

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE BENCH, PUNE)**

APPEAL No. 3 OF 2020 (WZ)

APPEAL No. 4 OF 2020 (WZ)

APPEAL No. 5 OF 2020 (WZ)

APPEAL No. 6 OF 2020 (WZ)

APPEAL No. 7 OF 2020 (WZ)

**COMMON WRITTEN SUBMISSIONS ON BEHALF OF STATE  
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY-  
RESPONDENT NO. 3**

1. In the case of *Mohammed Haroon Ansari and another Vs. District Collector, Ranga Reddy District, A.P.*, reported in (2004) 1 SCC 491, the Supreme Court of India was concerned with pollution caused by blasting and crushing of granite for concrete metal in some areas of State of Andhra Pradesh. Such activity caused a lot of fine silica granite dust to enter the atmosphere, adversely affecting the health of the nearby residents. The Court, in paragraph 8 of the judgment, held as under:

“8. We may, at once, notice that the High Court was persuaded by public interest involved in the matter in initiating proceedings on the basis of a letter sent to it. The anxiety of the High Court was further exhibited by its concern in the matter in constituting an Expert Committee and although that Expert Committee stated that a distance of 1 km is a safe distance between the site under quarry lease and the residential locality or GLSR, but in order to be safer than what the Expert Committee observed, the High Court increased the distance by another 1 km. Particularly when the assessment made by the Centre of Mining Environment, Indian School of Mines, Dhanbad, concluded that there is no impact by the quarry operations carried on by the appellants before us on GLSR or Osmansagar lake or nearby residential locality, it is unnecessary to impose condition that the distance of 1 km for carrying out the quarry activities should be converted to 2 km. The affidavit of the Pollution Control Board indicates that if proper safeguards are adopted as

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indicated in the said affidavit, it will not cause any air, water or noise pollution, much less dust particles which affect the water supply system in GLSR or Osmansagar lake. We, therefore, direct that the order made by the High Court is modified by directing that the distance of 1 km is a safe distance between the site of the quarry leases and the residential localities or GLSR or Osmansagar lake. The guidelines issued by the Andhra Pradesh Pollution Control Board specified 1 km to be a safe distance between crusher and human habitation from 17-1-1997. Prior to that it was only 500 metres away from the national highway and 100 metres away from the State highway, major district roads and other roads. **That is why this Court granted an interim order earlier and directed that no mining and stone-crushing operations shall be carried on within a distance of 1 km from the lake or reservoir and 500 metres from human habitations.** This order will hold good in respect of all such mining leases which have been granted prior to 17-12-1996. It is not necessary to advert to any other details or arguments raised in the petitions filed before the High Court or in appeals before this Court. **Suffice it to observe that the impugned order of the High Court shall stand modified only to the extent indicated by us and all other terms set out by the High Court in regard to the safeguards to be adopted in maintenance of the environment shall remain intact. Further, it is certainly necessary that the appellants before carrying on any of the mining and stone-crushing activities obtain necessary clearance from the Pollution Control Board and must comply with such conditions as may be imposed by the Pollution Control Board.** It is open to the Pollution Control Board to take such action as may be necessary to enforce the conditions imposed by them under the relevant statutes."

As can be seen from a plain reading of the order of the Supreme Court, the direction issued by the Supreme Court in the proceeding was generic and not restricted just to stone crushing operations. It concerned all mining operations. It clearly mandated that "no mining" shall be carried out within 500 meters of human habitation.

In the case of *Yakubhai Sharifbhai Aagodiya v. Collector and District Magistrate*, Writ Petition (PIL) No. 70 of 2011, the High Court of Gujarat was dealing with the issue of environment pollution caused by stone crushing (quarry) units. The High Court heard all the parties, including the Geology Department of the State Government and Gujarat Pollution Control Board, and considered the provisions of the Gujarat Minor Minerals Rules, 1966 (as replaced by the Rules of 2010) on the aspect of prescription of minimum distance of stone crushing units from residential area. The Rules of 1966 and 2010 prescribed minimum distance of 200 meters. The High Court in paragraph 10 of the judgment observed as under:

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"..... We may only say at this stage that the Rules, 1966 are now replaced by the Rules, 2010. Even while enacting the Rules, 2010, it appears that the State Government has overlooked the decision of the Supreme Court in the case of *Mohammed Haroon (supra)* so far as the distance part is concerned".

Again in paragraph 11, the High Court has observed as under:

"However, what is important once again is the distance at which the unit is being operated from the residential locality. It is an undisputed fact that the distance between the unit and the residential locality of the petitioners is about 645 metres i.e. for sure, less than 1 km. **We are not able to understand as to why the Gujarat Pollution Control Board has ignored this aspect while granting consent, more particularly, when there is a decision of the Supreme Court in the case of Mohammed Haroon (supra) that a safe distance between a crushing unit and residential locality should be 1 km.. The judgment of the Supreme Court would be the law of the land within Article 141 of the Constitution of India and the Gujarat Pollution Control Board could not have overlooked the judgment and granted necessary consent or permission to start the unit.**"

The Gujarat Pollution Control Board, in terms of the directive issued by the High Court, has published guidelines prescribing 1 kilometer distance from residential area for stone crushing units, in sync with the directive issued by the Supreme Court of India.

Considering the general directions issued by the Supreme Court, the observations made by the High Court and the guidelines issued by the Gujarat Pollution Control Board of prescribing 1 kilometer distance criteria for stone crushing units, **the State Environment Impact Assessment Authority has taken a decision to grant Environment Clearances to sand mining leases which are beyond 500m from human habitation in line with the directive of the Supreme Court. This practice has been and is being followed, without exception, by the Authority while granting approvals and clearances for sand mining leases since the year 2015.**

2. There is no denial of the fact that the Sustainable Sand Management Guidelines 2016 and 2020 are silent on the minimum distance of the mining area from human habitation. The Gujarat Minor Mineral Rules make a vague reference to the distance criteria. However, as observed by the High Court the Rules of 2010

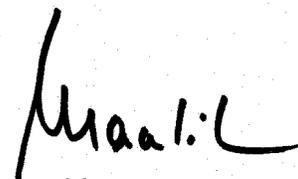
are not in consonance with the directions issued by the Supreme Court of India. Under the circumstances, keeping in mind the direction issued by the Supreme Court of India that "no mining" shall be carried out within 500 meters of human habitation and the observations of the High Court of Gujarat, the Authority has been uniformly adopting the criteria of 500 meters distance from human habitation while considering the projects of sand mining for grant of clearance.

3. The State Government or State Authorities do not possess power in law to relax the criteria or conditions prescribed by the Central Government or the Central Authority (Central Pollution Control Board). The Central Pollution Control Board has suggested minimum distance of 200 meters from human habitation. Therefore, the State Authority cannot under any circumstances grant permission or clearance for sand mining operation in an area which is less than 200 meters from human habitation. However, the State Authority is not precluded from prescribing a more stringent criteria, that is say, adopt a standard which is stricter than the one advised by the Central Authority. **In the present case, the State Authority has chosen to adopt the distance criteria prescribed by the Supreme Court of India of minimum distance of 500 meters.**
4. There cannot be quarrel that sand mining does cause air pollution. Several orders have been passed by this Hon'ble Tribunal and the Constitutional Courts upholding the powers of the authorities to regulate the sand mining operations, considering that they are a source of environment pollution. The State Authority has chosen to adopt the criteria of minimum distance as prescribed by the Supreme Court of India. Such policy decision of the State Authority cannot be faulted, either in fact or in law.
5. The submission of appellants that different standards are being adopted by the State Authority (Respondent No. 3) on the issue of adherence to minimum distance from human habitation is incorrect and denied. **It is declared that the Authority, since the year 2015, has consistently maintained that it shall not grant Environment Clearance to any sand mining project which is within**



**distance of 500 meters from human habitation.** There may have been cases, like the present one, where permissions have been granted on basis of incorrect or incomplete information, to units operating within 500 meters of human habitation. On becoming aware of the correct facts, appropriate corrective actions have been and are being taken by the Authority.

For all the reasons, the appeals deserve to be dismissed. It would be open for the appellants to approach the Authority for obtaining permission to mine from such leased area which is beyond 500 meters from residential area, and the Authority assures to consider such request of the appellants in accordance with law.



Maulik Nanavati  
Advocate for Respondent No. 3

1.10.2020

Encl:

1. (2004) 1 SCC 491
2. Judgment dated 12.03.2012 passed in Writ Petition (PIL) No. 70 of 2011

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(*Rajendra Babu, J.*)

(2004) 1 Supreme Court Cases 491

- a (BEFORE S. RAJENDRA BABU AND G.P. MATHUR, JJ.)  
MOHD. HAROON ANSARI AND ANOTHER .. Appellants;  
*Versus*  
DISTRICT COLLECTOR, RANGAREDDY  
DISTRICT, A.P. AND OTHERS .. Respondents.
- b Civil Appeals Nos. 1907-08 of 2000<sup>†</sup> with Nos. 1909-14 of 2000,  
decided on December 12, 2003

- c **Constitution of India — Arts. 21 and 226 & 136 — Ecology — Blasting and crushing of granite — PIL before High Court alleging that the operations affected nearby localities, reservoir and lake — Report of Asstt. Director, Mines & Geology revealing that the quarries and crushers are at a distance of 2 km from the village and 20 km from Hyderabad, that ground-level water reservoir which supplies water to Hyderabad is located at a distance of 1 km from the stone quarry and that the lake is at a distance of 3 km from the quarries and crushers — Expert Committee constituted by High Court in its report stating that 1 km is a safe distance between the site under the quarry lease and the residential locality or GLSR — But in order to be safer than what the Expert Committee observed, High Court increasing the distance by another 1 km — However, assessment made by Centre of Mining Environment, Indian School of Mines, Dhanbad, submitting its report pursuant to order of Supreme Court, concluding that there is no impact by quarry operations on GLSR or lake or nearby residential locality — Pollution Control Board in its affidavit indicating that if proper safeguards are adopted it will not cause any air, water or noise pollution, much less dust particles which affect the water supply system in GLSR or lake — Accordingly the order made by High Court modified by Supreme Court by directing that the distance of 1 km is a safe distance between the site of the quarry leases and the residential localities or GLSR or the lake**

R-M/Z/29433/C

- f Advocates who appeared in this case :  
K.N. Raval, Solicitor General (*Amicus Curiae*) and R. Mohan, Senior Advocate (P. Niroop, R. Chandrashekhara Reddy, Pavan Kumar, Hari Shankar K., A.T.M. Sampath, V. Balaji, G. Ramakrishna Prasad, Md. Wasay Khan, K.C. Sudarshan, D. Mahesh Babu, Nikhil Nayyar, Ms Urmila Sirur, T.V. Ratnam, K. Subba Rao, Anil Tandale and Guntur Prabhakar, Advocates, with them) for the appearing parties.

The Judgment of the Court was delivered by

- g **RAJENDRA BABU, J.**— On the basis of a letter sent to the Chief Justice of the High Court of Andhra Pradesh, a petition in the nature of public interest litigation was entertained to direct the respondents to take action against the illegal blasting and crushing of granite for concrete metal in the areas of Goldodi, Nanakramguda, hills of Khanapur and Kokapet in Rangareddy district as a result of which a lot of fine granite silica dust is

- h <sup>†</sup> From the Judgment and Order dated 17-10-1997 of the Andhra Pradesh High Court in WP No. 7326 of 1997 and Order dated 2-12-1997 in WPMP No. 33976 of 1997

entering into the atmosphere which causes a disease called “silicosis” to the residents nearby. Two writ petitions were filed by the appellants in Civil Appeals Nos. 1907-08 of 2000 calling for records of proceedings before the Assistant Director of Mines and Geology, Hyderabad in respect of grant of lease over an extent of 5 acres in Survey No. 239 of Kokapet village, Rangareddy district, for quashing the same and for granting appropriate consequential reliefs. Similarly, certain other persons also filed writ petitions challenging the action of the Government in stopping the mining operations in different areas of Kokapet village.

2. The High Court called for a report from the Assistant Director of Mines and Geology. The said report revealed that there are four quarry leases and three stone-crushers in Kokapet village, Rajendranagar mandal; that the quarries and crushers are at a distance of 2 km to the south of Kokapet village and 20 km from Hyderabad; that the ground-level water reservoir of Hyderabad Metropolitan Water Works and Sewerage Board, which supplies water to the city of Hyderabad is located at a distance of 1 km from the stone quarry; that Osmansagar lake is also located about 3 km south-west of these quarries and crushers. After receipt of the report of the Assistant Director of Mines and Geology, the High Court impleaded seventeen stone industries and also directed issuance of notice to the Government of Andhra Pradesh to appoint a Committee of Experts to examine whether quarrying, crushing and blasting activities are close to Osmansagar lake and whether the ground-level water reservoir of Hyderabad Metropolitan Water Works and Sewerage Board is endangered by such operations and submit a report of the said Committee to the High Court.

3. A Committee, consisting of Shri T. Chatterjee, Member Secretary, A.P. Pollution Control Board, Shri K.P. Chandrasekhar Rao, Director (Technical), Hyderabad Metropolitan Water Works and Sewerage Board, Shri K.V. Rao, Shri T.V. Chowdary, Director of Mines and Geology, Hyderabad and Shri P. Babu Rao, Director, Groundwater Department, submitted its report on 4-8-1997. Conclusions and recommendations of the Committee are as under:

“(1) As a result of blasting in the quarries, within a radius of 1 km the shock waves which are generated, pass through the joints — especially the horizontal joints and create vibrations in the nearby areas. The reservoir which is close by is also within the range of its impact. Higher than present intensities of blasting will definitely cause damage to the reservoir structure. Thus, blasting and quarrying within a range of 1 km, already prohibited, must not be permitted.

(2) To prevent unauthorised quarrying, it is suggested that the approach road must be closed after the gateway of GLSR and all activities of unauthorised quarrying must be stopped forthwith. Security staff can be contracted for the purpose by the GLSR authorities.

(3) The authorised quarry and crusher company will lose approach and can be permitted to build another approach to their facilities from the eastern side.

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(*Rajendra Babu, J.*)

a (4) The quarries on the northern flanks of the hill range at a distance of 1 km from the reservoir will not have any impact on the reservoir because of the joint patterns/systems in the areas. GLSR is on one side of the dispersion point, the authorised quarries are on the other side of it. However, as a precautionary measure, the intensity of blasting must be kept at the minimum by fixing the limit of number of holes, depth of holes and quantity of explosive per blasting.

b (5) There is no impact on Osmansagar lake due to blasting beyond 1 km radius.”

4. However, the High Court, after noticing various aspects attributed to in the report, held as follows:

c “The distance of 1 kilometre, according to the Expert Committee is a safe distance between the site under quarry lease and the residential locality or GLSR. In fact, the distance between them is not only to be safe, but it should be safer. As the residents of the village situated nearby are experiencing tremors as well as dust pollution, it is always better that no quarry lease should be granted within a distance of 2 kilometres in future. Therefore, Respondents 7 to 23 cannot operate quarry leases and stone-crushers. It is, however, open to them to apply for areas for quarry lease beyond 2 kilometres from residential areas and GLSR.”

d 5. On the basis of this conclusion, the High Court set aside the leases granted in favour of seventeen respondents, including the appellants in these appeals before us. The order of the High Court is in challenge in these appeals.

e 6. When the matter came up before this Court, by an order made on 17-2-1998, this Court stayed the order of the High Court insofar as the appellants before this Court are concerned, and restrained the appellants from carrying on any mining and stone-crushing operations within a distance of 1 kilometre from the lake or service reservoir and 500 metres from human habitation. Subsequently, this Court granted leave in all these matters and by an order made on 4-3-2003, asked the parties to get a report from a competent institution or organisation which has experience in the field to make a proper assessment as to the impact on GLSR in relation to the activities carried on by the stone-crushers and quarries and file a report. The said report has been made by the Centre of Mining Environment, Indian School of Mines, Dhanbad making an assessment of the impacts of stone quarries and stone-crushers on the ground-level service reservoir on the banks of Osmansagar lake on the outskirts of Hyderabad city. The said Committee consisted of Prof. N.C. Saxena, Professor and Dean who was a Mining Engineer and mining environment expert having over 35 years’ experience, Prof. Gurdeep Singh, Head, Centre of Mining Environment who was an expert on environmental pollution having over 20 years’ experience, Dr (Mrs) Rekha Ghosh, Asstt. Prof. who was an Environmental Geologist and Hydrogeologist having over 35 years’ experience and Dr A.K. Pal, Asstt. Prof. who was an expert on environmental pollution having 20 years’ experience. The

Committee, after studying the area, nature of mining activities, change in land-use, topography, ground vibrations due to blasting, air-quality assessment, water-quality assessment, noise-quality assessment, concluded as follows: a

*“Impacts on ground-level service reservoir (GLSR)”*

- As seen in Fig. 1a, GLSR lies on the opposite flank of the hill with respect to the sites of the quarries of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries at an aerial distance of about 1.2 km. b

- The blast-vibration studies at the site of GLSR indicated that the level of the vibrations for the nature of blasting done at the quarries was such that it was below the lowest-detectable limit of the instrument (0.51 mm/sec) and hence below the permissible limit (10 mm/sec for dominant frequency >25 Hz) for the objects of historic importance and sensitive structures. Therefore, GLSR is not likely to be affected by blasting at the quarries of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries. c

- It is observed from the wind-rose diagram in Fig. 8 that the predominant wind direction in the area was from the side of GLSR towards the quarries and crusher sites of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries. The concentrations of SPM, RPM, NO<sub>x</sub> and SO<sub>2</sub> in the air were well within the permissible limits of 200 µg/m<sup>3</sup>, 100 µg/m<sup>3</sup>, 80 µg/m<sup>3</sup> and 80 µg/m<sup>3</sup> respectively for residential areas. The concentration of PBS in the ambient air was below the detectable limit of <0.6 mg/m<sup>3</sup>. Hence, the activities at the quarries and the stone-crushers were not causing any air pollution at the site of GLSR. d e

- The drainage/watershed (Fig. 2) study indicates that GLSR and the quarries and stone-crushers of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries lie in two different watersheds. Hence, the run-off from the quarries and stone-crushers cannot reach the site of GLSR. Thus, there is no question of water at GLSR getting polluted due to the activities at these quarries and crushers. f

*Impacts on Osmansagar lake*

- As seen in Fig. 1a, Osmansagar lake lies on the opposite side of the hill from the sites of the quarries and stone-crushers of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries at a distance of about 1.5 km. The dam of the lake is at a distance of about 4 km from the quarries. Also the lake lies in a different area/watershed as is evident from the drainage map of the area shown in Fig. 2. Hence, the run-off from the quarries and stone-crushers cannot reach the lake and pollute the water in the lake. g

- The water-quality studies for the lake water (Samples W-7 and W-8) indicate that the quality of the water available in the lake was conforming to the potable water standards (IS 10.500). h

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(*Rajendra Babu, J.*)

a • The ground vibrations due to blasting at the quarries of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries would not reach the dam site of the lake as its distance was about 4 km from the mines and the vibration observations at GLSR at a distance of about 1.2 km indicates that the level of the vibrations was below the measuring limit of the instrument.

b • In view of the above discussions Osmansagar lake is not likely to be affected in any manner due to mining and stone-crushing activities of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries.

*Impacts on Kokapet village*

c • Kokapet village lies at a distance of about 2 km from the site of the quarries and stone-crushers of M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries. The mining and stone-crushing operations of these industries would not affect the village in any manner because of the following reasons:

d • The village being at a distance of about 2 km would not receive the blast vibrations to affect any building or structure because the level of the vibrations at a distance of 1.2 km at the site of GLSR was below the detectable limit of the instrument.

e • The ambient air quality at the village was good as the concentrations of SPM, RPM, NO<sub>x</sub>, SO<sub>2</sub> and Pb in the ambient air were well below the permissible limits for the residential areas (24-hour average). Hence, the quarrying and stone-crushing activities at M/s Saleem Metal Industries, M/s Sulfi Metal Industries and M/s Al-Hira Metal Industries were not causing any air pollution problem at the village.

f • The village would also not receive any run-off from the site of the quarries and the stone-crushers because even if being in the same drainage system the run-off will be arrested in the water impoundment before the village.”

g 7. We called upon the Pollution Control Board to respond to the report submitted by the Centre of Mining Environment, Dhanbad, but the Pollution Control Board has not contradicted what has been stated in the said report. On the other hand, it was averred by them that: (a) RPM, SPM, NO<sub>x</sub> and SO<sub>2</sub> are within the ambient air-quality standards prescribed for residential zones, (b) noise levels are also within the permissible limits at some crushers, (c) the run-off from the stone-crushers reaches the downstream of Osmansagar lake, that is, Musi river as seen from the drainage map. The Pollution Control Board further stated in their affidavit that:

h “The impact studies done by the Indian School of Mines, Dhanbad concluded that there will not be any adverse impacts on GLSR or Osmansagar lake due to the mining and stone-crushing activities of the three crushers which are located about 1.2 km away from GLSR. From



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this observation, it can also be concluded that there will not be any impact on GLSR or lake from any other existing crushers as they are further away from these three crushers on which studies are made by ISM.” a

8. We may, at once, notice that the High Court was persuaded by public interest involved in the matter in initiating proceedings on the basis of a letter sent to it. The anxiety of the High Court was further exhibited by its concern in the matter in constituting an Expert Committee and although that Expert Committee stated that a distance of 1 km is a safe distance between the site under quarry lease and the residential locality or GLSR, but in order to be safer than what the Expert Committee observed, the High Court increased the distance by another 1 km. Particularly when the assessment made by the Centre of Mining Environment, Indian School of Mines, Dhanbad, concluded that there is no impact by the quarry operations carried on by the appellants before us on GLSR or Osmansagar lake or nearby residential locality, it is unnecessary to impose condition that the distance of 1 km for carrying out the quarry activities should be converted to 2 km. The affidavit of the Pollution Control Board indicates that if proper safeguards are adopted as indicated in the said affidavit, it will not cause any air, water or noise pollution, much less dust particles which affect the water supply system in GLSR or Osmansagar lake. We, therefore, direct that the order made by the High Court is modified by directing that the distance of 1 km is a safe distance between the site of the quarry leases and the residential localities or GLSR or Osmansagar lake. The guidelines issued by the Andhra Pradesh Pollution Control Board specified 1 km to be a safe distance between crusher and human habitation from 17-1-1997. Prior to that it was only 500 metres away from the national highway and 100 metres away from the State highway, major district roads and other roads. That is why this Court granted an interim order earlier and directed that no mining and stone-crushing operations shall be carried on within a distance of 1 km from the lake or reservoir and 500 metres from human habitations. This order will hold good in respect of all such mining leases which have been granted prior to 17-12-1996. It is not necessary to advert to any other details or arguments raised in the petitions filed before the High Court or in appeals before this Court. Suffice it to observe that the impugned order of the High Court shall stand modified only to the extent indicated by us and all other terms set out by the High Court in regard to the safeguards to be adopted in maintenance of the environment shall remain intact. Further, it is certainly necessary that the appellants before carrying on any of the mining and stone-crushing activities obtain necessary clearance from the Pollution Control Board and must comply with such conditions as may be imposed by the Pollution Control Board. It is open to the Pollution Control Board to take such action as may be necessary to enforce the conditions imposed by them under the relevant statutes. b c d e f g

9. The appeals shall stand disposed of accordingly. No costs. h

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**WRIT PETITION (PIL) No. 70 of 2011**

**For Approval and Signature:**

**HONOURABLE THE ACTING CHIEF JUSTICE MR. BHASKAR BHATTACHARYA**

**HONOURABLE MR. JUSTICE J. B. PARDIWALA**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**YAKUBBHAI SHARIFBHAI AAGLODIYA & 4 - PETITIONER**

**Versus**

**COLLECTOR & DISTRICT MAGISTRATE & 8 - RESPONDENT**

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**Appearance :**

MR JV JAPEE for PETITIONER : 1 - 5.  
 GOVERNMENT PLEADER for RESPONDENT : 1, 4, 9,  
 MR HS MUNSHAW for RESPONDENT : 2,  
 MR SUNIL L MEHTA for RESPONDENT : 3,  
 MR MANISH J PATEL for RESPONDENT : 5,  
 TANNA ASSOCIATES for RESPONDENT : 6 - 8.

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**CORAM : HONOURABLE THE ACTING CHIEF JUSTICE**  
**MR. BHASKAR BHATTACHARYA**

and

**HONOURABLE MR. JUSTICE J. B. PARDIWALA**

Date : 12/03/2012

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. This Writ Petition in the nature of a Public Interest Litigation has been preferred by the petitioners, who are residents of Block No.613 of Village Prempur, Taluka Himatnagar, District Sabarkantha redressing serious grievance as regard environmental pollution caused by stone crushing (quarry) unit run by respondents No.6, 7 and 8 have prayed for the following relief:

*“(A) To issue a writ of mandamus or any other appropriate writ, order or direction and be pleased to quash and set aside the impugned order passed by respondent No.3 and 4 (at Annexure M and P to the petition) allowing to restart the mining activities, which are passed contrary to the observations made by this Hon'ble Court in Special Civil Application No.7293 of 2010 read with Misc. Civil Application No.2524 of 2010, decision of Hon'ble Apex Court in the case of Mohammed Harron Ansari and Another vs. District Collector, Ranga Reddy District reported in AIR 2004 SC 823 providing one kilometer as a safe distance between crushing unit and residential locality and also contrary to the statement made by Learned Counsel for respondent Nos. to 8 and also without making any endeavour or attempt to ensure safety of human inhabitation of the adjoining area and without considering the impact of mining operations upon agricultural fields or health and hygiene of the locality and underground water and also in violation of the fundamental rights of the petitioners under Article 14, 19(1)(g) and Article 21 of the Constitution of India.*

*(B) To issue the writ of mandamus or any other writ, order or direction and be pleased to direct the Collector, Sabarkantha to take appropriate steps to cancel the mining lease in question of the respondent Nos.6, 7 and 8 as the agriculturists and residents of the surrounding area are facing multiple environment related problems and are exposed to serious risk and hazard to their safety on account of blasting operations and there is substantial reduction of the underground water.*

*(C) To direct the respondent authorities not to allow respondent Nos. 6 to 8 to carry out mining activities in Block No.651, Village Prempur, Taluka- Himatnagar, District Sabarkantha, pending the admission, hearing and final disposal of this petition.*

*(D) To direct the respondent authorities not to allow the respondent Nos. 6 to 8 to carry out mining activities in Block No.651 of Village Prempur, Taluka- Himatnagar, Dist. Sabarkantha pending admission, hearing and final disposal of this petition."*

**I. ORIGIN AND GENESIS OF THE PUBLIC INTEREST LITIGATION :**

2. Facts relevant for the purpose of deciding this Public Interest Litigation can be summarized as under:

2. 1 Petitioners are agriculturists and are residing at Village Prempur situated in Taluka-Himatnagar of District-Sabarkantha and Village Pipodar, situated in Taluka-Himatnagar of District-Sabarkantha. It appears from the record that the petitioners had preferred Special Civil Application No.7293 of 2010 alleging environmental pollution being caused by respondent

Nos.6 to 8. It was alleged that the respondent Nos.6 to 8 were using crushing machine (stone crushing unit) causing multiple environmental problems relating to health, hygiene and safety of the agriculturists of the surrounding area. Quarry lease was granted by respondent State Authority in Block No.651 of Village Prempur, adjoining to it are the agricultural lands. They highlighted before this Court that pollution is being caused by respondent No.6 to 8.

2.2 It appears that the Division Bench of this Court vide order dated 31.08.2010, disposed of the writ petition taking note of the fact that respondent Nos.6 to 8 have closed the unit. However, with same suitable observation the Division Bench disposed of the petition being Special Civil Application No.7293 of 2010. We would like to quote the order passed by this Court at the relevant point of time with regard to the same subject matter:

*"The petitioners preferred the writ petition alleging environment pollution as being caused by respondents nos. 6 to 8. It was alleged that the respondents nos. 6 to 8 were using crushing machine causing multiple problems relating to health, hygiene and safety of the agriculturists of the surrounding area. The quarry lease has been granted by respondent State authorities in Block No.651 of Prempura. Adjoining to it are the agricultural lands. They have highlighted the pollution being caused by the respondents nos. 6 to 8. Learned counsel appearing on behalf of the State referred to Collector's report and submitted that a minimum distance of 200 mts. is prescribed under the Gujarat Minor Mineral Rules, 1963.*

*Per contra, learned counsel for the petitioners submits that in a similar case, Pollution Control Board has specified 1 km. to be safe distance between crusher and human habitation. Reliance has been placed on Supreme Court decision in Mohammed Haroon Ansari and another Vs. District Collector, Ranga Reddy District (AIR 2004 SC 823). That was a case where mining quarrying operations were seen to be causing pollution, the expert committee appointed by High Court opined that 1 km. is safe distance between site under quarry lease and residential locality or Ground Level Service Reservoir. Pollution Control Board also specified 1 km. to be safe distance between crusher and human habitation. The Supreme Court accepted the said position. In view of such decision of Supreme Court, learned counsel for the petitioner would contend that the respondent-State should modify the 1963 Minor Mineral Rules in view of the report of the Pollution Control Board and decision of the Supreme Court in Mohammed Haroon Ansari (supra).*

*2. Learned counsel appearing on behalf of the Gujarat State Pollution Control Board submits that the Board having found that the respondents nos. 6 to 8 were causing pollution in the area cancelled the Consolidated Consent and Authorization (C.C.A.) by order dated 21.07.2010. In view of the cancellation of such consent the respondents nos. 6 to 8 cannot operate the crushing unit.*

*3. Learned counsel appearing on behalf of respondents nos. 6 to 8 while accepting that they have closed the unit, submits that they be allowed to apply for fresh lease in an area where the public in general will not be affected. In this connection, we are not expressing any opinion, but may only observe that the crushing unit can be allowed to operate without causing pollution and affecting the agricultural fields or human habitation or the health and hygiene of the locality including the water reservoirs, etc. No further order is required to be passed in this case. The writ petition stands disposed of."*

2.3 Record also reveals that Respondent Nos.6 to 8 thereafter preferred Misc. Civil Application No.2524 of 2010 in Special Civil Application No.7293 of 2010 for review and recall of order dated 31.08.2011 passed by this Court. This Review Application was also disposed of by the Division Bench vide order dated 24.11.2010. We would like to reproduce Para 7 of the said order:

*"7.We have heard counsel for the parties and noticed the statement. We do not want to make any observation with regard to the stand taken by counsel for the respondents nos. 6 to 8 (applicants herein), but may only observe that this Court generally records the statement of counsel in verbatim, if orally made. This Court by its order dated 31.08.2010 having not expressed any further opinion and having passed any further order in the Special Civil Application No.7293 of 2010, taking into consideration the fact that the unit of original respondents nos. 6 to 8 (applicants herein) has been closed, the question of recalling or modification of order dated 31.08.2010 does not arise. Respondents nos. 6 to 8 (applicants herein) will apply for fresh lease in an area where public in general will not be affected. The statement made by counsel for the respondents nos. 6 to 8 (applicants herein) will not preclude them to make any application in accordance with law, including application for grant of fresh C.C.A. In such a case, the Gujarat Pollution Control Board before passing any order will take into consideration the safety of the human inhabitation of the adjoining area. The petition for review stands disposed of with aforesaid observations. No costs."*

2.4 It is the case of the petitioners that in spite of clear observation made by the Division Bench earlier in the point of time that crushing unit may be allowed to operate without causing pollution and affecting the

agricultural fields or human habitation or the health and hygiene of the locality including the water reservoirs, etc. the authorities concerned namely respondent No.1- Collector, Sabarkantha and respondent No.3- Gujarat Pollution Board has once again granted permission to start the crushing unit which is only at a distance of 645 meters from the residential locality and the agricultural fields. It is also the case of the petitioners that Respondent Nos. 6 to 8 have started blasting operations which has caused substantial damage to the residential houses including religious places like mosque. It is the case on behalf of the petitioner that the permission has been granted by the concerned respondents in total violation of the direction which has been issued by the Hon'ble Supreme Court in this regard wherein Hon'ble Supreme Court has stated that a distance of 1 kilometer can be said to be safe distance between crushing unit and the residential locality.

- 2.5 It is in this background of the aforesaid facts that the petitioners are once again before this Court by way of this petition in the nature of a Public Interest Litigation.

## **II. CONTENTIONS OF THE PETITIONERS :**

3. Learned Counsel Mr. J.V. Japee, vehemently argued that the authorities concerned in flagrant disregard of the earlier orders passed by this Court have granted permission to start the quarry in favour of Respondent No.6 willfully ignoring and overlooking the objections

and representations filed by petitioners and other residents of surrounding area regarding environment related problems.

4. Learned counsel also submitted that the petitioners had also highlighted potential risk and hazards to the safety of life and property of the people residing in the surrounding area. He has submitted that the authorities concerned duly complied or/and ignored the objections and representations of the petitioners. Mr.Japee brought to our notice the photographs of the mosque and other residential houses which indicates and suggest that cracks have developed due to vibration caused by the crushing unit which is only at a distance of 645 meters. Mr.Japee also vehemently submitted that it was specifically pointed out to the authorities that on account of small particles of stones being spread due to operation of the quarry the standing crops also would get damaged. He submitted that authorities also ignored the fact that there would be shortage of water on account of necessity of water in the quarry. The agricultural labourers residing in the agriculture fields would also be affected by the pollution created by the operation of the quarry unit. He submitted that authorities very conveniently obtained NOC from some of the relatives, friends and neighbours of respondent Nos.7 and 8 but deliberately ignored the objection of the persons who are most affected.
5. Mr. Japee invited our attention to the judgment of the

Apex Court in the Case of Mohammed Haroon Ansari and another Vs. District Collector, Ranga Reddy District, A.P. reported in AIR 2004 SC 823. Relying on this judgment of the Apex Court Mr.Japee submitted that Supreme Court took serious note of the pollution being caused by operations of stone crushing/mining quarry. He submitted further by inviting our attention to para No.8 of the judgment where the Supreme Court has observed that the distance of 1 k.m. is a safe distance between the site of the quarry lease and the residential locality.

6. Mr.Japee therefore, submitted that this is a fit case where in this Court should interfere and exercise power under Article 226 of the Constitution in public interest and grant reliefs as prayed for in the petition.

**III. CONTENTIONS OF RESPONDENT NO.4, GEOLOGIST DIST.SABARKANTHA :**

7. Learned Assistant Government Pleader appearing on behalf of respondent No.4 submitted that there is no dispute to the fact that the distance between the site and the residential locality is of 645 meters. According to the learned AGP, this distance is a safe distance and the pollution problem which is being apprehended by the petitioners is not well founded, if respondent Nos.6 to 8 are permitted to operate the quarry. Learned AGP further submitted that necessary permissions from the revenue authority have also been obtained by the respondent. Learned AGP relied on Gujarat Minor

Minerals Rules, 1966 more particularly Rule 22(7) which provides that no blasting or mining operations should be allowed within 200 meters from Railway lines, Dam, Roads, Hospitals, Buildings and residential area. According to the learned AGP permission has been granted in accordance with Rule 22(7) of Gujarat Minor Minerals Rules, 1966. Learned AGP further submitted that as and when it has been found that the lease holder has violated the terms of the lease action has been taken and penalty of Rs.10.50 lac has been recovered from Respondent No.6. Learned AGP also submitted relying on the affidavit-in-reply filed by respondent no.4, Geologist that on inspection it has been found that adequate measures are being taken by respondent no.6 to meet with the conditions of the lease. Learned AGP, therefore, submitted that there is no substance in this Public Interest Litigation and the same deserves to be rejected.

**IV. CONTENTIONS OF RESPONDENT NO.3, GUJARAT POLLUTION CONTROL BOARD :**

8. Learned Counsel Mr. Sunil L. Mehta appearing for Gujarat Pollution Control Board submitted that the Officers of the Board visited the unit on 02.06.2011 and it was found that there was no blasting activity and the rubble stones from mines were in wet condition, thus preventing dust from being spread in the air. It was also found by the officers that water sprinkling was being regularly done and the unit had installed wind breaking wall from RCC plates. He

submitted that unit has implemented all the suggestions as made by Gujarat Cleaner Production Centre. Taking all these into consideration SPCB, thought fit to issue an order revoking the earlier direction of closure under Section 31-A of the Air Act and pass a fresh order of consent.

**V. CONTENTIONS OF RESPONDENT NO.6, PARTNER OF SAI QUARRY :**

9. Learned Senior Counsel Mr.Bhaskar Tanna submitted that respondent no.6 has in all earnestness carried out all necessary modifications and compliance of Gujarat Pollution Control Board given from time to time and accordingly Gujarat Pollution Control Board has issued a consent order in favour of respondent No.6 for a period of five years. Learned Counsel submitted that affidavit filed by the Geologist would show that Survey No.613 is at a safe distance of 645 meters from the said quarry. Mr. Tanna further submitted that there are no residential houses in that area as well as in the nearby vicinity. He vehemently submitted that when all the authorities after due consideration have thought fit to grant consent then in that case this Court in exercise of power under Article 226 of the Constitution may not grant any relief to the petitioners in the name of public interest. He submitted that his client has invested huge sum to setup the unit and at this stage if any orders adverse to respondent no.6 are passed then it may cause irreparable injury and will also cause grave prejudice. He submitted that it is the

fundamental right of respondent No.6 to trade and carry on business.

**VI. ANALYSIS :**

10. What can be gathered from the materials on record is that in the first round of litigation, the petitioners pointed out to the Court that the respondent Nos.6 to 8 were using crushing machine causing multiple problems relating to health hygiene and safety of the agriculturists of the surrounding area. We have noticed that at that point of time, the stand on behalf of the State Government relying on the Collector's report was that the minimum distance of 200 metres is prescribed under the Gujarat Minor Minerals Rules, 1966 and, therefore, the unit of the respondent Nos.6 to 8 was far beyond the prescribed distance from the residential premises of the petitioners. We have also noticed that at that stage the petitioners pointed out to the Court that as per the decision of the Supreme Court in *Mohammed Haroon (supra)*, the minimum distance between the crusher and human habitation must be 1 km. It was also pointed out to the Court that in view of decision of the Supreme Court in the case of *Mohammed Haroon (Supra)*, the State should modify Minor Mineral Rules, 1966, so far as the distance part is concerned. We may only say at this stage that the Rules, 1966 are now replaced by the Rules, 2010. Even while enacting the Rules, 2010, it appears that the State Government has overlooked the decision of the Supreme Court in the case of *Mohammed Haroon*

(*supra*) so far as distance part is concerned. Be that as it may, we shall deal with this issue at a later stage in our judgment. We have also noticed that the Gujarat Pollution Control Board submitted before the Court that the respondent Nos.6 to 8 were causing pollution in the area and, therefore, cancelled the consolidated consent and authorization (C.C.A.) by order dated July 21, 2010 and in this view of the matter, the respondent Nos.6 to 8 cannot operate the crushing units. Record also reveals that in the first round of litigation, the respondent Nos.6 to 8 accepted the fact before the Court that they have closed the unit as per the order of the Gujarat Pollution Control Board dated July 21, 2010. However, they pleaded that they may be allowed to apply for fresh lease in an area where the public in general will not be affected. We have noticed that the Division Bench in its order dated August 31, 2010, which we have referred to in the foregoing paragraph 22, observed without expressing any opinion that the crushing unit can be allowed to operate without causing pollution and affecting the agricultural fields or human habitation or the health and hygiene of the locality, including the water reservoirs.

11. It appears that once again the respondent Nos.6 to 8 applied before the Gujarat Pollution Control Board for fresh lease and the Gujarat Pollution Control Board has granted consent to run the unit, subject to certain terms and conditions, which according to respondent Nos.6 to 8 are being scrupulously complied with. However, what is important once again is the distance

at which the unit is being operated from the residential locality. It is an undisputed fact that the distance between the unit and the residential locality of the petitioners is about 645 metres i.e. for sure, less than 1 km.. We are not able to understand as to why the Gujarat Pollution Control Board has ignored this aspect while granting consent, more particularly, when there is a decision of the Supreme Court in the case of *Mohammed Haroon (supra)* that a safe distance between a crushing unit and residential locality should be 1 km.. The judgment of the Supreme Court would be the law of the land within Article 141 of the Constitution of India and the Gujarat Pollution Control Board could not have overlooked the judgment and granted necessary consent or permission to start the unit. Most disturbing feature of this litigation is complete misreading of Rule 22(vii) of the Gujarat Minor Minerals Rules, 1966. It appears that taking shelter of this particular Rule, the Gujarat Pollution Control Board as well as respondent Nos.6 to 8 are of the view that since the distance between the unit and the residential locality is of more than 50 metres, as prescribed under the Rules, the Gujarat Pollution Control Board was well within its powers to accord permission in favour of the respondent Nos.6 to 8. For better understanding of this issue, we may quote Rule 22(vii) of the Gujarat Minor Minerals Rules, 1966, which reads as under :

**“Rule 22(vii) :** *The lease shall not carry on or allow to be carried on any quarrying operations at any point within a distance of 50*

*metres, if no blasting is involved 200 metres if blasting is involved from the boundary of any railway line, except with the written permission of the railway administration concerned or from the boundary of any reservoir, canal, road or public works or buildings except with the previous permission of Government. The permission of railway administration or Government may, in granting such permission impose such conditions as it may deem fit.”*

12. Plain reading of this Rule 22(vii) suggests that the quarrying operations can be permitted at any point within a distance of 50 metres, if no blasting is involved and if blasting is involved, then within a distance of 200 metres from the boundary of any Railway Line, except with the written permission of the Railway Administration concerned or from the boundary of any reservoir, canal, road or public works or buildings, except with the previous permission of the Government.
13. In our opinion, the position of law as understood by the respondents is completely misconceived and absurd. If the argument of the respondents is accepted, it would lead to a situation where the industrial stone crushing unit would come and say that they do not discharge, suspend particulate beyond the levels of parametres prescribed under the Act and, therefore, they should be allowed to operate the stone crushing unit in the heart of the city. In the first instance, Rule 22(vii) of the Rules, 1966 has no application because Rule 22(vii) is absolutely silent insofar as the distance to be

maintained from a residential locality is concerned. The word “building” used in Rule 22(vii) would not suggest that it would include the residential locality and other structures like schools, temples, national highways, etc.. This problem has cropped up as according to us, there is no unified policy of Gujarat Pollution Control Board or any guidelines framed by the Gujarat Pollution Control Board in this regard. What we have noticed is as and when the permission is prayed for to start a quarry unit, the Gujarat Pollution Control Board seems to be taking into consideration the guidelines as regards the parametres to be maintained as fixed under Schedule-I of the Environment (Protection) Rules, 1986. We shall quote Rule 37 of the Environment (Protection) Rules, 1986, which reads as under :

*“Rule 37 : Stone crushing unit : Suspended Particulate Matter (SPM) :*

*The standards consist of two parts :*

- (i) Implementation of the following pollution control measures :*
  - (a) Dust containment cum suppression system from the equipment.*
  - (b) Construction of wind breaking walls.*
  - (c) Construction of the metalled roads within the premises.*
  - (d) Regular cleaning and wetting of the ground within the premises.*
  - (e) Growing of a green belt along the periphery.*
- (ii) Quantitative standard for the SPM :*

*The Suspended Particulate Matter contribution value at a distance of 40 metres from a controlled isolated*

*as well as from a unit located in a cluster should be less than 600 mg/Nm<sup>3</sup>. The measurements are to be conducted at least twice a month for all the 12 months in a year.”*

14. It can be seen that so far as the above referred Rule 37 is concerned, it is also silent so far as the distance part is concerned. However, this would not preclude or prevent the Gujarat Pollution Control Board to make a unified policy and frame guidelines in this regard under Section 17 of the Air Act. In the case of *Mohammed Haroon (supra)*, the Supreme Court was dealing with Environment (Protection) Act (29 of 1986) and the same issue of minor quarries/ operation of stone crushers was under consideration in context with pollution. The relevant observations of the Supreme Court are quoted hereinbelow :

*“8. .. .. The affidavit of Pollution Control Board indicates that if proper safeguards are adopted as indicated in the said affidavit, it will not cause any air, water or noise pollution, much less dust articles affect the water supply system in GLSR or Osmansagar lake. We, therefore, direct that the order made by the High Court is modified by directing that the distance of 1 km. is a safe distance between the site of the quarry leases and the residential localities or GLSR or Osmansagar lake. The guidelines issued by the Andhra Pradesh Pollution Control Board specified 1 km. to be safe distance between crusher and human habitation from 17.1.1997. Prior to that it was only 500 metres away national Highway and 100 metres away from the State Highway, Major District roads and other roads. That is why this Court granted an interim order earlier and directed that no*

*mining and stone crushing operations shall be carried on within a distance of 1 km. from lake or reservoir and 500 metres from human habitations."*

15. Section 17 of the Air authorises the Board under Clause (a) to plan a comprehensive programme for the intervention, control or abatement of air pollution and to secure the execution thereof; Clause (e) to inspect, at all responsible times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution. Clause (f) further entitles to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas. Under Clause (g) the Board is authorised to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutions into atmosphere from industrial plants and automobiles or for the discharge of any air pollution into the atmosphere from any other source whatsoever not being a ship or any aircraft. Under Clause (j) *the Board may do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.*

(Emphasis supplied)

16. We are of the view that the Gujarat Pollution Control Board is obliged in public interest to plan a comprehensive programme for prevention, control or abatement of air pollution and to secure execution thereof, it is authorised to take steps for prevention, control or abatement of area pollution. It is also authorised to take steps for prevention, control or abatement of air pollution in air pollution arise and is also entitled to do all such other things and to perform all such other acts as it may think necessary for proper discharge of its functions and generally for the purpose of carrying into effect the purposes of the Air and Water Act. In fact, it is the duty of the Gujarat Pollution Control Board to prevent and control and in doing so, for achieving the purpose of the Act, for the purpose of carrying into effect the purpose of the Act, it must frame the guidelines. The guidelines must be in the form of general information to all the industrial units which are proposed to be established or operating in accordance with guidelines. We also deem fit to quote Section 31(A) of the Air Act, which reads as under :

*“31 : Power to give directions : Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*

*Explanation : For the avoidance of doubts, it is*

*hereby declared that the power to issue directions under this section includes the power to direct-*

*(a) the closure, prohibition or regulation of any industry, operation or process; or*

*(b) the stoppage or regulation of supply of electricity, water or any other service.”*

17. From the language of Section 31(A) of the Act, it would be clear that the Board has authority to issue any direction in writing to any person and such person shall be bound to comply with such direction. The fact that the Board has not issued any guidelines then too the Board to achieve the object under the Air Act can issue a direction relating to closure, prohibition or regulation of any industry, operation or process. The Board can also issue a direction to an existing unit that it should shift its location. We are of the view that keeping in mind the seriousness of the issue in question, the Board must immediately frame appropriate guidelines insofar as granting permission to start quarry operation units (stone crushing units) like in the present case. In framing such guidelines, the Board may keep in mind the following factors :

- (i) Standards of quality of air and water laid down under the concerned Acts;
- (ii) Existing concentration of various pollutions, including noise in the area;
- (iii) The likely emission or discharge of environmental pollutants from the proposed industry, process or operation;

- (iv) The topography and climatic features of the area;
  - (v) Conservation of biodiversity of the area;
  - (vi) Environmentally compatible land-use in the area;
  - (vii) Net adverse environmental impact likely to be caused by an industry, process or operation in the area;
  - (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958;
  - (ix) Proximity to human settlement, state or national highway, railway, railway line (non-captive), besides proximity to river.
  - (x) Likely process-hazards, including hazard likely to occur during handling, storage and transportation of the chemicals; and
  - (xi) Provisions of the Wild-life (Protection) Act, 1972 and the Environment (Protection) Act, 1986.
18. It is not disputed that in the State of Gujarat, about 1258 industries are involved in the business of crushing of the stones and allied matters. It is also not disputed that mushrooming of such industries is on the rise which is not effectively controlled by the State Executive. Such industries are scattered all over and not located within specified places. The pollution caused on account of the crushing of the stones can also not be disputed. Emission of dust emitted from the conduct of the business are surely to affect the lungs and other major organs of the people involved in the business and living in surrounding areas. At this stage, keeping in mind the nature of controversy, we

deem fit to quote a paragraph of a Division Bench decision of Karnataka High Court in the case of Obayya Pujary and others v. Member Secretary, Karnataka Pollution Control Board, Bangalore reported in **AIR 1999 Karnataka 157**. Their Lordships of Karnataka High Court have observed as under:

*“The air we breathe, is a mixture of nitrogen and oxygen with minor constituents like carbon dioxide and trap gases. Pollutants are substances which are not normally present in the air. Pollutants in the form of dust, smoke, industrial and automobile exhaust, gaseous and particulate matters, though not normally expected to be present, yet are found in the air. Nature and amount of such pollutants varies from place to place depending upon population, vehicular density and location of industrial units etc. Lungs are the major organs affected by the air pollution. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Organic matters including dust can cause the allergic reactions producing allergic alveolitis. Inorganic dust may get deposited in the lungs and produce fibrosis. Exposure to dust may lower the lung defences and clearing mechanism, resulting in infections particularly tuberculosis. Such occupational exposures may also lead to causing lung cancer as well. Such hazardous effects on health are likely to be caused on account of the air pollution which is caused due to stone crushing. By stone crushing a lot of thick dust is generated polluting the environment, visible dust contains particles more than 50 u in diameter which settle down in the nose and pharynx. Similar particles of 5-10 u size remain suspended in air and are inhaled deeper. Such particles are deposited in the tracheo-bronchial tree and lung*

*parenchyma which is likely to induce fibrosis.”*

19. Besides human beings, the animals and the vegetation including crops are likely to be affected unless protected. It is, therefore, the duty of the respondent State to take measures and effective steps for regulating the conduct of the business as has been done in many other States. The statement showing the details of the said industries is as under :

Place	Small	Medium	Large	Total
Ahmedabad City	0	0	0	0
Anand	2	0	0	2
Ankleshwar	38	0	0	38
Bharuch	0	0	0	0
Bhavnagar	63	1	1	64
Bhuj	80	1	2	83
Gandhinagar + Ahmedabad Rural	2	0	0	2
Godhra	70	0	2	72
Himatnagar	165	2	0	167
Jamnagar	34	0	0	34
Jetpur	13	0	0	13
Junagadh	81	2	0	83
Mehsana	12	0	0	12
Nadiad	68	0	0	68
Navsari	104	1	0	105
Palanpur	41	0	0	41
Porbandar	3	0	0	3
Rajkot	82	0	0	82
Surat	45	1	1	46
Surendranagar	113	0	0	113
Vadodara	183	1	1	185

Vapi	45	0	0	45
Total :	1244	9	6	1258

20. The right to 'life' is the most fundamental right as enshrined in Art. 21 of the Constitution of India. Such right includes all attributes of the life. In ***Kharak Singh v. State of U.P., AIR 1963 SC 1295***, the Supreme Court acknowledged that the term 'life' meant something more than mere animal existence. The inhibition against its deprivation extended to all those limbs and faculties by which the life is enjoyed. It equally prohibited the mutilation of the body by the amputation of an arm or leg, of putting out of an eye, or the destruction of any other organ by the body through which the soul communicates with the outer world. It postulates to be free from restrictions on the enjoyment of a decent, respectable and healthy life. Right of life under Art. 21 is a right of a person to be free from restrictions or encroachment. Whether imposed directly or indirectly brought about by calculated measures. In ***Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802***, it was held that it is a fundamental right of everybody to live with dignity. Such right would include all those rights which ensure a person's life meaningful, complete and worth living. Right to life would also include right to live in peace, to sleep in peace, enjoy health free from pollution. In ***Subhash Kumar v. State of Bihar, AIR 1991 SC 420***, the Apex Court held that enjoyment of pollution free atmosphere was included in the right to life under Art. 21. The Court observed (para 7 of AIR) :-

*"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."*

However, such a right is not an absolute right and is obviously subject to reasonable restrictions. It is also controlled and regulated by needs of the society. It has to be kept in mind that rapid growth of the economy and the industrialisation is also the need of the mankind and attribute of and requirement of the decent, respectful and dignified life. While protecting the environment the industrial development cannot be completely ignored. In *M. C. Mehta's case, (1992 (3) SCC 256) (supra)*, it was observed :-

*"We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area."*

21. The Supreme Court in ***Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, AIR 1987 SC 359***, had observed :

*"Consciousness for environmental protection is of recent origin. The United Nations Conference on World Environment held in Stockholm in June 1972 and the follow-up action thereafter is spreading the*

awareness. Over thousands of years men had been successfully exploiting the ecological system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon Nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have now come to be realised. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. We had commended earlier to the State of Uttar Pradesh as also to the Union of India that afforestation activity may be carried out in the whole valley and the hills. We have been told that such activity has been undertaken. We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way, there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation."

22. Again in **Sri Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109**, the Supreme Court had held :

"Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion

*of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. In the last century, a great German materialist philosopher warned mankind : 'Let us not, however, flatter ourselves over much on account of our human victories over nature. For each of such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different unforeseen effects which only too often cancel the first.' Ecologists are of the opinion that the most important ecological and social problem is the widespread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half of the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.*

*In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with*

*this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by this Court. Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whether a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48-A of the Constitution. Directive principle which enjoins that 'The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country' and Art. 51 A (g) which proclaims it to be the fundamental duty of every citizen of India 'to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.' When the Court is called upon to give effect to the directive principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions."*

23. The Supreme Court in ***M. C. Mehta v. Union of India, AIR 1987 SC 1086*** has ruled that enterprise which has engaged in a hazardous or inherently dangerous industry which poses a potential threat to

the health and safety of persons working in the industrial unit and residing in the surrounding areas owes an absolute obligation to the community to ensure that no harm results to any one on account of such hazardous or inherently dangerous nature of the activity. A person engaged in such industrial activity is under an obligation to conduct his commercial activities with the highest standards of safety. If the enterprise is permitted to carry on any hazardous or inherently dangerous activity for profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads. In case of loss on account of such activity the enterprise is even liable to indemnify and compensate the sufferer. No person, therefore, can claim to have a right of carrying on any commercial activity which admittedly affects the health of others. The State, under these circumstances is under a constitutional obligation to provide safeguards for protecting the life and health of the citizens. There is no absolute right vesting in any citizen to carry on commercial activities of trade or occupation without limitation. The experts on the subject are of the opinion that the theory which governs our environmental laws, is what may be called a 'Policing Society Theory' envisaging the Legislature and the administration would perform their task acting as vigilant policemen entrusted to detect crimes by bringing the culprits to the Court. Failure on the part of the Executive or the Legislature to perform their

constitutional obligation would cast a duty upon the judiciary to react and come to the rescue of the people by providing remedial measures, issuance of appropriate direction protecting the environment for the safety of life, the health and property of the citizens.

24. Right to freedom as enshrined in Art. 19 of the Constitution though fundamental, is not an absolute right and is always subject to reasonable restrictions which may be imposed in the larger interests of the society. Freedom of profession, trade and business as contemplated by Clause (1)(g) of Art. 19 of the Constitution is always subject to the limits as may be imposed by the State in the interests of public welfare. The Supreme Court in various judgments held that there were certain activities which were inherently pernicious that nobody could be considered to have a fundamental right to carry them on as trade or business. The Supreme Court in **Cooverjee v. Excise Commissioner, 1954 SCR 873 : (AIR 1954 SC 220)** has held that though a citizen has a right to carry on any business of his choice, there is no right to carry on any business inherently dangerous to the society. No citizen has a fundamental right to carry on business wherever he chooses and such a right can be subjected to reasonable restriction in the interests of general public. The Supreme Court in **State of Maharashtra v. H. N. Rao, AIR 1970 SC 1157**, held that the reasonable restriction imposed has to be adjudged in the light of the nature of the right, danger

or injury which may be inherent in the unbridled exercise of the right and the necessity of protection against danger which may result to the public by the exercise of the right. It further held :

*"In adjudging the reasonableness of restrictions imposed upon the holding or disposal of a carcass which is noxious, maintenance of public health is the paramount consideration. Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated in the Act, being enacted solely in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Art. 19(1)(f) and (g) and the interests of a citizen in the exercise of his right to acquire, hold or dispose of his property to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity."*

25. In the aforesaid view of the matter, we are left with no other option but to quash and set aside the order passed by the respondent Nos.3 and 4 permitting the respondent Nos.6 to 8 to restart the quarry operations and we, accordingly, quash the same. However, it shall be open for respondent Nos.6 to 8 to put up a unit at a distance of 1 km. from the residential locality and may seek appropriate permission or consent from the Board in this regard. It shall be open to the respondent Nos.6 to 8 to relocate themselves at a place, which is at a minimum distance of 1 km. from the residential locality and the Board upon inspection if is satisfied as regards

the distance maintained, then in that case, the Board may grant fresh consent order in favour of the respondent Nos.6 to 8 in accordance with law.

26. Keeping in view the facts and circumstances of the case, the position of law, the interest of the Society and all those who are carrying on or intend to carry on business connected with the crushing of stones, we deem it proper to issue the following directions to the Gujarat Pollution Control Board in the public interest :

- (i) The Gujarat Pollution Control Board shall immediately formulate a policy regulating carrying on of business related to crushing of stones by prescribing reasonable conditions, including the guidelines and licences and their periodical renewals. While framing the guidelines, the Gujarat Pollution Control Board shall keep in mind the factors which we have indicated in paragraph 17 hereinabove.
- (ii) The Gujarat Pollution Control Board is hereby directed to submit its compliance report in the Registry of this Court on or before June 11, 2012.

Copies of present judgment shall be furnished by the Registry to the learned Assistant Government Pleader appearing for the respondent-State as well as the learned counsel appearing for the Gujarat Pollution Control Board for taking up appropriate action and submission of compliance report within the period and time specified.

**(Bhaskar Bhattacharya, Acting C.J.)**

**(J.B. Pardiwala, J.)**

**:: FURTHER ORDER ::**

After this order is passed, the learned advocate appearing on behalf of the respondent No.6 prays for stay of operation of our order.

In view of what has been stated above, we find no reason to stay our order. The prayer is, therefore, refused.

**(Bhaskar Bhattacharya, Acting C.J.)**

**(J.B. Pardiwala, J.)**

Aakar

