Pollution Control Board has given a clean chit to the tanning industries that they are not causing any pollution to the Palar River passing through the District of Vellore. It is not clear from the report whether there is any pollution in the Palar River /water bodies and its tributaries and if there is any pollution the resources through which the pollution is caused. Second respondent - Tamil Nadu Pollution Control Board is directed to make fresh inspection and file a status report along with copy of the inspection report about the pollution of the Palar River within four weeks.

¹¹ Learned counsel for the respondent no. 2 The Tamil Nadu Pollution Control Board reported that no pollution is being caused by the leather and other industries situated nearer to Palar river in the district Vellore, Tamil Nadu. Learned counsel for the petitioner contended that there is still pollution in the river Palar. On the directions of the court, the Tamil Nadu Pollution Control Board-second respondent made inspection and submitted report with regard to stretches 1, 2, 3, 4, 5 and 6 of the river Palar. It is reported that there is no more pollution in river Palar within the stretches aforesaid at the instance of the industries. However, according to the learned counsel for the petitioner, there is still pollution in the river Palar due to which some of the persons recently get affected.

In view of the contradictory stand taken by the parties, we are of the view that the report should be obtained from Central Pollution Control Board, New Delhi. We accordingly, implead Central Pollution Control Board through its Chairman, Parivesh Bhawan, CBD-cum-Office Complex, East Arjun Nagar, New Delhi-110032 as party respondent.

Let notice be issued on the Central Pollution Control Board returnable in four weeks. Dasti, in addition, is permitted.

On their appearance, the Court may direct them to make inspection of river Palar and the industries, municipalities and other sources discharging effluents in the river at various locations of the Vellore district and submit report, analysis along with maps. The State Pollution Control Board will cooperate the Central Pollution Control Board.

inspect River Palar and the industries, municipalities and other sources discharging effluents into the river at various locations of the Vellore District and submit a report, analysis, along with maps.

18.5. Subsequently, by order dated 07.04.2015, this Court directed the learned counsel appearing for the CPCB to conduct an inspection and submit a report with regard to the stretches 1, 2, 3, 4, 5 and 6 of River Palar, including the Common Effluent Treatment Plant (CETP) within three weeks.

18.6. In compliance of the same, the Officials of the CPCB carried out an inspection of 124.5 km of River Palar stretches, 8 Common Effluent Treatment Plants (CETPs) and 26 Individual Effluent Treatment Plants (IETPs) in Vellore District, Tamil Nadu and presented a report on 12.05.2015.

18.7. On 04.12.2017, when the matters were taken up for consideration, it was represented before this Court that at present, the pollution is due to the non-treatment of municipal solid waste and hence, this court directed the Additional Advocate General to file a report on behalf of the State regarding the action taken with respect to solid waste management.

18.8. On 19.11.2024, after hearing arguments of the learned counsel appearing for all the parties, this Court directed the State Pollution Control Board and the Central Pollution Control Board to file a report regarding the current situation of the pollution alleged to

have been caused by Tanneries. In compliance of the same, the TNPCB and CPCB filed their respective reports on 03.12.2024 and 09.12.2024.

18.9. The report of TNPCB dated 03.12.2024 proceeds to state that (i)the quality of River Palar is not deteriorating further since 2014; (ii)the average TDS of surface water in the year 2023 at the entry of the Tirupathur District at Kodayanchi village is 591 mg/l and at the exit of the Ranipet District (stretch 6) at Sathambakkam Village is 1416.5 mg/l and in between the stretches, there is an increase of TDS level observed at three locations, which might be the influence of groundwater quality, disposal of sewage from urban local bodies, dumping of municipal solid waste, etc.; (iii)All the CETPs and IETPs that are located along the stretch of the Palar River have provided ZLD system and are operating the same and TNPCB is continuously monitoring the operation of the same; (iv)CEPI score index evolved in Ranipet was found to be reduced over the years from 78.13 to 18.4 and have now fallen under the category “other polluted areas from critically polluted area”; (v)Along the Palar River stretch, only Ambur Municipality and Vellore Corporation have provided Sewage Treatment Plants (STPs) to treat the sewage generated from their respective Urban Local Areas, However, the untreated sewage form the urban local areas are discharged majorly through 51 outfalls located along the River Palar; (vi)the urban local bodies have provided the Micro Compositing Centre (MCC) and Resource Recovery Centre (RRC) for handling and processing of day-today Municipal Sold Wastes generated in the urban local areas and carrying out “Bio Mining Process” to remove the legacy

wastes. However, the Municipal Solid Wastes are dumped along the Palar River banks; (vii) Groundwater is suitable for various agricultural activities; and (viii) the yield of cereals such as Rice, Jowar (Cholam), Bajra (cumbu) and Ragi in the District of Ranipet, Vellore and Tirupathur are in the range of State Average Yield.

18.10. The report of CPCB stated that it has been filed based on the monitoring of Groundwater (infiltration wells) and Outfalls (drains)/surface water along the Palar River carried out by TNPCB from time to time and the pollution control measures adopted by Common Effluent Treatment Plants (CETPs) and Individual Effluent Treatment Plants (IETPs) of Tannery units collected from TNPCB. It was further stated in the said report that at present, there are 30 tannery units, out of which 10 units are closed either on its own or directions issued by CPCB and 20 units are operational and that all the 20 units have upgraded Individual Effluent Treatment Plants (IETPs) by installing Multiple Effect Evaporators (MEE) combined with Agitated Thin Film Dryers (ATFD) as part of their Zero Liquid Discharge (ZLD) systems, replacing earlier solar evaporation ponds. This upgradation in treatment system has enhanced salt recovery efficiency and optimized waste management processes. Regarding CETPs, the report states that presently, there are 434 tanneries connected to 8 CETPs and all 8 CETPs in the area have upgraded the ZLD system with improved salt recovery and sludge management and they have installed OCEMS and connected to CPCB and TNPCB servers. Regarding the groundwater

(Infiltration Wells)/ monitoring well located along the Palar River, the report states that except for one location (Chakkaramallur in stretch 6), there is an increasing trend of COD concentration ranging from 8 to 296 mg/L; and TDS (2020 to 3552 mg/L) at 8 locations, Total Hardness (810 – 1200 mg/L) at 3 locations, Chloride (2275 mg/L) at one location and Alkalinity (910 mg/L) at one location, are not meeting permissible drinking water standards; and that, BOD concentration was found in the range of 2-8 mg/L at all locations of infiltration wells and similar trend was noticed in all the years (2021-2024). However, in monitoring well at Girisamudram, BOD was noticed to be ranging from 6 - 28 mg/L for the year 2023 -2024. That apart, the findings relating to outfalls (drains) in the River Palar are summarized in the report as under:

- (i) In most of the drains (outfalls) in Stretches 1, 2, 3 & 5, BOD (32.8 - 464 mg/L) and COD (263 -1848 mg/L) are exceeding the General Standards for discharge of Environmental Pollutants to inland surface water, and the concentration of Sulphide (4 - 115 mg/L) is observed higher as compared to 2015 monitoring results.
- (ii) At a few locations (Stretches 1, 2 & 3), the levels of Chloride (1150 - 2026 mg/L) is also observed higher as compared to 2015 monitoring results.
- (iii) BOD concentration at 20 outfalls are meeting the general discharge standard, as against 5 outfalls in 2015, which indicates there is a decrease in number of outfalls in which exceedance of BOD standard was reported in 2015.
- (iv) In the year 2015, TDS at 19 outfalls was ranging from 2104 – 7088 mg/L, but at

present high TDS concentration (2156 – 4320 mg/L) found only in 9 outfalls. It indicates improvement in 27 outfalls in comparison with the year 2015.

(v) The concentration of TDS at the outfall (inlet of lake) has decreased from 7088mg/L (2015) to 2874mg/L (present). Similarly, the concentration of TDS at the outfall (outlet of lake) has also decreased from 4044 mg/L (2015) to 3796mg/L (present).

(vi) Higher Chloride concentration (1016- 1938mg/L) was found in 11 outfalls in the year 2015 and at present Chloride concentration is in the range of 1150 – 2026 mg/L in 04 outfalls only, indicating improvement in 32 outfalls.

(vii) In comparison with 2015, COD concentration as well as exceedance in number of outfalls remains same.

As far as sewage management is concerned, the report states that STP is constructed in two Municipalities i.e. Ambur & Ranipet and is being operated and thus, the untreated sewage directly joins River Patar from Vellore, Vaniyambadi, Melvisharam, Arcot & Walajahpet Municipal limits and treated sewage from Ambur & Ranipet towns.

V. CONTENTIONS OF THE PARTIES

VELLORE DIST. ENVIRONMENT MONITORING COMMITTEE / APPELLANT IN
S.L.P.(C) NOS.23633-23634 OF 2010

19. According to the learned counsel, the compensation amounts fixed *vide* award dated 07.03.2001 by the LoEA were paltry, ranging from Rs. 1,000 per hectare per year (Rs. 83

per hectare per month) to Rs. 14,000 per hectare per year (Rs. 1,167 per hectare per month). Furthermore, the measures to recover these amounts were also ineffective. When separate awards were passed for farmers who were left out in the initial assessment pursuant to the order of the High Court in WP No. 23291 of 2006, culminating in an award dated 24.08.2009, the LoEA chose to compensate the farmers from the interest accumulated and compensation deposited before it, as well as from the funds deposited for ecological restoration, instead of collecting the same from the identified errant industries. This resulted in one farmer being compensated from the amount rightfully due to another. Farmers continued to face the brunt of pollution, and received diminished if not nil returns from agricultural lands for decades. Moreover, compensation was frozen for the period upto 1999 and no fresh assessment of compensation for the period beyond 31.12.1998 was undertaken as the pollution continued unabated after that date.

20. It is also stated that the details of the persons affected, who had not received compensation either in part or full, were already available as part of the record in the award dated 07.03.2001. The District Collector was the authority disbursing compensation. The appellant had sought only a mandamus to the revenue authorities to collect the balance compensation amount still due from the identified industrial unit and distribute the same to the farmers identified by the LoEA. However, without properly appreciating the claim of the appellant, the High Court dismissed the writ petition filed by them.

21. The learned counsel further submitted that certain polluters were yet to make the necessary payments in accordance with the award dated 07.03.2001. In fact, the High Court in its order dated 30.10.2008 in MP No. 2 of 2008 in WP No. 8335 of 2008 had noticed this aspect and directed the District Collector to recover the award amount from defaulting members of AISHTMA within four weeks. This court *vide* order dated 20.02.2013, in SLP (C) Nos. 23633-23634 of 2010 directed the State Government to pay a sum of Rs 4.48 crores to the farmers and to recover the same from the default tanneries. But, till date, the compensation amount has not been paid to all the affected parties.

22. It is submitted that the LoEA in its award dated 07.03.2001 held that the liability to pay compensation continues beyond 31.12.1998 until the damage caused to ecology is reversed. In its subsequent award dated 24.08.2009, the LoEA determined compensation for the affected individuals / families who had not been included in the first award, holding that 'Polluter Pays Principle' clearly states that the polluter remains to be liable till the ecological damage caused by him is restored; and moreover, the polluter's liability is an absolute liability. That apart, by quashing the order of the LoEA dated 05.05.2009, the High Court has denied an opportunity to effectively assess compensation beyond 1998.

23. The learned counsel stated that 14 years after the order came to be passed by the High Court, pollution caused by the industries continues unabated, and there has been no assessment of the liability of the industries beyond 31.12.1998 for the damages they have caused to ecology, citizens, farmers and their livelihoods. Therefore, it is contended that

once the fact of continuing pollution is demonstrated, as a corollary, liability of polluters both for the closure of their illegal units, and payment of remediation and compensation to the affected persons continues; and that, the damage caused to the environment and ecology cannot be reversed as long as the pollution continues.

24. The observation of the High Court that the industries cannot be blamed for pollution on account of non-implementation of the scheme for reversal of ecology, despite the industries depositing Rs.5 crores, is unmindful of the fact that pollution is still continuing, and any meaningful scheme for reversal of ecology can be implemented only when the pollution ceases and hence, the same is unsustainable.

25. The learned counsel submitted that after thorough analysis, the LoEA constituted by the Central Government in terms of the judgment of this Court in *Vellore Citizen Welfare Forum* (supra), clearly found that pollution was still being caused by the tanneries and the level of pollution due to the discharge of effluents was exceeding permissible limits and the steps taken by the industries to install reverse osmosis plants were at the initial stage with no plant having become operational so far. Consequently, the LoEA passed the order dated 05.05.2009 fixing the liability on the industries to pay compensation to the affected families / individuals. Thus, the order passed by the LoEA based on specific evidence and the actual state of the pollution, cannot be faulted.

26. According to the learned counsel, the liability of the leather tanneries for the pollution caused by them did not cease in the year 1998 by merely paying the

compensation amount. The polluting industries are liable to reverse the damage to the environment and ecology as long as the tanneries continue to pollute the environment on (a) polluter pays principle and (b) precautionary principle, both of which have been recognized by this Court. The industries, which are still polluting the environment, cannot absolve themselves of their liability, merely on the ground that some payment was made by them to the Government in terms of directions of this Court. In such circumstances, the order of dismissing the writ petition passed by the High Court stating that the claim lacks necessary particulars or details and is based on mere allegations, is arbitrary and illegal.

27. According to the learned counsel, in order to protect major water sources in the State, the Government of Tamil Nadu issued G.O.(Ms) No. 213 dated 30.03.1989, thereby imposing a total ban on the establishment of highly polluting industries within 1 kilometre of the embankment of water bodies. Highly polluted tanneries were listed in S.No.2 of Annexure-I and the River Palar was listed in S.No.5 of Annexure-II of the said G.O. Further, this Court in Vellore Citizens Welfare Forum (supra), at paragraph 25(10) pointed out that *“The Government Order No. 213 dated March 30, 1989 shall be enforced forthwith and that, no new industry listed in Annexure-I to the Notification shall be permitted to be set up within the prohibited area. The authority shall review the case of all the industries which are already operating in the prohibited area and it would be open to authority to direct the relocation of any of such industries”*. Subsequently, the

Government issued G.O.(Ms).No.127 dated 08.05.1998 expanding the above G.O mandating that highly polluting industry (RED category) shall not be permitted within 5 kilometres from rivers Pennaiyar, Palar, Vaigai and Thamirabarani, and thereafter, passed G.O.(Ms).No.223 dated 02.09.1998 modifying the said G.O.(Ms)No.213 mandating that the industries specified in Annexure I of the same, should not be permitted within 5 kms from the embankment of the rivers Cauvery, Pennaiyar, Palar, and Vaigai. However, the State Government has neither prevented the establishment of new activities in the prohibited area nor has it directed the relocation of units that existed on the date of the G.O. In fact, all eight Common Effluent Treatment Plants (CETPs) and several tanneries are located within the prohibited distance from the river. As such, the siting of the industries is illegal and their proximity to the river has exacerbated the impact of the pollution caused. Hence, the operation of CETPs and Tanneries, without the mandatory consent of the Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974, the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 (now the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016) and in violation of the aforementioned G.Os., must be stopped.

28. It is further submitted that despite the judgment of this Court in *Vellore Citizen Welfare Forum* (supra) as well as the High Court, the pollution caused by the tanneries continued. Eight CETPs (set up with Government assistance to treat effluent from multiple

tanneries) and the Individual Effluent Treatment Plants (IETPs) (established by some tanneries to treat their own effluents) continue to discharge effluent into the environment, particularly, into the River Palar. Even the treated effluent fails to meet the standards prescribed by the TNPCB. Thus, Zero Liquid Discharge (ZLD) has not been achieved till date, and the effluent continues to pollute groundwater through discharge from various components of the effluent treatment system, in violation of the principle of sustainable development.

29. The learned counsel ultimately submitted that 28 years have lapsed since the judgment of this court in Vellore Citizens Welfare Forum (*supra*), where an opportunity was granted to the polluters to cease their illegal activities and operate without causing pollution. Crores of rupees of Government aid were sanctioned for the construction of CETPs, which were illegally sited in close proximity to the river, exacerbating the impact of pollution. The TNPCB, despite noticing violations and recording pollution, has failed to take any action for decades. Even the fact of the violation was not placed before this Court by the respondent authorities. Hence, no equities lie in favour of the CETPs and tanneries as they have profited at the cost of the environment and the thousands of farmers whose lives and livelihood has been destroyed.

30. With these submissions, the learned counsel prayed to set aside the order of the High Court dated 28.01.2010 passed in the writ petitions and consequently, direct the authorities concerned to close the CETPs and tanneries which have continued to discharge

effluents and pollute the environment, without achieving ZLD and also assess and award compensation to the affected persons till the damage caused is reversed and the health of ecology is restored and further direct the TNPCB to prosecute the polluting units for violation of sections 24 and 25 of the Water (Prevention and Control of Pollution) Act, 1974.

AISHTMA / RESPONDENT NO.4 IN SLP (C)NO.23633 OF 2010 & RESPONDENT NO.3 IN SLP (C)NO.23634 OF 2010

31. It is submitted that Tanneries have fully paid the total amount of Rs.33.39 crores (Compensation amount of Rs.29.73 crores + Reversal of Ecology of Rs.3.66 crores) determined by the LoEA and the same has been disbursed by the concerned authorities and hence, no further amount is payable by the industries. However, without verifying this fact, the appellant after a period of 14 years, has alleged before this Court that a balance of Rs.15 crores is still payable by the AISHTMA. Even the Government of Tamil Nadu in its supplementary affidavit dated 29.11.2013, stated that after making the full payment as assessed by the LoEA, balance of Rs.1.15 crores is available with them and the same would be disbursed as and when the issues are settled either through court or out of court.

32. It is further submitted that the LoEA in its report titled “ Report & Award – Part II for Vellore District in Tamil Nadu on Reversal of Damaged Ecology” dated 27.09.2001 Annexure IV, recommended 7 schemes to be implemented by the industries and 8 schemes to be implemented by the government, to prevent further damage to the

environment. The LoEA directed the industries and the government to implement these schemes respectively. Accordingly, the industries have diligently adhered to the suggested recommendations and continues to do so in order to ensure a clean environment. As regards the other eight schemes, it is for the government authorities to implement the same, including the disposal of 150000 Tonnes of solid wastes containing about 3% sodium chromate dumped by the Tamil Nadu Chromates and Chemicals Industries, Ranipet.

33. It is submitted that the appellant in SLP (C) Nos.23633 -23634 of 2010 has approached the issue with a “tunnel vision” on the tannery industry, thereby ignoring all other industries and contributors to pollution in the river. Referring to the affidavit filed by the TNPCB, and the report of the CPCB, it is stated that one of the major contributors of pollution is untreated sewage and dumping of solid municipal wastes in the river and its surroundings. Placing reliance on the report of the CPCB, it is submitted that none of the Urban areas in Vellore District have sewage treatment plants and the entire untreated sewage is being let out either through the outfalls or drains eventually leading to the river. Further, in both the urban areas and villages throughout the district many outfalls carry the untreated sewage through organized Municipal Drainage Systems, thereby discharging the untreated sewage directly into the river. Moreover, it is not only the untreated sewage but the total solid wastes garbage generated in the towns are dumped in the river. Despite the responsibility of the municipalities to treat sewage, no steps have

been taken, even though the LoEA has framed a scheme way back in 2001. Consequently, the untreated sewage continues to be released directly into the river.

34. It is also submitted that the River Palar, which once had a breadth of 2000 Ft. has been reduced to 200 Ft. in many areas due to encroachments on both banks. That apart, even sand mining is rampant in the district thereby causing irreparable damage to the river. It is reported that sand had been dug up to a depth of nearly 30 ft. As a result, groundwater which was once available at 200 ft, is now only found below 1000 ft. for water. It is further submitted that agriculture activities can easily be noticed in many areas of the river, thereby causing inorganics like fertilizers etc., to directly penetrate into water sources. Thus, there are many polluters other than the tannery industries that are causing pollution to the river.

35. Adding further, the learned counsel submitted that the leather industry plays a pivotal role in the Indian economy. With this, India has strong skilled manpower and innovative technology. The country has an eco-sustainable tanning base and modern manufacturing units. According to statistics, approximately 50 thousand workers are employed in the tanning industry and about 1.5 lakhs from the allied Industry & indirectly about 4 lakhs workers are employed across the Vellore district, including leather garment manufacturing, with the majority concentrated in towns like Ambur, Vaniyambadi, Ranipet, Visharam, and Pernambut. Further, the percentage of women in the leather industry in Vellore District, is considered to be high, with estimates suggesting that

women make up a significant portion of the workforce, often exceeding 80%, which is due to the dominance of the footwear sector. Therefore, Tannery industry contributes significantly to the economy and employment in the region.

36. It is further submitted that this court, in *Vellore Citizen Welfare Forum* (supra), directed all Tanneries in 5 Districts of Tamil Nadu to set up Common Effluent Treatment Plants (CETPs) or Individual Effluent Treatment Plants (IETPs), and those connected with CETPs to install additional Pre-treatment Systems in the tanneries and further directed to obtain Consent of the Board to operate. During 1990's, the Ministry of Environment & Forests (MoEF), Government of India, initiated an innovative financial support scheme for CETPs to ensure the growth of the small and medium entrepreneurs (SMEs) in an environmentally compatible manner. The Tanning Industry took up the responsibility and started setting up CETPs. By the end of 1995/1998, eight CETPs were set up in Vellore District apart from the Individual Treatment Plants (IETPs) set up by large industries for isolated tanneries which could not be connected to CETP. All the above CETPs and IETPs hence adopted the Best Available Technology (BAT) of the time as suggested, approved and monitored by the TNPCB. It is worth mentioning that no Tannery in Tamil Nadu was operating without a proper Treatment Plant from 1998. Further the funding from Government Agencies for the Up-gradation Projects in the CETPs were approved by the TNPCB.

37. It is also submitted that this respondent entered into an MoU with NEERI (National Environmental Engineering Research Institute) and CLRI (Central Leather Research Institute) to provide technical guidance in meeting the discharge norms prescribed by the TNPCB. The industry in order to demonstrate its bona fide intentions towards establishment of sustainable ecology in their surroundings, voluntarily accepted to set up ZLD for tanneries, though the ZLD concept was not a statutory requirement. Under the ZLD System, pre-treated effluent from Member Tanneries is conveyed to the CETP and the entire effluents received from member tanneries are treated, water recovered are reused and not a drop of water is discharged from the CETPs thus achieving ZLD. Hence, ZLD System enables tanneries to recover and reuse water for their process thus minimizing the drawal of water from water bodies like wells etc.

38. According to the learned counsel, presently there are 8 CETPs to which 459 tanneries are connected and 26 IETPs in the erstwhile Vellore District, all of which have set up ZLD Plants that are successfully operating under the supervision of the TNPCB. The tanning industry in Tamil Nadu is the only sector in India that has implemented ZLD system, having made substantial investment of more than Rs.747.19 Crores for the establishment of the 8 CETPs with financial assistance from the Government of India and the Government of Tamil Nadu. Additionally, Rs.75 Crores has been invested for the establishment of 26 IETPs.

39. It is further submitted that the tanneries incur exorbitant operation and maintenance cost. The O & M cost of the ZLD system is substantial with the cost per cubic meter having increased nearly 10 times since the implementation of the ZLD system. Previously, the O&M cost under conventional treatment system was around Rs.50 - 80 per cubic meter, but with the new system, this cost has risen to approximately Rs.700 to 800 per cubic meter, with energy cost alone accounting for 50% of the total O&M expenses. That apart, the operation and maintenance cost of the CETPs is borne collectively by the members on a pro-rata basis based on the volume of effluent discharged by each member unit.

40. It is also submitted that TNPCB as per the directions of the CPCB has fixed certain parameters to be followed by the Member Units of the CETPs before discharging their effluent to their respective CETPs. The functioning of the CETP and IETPs are monitored online by both TNPCB & CPCB. The Electromagnetic Flow Meters and the IP Cameras are connected to the Water Quality Watch Centre of TNPCB and CPCB portal for online monitoring to ensure ZLD at all times. The CPCB continuously monitors online at the outlet of the CETPs. It is further submitted that TNPCB collects the effluent samples every month at various stages and result are shared with the CETP and directions are issued in case of variations in the parameters. Relying on the observation of the High Court in the order in W.P.No.8335 of 2009, it is thus submitted that steps have been taken to prevent pollution.

41. Regarding the Solid Waste Management System, it is submitted that the sludge generated from the treatment system as well as from the Pre-treatment system in Member tanneries is processed using mechanical dewatering system, such as, Filter Press, Screw Press and Centrifuges to reduce moisture content. The sludge having 40% of solids content and 60% of moisture are collected and stored in an impervious, covered roofed sludge storage shed. After drying it is then scientifically disposed of to Cement Industries for Co-processing in their Cement Kiln to convert it into utilizable product as per the Hazardous Waste Authorization issued to the CETPs/IETPs by the TNPCB.

42. It is submitted that as explained supra, the industry implemented, with the assistance and guidance of the premier leather research institute in the country viz; Central Leather Research Institute, scientific, eco-friendly measures in tanneries based on the “reduce, recycle and reuse” (3R) principle in the pre-process, in-process and end-of-pipe stages to reduce pollution load in the discharged effluent; voluntarily stopped using chemicals that do not pass ZDHC- Level 3 certification; converted conventional effluent treatment systems into Zero Liquid Discharge Effluent Treatment Systems using modern, state-of-the-art proven technology and disposes off hazardous solid waste to Pollution Control Board-certified pre-processors to be used in cement kiln industries thus ensuring that ecology is not harmed by the industry on account of its solid waste or liquid waste.

43. It is further submitted that the salt generated by the CETPs from its Multiple Effect Evaporator (MEE) Process are stored in an impervious Salt Storage shed as per the

direction of the TNPCB. The CETPs have also prepared a Detailed Project Report (DPR) for purification of MEE salt for reuse in the Chlor-alkali industries as per the design of the CSIR-Central Salt and Marine Chemicals Research Institute (CSMCRI) Bhav Nagar, Gujarat and submitted the same to the Department for Promotion of Industry and Internal Trade (DPIIT), a Central Government Department under the Ministry of Commerce & Industry, Govt of India. The report is currently awaiting funding approval under the Indian Footwear and Leather Development Programme (IFLDP) – Sustainable Technology & Environmental Promotion (STEP) sub-scheme after being duly vetted by the CSIR - Central Leather Research Institute (CLRI). It is also submitted that the tannery industry in the erstwhile Vellore District (now trifurcated into three districts) has already paid the compensation as stipulated by the LoEA and implemented all the directions issued by the LoEA, thus completely arresting discharge of treated effluent onto land or into the river.

44. With these submissions, the learned counsel sought to dismiss the appeals filed by the appellant / Vellore District Environment Monitoring Committee.

AISHTMA / APPELLANT IN SLP(C) NO.26608 OF 2011

45. It is submitted that pursuant to the direction of the High Court, a detailed, comprehensive and scientific enquiry was conducted which culminated into an award dated 07.03.2001 to identify the pollution affected individuals or families in the entire Vellore District for the period 1991-1998. The said award has already been duly complied

with by the AISHTMA which deposited the pollution fine levied under the said award on individual tanners and has paid the pollution compensation amounts for the affected persons as well as for ecological restoration and reversal schemes. This was done, despite the fact that hundreds of crores of rupees had already been spent by the tanning industry in adopting the latest and most modern pollution controlling techniques.

46. It is further submitted that the LoEA admitted in the award dated 07.03.2001 that it identified 186 villages in 7 taluks of the entire Vellore District as pollution affected ones for the period 1991-1998 with 29,193 individuals or families as beneficiaries to receive pollution compensation from the AISHTMA and therefore, the question of re-conducting this exercise after a gap of 10 years to consider the left-over cases is unsustainable.

47. It is further submitted that the LoEA illegally empowered itself to re-conduct the entire exercise for the so-called left-over cases which ultimately culminated into an Award dated 24.08.2009. This award was based on the interim order dated 20.12.2007 passed by another bench of the High Court in WP(C) No.23291 of 2006 filed by the Vellore Consumer Forum. In the said interim order, the High Court merely recorded the submission of the Counsel for the LoEA to the effect that the LoEA will consider all the applications filed before the cut-off date which are pending as well as the applications that are filed after the cut-off date and decide them in accordance with law and grant compensation wherever the case is made out. Thus, there was no direction to the LoEA by the High Court to consider the left-over cases and the LoEA misused the directions of

the High Court in its attempt to make the tanning industry represented by the AISHTMA as a scapegoat to hide its own wrongful omissions and commissions. Further, in the aforesaid writ petition, neither the appellant nor any other affected tanning industry was made a party and the said writ petition is still pending for final disposal.

48. According to the learned counsel, the report and the award dated 24.08.2009 passed by the LoEA thereby awarding compensation to the tune of Rs. 2.91 Crores to 1382 affected individuals is without jurisdiction, and even if assuming without conceding these to be within jurisdiction, there was violation of the principles of natural justice as the compensation demanded through claim notices were sent to individual tanneries by the LoEA even before passing of the award on 24.08.2009.

49. It is further submitted that the arguments/objections made by the AISHTMA before the LoEA were not considered in the Award dated 24.08.2009 and was rather summarily rejected. That apart, the findings of the LoEA are not only vague but also bereft of any reliable evidence and is based only on conjectures and surmises.

50. It is further stated that post 2003 the AISHTMA and other tanning industries have more capably adhered to the charter on Corporate Responsibility for Environmental Protection (CREP) carved out by the Central Pollution Control Board in the year 2003 for the tanning sector across India, which is very much evident from the implementation status report as on January, 2005 of the Task Force constituted by the Central Pollution Control Board for overseeing its CREP recommendations. Even upon considering a

presumptuous eventuality that the LoEA has powers to identify the affected individuals through its Award dated 24.08.2009 belatedly and retrospectively for the period 1991-1998; even then also the principle of equity demands that the amount of compensation should be disbursed to the left-over affected persons, *etc.* from the amount already deposited years ago by the appellant herein under the Award dated 07.03.2001, without mentioning the interest part accrued on such heavy amounts to the tune of many crores. Therefore, no fresh liability should be fastened on the appellant because no relevant material evidence has been adduced by the LoEA that there is a damage to the ecology after 1999 and moreover, once the tanning industry has always fulfilled its part of the liability to bring down pollution levels. Thus, it should not be held liable for wrongful omissions and commissions of others, especially LoEA and the concerned State Govt which were entirely responsible for initiation of timely and expeditious implementation of ecological reversal schemes and programmes.

51. Without considering all these aspects, the High Court erred in dismissing the writ petition filed by AISHTMA by the order impugned herein, which will have to be set aside by this Court.

RESPONDENT NOS.3 & 4 IN SLP (C) NO.26608 OF 2011

52. At the outset, it is submitted that the appellant / AISHTMA is the fourth respondent in SLP (C)Nos.22633-22634 of 2010 and has been actively contesting the same by filing

counter affidavits, etc. However, as a counter blast, they preferred this appeal, which was registered as SLP(C)No.26608 of 2011, without there being any order to condone the delay of 439 days in filing the same.

53. It is further submitted that at the instance of the AISHTMA, the award dated 07.03.2001 passed by the LoEA was challenged in W.P.No.512 of 2002, which by order dated 22.03.2002, was disposed of by the High Court, by permitting the tanneries to deposit the compensation determined in instalments. However, the award of the LoEA was affirmed by the High Court and the same reached finality. Hence, the liability of the industries to pay compensation for the environmental damage caused by them is no longer *res integra* and has been accepted by the appellant AISHTMA.

54. As far as the award dated 24.08.2009 passed by the LoEA is concerned, the learned counsel submitted that it was only in respect of those who were left out of the earlier award dated 07.03.2001. It pertains to the very same area, following the same methodology, based on inspections conducted by the LoEA and was issued after issuance of notices to the AISHTMA and tanneries. Therefore, the AISHTMA cannot proceed to challenge the very basis of their liability to pay compensation, as these issues have been conclusively decided by this Court in Vellore Citizens Welfare Forum (*supra*).

55. It is submitted that the AISHTMA attempts to conflate two awards of the Authority, which according to the Respondent Nos.3 and 4, are distinct. *Vide* award dated 24.08.2009 which was impugned in W.P No. 22638 of 2009, the LoEA dealt with the left-out cases

for the period from 12.08.1991 to 31.12.1998. Whereas, the LoEA passed an order dated 05.05.2009 based on the orders in M.P. No. 1 of 2008 in W.P. No. 8335 of 2008, subsequently modified by the High Court in M.P. No. 2 of 2008 in W.P. No. 8335 of 2008, which dealt with liability of the polluters to pay compensation for the period 1999-2008. Thus, both the awards/orders of the authority are distinct.

56. Adding further, it is submitted that paragraph 3.1 of the award of the LoEA dated 24.08.2009 indicates that on scrutiny, out of the 7,937 claims received, 515 were found to be duplicates and the remaining 7,422 claims were processed and intimation of the steps taken by the authority was sent to the AISHTMA. Also, paragraph 4 of the Award proceeds to state that for the 7,422 claims, from the same 7 Taluks covered in the earlier award, once again, field surveys were fixed with advance intimation to the AISHTMA. However, it appears that representatives of the AISHTMA did not participate in the field surveys which were conducted in the presence of revenue officials and water samples were collected from wells to ascertain TDS, based on which the compensation was to be calculated. The LoEA used an extremely conservative yardstick to determine compensation payable per hectare, i.e., a farmer whose livelihood is destroyed by contamination of their water source, rendering the land fallow and uncultivable, was provided a meager sum ranging from Rs.1,000/- a year to Rs.14,000/- a year (Rs.83/- a month to Rs.1,166/- a month per hectare per year was quantified). This meager compensation was also computed and awarded only for the period from 12.08.1991 to

31.12.1998. If pollution has stopped and the ecology has recovered, then further compensation is not required. Whereas, it is evident from the reports of the TNPCB and the audit of the CPCB, none of the units have achieved Zero Liquid Discharge, and the pollution continues unabated. It is therefore just and necessary that the compensation be paid to the affected parties till the damage is reversed and the ecology recovers.

57. Therefore, it is submitted that the High Court has correctly dismissed the writ petition, after having held that the award impugned in the writ petition, cannot be termed as a fresh award and that it is a continuation of the earlier award of the year 2001, as it concerns the left-out cases. The High Court rightly placed reliance on the polluter pays principle to hold that the liability continues till the ecological damage caused by the polluter is restored and the liability is an absolute liability. Therefore, the High Court, in line with the judgement in Vellore Citizens Welfare Forum held that the polluters ought to be liable for payment of compensation until the pollution ceases and the ecological damage is restored, and that the compensation paid cannot be considered as one-time payment.

58. According to the Respondent Nos.3 and 4, the present attempt of the AISTHMA is to frustrate poor and marginal farmers who have suffered the fallout of the pollution caused by tanneries, who have profited and prospered by polluting the environment and these entities have saved money by not treating the effluent. Thus, according to the learned counsel, the order of the High Court does not require any interference by this Court.

SUBMISSIONS OF THE RESPONDENT AUTHORITIES

59. Reiterating the contents made in the reports submitted by them, pursuant to the order of this court dated 19.11.2024 regarding the current state of pollution in the Vellore District, the learned counsel for the TNPCB and CPCB have made their respective submissions. They have also submitted that the authorities are intending to comply with any directions / orders, that may be passed by this Court, to sub-serve the interests of justice.

VI. ANALYSIS

(A) BASIC PRINCIPLES

60. At the outset, it is imperative to establish the three foundational principles *viz.*, (i) Doctrine of Public Trust, (ii) Principle of Sustainable Development, and (iii) Right to healthy environment, that must guide the consideration of other aspects in this case.

PUBLIC TRUST DOCTRINE

61. The Doctrine of Public Trust asserts that vital natural resources such as rivers, seashores, forests, and air are held in trust by the State for the benefit and enjoyment of the public. Rooted in Roman law, which classified these resources as common property (*res communis*) or unowned (*res nullius*), and refined by English common law, this doctrine places a fiduciary duty on governments to protect them from privatization or exploitation that compromises public interests. It imposes three key restrictions *viz.*,

(a)resources must remain accessible for public use, (b)cannot be sold for private gain, and (c)must be preserved in their natural state. Courts internationally, have extended its scope to protect wetlands, riparian forests, and ecologically fragile lands, emphasizing the need for environmental preservation in light of modern ecological challenges. This evolving interpretation reflects the doctrine's relevance in maintaining the balance between sustainable development and environmental conservation. In *M.C. Mehta v. Kamal Nath*¹², this court elucidated the doctrine of public trust as follows:

“24. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bears a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by everyone in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention”, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the public trust doctrine as under:

‘The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasised. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties

¹² (1997) 1 SCC 388

— such as the seashore, highways, and running water — “perpetual use was dedicated to the public”, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.’

25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters, and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. 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 purposes. According to Professor Sax the public trust doctrine imposes the following restrictions on governmental authority: “Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third property must be maintained in particular types of uses”.

62. Further, in *Vedanta Limited v. State of Tamil Nadu*¹³, it was observed by this Court as follows:

“25. In addition, the public trust doctrine, recognized in various jurisdictions, including India, establishes that the state holds natural resources in trust for the benefit of the public. It reinforces the idea that the State must act as a steward of the environment, ensuring that the common resources necessary for the well-being of the populace are protected against exploitation or degradation. These principles underscore the importance of balancing economic interests with environmental and public welfare concerns. While the industry has played a role in economic growth, the health and welfare of the residents of the area is a matter of utmost concern. In the ultimate analysis, the State Government is responsible for preserving and protecting their concerns.”

¹³ 2024 SCC Online SC 230

SUSTAINABLE DEVELOPMENT

63. The doctrine of sustainable development was evolved to strike a balance between economic advancement and environmental safeguards. It envisions development that can be sustained by nature / environment. While the advancement of industries and infrastructure is indispensable for fostering employment and generating revenue, such growth cannot come at the cost of irreparable ecological damage. This Court has already extensively considered the concept of sustainable development in the following decisions, the relevant paragraphs of which are reproduced below:

(i) Vellore Citizens' Welfare Forum (supra):

“10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable Development” is the answer. In the international sphere, “Sustainable Development” as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called “Our Common Future”. The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as “Brundtland Report”. In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called “Caring for the Earth” which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in history—deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents, namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. “Sustainable Development” as defined by the Brundtland Report means “Development

that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."

(ii) *Intellectuals Forum v. State of A.P.*¹⁴:

"84. The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development, which sustains from one generation to the next in order to secure "our common future". In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress". It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally."

(iii) *Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn.*¹⁵

"The concept of "sustainable development" has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore,

¹⁴ (2006) 3 SCC 549

¹⁵ (2009) 9 SCC 737

cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) v. Union of India [(2008) 2 SCC 222] and M.C. Mehta v. Union of India [(2009) 6 SCC 142].”

(iv) Vedanta Limited (supra)

“24. The closure of the industry is undoubtedly not a matter of first choice. The nature of the violations and the repeated nature of the breaches coupled with the severity of the breach of environmental norms would in the ultimate analysis have left neither the statutory authorities nor the High Court with the option to take any other view unless they were to be oblivious of their plain duty. We are conscious of the fact that the unit, as this Court observed in its decision in 2013, has been contributing to the productive assets of the nation and providing employment and revenue in the area. While these aspects have undoubted relevance, the Court has to be mindful of other well-settled principles including the principles of sustainable development, the polluter pays principle, and the public trust doctrine. The polluter pays principle, a widely accepted norm in international and domestic environmental law, asserts that those who pollute or degrade the environment should bear the costs of mitigation and restoration. This principle serves as a reminder that economic activities should not come at the expense of environmental degradation or the health of the population.

.....

26. As consistently held in numerous decisions of this Court, the unequivocal right to a clean environment is an indispensable entitlement extended to all persons. Air, which is polluted beyond the permissible limit, not only has a detrimental impact on all life forms including humans, but also triggers a cascade of ecological ramifications. The same is true for polluted water, where the pervasive contamination poses a profound threat to the delicate balance of ecosystems. The impact of environmental pollution and degradation is far reaching: it is often not only severe but also persists over the long term. While some adverse effects may be immediately evident, the intensity of other kinds of harm reveals itself over time. Persons who live in surrounding areas may develop diseases which not only result in financial burdens but also impact the quality of life. The development and growth of children in these communities may become stunted, creating a tragic legacy of compromised potential. Basic necessities, such as access to potable water, may not be met, exacerbating the challenges faced by these already vulnerable populations. Undoubtedly, such adverse effects are felt more deeply by marginalised and poor communities, for whom it becomes increasingly difficult to escape the cycle of poverty.

27. This Court is also alive to the concept of intergenerational equity, which suggests that “present residents of the earth hold the earth in trust for future generations and at the same time the present generation is entitled to reap benefits from it.” The planet and its invaluable resources must be conscientiously conserved and responsibly managed for the use and enjoyment of future generations, emphasising the enduring obligation to safeguard the environmental heritage for the well-being of all.

28. It is an undeniable and fundamental truth that all persons have the right to breathe clean air, drink clean water, live a life free from disease and sickness, and for those who till the earth, have access to uncontaminated soil. These rights are not only recognized as essential components of human rights but are also enshrined in various international treaties and agreements, such as the Universal Declaration of Human Rights, the Convention on Biological Diversity, and the Paris Agreement. As such, they must be protected and upheld by governments and institutions worldwide, even as we generate employment and industry. The ultimate aim of all our endeavours is for all people to be able to live ‘the good life.’ Without these basic rights, increased revenue and employment cease to have any real meaning. It is not merely about economic growth but about ensuring the well-being and dignity of every individual. As we pursue development, we must prioritize the protection of these rights, recognizing that they are essential for sustainable progress. Only by safeguarding these fundamental rights can we truly create a world where everyone has the opportunity to thrive and prosper.

29. We have heard these proceedings for several days and after a careful evaluation of the factual and legal material, we have come to the conclusion that the Special Leave Petitions do not warrant interference under Article 136 of the Constitution.”

(v) M.C.Mehta v. Union of India¹⁶

“19.....As stated above, in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the Authorities have not taken into account the macro effect of such wide scale land and environmental degradation caused by absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above Area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. Environment and ecology are national assets. They are subject to

¹⁶ (2009) 6 SCC 142

inter-generational equity. Time has now come to suspend all mining in the above Area on Sustainable Development Principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India. In fact, these Articles have been extensively discussed in the judgment in M.C. Mehta's case (supra) which keeps the option of imposing a ban in future open. Mining within the Principle of Sustainable Development comes within the concept of "balancing" whereas mining beyond the Principle of Sustainable Development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of Precautionary Principle."

RIGHT TO HEALTHY ENVIRONMENT

64. Right to life inherently includes the right to enjoy, pollution free environment, which are essential for the full enjoyment of life. If anything endangers or impairs the quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution to address the pollution of environment which may be detrimental to the quality of life. This court has recognised the concept of 'right to healthy environment' as part of the 'right to life' under Article 21 and thereby has also recognised the 'right to clean drinking water' as a fundamental right. Infact, environmental rights, which encompass a group of collective rights, are now described as "third generation" rights. Therefore, the State, so as to sustain its claim of functioning for the welfare of its citizens, is bound to regulate water supply by safeguarding, maintaining and restoring the water bodies to protect the right to healthy water and prevent health hazards. This court has also laid down in many cases, that the States shall ensure that the water bodies are free from encroachments and steps must be taken to restore the water bodies. In this context, we may refer to the following judgments and observations made thereunder:

(i) *Subash Kumar v. State of Bihar*¹⁷

“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 Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.”

(ii) *State of Karnataka v. State of Andhra Pradesh*¹⁸

“175. Water is a unique gift of nature which has made the planet earth habitable. Life cannot be sustained without water. In the National Water Policy issued by the Government of India in 1987, it was declared that water is a prime natural resource, a basic human need and a precious national asset. Water, like air, is the essence for human survival. The history of water availability and its user is tied up with the history of biologically evolution in all civilizations. It will not be wrong to say that not only the life started in water but rather water is life itself. It is essential for mankind, animals, environment, flora and fauna. There is no denial of the fact that in the ancient times water played an important role in the origin, development and growth of civilization all over the globe. Water is an important factor in the economic development of the countries which ultimately affects the social and human relations between the habitants. Planned development and proper utilization of water resources can serve both as a cause as well as an effect off the prosperity of a nation. Water on earth is available in the form of frozen snow, rivers lakes, springs, water ways, water falls and aqueducts, etc.”

(iii) *A.P. Pollution Control Board II v. Prof. M.V. Naidu and Others*¹⁹

“7. Our Supreme Court was one of the first Courts to develop the concept of right to 'healthy environment' as part of the right to "life" under Article 21 of our Constitution. [See Bandhua Mukti Morcha v. Union of India (1984 (3) SCC 161)]. This principle has now been adopted in various countries today.

8. In today's emerging jurisprudence, environmental rights which encompass a group of collective rights are described as "third generation" rights. The "first generation" rights are generally political rights such as those found in the International Convention

¹⁷ (1991) 1 SCC 598 : 1991 SCC OnLine SC 42

¹⁸ (2000) 9 SCC 572

¹⁹ (2001) 2 SCC 62 : 2000 SCC OnLine SC 1679

on Civil & Political Rights while "second generation" rights are social and economic rights as found in the International Covenant on Economic, Social and Cultural Rights. "Right to Healthy Environment". (See Vol.25) 2000 Columbia Journal of Environmental Law by John Lee P.283, at pp.293-294 fn.29)."

(B) POLLUTION CAUSED BY TANNERIES

65. The livelihoods of people in Vellore District, particularly farmers, inland fishermen, and rural communities, have been severely impacted by the tanning industry. Excessive sand mining along riverbanks, especially the River Palar, has caused ecological damage, including lowered groundwater levels, riverbank erosion, and loss of fertile land. Farmers face water scarcity, degraded soil quality, and declining agricultural income, with crop failures becoming common. The toxic contamination of soil and water has also led to increased public health concerns, including respiratory and skin disorders. Tanneries in the district, operational since 1914 are a major contributor to these problems. They utilize chemicals, such as, calcium carbonate, sodium chloride, and sulphuric acid in processing hides and skins. Chrome tanning, a dominant method, generates effluents containing heavy metals like chromium, lead, arsenic, and mercury, which contaminate groundwater and soil, posing serious risks to human health and ecosystems. Effluents discharge into fields, irrigation tanks, and the River Palar exacerbates the problem, with untreated wastewater often exceeding safe Total Dissolved Solids (TDS) levels, reaching up to 15,000 mg/l in some cases.

66. Data shows that on average, tanneries process approximately 1.1 million kilograms of raw hides daily, using 45–50 million litres of water and discharging 35–45 litres of

wastewater per kilogram processed and thereby resulting in an effluent discharge of 37,458 kld (13.5 mcm annually). Solid waste generation ranges from 38.5 to 62 kilograms per 100 kilograms of raw hides, with only 20–32 kilograms of finished leather produced. The high levels of TDS in tannery wastewater, primarily due to sodium chloride and other chemicals, further degrade soil and water quality. This has significantly declined crop productivity, with tannery waste rendering agricultural land infertile over time. Further, groundwater, a primary source for drinking and domestic use in the district, is also heavily impacted, thus adversely affecting public health.²⁰ Another Survey²¹ has also indicated the decline in the productivity and production of crops over the years. The systematic pollution will also have a cascading effect on the aquifers, thereby decreasing the availability of the groundwater in the surrounding areas. All these issues ultimately have far-reaching implications for the region's socio-economic stability.

(C) CURRENT STATUS OF POLLUTION

67. The CPCB report dated 09.12.2024 states that the work of monitoring groundwater (infiltration wells) and outfalls (drains) / surface water along the River Palar is being carried out by the TNPCB from time to time. They also furnished status reports of pollution control measures adopted by the CETP and IETP of tannery units, which were collected and compiled by the TNPCB. It was revealed from the report that the TNPCB

²⁰ A review on Tannery Pollution in Vellore District, Tamil Nadu reported in Research Journal of Pharmaceutical, Biological and Chemical Sciences ISSN:0975-8585

²¹ Environmental Impact of leather Industrial Pollution on Agricultural Production in Vellore District Journal of Environmental Impact and Management Policy - ISSN: 2799-113X

has collected samples from 34 outfalls (drains) directly discharging into the river and the other two drains (inlet & outlet of Pernambut Lake) in the years 2021 and 2022. Based on monitoring reports of the TNPCB, the status of these outfalls (drains) compared with the results of 2015, is summarised by us in the below table:

Present state of Outfalls in Palar River (2021-2022)

Parameter	BOD Biological Oxygen Demand	COD Chemical Oxygen demand	TSS Total Suspend ed Solids	TDS Total Dissolved Salts	Chromium	Chloride	Sulphide
Standard level set by PCB	≤ 30mg/l	≤ 250mg/l	≤ 100 mg/l	≤ 2100mg/l	≤ 2mg/l	≤ 1000 mg/l	≤ 2mg/l
Highest Range	464 Sunnabukal road	1848 Sunnabukal road	1934 Sunnabukal road	4320 Vadakarai	BDL (Below Detection limit)	2026 Vadakarai	115 Sunnabukal
Lowest Range	32.8 OV bridge	263 Girisamudram	108 Girisamudram	2156 Jaffrabadh	BDL (Below Detection Limit)	1150 Minnur	4 Viruthambatu
Note in comparison with 2015 Data	20 outfalls are meeting general standard as against 5 in 2015 indicating decrease in number of outfalls in which exceedance of BOD standards was reported from 2015 (31-510)	Similar to 2015 (251-1952)	2015 levels (164-304) Increasing trend	2015 levels (2104-7088) Improvement	N/A	Higher than 2015 levels	Higher than 2015 levels

The above table clearly shows higher concentrations of BOD, COD, TDS, Chloride and Sulphide in the Palar River stretches as compared to 2015. Further, the result also indicates that the drains are carrying untreated sewage and occasional influx of industrial effluent.

68. That apart, the samples were analysed for parameters such as pH, EC, TDS, COD, Total hardness, Chloride, Alkalinity, Sulphate, Sodium, Total Chromium and the monitoring results were compared with Indian Standard for drinking water specification IS 10500:2012.

Present state of Groundwater and monitoring well in Palar River (2021-2024)

Parameter	BOD	COD	TDS	Chromium	Chloride	Alkalinity	Hardness
IS 10500:2012 level drinking water	N/A	12/26	500-2000 mg/l	0.05 mg/l	250/1000 mg/l	200/600 mg/l	200/600 mg/l
Highest Range	28	296 Monitoring well at Girisamudram	3552 Madhannur	BDL	2275 Malatru in Madapalli	210-910 mg/l Ramayanathopu	810-1200mg/l Walajah headworks
Lowest Range	2-8	08 Chikramallur	2020 Veppur	BDL	74-415 Navlock	89-245 mg/l Kodayanchi	140-290 mg/l Malatru

The above table indicates that most of the groundwater (infiltration wells) do not meet the permissible drinking water standards with respect to TDS, total hardness, chloride &

alkalinity. Additionally, there is an increasing trend in the concentration of COD in the groundwater, which requires detailed assessment by the TNPCB through expert institutions, such as, NEERI, NGRI, etc. to study the extent of groundwater contamination, if any, and to identify and execute the remedial measures for the same.

Sewage Management

69. In 2015, the urban areas of Vellore District located on the banks of the River Palar such as Vaniyambadi, Ambur, Vellore, Melvisharam, Arcot, Ranipet and Walajahpet, did not have any Sewage Treatment Plant (STP) to treat the sewage generated by these towns. Untreated sewage from these municipal areas was either being utilised for irrigation by surrounding farmers or ultimately flowing into the river. At present, STPs have been constructed in two Municipalities i.e. Ambur & Ranipet and are operational. An STP has also been constructed in Vellore city, but is not yet operational. Thus, as of now, untreated sewage from the municipal limits of Vellore, Vaniyambadi, Melvisharam, Arcot and Walajahpet continues to flow into the river, while treated sewage is discharged from Ambur & Ranipet.

Effluent Treatment Plants

70. The CPCB report reveals that at present, there are 434 tanneries connected to the 8 CETPs. The CETPs have been upgraded to ZLD system with improved salt recovery and sludge management. All 8 CETPs have installed Online Continuous Effluent Monitoring System (OCEMS) which are connected to the CPCB and TNPCB servers. Further, in

2015, 26 tanneries had individual ETPs and at present, there are 30 tannery units, of which 10 units have been closed either voluntarily or due to the directions issued by CPCB, while 20 units remain operational. All these 20 operational units have upgraded their IETPs by installing Multiple Effect Evaporators (MEE) combined with Agitated Thin Film Dryers (ATFD) as part of their ZLD systems, replacing their earlier solar evaporation ponds. These upgrades have enhanced salt recovery efficiency and optimised waste management processes. The CPCB report further states that there has been an improvement in the available ZLD system both for IETPs and CETPs compared to 2015. Despite the adoption of ZLD in the IETPs and CETPs, the higher concentration of reported parameters in outfalls and infiltration wells in stretches I, II, & III indicates occasional discharges from industrial activities, along with untreated sewage from the surrounding area. The report also highlighted the need for the TNPCB to be more vigilant with regard to the industries in the area. Additionally, adequate sewage management systems need to be installed in the area to prevent untreated sewage, that is discharged into the river.

(D) LIABILITY TO PAY COMPENSATION

POLLUTER PAYS PRINCIPLE

71. Coming to the aspect of liability, it would be relevant to discuss the “polluters pay principle” which is the universal principle followed for fastening liability on the polluter for the proportionate damage caused to the environment, resulting in violation of right to

clean and healthy environment as guaranteed under Article 21 of the Constitution of India. In *Indian Council for Enviro-Legal Action v. Union of India*²², it was noted that when an activity is inherently hazardous or dangerous, the individual or entity engaging in such activity bears absolute liability for any harm caused, regardless of the care exercised. Polluting industries, therefore, are under an obligation to fully compensate for the damage caused to affected communities. More importantly, the Court clarified that the Polluter Pays Principle extended beyond compensating victims of pollution; it included the cost of reversing environmental degradation, in other words, they are required to undertake all necessary remedial measures to remove pollutants and restore the environment. This principle, along with the Precautionary Principle, has been recognized as part of the law of the land, drawing strength from Article 21 of the Constitution, which guarantees the right to life and personal liberty. It underscores that environmental protection is not merely a regulatory obligation but a constitutional imperative aimed at safeguarding the fundamental rights of individuals and preserving ecological balance. The relevant paragraphs are as under:

“65.....We are convinced that the law stated by this Court in Oleum Gas Leak case [M.C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37] is by far the more appropriate one — apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision is obiter.) According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the

²² (1996) 3 SCC 212

activity carried on. In the words of the Constitution Bench, such an activity: (SCC p. 421, para 31)

“... can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not”.

The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers — and not the person affected and the practical difficulty (on the part of the affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the “Polluter Pays” principle. [(Historic Pollution — Does the Polluter Pay? by Carolyn Shelbourn — Journal of Planning and Environmental Law, Aug. 1974 issue.)]

“The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The ‘Polluter Pays’ principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.

Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme [(1987) OJC 328/1] makes it clear that ‘the cost of preventing and eliminating nuisances must in principle be borne by the polluter’, and the Polluter Pays principle has now been incorporated into

the European Community Treaty as part of the new articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles: the need for preventive action; the need for environmental damage to be rectified at source; and that the polluter should pay.”

72. Referring to the aforesaid judgment, this Court in *Vellore Citizen Welfare Forum* (supra) held in paragraph 12, as under:

“12. The Polluter Pays Principle” has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India [(1996) 3 SCC 212 : JT (1996) 2 SC 196] . The Court observed : (SCC p. 246, para 65)

“... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.”

The Court ruled that : (SCC p. 246, para 65)

“... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on”.

Consequently, the polluting industries are thus “absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas”. The “Polluter Pays Principle” as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”

73. In *M.C. Mehta v. Kamal Nath*²³, it was observed by this Court as follows:

“8. Apart from the above statutes and the rules made thereunder, Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the

²³ (2000) 6 SCC 213 : 2000 SCC OnLine SC 963

environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely, air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of Article 21 of the Constitution.

9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect “life”, in order to protect “environment” and in order to protect “air, water and soil” from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries, etc., are all judgments which seek to protect the environment.

10. In the matter of enforcement of fundamental rights under Article 21, under public law domain, the court, in exercise of its powers under Article 32 of the Constitution, has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the “polluter-pays principle” which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter, is under an obligation to make good the damage caused to the environment.”

Therefore, the industries are liable to not only compensate but also bear the costs for restoring the river. Needless to point out that the remedial action would not stop at restoration, but it is a continuous process, to sustain the river, pollution free and a fresh

cause of action would commence again if the industries and the local bodies fail in their duty.

(E) EXTENT OF LIABILITY – DEEMING FICTION AND PRECAUTIONARY PRINCIPLE

74. The idea of the Polluter Pays Principle, though seemingly progressive, must be carefully examined to ensure it does not result in the emergence of a "right to pollute" for those who are financially capable or willing to pay. One key question that arises is the extent of liability for the pollution caused, specifically, whether the liability ends once compensation, as determined by the Court or other authorities, is paid, or whether it is a continuing liability that persists until the actual pollution is curbed and its effects reversed. This Court has recognized that the Polluter Pays Principle, when applied absolutely, has not yet sufficiently mitigated the harm caused to the environment, yielding below-average results. The tanneries have clearly exploited this system, discharging effluents, assuming that payment of compensation grants them the right to pollute. This issue is not limited to the Vellore tanneries alone; it is a broader problem seen across industries in developing countries, where it is often seen as more cost-effective to pay the relatively low compensation than to invest in cleaner technologies that would reduce pollution. Industries, when faced with a choice between the marginal damage cost and the marginal cleaning cost, often opt for the former, thus perpetuating the cycle of environmental degradation. Few examples to illustrate the same as under:

(a) Kanpur Tanneries²⁴: Despite the Court's order, it was revealed that the tanneries in Kanpur were operating illegally for all 30 days instead of the Government-mandated 15 days per month. These tanneries have also been discharging contaminated water into the river Ganga, continuing their harmful practices despite legal orders.

(b) Bicchri Industrial Cluster²⁵: The Court passed a verdict in 1999, ordering the company to pay Rs 37.4 crore for remediation. However, the company filed multiple interlocutory applications to delay the payment. In 2011, the Court directed the company to pay the fine along with compound interest at 12% per annum from November 1997 until the amount was fully paid or recovered. Despite this, the village continues to suffer from water contamination and scarcity, impacting drinking water availability, livestock, and agricultural yields. The community, which won the case, has been waiting for over three decades for justice, but compensation has not reached them, and the water crisis persists.

(c) Perundurai²⁶: In this case, although the Court directed industries to comply with the ZLD system, many units continue to violate the norms. They discharge untreated effluents into open places, borewells, wells, and rainwater, and bury sludge in the earth. The TDS levels reportedly reached as high as 20,000 ppm per liter, highlighting a continued disregard for environmental norms²⁷.

²⁴ 1988 SCR (2) 530

²⁵ 1999 SCC (3) 212

²⁶ Order dated 20.12.2004 passed by the Madras High Court in Writ Petition Nos. 15244 of 2004

²⁷ <https://www.newindianexpress.com/states/tamil-nadu/2018/Jun/16/perundurai-becomes-capital-of-cancer-in-erode-district-1829072.html>

75. Further, in *Vellore Citizens Welfare Forum (supra)*, this Court endorsed the application of the absolute liability principle as an integral component of the polluter pays principle, so long as the polluting activity results in harm or damage.

“12. ... Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. The Polluter Pays Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of Sustainable Development and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”

76. We may also refer to the following decisions, regarding this aspect:

(i) Indian Council For Enviro-Legal Action (*supra*)

“60. ... Be that as it may, we are of the considered opinion that even if it is assumed [for the sake of argument] that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment..... Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of environment in Section 2(a), Sections 3 and 5 clothe the central Government with all such powers as are necessary or expedient for the purpose of protecting and improving the quality of the environment. The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court

finds that such directions are warranted. We find that similar directions have been made in a recent decision of this Court in Indian Council for Enviro-Legal Action and Ors. [supra]. That was also a writ petition filed under Article 32 of the Constitution. Following is the direction:

It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharge of their effluents into Nakkavagu. They were responsible to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers.

It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.”

(ii) Bajri Lease LoI Holders Welfare Society v. State of Rajasthan²⁸

“16. The CEC has recommended imposition of exemplary penalty of Rs.10 lakh per vehicle and Rs.5 lakh per cubic metre of sand seized, which would be in addition to what has already been ordered / collected by the State agencies as compensation. Compensation / penalty to be paid by those indulging in illegal sand mining cannot be restricted to the value of illegally-mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of the compensation. The “Polluter Pays” principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology”.

77. When there is a violation in compliance with the environmental laws, be it by engaging in activities directly involved in causing pollution or failure to take steps to curb the pollution and restore the environment or violating any terms of licence granted by any State or central authority and acts in a manner detrimental to the environment, the effect of which causes or is likely to cause degradation of the environment, then the deeming

²⁸ (2022) 16 SCC 581

fiction of polluting the environment becomes applicable and the polluter is not only liable to payment of compensation but also to restore the environment. As we have already seen, there is a persistent duty on the State to ensure that all steps are taken to ensure the protection of the environment. The State, even in the absence of any law, must put in place a mechanism to address the issue of degradation by taking preventive measures. The measures should lean towards protection and preservation rather than facilitation of economic activity by reliance upon lack of scientific details for adverse effects. The State must endeavour through its research wings to identify the industries and activities which impacts or can impact the environment before permitting such activities as there is a possibility that the damage could not only be irreversible but also the effects of such damage could be far more threatening the human race than the commercial benefits arising out of such activity. This precautionary principle, that has been recognized in various judgments as seen above and in *Vellore Citizen Welfare Forum's* case (Supra) was reiterated by this Court in *T.N. Godavarman Thirumulpad, In re v. Union of India*²⁹, the relevant passage of which reads as under:

“43. The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this writ petition itself in an order passed on 9-5-2022 [T.N. Godavarman Thirumulpad v. Union of India, (2022) 9 SCC 306] in connection with another set of applications. In this order, it has been observed and held : (T.N. Godavarman Thirumulpad case [T.N. Godavarman Thirumulpad v. Union of India, (2022) 9 SCC 306], SCC pp. 315-16, paras 16-19)

“16. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in

²⁹ (2022) 10 SCC 544 : 2022 SCC OnLine SC 716

mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, courts are required to balance development needs with the protection of the environment and ecology [T.N. Godavarman Thirumulpad (104) v. Union of India, (2008) 2 SCC 222]. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718]. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [Indian Council For Enviro-Legal Action v. Union of India, (1996) 5 SCC 281].

17. In Vellore Citizens' Welfare Forum v. Union of India [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647], this Court held that the "precautionary principle" is an essential feature of the principle of "sustainable development". It went on to explain the precautionary principle in the following terms : (SCC p. 658, para 11)

'11. ... (i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.'

18. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718].

19. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest [M.C. Mehta v. Union of India, (2004) 12 SCC 118]. This

Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.”

While dealing with the applications in the present set of proceedings, we shall follow the same principles.”

78. To tackle this issue, the NGT has adopted the above principles in the following cases:

(i) *Court on its own motion v. State of HP*³⁰:

“36. The liability of the polluter is absolute for the harm done to the environment which extends not only to compensate the victims of pollution but is also aimed to meet the cost of restoring environment and also to remove the sludge and other pollutants. [Ref: Indian Council for Enviro-Legal Action v. Union of India supra]. The Supreme Court held that the person causing pollution by carrying on any hazardous or dangerous activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his commercial or industrial activity. In the light of these principles, it is clear that the persons who are causing pollution in the eco-sensitive areas resulting in environmental hazards must be required to compensate for the damage resulting from their activity. A large number of tourists and vehicles which are using the roads and are carrying on such other activities for their enjoyment, pleasure or commercial benefits must be made to pay on the strength of the ‘Polluter Pays’ principle. It will be entirely uncalled for and unjustified if the tax payers’ money is spent on taking preventive and control measures to protect the environment. One who pollutes must pay. We have already discussed at some length that the high tourist activity, vehicular pollution and deforestation attributable to acts of emission require to be compensated, restored and maintained in a manner that there is minimum damage and degradation of the environment. Such an approach can even be justified with reference to the doctrine of sustainable development.”

³⁰ 2014 SCC Online NGT 1

(ii) *Saloni Ailawadi v. Union of India*³¹:

“23.We may also observe that ‘Precautionary Principle’ and ‘Sustainable Development’ principle are part of Article 21 of the Constitution and Section 20 of the National Green Tribunal Act, 2010. ‘Polluter Pays’ principle does not mean polluter can pollute and pay for it. It would include environmental cost as well as direct cost to people. Environmental cost is not restricted to those which is immediately tangible but full cost for restoration of environmental degradation³². If cheat devices leading to pollution are ignored only on account of absence of a procedural protocol, it will be against the said accepted principles of environmental jurisprudence. Accepted global procedural norm can be accepted unless prohibited in India expressly or impliedly.

24.The law has to encourage honesty and fair dealing in business transactions and certainly business considerations cannot override environmental protection....”

(F) DETERMINATION OF COMPENSATION

79. Now that we've discussed the aspect of liability, let us turn our attention to the determination of compensation for pollution-related damage. As highlighted earlier, polluters bear the absolute liability for the harm they cause to the environment. However, it is well known that quantifying the extent of that damage is never an easy task and is usually quite complex. Unlike tangible property damage, the harm inflicted upon ecosystems—such as the destruction of flora, fauna, aquatic life, and the disruption to micro-organisms—is not easily measurable in monetary terms. Additionally, the impact on local communities, particularly their livelihoods, is difficult to assess. The loss of biodiversity, degradation of natural resources, and long-term socio-economic

³¹ 2019 SCC OnLine NGT 69

³² Research Foundation for Science v. Union of India, (2005) 13 SCC 186

consequences extend beyond the realm of financial valuation. Therefore, while the liability is clear, the process of determining an equitable compensation amount is fraught with challenges, as it must account for both the tangible and intangible damage inflicted on the environment and the affected communities. However, we can refer to past environmental cases, both Indian and international, to grasp the principles made therein relating to this aspect.

80. CASE LAWS

(i) *Costa Rica v. Nicaragua*³³

The International Court of Justice, in the case titled “*Certain Activities Carried Out by Nicaragua in the Border Area [Costa Rica v. Nicaragua, dated 02.02.2018]*”, observed that the lack of certainty as to the extent of damage did not preclude awarding compensation for the impairment or loss of environmental goods and services (paras 35 and 86). The Court ultimately stated its view to the effect that “damage to the environment, and the consequent impairment or the loss of the ability of the environment to provide goods and services is compensable under international law.” Thus, as per the decision of the Court, the assessment of compensation for damages requires the Court to be able to determine a causal link between the wrongful act and injury suffered. While so, it was noted that environmental damage claims had their own particular issues concerning causation as damage could be the result of multiple concurrent causes or the lack of

³³ [2018] ICJ Rep 15

scientific certainty may make it difficult to establish the causal link. In regard to the methodology to be used to value the impairment or loss of environment, goods and service, the Court explained, it would select those elements of methods offered by the Parties that provided a “*reasonable basis for valuation*” to assess the value for restoration of the damaged environment (Nicaragua) as well as the impairment of loss of goods and services prior to recovery (Costa Rica) (para 53). The Court justified this approach stating that there is no prescribed method of valuation for the compensation of environmental damage under international law and the Court would have to take into account the specific circumstances and characteristics of each case. In other words, the Court was refraining from adopting a single purpose methodology for valuation of environmental damage in favor of a case-by-case approach (para 52). The Court went on to develop its own method of valuation of environmental damage “*from the perspective of the ecosystem as a whole*”, which is *an overall assessment of the impairment or loss of environment goods or services rather than separate valuation of each different category*.

(ii) In *Deepwater Horizon Oil Spill by British Petroleum case*³⁴, on April 20, 2010, the oil drilling rig *Deepwater Horizon*, operating in the Macondo Prospect in the Gulf of Mexico, exploded and sank resulting in the death of 11 workers on the Deepwater Horizon and the

³⁴ United States v. BP Exploration & Prod., Inc. (In re Oil Spill by the Oil Rig “Deepwater Horizon”), 21 F. Supp. 3d 657 (E.D. La. 2014)

largest spill of oil in the history of marine oil drilling operations. 4 million barrels of oil flowed from the damaged Macondo well over an 87-day period, before it was finally capped on July 15, 2010. The United States filed a complaint in District Court against BP Exploration & Production and several other defendants alleged to be responsible for the spill. This led to multiple civil and criminal actions being initiated and billions of dollars in fine, settlements and restoration effort. The Polluters claimed the award to be a one-time payment, however, the British petroleum, allied companies and individuals were held liable on the basis of polluter pays principle being an absolute and continuing liability extending to restoration to a pre damage state of affairs. The litigation lasted three phases, numerous lawsuits and a final settlement of 20 billion US Dollars after the appeal was rejected by the US Supreme Court in 2015.

(iii) In *M.C. Mehta (supra)*, while dealing with Kanpur tanneries, this court has pointed out in paragraph 14, as follows:

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 effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure. Moreover, the tanneries involved in these cases are not taken by surprise. For several years they are being asked to take necessary steps to prevent the flow of untreated waste water from their factories into the river. Some of them have already complied with the demand. It should be remembered that the effluent discharged from a tannery is ten times noxious when compared with the domestic

sewage water which flows into the river from any urban area on its banks. We feel that the tanneries at Jajmau, Kanpur cannot be allowed to continue to carry on the industrial activity unless they take steps to establish primary treatment plants.

(iv) The aspect of determining compensation has been dealt with in detail in *Adil Ansari vs M/S Gupta Exports and Ors*, in Original Application No. 220/2019, wherein the National Green Tribunal observed as follows:

“Calculating environmental compensation:

514. Taking into consideration multifarious situations relating to violation of environmental laws vis-a-vis different proponents, nature of cases involving violation of environmental laws can be categorized as under:

(i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.

(ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.

(iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

515. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

516. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

517. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

518. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive.” The idea is not only for restoration/remediation or to mitigate damage/loss to environment,

but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

519. To impose appropriate 'environmental compensation' for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of 'Harmness cost'. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

520. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

521. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

...

525. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said

that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

526. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc."

81. Further, certain guidelines for determining compensation have already been established. It is to be noted that the Principal Bench of the NGT vide order dated 31.08.2018 in the matter of *Paryavaran Suraksha Samiti & another v. Union of India & Ors. WP (CIVIL) No. 375/2012* observed that "CPCB may also assess and recover compensation for the damage caused to the environment and the said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months". Accordingly, the CPCB in its report published on July 15, 2019 laid down the formula for computation of environmental compensation. The formula for computing environment compensation was accepted by the NGT vide its order dated August 28, 2019 in *Paryavaran Suraksha Samiti* (supra). The said formula is:

$$EC = PI \times N \times R \times S \times LF$$

Wherein, EC stands for Environmental Compensation in INR, PI stands for Pollution Index of industrial sector, N stands for Number of days the violation took place, R stands for a factor in INR (₹) for compensation for the environmental harm caused by the industry, S stands for factor for scale of operation and LF stands for location factor.

While the CPCB and State Pollution Control Boards (SPCB) largely appear to be following this formula, the NGT also took various other approaches towards determining environmental compensation. It seems that NGT has primarily adopted two methods for the imposition of environmental compensation: (a) levying 5-10% of the project cost as environmental compensation if it finds the industry to be defaulting; or (b) using a percentage of the annual turnover of the industry as the method for determining environmental compensation.

(G) GOVERNMENT PAY PRINCIPLE VIS-À-VIS RESPONSIBILITY OF THE GOVERNMENT

82. It is also apposite to state that while polluters bear absolute liability to compensate for environmental damage, the Governments (both Union and State) share an equally significant responsibility to prevent environmental degradation and ensure the implementation of effective remedial action. Moreover, Sections 3 and 5 of the Environment (Protection) Act, 1986, empower the Central Government to issue directions. Thus, the Central Government, with the assistance of the State Government, RPCB or any other agency or authority, authorized, empowered or constituted by it, if so required, is entrusted with determining the amount required for remedial measures,

ensuring its recovery, and overseeing their execution. In fact, in *Tata Housing Development Company Ltd v. Aalok Jagga and others*³⁵ it was observed as follows:

“35. In Indian Council for Enviro Legal Action vs. Union of India and others, (1996) 5 SCC 281, this Court has made the following observations:

‘41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.’”

83. Furthermore, we are also well aware that mere imposition of liability might not have much impact unless it is accompanied by strict enforceability. As mentioned earlier, in India, despite laws like the Water Act, 1974, and Environment Protection Act, 1986, enforcement mechanisms remain weak, as evidenced by persistent pollution in the river,

³⁵ (2019) 14 SCALE 641

28 years after a court judgment in *Vellore Citizens Welfare Forum* (supra). We are conscious of the fact that normally the government cannot be held liable for the action of third parties. But, the State, which is entrusted with the duty to protect not only its citizens but also the environment, cannot absolve itself from its failure in implementing the laws and allowing the activities that continue in violation of the laws. The role of the State is not restricted to initial verification but also extends to continuous inspection and to ensure compliance of all laws and orders. It is pertinent to mention that the States could enforce the compliances of all the laws and the orders even during renewal of any licences. Therefore, it is equally important to recognize the role of the Government and other regulatory bodies as well to impose upon them, a responsibility with penalizing consequences in ensuring strict compliance with the orders and directions given by the Courts as well as the applicable environmental laws and principles. In other words, while the “Polluters Pay Principle” focuses on directly penalizing offenders, its effectiveness is inherently tied to the vigilance and enforcement mechanisms of the Government and regulatory bodies, and thus, in situations where authorities fail to regulate polluters adequately, the resultant environmental degradation underscores a shared responsibility. The ‘Government Pay Principle’ emerges from this context, aiming to hold governments accountable for regulatory and enforcement lapses. Examples from countries like South Africa, and Chile demonstrate how holding governments accountable can drive proactive environmental protection measures:

(a) In the late 1980s, South Africa witnessed a shift towards government compensation for environmental harm caused by private injurers, which led to legislative intervention. Section 19 of the Environmental Conservation Act, 73 of 1989 empowers the government to take the necessary steps to repair the damage and to recover the cost from the polluter for its failure to take adequate measures ³⁶.

(b) In *Chile*³⁷, the Framework Law contains provisions for citizen-suits to address environmental harm. The law allows individuals to initiate legal actions against local governments to recover the compensation for environmental damage. It provides that victims of environmental harm may require the municipality in which the activity damaging the environment occurred to take action on their behalf, holding the municipality jointly and severally liable for the environmental damage suffered by the petitioner in cases of government inaction.

(c) In *Fundación Natura contra Petro Ecuador case*³⁸, an Ecuadorian court, when approached by an environmental activist NGO, ordered the state agency to assess the damage and to compensate the community, holding that the state could sue the corporation once the assessment was completed.

³⁶ Section 19 and 20 Environmental Conservation Act 73 of 1989.

³⁷ Sullivan, M. (1996). Chilean environmental law. Comparative Environmental Law, 1. CHL-16 (Nicholas A. Robinson ed., 1996)

³⁸ Fundación Natura contra Petro Ecuador de la Provincia de Buenos Aires, Expediente No. 221-98-RA Corte Constitucional de Ecuador, 1998), upholding Fundación Natura contra Petro Ecuador, Expediente No 1314 (Juzgado decimo primero de lo civil de Pichinega, April 15, 1998).

Thus, by holding the Governments accountable, the approach ensures a dual-layered system of responsibility, fostering more stringent oversight and proactive environmental governance. In fact, the National Green Tribunal (NGT) has already adopted similar approaches by ordering Governments to compensate victims and recover costs from polluters in the decision cited supra.

(H) REDUCTION OF POLLUTION

84. Some of the techniques / methodologies / approaches followed to reduce the pollution caused by the industries are as under:

(a) EXTENDED PRODUCER RESPONSIBILITY (EPR)

It is a policy that generally makes producers' responsible for the environmental impact of their products throughout their lifecycle. In the present case, the tannery industries owe a duty of care to the environment and are accountable. EPR can serve as a pivotal strategy to mitigate pollution and ensure sustainable waste management. Tanneries must adopt traceability systems to track waste generation, treatment, and recycling, ensuring accountability. Financial mechanisms such as environmental fees and deposit-refund systems could incentivize compliance, while penalties and license revocation would deter violations. We are also of the view that the responsibility must not be restricted just until the life cycle of the product but also must extend until the effects are controlled, nullified and restoration is executed.

(b) EMISSION STANDARDS - COMMAND AND CONTROL PRINCIPLE

Emission standards are regulatory limits that specify the maximum allowable levels of pollutants released into the environment, aiming to protect public health and preserve environmental quality. These standards are a key element of the Command and Control (CAC) principle, where governments set clear, enforceable rules to limit pollution. Under this approach, industries must comply with specific emission limits, with penalties such as fines or imprisonment (e.g., under the Water Act) for non-compliance. In addition to setting pollutant thresholds, regulators should also implement ambient standards, focusing on the overall quality of air, water, and soil by controlling pollution concentrations. Moreover, technology standards can be enforced, requiring industries to use specific pollution-control technologies to meet these regulatory requirements. Implementing these standards for the tannery industry can effectively reduce pollution and ensure long-term environmental protection.

(c) REGULAR IMPACT ASSESSMENT

While many countries have made regular monitoring a part of their Environmental Impact Assessment (EIA) process, India officially recognized the need for ongoing assessments only in 2020. This development marks a significant step forward in ensuring that the environmental impacts of projects are not only evaluated before they begin but are also continuously monitored throughout their operational lifespan. Therefore, similar to the mandatory EIA under the Environment Protection Act, a Regular Impact Assessment

(RIA) should be made mandatory for all industries identified as polluting. The tanneries must be directed submit periodical reports of the emissions, and the States and their mechanism must conduct independent audit of the emissions and take appropriate action. Without such regular assessments, court orders and regulatory measures risk being ineffective in addressing long-term environmental harm.

(d) EFFLUENT CHARGES/TAX

An effluent charge is a financial penalty or tax imposed by government authorities on polluters, based on the amount of effluent discharged into the environment, typically calculated in rupees per unit of pollution. As an additional recommendation, the charge can be structured to apply specifically to effluent released beyond the permissible limit, with industries paying a tax per unit of excess pollution. This approach aligns with Pigouvian taxes (pollution taxes), designed to internalize the environmental costs of pollution. In India, introducing industry-specific effluent charges would not only incentivize industries to reduce their environmental impact but also help fund necessary pollution control measures.

One key benefit of effluent charges is that they provide a mechanism for collecting detailed financial and technological data from each polluting source. Unlike emission standards, which primarily focus on limiting the volume of pollution, effluent charges require continuous monitoring of both the quantity of effluent discharged and the technologies used to mitigate it. This enhanced data collection improves regulatory

enforcement and allows for more targeted, effective pollution control strategies, ensuring that industries are held accountable for their environmental impact.

(e) POLLUTANT RELEASE AND TRANSFER REGISTER (PRTR) / PARTICIPATORY CITIZENS APPROACH

The Pollutant Release and Transfer Register (PRTR) is a system that collects and disseminates information about hazardous substance emissions and transfers from industrial facilities, ensuring transparency and community access to environmental data. Established in response to events like the Bhopal Disaster and the Rio Earth Summit (1992), PRTRs promote environmental education and participatory decision-making under the Aarhus Convention, 1998, which emphasizes three pillars: (a) Access to Information—citizens have the right to obtain environmental data, which authorities must provide transparently; (b) Public Participation—people must be informed and involved in environmental decision-making to enhance outcomes and legitimacy; and (c) Access to Justice—citizens can seek legal recourse for violations of environmental laws. Despite global adoption by countries like the U.S., Canada, and Turkey, India has yet to recognize citizens' "right to know," underscoring the need for public access to such crucial environmental information. Though under the Right to Information Act, 2005, information can be collected from the State or Central Board, the Board can disclose the compliance details, violations or actions taken by it, only if the particulars are readily

available with it. Therefore, in public interest, the State/Central governments or Boards/departments must issue appropriate instructions or guidelines mandating the industries to disclose the periodical reports in the websites. Such conditions can also be imposed while granting or renewal of any licence or by introducing the same by including such conditions as mandates for compliance of Corporate Social Responsibility (CSR). Another emerging concept in the corporate world is the Environmental, Social Governance (ESG), a positive step by the corporates to pledge their commitment to preserve the ecology by assessing their impact on the environment. An interplay between the CSR and ESG ought to be facilitated to ensure not only compliance of the norms but also to ensure voluntary disclosure.

ITALIAN TANNERIES – A CASE STUDY

85. One of the challenges in ensuring environmental compliance within India's tanning industry is that the majority of businesses fall under the Small and Medium Enterprises (SME) category, with only a few large-scale entities in Tamil Nadu and Uttar Pradesh. Similarly, the Italian tanning industry, primarily composed of SMEs, has however managed to successfully limit pollution by focusing on the recovery, treatment, and reuse of waste products such as sewage sludge, trimmings, and shavings. According to reports, over 72% of the waste produced is sent to recovery plants, while only materials like sludges, paint residues, absorbent materials, non-recoverable poly-materials, inert

materials, and a few others are disposed of. Additionally, the industry operates an interconnected system for exchanging waste products, which minimizes both waste and costs. Further, wastewater is treated and reused, reducing the reliance on fresh water and preventing pollution in rivers, canals, and groundwater. To achieve similar environmental benefits, India's tanning industry should adopt best practices for wastewater reuse, including recovering chromium for reuse. Government-supported, consortium-based wastewater treatment plants where water is reused would help safeguard the fragile ecosystem.

86. In *People Health and Development Council, represented by its Secretary, Erode-5 vs State of Tamil Nadu and Another*³⁹, the Madras High Court has pointed out certain effluent reduction measures as under:

“22.The Board has also suggested that the parameter TDS in the effluent discharged from the existing primary and secondary treatment system could be contained less than 2100 mg/lit. under the individual Effluent Treatment Plants only by implementing suitable membrane technologies (Reverse Osmosis System) with suitable evaporation system for the rejects as tertiary treatment. By implementing the said R.O. system, the standards of 2100 mg/lit. for TDS could be achieved and further the permeate of R.O. system could be reused completely in the tanning process implementing the membrane technologies the effluent generated in the tanning process could be completely recovered and reused in the process, leaving a small quantity of rejects which could be evaporated through suitable evaporation systems, and discharge of treated effluent not satisfying the norms either on land for irrigation or on land for open percolation/into water courses could be avoided. The discharge of effluent by the respondent tanneries, after treatment in their existing treatment systems, on land for irrigation, without complying the TDS norms either within unit premises or land outside the premises owned by the unit cannot be construed as zero discharge system.

³⁹ 2005 SCC OnLine Mad 110

23. In the light of our discussion, it is clear that though all the tanneries in and around Kalingarayan channel and Bhavani River have Effluent Treatment Plants, in the absence of implementation of suitable membrane technologies, namely, Reverse Osmosis system (R.O. system), the TDS in the effluent discharged from the existing treatment system is not under control. Undoubtedly, all the tanneries and dyeing factories have to strictly adhere to the norms namely that the effluent discharge either on land or any water course shall not contain constituents in excess of the tolerance limit laid down for TDS as 2100 mg/lit. In order to achieve this goal, they have to adopt and implement suitable membrane technologies, Reverse Osmosis system with evaporation system for the rejects as tertiary system. This will go a long way in curbing the environmental hazard. For compliance of the same, this Court feels that a further reasonable time may be granted. Accordingly, all the tanneries/dyeing units located in Erode District are granted time till 31-08-2005. The District Collector and the officers of the TNPCB are directed to give wide publicity in the area concerned regarding the direction and the extension of time granted for compliance. It is made clear that those who are not willing to adhere to this direction and adopt the R.O. system, they are free to shift their concern to SIGC, Perundurai within that period. The Collector and the officers of the Board are directed to make periodical inspection to the tanneries/dyeing units for proper implementation of the above direction. Before conclusion, as observed in M.C. Mehta v. Union of India, though we are conscious of the fact that these tanneries bring more employment and revenue, but life, health and ecology have greater importance to the people...”

87. United Nations Environment Programme (UNEP) through its Mediterranean Action Plan (MAP), specifically the Marine Pollution Assessment and Control Unit (MED POL) prepared a report towards a More Sustainable Tannery Sector in the Mediterranean aiming to improve environmental practices in the tanning industry across Mediterranean countries. The report has also stated few of the available tools for improving the tannery sector. BAT (Best Alternative Technique) reference document for the tanning of hides and skins forms part of a series presenting results of an exchange of information between European Union (EU) Member States, the industries concerned, non-governmental

organizations promoting environmental protection and the European Commission, to draw up, review, and where necessary, update BAT reference documents as required by Article 13(1) of the Directive 2010/75/EU of the European Parliament and the Council on industrial emissions (integrated pollution prevention and control). Such references can be undertaken by the TNPCB.

(I) RELEVANT PROVISIONS UNDER THE WATER ACT

88. We will not reiterate the provisions of law related to the issue at hand as it is well settled. However, we deem it necessary to highlight the relevant provisions of the Water (Prevention and Control of Pollution) Act, 1974. The Water Act provides for the constitution of the Central and State Pollution Control Boards and empowers them to carry out a variety of functions. These include establishing quality standards, research, planning and investigations to promote cleanliness of streams and wells and to prevent and control pollution of water. Importantly, it also provides that no industry, etc. which is likely to discharge sewage or trade effluents, can be established by any person without obtaining the consent of the State Board. The aforesaid provisions are extracted below for ready reference:

“24. Prohibition on use of stream or well for disposal of polluting matter, etc.

(1) Subject to the provisions of this section,—

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any [stream or well or sewer or on

land]⁴⁰; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:—

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

25. Restrictions on new outlets and new discharges.—

[(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

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

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988 (53 of 1988), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made

⁴⁰ Substituted by Act No. 53 of 1988, for the words "stream or well"

in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.] (7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

26. Provision regarding existing discharge of sewage or trade effluent.—

Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a [stream or well or sewer or on land]⁴¹, the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section [shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette].

43. Penalty for contravention of provisions of section 24

Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than [one year and six months]⁴² but which may extend to six years and with fine.

44. Penalty for contravention of section 25 or section 26

Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than [one year and six months]⁴³ but which may extend to six years and with fine.”

89. In *Gujarat Pollution Control Board v. M/s. Nicosulf Indst. & Exports Pvt Ltd*⁴⁴, a complaint was filed under various sections of the Water (Prevention and Control of

⁴¹ Subs. by Act 44 of 1978, s. 13, for “stream or well” (w.e.f. 12-12-1978)

⁴² Substituted by Act No. 53 of 1988, for the words “six months

⁴³ Substituted by Act No. 53 of 1988, for the words “six months

⁴⁴ 2009 (2) SCC 171

Pollution) Act, 1974, against M/s. Nicosulf Industries & Exports Pvt. Ltd. and its directors for allegedly discharging 10,800 liters of polluted water daily during nicotine sulphate production, where the court held that under sections 24 and 25 of the Act, every industry is compulsorily required to obtain prior permission or approval of the Board for discharging its polluted water either within or outside the industry as per section 25(i) of the Act.

90. Additionally, in the 1983 case of *U.P. Pollution Control Board v. M/s. Mohan Meakins Ltd. and Others*⁴⁵, relating to Gomti River pollution caused by the respondent therein, faced prolonged delays. The High court gave its judgment in 1999 and thereafter, this court held that where an offence under the Act has been committed by a company, every person who was in charge of and was responsible for the company's conduct of business, is also guilty of the offence.

91. Thus, it is evident that Vellore's current status highlights the critical consequences of unchecked industrialization and exploitation of natural resources. The district, once known for its agricultural prosperity and natural resources, now faces a grave environmental crisis driven by pollution from the tanning industries, illegal sand mining, and poor waste management. These activities have degraded vital ecosystems, polluted

⁴⁵ 2000 (3) SCC 745

water bodies like the River Palar and reduced the groundwater availability, severely impacting the livelihoods of farmers, fishermen, and local communities.

91.1. In the light of the principles outlined above, this Court has the duty to foster a more comprehensive, balanced, and sustainable approach to curb the water pollution in the river. The principles mentioned not only ensure compliance but also encourage long-term strategies for environmental protection, public health, and sustainable development. Moreover, the legal position is clear: until the damage caused by the tanneries to the ecology is reversed, the polluters have a continuing duty to pay compensation and further, it is the bounden duty of both the Central and State Governments and local authorities to prevent, protect and preserve natural resources and maintain a healthy and clean environment.

VII. ECOCIDE

92. Before we proceed with our discussions and findings, we also want to highlight the emerging concept of ecocide, which has gained significant attention in the environmental discourse. Ecocide is defined as 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment.' Acts such as the pollution of rivers with untreated sewage, illegal sand mining, large-scale deforestation etc. fall under this definition. The environmental damage occurring in Vellore District could even be categorized as ecocide, underscoring the urgency of addressing and halting such activities.

VIII. DISCUSSION AND FINDINGS

93. Earlier, this Court in *Vellore Citizens Welfare Forum* (supra) extensively considered the issue of pollution caused by tanneries in the Vellore District and its adverse impact on human lives, soil, water, agriculture, etc. and rendered a land mark decision, issuing various directions to the authorities concerned. Pursuant to the same, *vide* notification dated 30.09.1996, the Central Government constituted the LoEA to assess the damage caused, frame a scheme for reversal of the damage, identify affected individuals / families and compute the compensation payable to them. Accordingly, the LoEA passed its first award on 07.03.2001, identifying 29,193 affected individuals / families in respect of 15,164.96 hectares in 186 villages within 7 Taluks of Vellore District and determined the compensation for the period from 12.08.1991 to 31.12.1998. It was clearly stated in the said award that the liability of the polluting industries continued beyond 31.12.1998 until the damage caused to the ecology and environment by pollution was fully reversed. Though the said award dated 07.03.2001 was initially challenged by the AISHTMA in WP.No.512 of 2002, the High Court affirmed the award, by order dated 22.03.2002 and hence, it attained finality. It is also to be noted that by order dated 07.04.2016, WP No.23291 of 2006 seeking a direction to the authorities to make the LoEA a permanent body, came to be dismissed by the High Court.

94. Aggrieved that the entire compensation amount awarded by the LoEA vide award dated 07.03.2001 has not been disbursed to all the affected individuals / families and only

a part of it was disbursed till date; the tannery industries continuing to discharge effluents into the River Palar; and that no scheme has been framed to reverse the damage caused to the ecology by the state Government, the appellant / Vellore District Environment Monitoring Committee filed WP.No.8335 of 2008 as a Public Interest Litigation seeking directions to the authorities concerned to pay compensation for the further loss caused to the affected families from 1998 onwards until the damage caused to the ecology is reversed, etc.

95. Pending the aforesaid writ petition, the LoEA based on the orders of the High Court as well as this Court proceeded to assess the damage caused to the ecology. The AISHTMA objected to the same by filing a reply stating that the LoEA cannot investigate the pollution caused by the industries after the award dated 07.03.2001 and thereby assess the quantum of pollution. The LoEA rejected the said objection by order dated 05.05.2009, which was challenged by the AISHTMA in WP No.19017 of 2009.

96. Thereafter, the LoEA considered all the applications relating to the period from 1991-98, which were not covered by the award dated 07.03.2001 and assessed a compensation of Rs.2,91,01,278/- to be payable to 1377 affected individuals/ families, by its second award dated 24.08.2009. This award was subsequently challenged by the AISHTMA in WP.No.22683 of 2009.

97. After due contest, the High Court by two separate orders dated 08.02.2010 viz., one in W.P.Nos.8335 of 2008 and 19017 of 2009 and another in W.P.No.22683 of 2009,

rejected the reliefs sought in the public interest litigation, but set aside the order dated 05.05.2009 passed by the LoEA and affirmed the second award dated 24.08.2009. These two orders are now put to challenge before us by the aggrieved parties.

98. At the outset, the learned counsel for the Respondent Nos.3 and 4 raised an objection that the AISHTMA preferred the Special Leave Petition along with an application to condone the delay of 439 days in filing the same and the same came to be registered as SLP(C)No.26608 of 2011, without there being any order condoning the said delay. The record of proceedings discloses no order regarding the condonation of delay in filing the said petition. While it may be true that the AISHTMA in order to defeat the claim of the appellant in SLP(C)Nos.22633-22634 of 2010 filed the petition in SLP(C)No.26608 of 2011 as a counter blast, it cannot be disputed that they have been actively contesting the appeals filed by the Vellore District Environment Monitoring Committee, in their capacity as Respondent No.4 in SLP (C)No.23633 of 2010 and Respondent No.3 in SLP (C) No.23634 of 2010. Moreover, the issues involved in all the appeals are interconnected and intertwined. Therefore, in the larger public interest, we overlook the mistake committed by the Registry and condone the delay in filing the petition, though not condoned earlier.

99. As already pointed out by us, the award dated 07.03.2001 passed by the LoEA has attained finality, in view of the order dated 22.03.2002 passed by the High Court in W.P.No.512 of 2002. It is the case of the contesting respondent in SLP (C) Nos.23633-23634 of 2010 and the appellant in SLP (C) No.26608 of 2011 / AISHTMA that the

compensation and the fund determined in the said award were paid by the industries and the same were also disbursed to the affected individuals / families.

100. However, the appellant / AISHTMA challenged the subsequent award dated 24.08.2009 passed by the LoEA, mainly contending that there were no claims pending against the industries; and that the High Court, in the order dated 20.12.2007, made in W.P.No.23291 of 2006, had not issued any direction to the LoEA to consider the left-out claims for the period 1991-98 and it merely recorded the submission of the learned counsel that the LoEA would consider all the applications filed before the cut-off-date, which are pending as well as the applications filed after the cut-off-date and decide them in accordance with law and grant compensation wherever the case is made out and therefore, the industries are not liable to pay any compensation for the period 1991-1998.

101. It may be true that the High Court did not explicitly pass an order directing the LoEA to consider the left-out claims for the period from 1991-1998, but after having given an undertaking before the High Court that the left-out claims would be considered, the LoEA cannot tactically choose to shrug off the said undertaking. Moreover, only because of the undertaking given by the LoEA, the High Court deemed it unnecessary to issue such a direction, expecting that the LoEA would comply with its own undertaking. It is also pertinent to mention here that the LoEA was tasked with duty to assess the damage, identify the areas and the individuals/families affected by the pollution. While the LoEA was empowered to identify the individuals/families that have suffered during the relevant

period, it goes without saying that the LoEA would have the authority to admit new claims if they are found to be genuine. The Doctrine of Implied Authority would automatically come into operation. The error or lapse, if any, on the part of the LoEA cannot affect the right of the residents who have been left out, more so considering that the right persists in view of the continuing pollution. Therefore, we reject the contention so raised by the learned counsel for the AISHTMA.

102. Apparently, *vide* award dated 24.08.2009, the LoEA identified 1,377 persons and determined the compensation amount to be Rs. 2,91,01,278/- for them. It was clearly stated in the said award that it was passed only in respect of the individuals / families, who were left out of the earlier award dated 07.03.2001, which has attained finality. It is also evident that the award was passed after issuing due notice to all the parties and that, the AISHTMA did not raise any grounds relating to non-adherence to the procedure for taking samples, as provided in Rule 6 of the Environment (Protection) Rules, 1986, before the LoEA either in its reply or at the time of personal hearing. It is not the case of the AISHTMA that the samples tested are not from the tanneries. Therefore, the technical objection raised now is only an after thought. Hence, the other grounds raised by the AISHTMA with respect to violation of the principles of natural justice and the Rules, against the award dated 24.08.2009, cannot be countenanced by us.

103. Upon considering all the factors, the High Court while rejecting the challenge to the award dated 24.08.2009, referred to the left-out claims as a continuation of the earlier

award and held the same as not bad in law. It was also pointed out by the High Court that by award dated 07.03.2001, the LoEA, after conducting a field survey and verifying the revenue records, filtered 1377 cases out of 7422 claims as affected individuals / families eligible for compensation due to ecological damage to their lands. By following a similar methodology, the LoEA determined a total compensation of Rs.2,91,01,278/- payable to the affected individuals / families and passed the subsequent award dated 24.08.2009. Also, the High Court rejected the appellant / AISHTMA's contention regarding limitation, holding that the polluter's liability is an absolute liability and the polluter cannot escape from the liability once it is established that it caused pollution; that, delay in passing the subsequent award will not preclude the left-out individuals / families from making any application for claiming compensation. It was further observed that the LoEA is not expected to function as a civil court, although it has to follow just and fair procedure. It was also pointed out that although the appellant / AISHTMA was not a party to the writ petition in WP.No.23291 of 2006, in which, the High Court passed the order, directing the LoEA to consider all the claims, the industries, which were found to be polluters even by this Court in Vellore Citizen Welfare Forum, cannot absolve their liability to pay compensation by applying the Polluter Pays Principle. Therefore, we do not find any reason, much less a valid reason, to interfere with the well-considered order passed by the High Court in W.P.No.22683 of 2009.

104. Next, we turn to the order passed by the High Court in W.P.Nos.8335 of 2008 and 19017 of 2009. It is the specific case of the appellant in SLP(C)No.23633 of 2010 that only a part of the compensation has been disbursed to the identified affected individuals / families and crores of rupees are yet to be collected; no scheme has been implemented for the reversal of the damage caused to ecology and environment; the industries continue to discharge effluents and they are not maintaining the standard expected of them and thus, the damage caused to the environment has only been exacerbated. Thus, this according to the appellant, entitles the affected individuals/ families to receive compensation beyond 31.12.1998 till the damage to the ecology is reversed. It is also submitted that a large number of tanneries are operating beyond the permissible limit and hence, they should be closed.

105. Though the appellant in SLP (C)No.23633 of 2010 sought multiple reliefs by filing Public Interest Litigation in W.P.No.8335 of 2008, the High Court rejected the same on the ground that except for asserting that a number of affected persons had not received the compensation amount, the appellant had not taken any steps to furnish the details of the individuals / families, who had received either only a part of the compensation amount or had not received any compensation amount at all and in the absence of supportive material, the claim of the appellant could not be entertained.

106. We are of the opinion that the details of the affected individuals / families are already available with the District Collector, and the LoEA after obtaining those

particulars, has awarded compensation to them. Hence, the failure of the appellant to furnish the details regarding the receipt of compensation by the affected individuals / families, cannot be a reason to reject the claim of the appellant concerning the disbursement of compensation to all the affected individuals / families. In our view, the High Court must have directed either the District Collector or the LoEA to produce the details or in the alternative, must have directed LoEA to verify the claims and issued appropriate directions.

107. In respect of the other reliefs made by the appellant in SLP (C)Nos.23633-23634 of 2010, it is pertinent to mention that the High Court by order dated 10.04.2008 in MP.No.1 of 2008 in WP No.8335 of 2008, *inter alia* directed the LoEA to make enquiries as to whether the polluters complied with the conditions of the award and to assess the compensation within four months, and the damage caused to the ecology since 1999. Even in the petition filed in MP.No.2 of 2008 in WP.No.8335 of 2008 by the appellant / AISHTMA, seeking to vacate the said order dated 10.04.2008, the High Court directed the LoEA to pass the order only after hearing the contentions of the AISHTMA. Accordingly, the LoEA issued due notices to all the parties, to which, AISHTMA filed its reply. Thereafter, the LoEA passed the order dated 05.05.2009, rejecting the objection raised by AISHTMA with regard to assessing the damage caused by the tanneries to the ecology beyond 1998 in the Vellore District.

108. The order dated 05.05.2009 would demonstrate that the LoEA took note of all the contentions raised by the AISHTMA, such as, the installation of IETPs and CETPs, expenditure of crores of rupees on pollution control measures as suggested by NEERI and CLRI, and the Government owing a duty to arrest pollution on their part, industries having earned income to the Government in crores of rupees, and thus, any liability being fixed on the industries must be borne by the Government, and hence, the industries have no liability to pay any compensation subsequent to the award period and the payment under the award is one time settlement. The fact that the industries represented by AISHTMA continue to pollute and that the pollution levels have not decreased even after the installation of some pollution control devices, and noting that the process of installing reverse osmosis plants is still in its initial stages, and also in the light of the legal position that the liability to pay compensation is based on the 'Polluter Pays Principle', and the 'Precautionary Principle' stressing the need to arrest pollution as laid down by this Court, the LoEA passed the said order dated 05.05.2009 rejecting all the contentions raised by the AISHTMA. However, the High Court erroneously set aside the said order passed by the LoEA by the order impugned herein, neglecting the object and misconstruing the scope and authority of the LoEA.

109. The learned counsel for the AISHTMA before us submitted that since the decision of this Court in *Vellore Citizens Welfare Forum* (supra), the Tanning Industries of Vellore District have fully complied with all the directions issued by this Court from time to time

and played their role in preventing any further damage to the ecology from their side. Placing reliance on the reports of the CPCB and the TNPCB, the learned counsel submitted that all tanneries in Vellore District are either connected to CETPs or have their own IETPs and all of them are equipped with ZLD Systems which are operational and functional; and that, both the authorities have reported that no discharge of treated or untreated effluent has been noticed either on land or into the River Palar. Furthermore, more than 80% of the water is reused and the solid wastes generated are being disposed of in a secured landfill system. It was also submitted that the industries have paid in full the compensation due to individuals/families and have also paid a fine of Rs.10,000/- each as imposed by this Court by its judgment dated 28.08.1996⁴⁶ towards the Environmental Protection Fund which is intended for the reversal of the damage to the ecology. Thus, according to the AISHTMA, it is for the Central and State Governments to utilize the said amount and take steps to complete the process of reversal at the earliest. The industries cannot be made liable for any alleged damage beyond 31.12.1998, as they have already taken necessary steps to control the pollution and several tanneries have installed reverse osmosis plants.

110. Indisputably, the award of the LoEA dated 07.03.2001 which was passed pursuant to the judgment of this court in Vellore Citizen Welfare Forum (supra), clearly mentioned that the liability of the industries continues until the damage caused to the ecology and

⁴⁶ Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647

environment by pollution is reversed. It is borne out from the records that the industries have taken steps to achieve ZLD and to reverse the damage caused to the ecology, deposited certain sums. However, the same have not been achieved till date and still remain a work in progress. In such circumstances, the industries will remain responsible for the further and continuing pollution caused to the ecology. Therefore, the alleged payment of fine of Rs.10,000/- each towards the Environmental Protection Fund made by the industries cannot absolve them of their liability to pay compensation until the damage to the ecology is reversed by meeting the standards prescribed by the Pollution Control Board and by adhering to the schemes implemented and directions passed by the government. Though the leather industry in India has become a major source of foreign exchange and Tamil Nadu is presently the leading exporter of finished leather, accounting for approximately 80 percent of the country's export, the same does not give the industry the right to destroy the ecology, degrade the environment and pose a threat to health of the residents. In such view of the matter, the order of the High Court passed in WP Nos.8335 of 2008 and 17019 of 2009, requires some degree of interference by us.

111. According to the AISHTMA, they have already deposited Rs.26.82 crores towards compensation for the affected families / individuals, in addition to Rs.3.66 crores towards the Environmental Protection Fund for the purpose of reversal and restoration of the ecology between 1991-98. As per the awards dated 07.03.2001 and 24.08.2009 passed by the LoEA, the total compensation payable to the affected individuals / families amounts

to Rs.29.73 Crores. The supplementary affidavit dated 29.11.2013 filed by the Additional Chief Secretary to Government, Environment & Forest Department, Govt. of Tamil Nadu, clearly outlined the collection of compensation amounts from the tanneries, the details of which are as follows:

1.	Total number of tanneries responsible for payment of compensation	547
2.	Total amount to be collected from the tanneries for compensation as fixed by the Loss of Ecology Authority for two awards (Rs.26.82 + Rs.2.91 crores)	29.73 crores
3.	Total amount to be collected from the tanneries for reversal of Ecology	3.66 crores
4.	Total amount to be collected (2 + 3)	33.39 crores
5.	Amount collected as on 22.08.2013	27.67 crores
6.	Amount collected from 23.08.2013 to 06.09.2013	1.13 crores
7.	Total amount collected as on 07.09.2013 (5+6)	28.80 crores
8.	Balance as on 07.09.2013 (4-7)	4.59 crores
9.	Less non-collectable balance	0.87 crores
10.	Net collectable balance	3.72 crores

The aforesaid affidavit further disclosed that pursuant to the order of this Court, dated 20.02.2013 in SLP(C)Nos.23633-23634 of 2010, a compensation amount of Rs.4.48 crores was disbursed to the affected individuals / families by the District authorities. Additionally, an amount of Rs.1.15 crores is held by the Divisional officers which would be disbursed as and when the issues are settled, either through court of law or out of court.

112. The reports filed by the TNPCB and CPCB clearly state that 8 CETPs along with their Member units and 26 IETPs are equipped with operational and functional ZLD Plants; regular monitoring is being carried out by the TNPCB to ensure proper functioning of the ZLD Plants; and any directions, in case of violations, are being complied with by the concerned units. All the CETPs and IETPs are connected to the Care Air Centre for Online Monitoring by both TNPCB and CPCB. Reverse Osmosis Plants have been established in most of the Units, while steps are being taken to establish them in the remaining units under the supervision of the State Pollution Control Board. However, there is no concrete assertion that ZLD has been fully achieved by the industries. Further, the report reveals that STPs have been provided for Sewage management in only two municipalities and untreated sewage continues to be discharged into the river.

113. Admittedly, the standard upper limit of pollution in treated effluent is 2100 mg/l of TDS content and the same has not been maintained by the industries. The same level of pollution is present in wells and other water sources in the areas. Hence, the industries which continue to pollute the environment, and thereby violate Section 24 of the Water (Prevention and Control of Pollution) Act, 1974, cannot absolve themselves of their liability, merely on the ground that some payment was made by them to the Government in compliance with the directions of this Court. The liability of the industries for the pollution caused by them did not cease in the year 1998 by merely paying the compensation amount. Rather it is a continuing liability that persists until the actual

pollution is curbed/ its effects reversed. In other words, the polluting industries are liable to reverse the damage to the environment and ecology as long as the tanneries continue to pollute the environment. At the same time, the Government has not implemented the scheme for reversal and restoration of ecology till date, despite the LoEA having drafted the same in the year 2001 itself. While it may be true that the details of the affected individuals / families cannot be ascertained at this distant point of time, this alone cannot be a reason to withhold the compensation amount payable to the affected individuals / families, until the damage caused to the ecology is reversed. Therefore, we have no hesitation to hold that by applying the Government Pay Principle, it is for the Government to pay compensation to the affected individuals / families and recover the same from the polluters, until the damage caused to the ecology is fully reversed. Accordingly, the order passed by the High Court is liable to be modified by this Court.

IX. CONCLUSION

114. The overall analysis clearly demonstrates that tanneries are among the most polluting industries and the damage caused by them by discharging untreated or partially treated effluents into the River Palar and surrounding areas, has resulted in irreversible damage to the water bodies, groundwater, and agricultural lands. This environmental degradation has impoverished local farmers and has caused immense suffering to the local residents and the tannery workers, thereby endangering public health and life. In fact, it

would not be wrong to say that the condition of tannery workers is no better than that of manual scavengers. With a majority of workers being women, the situation is even more distressing. It is also abundantly clear that the discharges were neither authorized nor in compliance with the standards set by the Pollution Control Boards. Though the reports indicate the establishment of CETPs and IETPs, the industries have still not achieved ZLD, till date. Furthermore, the industries have not complied with the extant statutory guidelines framed by the Government as per the appellant / Vellore District Environment Monitoring Committee. At the same time, the report also reveals that the tannery industry is not the sole polluter affecting the river. Other pollutant, such as untreated sewage and solid wastes generated in the towns are also being dumped into the river. Despite the responsibility of the municipalities to treat sewage, no effective steps have been taken and untreated sewage continues to be released directly into the river. It is disheartening to hear a worker describe the chemical pollution as “so powerful it can melt the dead - it’s only a matter of time before it begins to melt the living”. All of this occurs while various Supreme Court directives and environmental norms are flouted, and the schemes or plans framed by the Government remain on paper, failing to achieve any meaningful results. Thus, this Court, being the custodian of fundamental rights, must come to the rescue of the affected individuals / families and ensure that persistent wrongs are rectified and justice is actually done.

X. RESULT

115. Therefore, we deem it fit to issue certain directions to the stake holders, which are as under:

(i) The State government is directed to pay the compensation amount to all the affected families / individuals, if not already paid, in terms of the awards dated 07.03.2001 and 24.08.2009 passed by the LoEA within six weeks from today,

(ii) The State government is also directed to recover the compensation amount from the polluters, if not already recovered, by initiating proceedings under the Revenue Recovery Act or through any other means permissible by law.

(iii) The State government in consultation with the Central Government, shall within a period of four weeks, constitute a committee, under the chairmanship of a retired High Court Judge and members, comprising of the Secretaries of both the State and Central Departments, environmental experts, representatives from the affected communities, and any other person as it deems fit, for the purpose of conducting an audit to identify, maintain and create a clean and healthy environment in Vellore District.

(iv) The Committee shall carry out the following tasks and ensure its implementation until the damage caused to the ecology is reversed:

(a) In view of the decision arrived at by us, the committee shall scrutinize applications received from affected individuals/families seeking compensation beyond

1998, assess their claims, award compensation, and disburse it from the fund maintained by the Government.

(b) Formulate a comprehensive scheme to reverse the ecological damage in the affected areas. Such a scheme shall incorporate advanced techniques and best practices, as applicable, adopted by other State Governments and foreign countries.

(c) Issue appropriate directions to the State/Central Pollution Control Board and departments to prohibit industries and municipalities from discharging untreated effluents into the River Palar and other water bodies.

(d) Identify critical zones in the district as No Discharge Zones to safeguard the quality of water resources, particularly groundwater, from contamination by industrial and domestic waste.

(e) Identify locations where new CETPs and IETPs are required, and where industries can be feasibly connected to these systems. Based on the same, direct the establishment of such plants to strengthen the pollution control infrastructure.

(f) Address the deficiencies of existing CETPs, IETPs, and other pollution control mechanisms by ensuring their effective functioning and proper maintenance.

(g) Make any other recommendations that may be required to ensure continuous monitoring and compliance of the standards to ensure ZLD within a period of three months and submit a report to the State and central Governments/Boards which shall be implemented by the State/Central Government/Board,

(h) Ensure that State Pollution Control Board / Central Pollution Control Board is strictly complying with the relevant guidelines for monitoring and regulating the industries and file a report before this Court within four months from the date of constitution,

(v) Since pollution is a continuing wrong until the condition is reversed, the polluters shall be liable to compensate the victims and liable for the damage and the Committee constituted as per direction (iii) LoEA (present) is directed to periodically assess and pass appropriate orders till then,

(vi) the State shall implement the suggestions of the committee to formulate and implement a comprehensive rejuvenation plan for the Palar River, which includes removing pollutants, desilting, and ensuring adequate water flow and direct the concerned authorities and bodies to accomplish the same within a time frame,

(vii) The State shall ensure quarterly inspections of tanning industries in the district to assess compliance with environmental regulations and publish a report in its website disclosing all the material particulars. The inspection team shall verify whether the industries are established within permissible distances from prohibited zones, the status of ZLD compliance by the industries, and other relevant aspects.

(viii) the State shall facilitate a conduct of environment audit of each river in the State, ascertain the pollution, degradation, change in storage capacity, depletion of groundwater level and publish the results in the website, newspapers, media, and other public platforms,

(ix) the State shall mandate the installation of IoT-based sensors at discharge points, rivers, and groundwater wells to monitor water quality in real time.

(x) the State shall direct that AI systems shall be employed to analyze the data collected from IoT sensors and industry discharge reports, and any discrepancies from prescribed discharge limits shall be flagged for prompt regulatory response,

(xi) The State Pollution Control Board / Central Pollution Control Board shall in co-ordination with State government, set emission standards for the tannery industry in alignment with international environmental standards and take into consideration the recommendations of national and international regulatory bodies. Additionally, assess the feasibility of imposing effluent charges, which would be levied per unit of waste or discharge released, as a penal measure to enforce compliance,

(xii) The State Pollution Control Board /Central Pollution Control Board shall direct the industries to display effluent and discharge data, including chemical composition, on a publicly accessible notice board every three days and in case the standards are not met, direct the authorities to ensure compliance with the prescribed norms.

(xiii) The Central Government/Central Pollution Control Board shall issue appropriate directions to align the ESG and CSR of the industry/tannery towards voluntary disclosure and compliance of environmental norms,

(xiv) the State Pollution Control Board shall establish platforms through which citizens can report pollution incidents and monitor the corrective actions taken.

(xv) the authorities concerned shall take immediate and strict action against industries that fail to meet compliance standards, including closure in cases of persistent violations.

(xvi) The licencing authorities couched with the power to issue licences, are by virtue of the implied authority, entitled to cancel such licence/permits, not only for the fraud or the misrepresentation made to secure to such licence, but also for violation of the terms and conditions of such licence and any other applicable law, as any licence granted by an authority cannot be used to violate any law of the land and there cannot be any estoppel against law,

(xvii) the State Pollution Control Board shall direct industries and relevant authorities to prioritize the reuse and recycling of waste generated, and work towards the development of sustainable solutions.

(xviii) the State Pollution Control Board shall publish real-time water quality data on an open-access platform to ensure transparency.

(xix) the State/Pollution Control Board shall order the construction and operationalisation of adequate Sewage Treatment Plants (STPs) in urban and peri-urban areas to address wastewater management.

(xx) the State/ Pollution Control Board shall issue appropriate directions to ensure that all workers are provided with protective gear and that adequate emergency protocols are in place to prevent untoward incidents and the provisions of the Factories Act and other

labour laws, including coverage of health and life insurance schemes, are followed in strict compliance,

(xxi) the State shall direct that every industry/tanner is to conduct annual health checkups for workers to detect potential risks of cancer and other severe diseases and ensure that prompt medical assistance should be provided, ensuring that workers are not left to fend for themselves.

(xxii) The CLRI, MoEF etc., shall invest more resources in training and promoting their eco-friendly technologies to ensure their wide adoption by the industries. The State shall ensure that the industries adopt and follow technologies, suggest by CLRI, MoEF and other relevant authorities to ensure strict compliance with the norms and to ensure ZLD and meet the prescribed standards,

(xxiii) The authority concerned shall direct the Bureau of Indian Standards and relevant industries to explore the possibility of an ethical and sustainability mark/tag, enabling consumers to make informed choices.

(xxiv) The State government shall ensure the implementation of the ban on illegal sand mining and establish a monitoring committee to oversee sand mining operations, utilizing real-time surveillance mechanisms such as drones and GPS, implement stringent action against offenders, including the perpetual seizure of equipment and vehicles involved in illegal mining activities.

(xxv) The State shall form a state-level committee comprising representatives from the Central Pollution Control Board (CPCB), the State Pollution Control Board (SPCB), and the Secretary of Home. This committee should be responsible for presenting an annual compliance report to the concerned High Court or National Green Tribunal (NGT). The CPCB must ensure and render complete co-operation,

(xxvi) The primary task of enforcement lies with the State Pollution Control Boards and concerned District Magistrates. Hence, the State government shall set up a District Level Committee. Any complaint to the District Level Committee headed by the District Magistrate and comprising of SPCB officials must be addressed within 30 days, if there is delay, grounds be conveyed to the complainant. Any complaints against the action which includes inaction shall lie before the State Level Committee and if still the issue is not resolved, NGT may be approached.

(xxvii) the State shall promote schemes/programmes and seminars to promote, encourage, and raise awareness regarding an ecosystem-based approach to water management, co-ordinate with concerned bodies to rehabilitate wetlands, protect riparian zones, and enhance the overall ecological health of water bodies.

(xxviii) The Central and State Governments shall take adequate measures and allocate funds to maintain a clean and healthy environment.

116. With the aforesaid observations and directions,

(a) the order passed by the High Court in WP Nos.8335 of 2008 and 19017 of 2009 stands modified and the appeals filed by the Vellore District Environment Monitoring Committee stands disposed of; and

(b) the order passed by the High Court in WP No. 22683 of 2009, thereby confirming the award dated 24.08.2009 passed by the LoEA, is upheld and the appeal filed by the AISHTMA is dismissed.

117. There is no order as to costs. Connected miscellaneous application(s), if any, shall stand disposed of.

118. Post the matters after four months “for reporting compliance”.

.....J.
[J.B. Pardiwala]

.....J.
[R. Mahadevan]

NEW DELHI
JANUARY 30, 2025.

अपडेट **दैनिक धारा न्यूज**
दिल्ली, लखनऊ, मेरठ व हरिद्वार से प्रकाशित

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संचालक: अनुज पंवार 8860862295, 7819062295

डूंगर चर्म शोधन कारखाने पर एनजीटी की सख्ती के बाद जागा प्रशासन

धारा न्यूज संवाददाता, सरधना

रोहता ब्लॉक के गांव डूंगर में दशकों से संचालित चर्म शोधन कारखाने से फैलने वाले प्रदूषण और एनजीटी के बंद करने के आदेश के बाद सोमवार को जिला प्रशासन हरकत में नजर आया। मुख्य विकास अधिकारी नूपुर गोयल ने प्रदूषण नियंत्रण बोर्ड के जिला प्रभारी राजेंद्र प्रसाद और प्रशासनिक अमले के साथ कारखाने का औचक निरीक्षण किया। निरीक्षण के दौरान कारखाने से निकल रही गंदगी और प्रदूषण की स्थिति देखकर अधिकारी दंग रह गए। सीडीओ ने तत्काल संज्ञान लेते हुए प्रदूषण विभाग को समस्या के स्थायी समाधान के लिए प्लांट लगाने का प्रपोजल तैयार करने की सख्त हिदायत दी।

बता दें कि इस कारखाने में गांव के करीब 120 परिवार चमड़ा रंगने का कार्य करते हैं। 24 वर्ष पूर्व केंद्र व प्रदेश सरकार के सहयोग से 4 करोड़ की लागत से इसका उच्चीकरण किया गया था, लेकिन उस समय एसटीपी प्लांट

सीडीओ ने दिए सीईपीटी प्लांट का प्रपोजल भेजने के निर्देश



लगाने के बजाय जहरीले पानी की निकासी के लिए नाला बनाकर पड़ोसी गांव पुठ खास और आजमपुर के जंगलों में डाल दिया गया था। जल निकासी न होने के कारण आजमपुर के ग्रामीण दशकों से दुर्गंध और गंदगी के बीच जीवन जीने को मजबूर हैं। प्रदूषण विभाग में सुनवाई न होने पर ग्रामीणों ने एनजीटी का दरवाजा खटखटाया था, जहां जांच में पानी के सैंपल घातक पाए जाने पर एनजीटी ने जनहित में

कारखाने को तत्काल बंद करने के आदेश जारी किए थे।

मुख्य विकास अधिकारी नूपुर गोयल ने निरीक्षण के दौरान प्रदूषण विभाग को गंदे पानी को ट्रीट करने के लिए कॉमन एफ्लुएंट ट्रीटमेंट प्लांट का स्टीमेंट तैयार कर शासन को भेजने के निर्देश दिए। उन्होंने स्पष्ट किया कि प्लांट लगने से कारखाना प्रदूषण मुक्त हो जाएगा और 120 परिवारों के सामने खड़ा बेरोजगारी का संकट भी टल

जाएगा। सीडीओ ने कारखाने में काम करने वाले लोगों को भी मानकों के पालन और साफ-सफाई की सख्त हिदायत दी। इस मौके पर डीपीआरओ वीरेंद्र यादव और पर्यावरण समिति के जिला सलाहकार मांगेराम शर्मा भी मौजूद रहे। मांगेराम शर्मा ने कहा कि सीईपीटी की स्थापना से ग्रामीणों को रोजगार मिलता रहेगा और पड़ोसी गांवों को प्रदूषण से भी मुक्ति मिल जाएगी।

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03-02-2026

डूंगर में सीईपीटी प्लांट से चर्म शोधन कारखाने को बनाया जाएगा प्रदूषण मुक्त

एनजीटी आदेश के बाद अधिकारियों ने किया चर्म शोधन कारखाने का निरीक्षण

संवाद न्यूज एजेंसी

रोहता। डूंगर गांव में दशकों से संचालित चर्म शोधन कारखाने से फैलने वाले प्रदूषण के चलते एनजीटी द्वारा तत्काल बंद करने के दिए आदेश के बाद जिला प्रशासन ने मामले में संज्ञान लिया है। सोमवार को दोपहर मुख्य विकास अधिकारी नूपुर गोयल और प्रदूषण नियंत्रण बोर्ड के जिला प्रभारी राजेंद्र प्रसाद पूरे मामले के साथ गांव डूंगर में पहुंचे। यहाँ कारखाने से फैल रहे प्रदूषण को देख अधिकारी दंग रह गए।

रोहता ब्लॉक क्षेत्र के डूंगर गांव में दशकों से चर्म शोधन कारखाना संचालित है जिसमें गांव के 120 परिवार चमड़ा रंगने का कार्य करते हैं। यह कारखाना 24 वर्ष पूर्व केंद्र व प्रदेश सरकार के सहयोग से 4 करोड़ रुपये की लागत से उच्चोत्तरण कर संचालित किया गया था। उस समय ग्रामीण अभियंत्रण सेवा विभाग ने अपने प्रस्ताव में एसटीपी प्लांट लगाने के बजाय कारखाने से निकलने वाले जहरीले पानी को एक नाले का निर्माण कर कारखाना से निकासी कर पड़ोसी गांव पृथक्स की ओर आजमपुर के जंगल में डाल दिया था। गांव आजमपुर में पानी की निकासी रुक जाने से गांव आजमपुर में दुर्गंध और गंदगी भरा जीवन जीने के लिए ग्रामीण विवश हैं।

प्रदूषण से परेशान ग्रामीण कई साल से प्रदूषण विभाग को शिकायत करते आ रहे



डूंगर में चर्म शोधन कारखाने से निकलने वाले प्रदूषण का जायजा लेती अधिकारियों की टीम। संवाद

हैं। ग्रामीणों ने गत वर्ष एनजीटी का दरवाजा खटखटाया। एनजीटी की टीम कारखाने से सैपल लिए। सैपल में घातक प्रदूषण फैलाने वाले तत्व मिले। एनजीटी ने प्रशासन और प्रदूषण विभाग को तत्काल कारखाना बंद करने के आदेश दिए। कई बार प्रदूषण विभाग ने नोटिस देकर कारखाने को बंद कराने का प्रयास किया। सोमवार को मुख्य विकास अधिकारी नूपुर गोयल, डीपीआरओ वीरेंद्र यादव प्रदूषण विभाग की टीम के साथ गांव में पहुंचे और कारखाने का जायजा लिया। इसमें मुख्य विकास अधिकारी ने प्रदूषण विभाग को समस्या के समाधान का विकल्प तलाश करने की हिदायत दी। प्रदूषण अधिकारी राजेंद्र प्रसाद को गंदे पानी को ट्रीट करने के लिए सीईपीटी प्लांट लगाने का प्रस्ताव तैयार कर शासन को भेजने के निर्देश दिए। कारखाने में काम कर रहे कर्मचारियों को सीडीओ ने साफ सफाई और मानक के अनुसार ही कार्य करने की हिदायत दी।

“डूंगर चर्म शोधन कारखाने से निकलने वाले गंदे पानी को ट्रीट करने के लिए सीईपीटी प्लांट लगाने के लिए प्रस्ताव तैयार कर शासन को भेजा जाएगा। प्लांट लगने से कारखाना प्रदूषण मुक्त हो जाएगा। स्टीमेट तैयार करने के लिए विभाग को निर्देश दिए गए हैं।
-नूपुर गोयल, सीडीओ

“सीईपीटी प्लांट की स्थापना से कारखाना प्रदूषण मुक्त हो जाएगा। जिससे ग्रामीणों को रोजगार भी मिलता रहेगा और पड़ोसी ग्रामीणों को प्रदूषण से भी मुक्ति मिल जाएगी। -मांगेराम शर्मा, जिला सलाहकार, पर्यावरण समिति

Drawn

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Meerut dehat

03-02-2026

डूंगर में सीईपीटी प्लांट से चर्म शोधन कारखाने को बनाया जाएगा प्रदूषण मुक्त

एनजीटी आदेश के बाद अधिकारियों ने किया चर्म शोधन कारखाने का निरीक्षण

संवाद न्यूज एजेंसी

रोहता। डूंगर गांव में दशकों से संचालित चर्म शोधन कारखाने से फैलने वाले प्रदूषण के चलते एनजीटी द्वारा तत्काल बंद करने के दिए आदेश के बाद जिला प्रशासन ने मामले में संज्ञान लिया है। सोमवार को दोपहर मुख्य विकास अधिकारी नूपुर गोयल और प्रदूषण नियंत्रण बोर्ड के जिला प्रभारी राजेंद्र प्रसाद पुरे अमले के साथ गांव डूंगर में पहुंचे। यहाँ कारखाने से फैल रहे प्रदूषण को देख अधिकारी दंग रह गए।

रोहता ब्लॉक क्षेत्र के डूंगर गांव में दशकों से चर्म शोधन कारखाना संचालित है जिसमें गांव के 120 परिवार चमड़ा रंगने का कार्य करते हैं। यह कारखाना 24 वर्ष पूर्व केंद्र व प्रदेश सरकार के सहयोग से 4 करोड़ रुपये की लागत से उच्चोत्तरण कर संचालित किया गया था। उस समय ग्रामीण अभियंत्रण सेवा विभाग ने अपने प्रस्ताव में एसटीपी प्लांट लगाने के बजाय कारखाने से निकलने वाले जहरीले पानी को एक नाले का निर्माण कर कारखाना से निकासी कर पड़ोसी गांव पृथक्स की ओर आजमपुर के जंगल में डाल दिया था। गांव आजमपुर में पानी की निकासी रुक जाने से गांव आजमपुर में दुर्गंध और गंदगी भरा जीवन जीने के लिए ग्रामीण विवश हैं।

प्रदूषण से परेशान ग्रामीण कई साल से प्रदूषण विभाग को शिकायत करते आ रहे



डूंगर में चर्म शोधन कारखाने से निकलने वाले प्रदूषण का जायजा लेती अधिकारियों की टीम। संवाद

हैं। ग्रामीणों ने गत वर्ष एनजीटी का दरवाजा खटखटाया। एनजीटी की टीम कारखाने से सैपल लिए। सैपल में घातक प्रदूषण फैलाने वाले तत्व मिले। एनजीटी ने प्रशासन और प्रदूषण विभाग को तत्काल कारखाना बंद करने के आदेश दिए। कई बार प्रदूषण विभाग ने नोटिस देकर कारखाने को बंद कराने का प्रयास किया। सोमवार को मुख्य विकास अधिकारी नूपुर गोयल, डीपीआरओ वीरेंद्र यादव प्रदूषण विभाग की टीम के साथ गांव में पहुंचे और कारखाने का जायजा लिया। इसमें मुख्य विकास अधिकारी ने प्रदूषण विभाग को समस्या के समाधान का विकल्प तलाश करने की हिदायत दी। प्रदूषण अधिकारी राजेंद्र प्रसाद को गंदे पानी को ट्रीट करने के लिए सीईपीटी प्लांट लगाने का प्रस्ताव तैयार कर शासन को भेजने के निर्देश दिए। कारखाने में काम कर रहे कर्मचारियों को सीडीओ ने साफ सफाई और मानक के अनुसार ही कार्य करने की हिदायत दी।

“डूंगर चर्म शोधन कारखाने से निकलने वाले गंदे पानी को ट्रीट करने के लिए सीईपीटी प्लांट लगाने के लिए प्रस्ताव तैयार कर शासन को भेजा जाएगा। प्लांट लगने से कारखाना प्रदूषण मुक्त हो जाएगा। स्टीमेट तैयार करने के लिए विभाग को निर्देश दिए गए हैं।
-नूपुर गोयल, सीडीओ

“सीईपीटी प्लांट की स्थापना से कारखाना प्रदूषण मुक्त हो जाएगा। जिससे ग्रामीणों को रोजगार भी मिलता रहेगा और पड़ोसी ग्रामीणों को प्रदूषण से भी मुक्ति मिल जाएगी। -मांगेराम शर्मा, जिला सलाहकार, पर्यावरण समिति

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VAKALATNAMA

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION (O.A.) NO. 414 OF 2025

IN THE MATTER OF:

Suraj Bali

...Applicant

VERSUS

State of Uttar Pradesh & Ors.

...Respondent(s)

KNOW ALL to whom these presents shall come that I, **Suraj Bali**, the above-named Applicant, do hereby appoint **Mr. Tarun Cummra, Advocate, Enrolment No. D/13653/2022 & Mr. Ranjit Kumar, Advocate, Enrolment No. D/7603/2023** (hereinafter called "*the Advocate*"), to be my Advocate in the above noted cause and authorize him:

1. To act, appear, and plead in the above noted cause in this Hon'ble Tribunal at an approved fee of the Board.
2. To sign, file and present pleadings, applications, appeals, cross objections, rejoinders, revisions, restorations, withdrawals, compromises, replies, objections, affidavits, or any other documents as may be deemed necessary or proper for the prosecution of the said cause at all stages.
3. To file and take back documents, to withdraw or compromise the said cause, or submit to arbitration any difference or disputes that may arise touching or relating to the said cause.
4. To take out execution proceedings; to deposit, draw and receive money; to grant receipts therefor, and to do all other acts and things which may be necessary in the progress and prosecution of the said cause.
5. To appoint and instruct any other legal practitioner and authorize him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so.



And I, the undersigned, do hereby absolutely bind myself and confirm that all acts, deeds, and steps taken by the Advocate or his substitute in the above cause shall be as valid and binding on me as if they were my own acts and deeds, and they shall in all ways be absolutely binding on me.

IN WITNESS WHEREOF, I do hereunto set my hand to these presents, the contents of which have been understood by me, on this ____ day of _____, 2025.

ADVOCATE

Tarun Cummra
Tarun Cummra,
Advocate
Enrolment No. D/13653/2022
C-143, Lajpat Nagar-II,
New Delhi – 110024

Ranjit Kumar
Ranjit Kumar
Advocate
D/7603/2023

CLIENT

Suraj Bali
Suraj Bali

