

CONTENTS

1. EDITORIAL
2. GENESIS OF PUBLIC INTEREST LITIGATION
 - CONSTITUTIONAL PROVISIONS AND LAWS ON ENVIRONMENT
3. GUIDELINES FOR ENTERTAINING LETTERS/PETITIONS AS PUBLIC INTEREST LITIGATION
4. AUTHORITIES CONCERNING ENVIRONMENTAL ISSUES CONSTITUTED ON THE DIRECTIONS OF THE HON'BLE SUPREME COURT
5. IMPORTANT DECISIONS OF THE HON'BLE SUPREME COURT IN THE PUBLIC INTEREST LITIGATION MATTERS
 - TAJ POLLUTION MATTER
 - GANGA POLLUTION MATTER
 - VEHICULAR POLLUTION IN DELHI
 - POLLUTION BY INDUSTRIES IN DELHI
 - POLLUTION IN RIVER YAMUNA
 - POLLUTION IN NOIDA, GHAZIABAD AREA
 - NOISE POLLUTION BY FIRECRACKERS
 - IMPORT OF HAZARDOUS WASTE
 - POLLUTION IN PORBANDAR, GUJARAT
 - MANAGEMENT OF MUNICIPAL SOLID WASTE
 - MANAGEMENT OF SOLID WASTE IN CLASS-I CITIES
 - POLLUTION IN MEDAK DISTRICT, ANDHRA PRADESH
 - POLLUTION BY CHEMICAL INDUSTRIES IN GAJRAULA AREA
 - POLLUTION IN RIVER GOMTI
6. LEADING CASES ON ENVIRONMENTAL LAWS
 - OLEUM GAS LEAK CASE ON STRICT LIABILITY
 - BICHHRI CASE ON STRICT LIABILITY AND POLLUTION PAYS PRINCIPLE
 - POLLUTION BY TANNERIES IN TAMIL NADU CASE ON PRECAUTIONARY PRINCIPLE AND POLLUTER PAYS PRINCIPLE

EDITORIAL

The 'Parivesh' newsletter has been dealing with on various thematic issues mainly, technical in nature. The theme of this issue of the 'PARIVESH' is the Public Interest Litigations (PILs) through which several pollution related cases have been heard and delivered by the judiciary. The concept of PIL was introduced by the Hon'ble Supreme Court of India since eighties and since then a number of landmark judgments have been delivered by the Hon'ble Supreme Court followed by the High Courts.

In the recent order regarding CNG, the Hon'ble Supreme Court has further enlarged the scope of the PIL by elaborating Articles 39(e) and 47 of the Constitution, Part IV: Directive Principles of State Policy. The Article 39 (e) and 47 are relating to the health of workers and the duty of the State to raise the level of nutrition and the standard of living and to improve public health. The Hon'ble Supreme Court has pronounced directions in favour of a welfare society and equalitarian social order. The principles of Strict Liability (Rylands Vs Fletcher) have been redefined as "Precautionary Principle" and "Polluter Pays Principle".

Notwithstanding, various laws and rules, the enforcement has been difficult for various reasons including delay in judicial proceedings. On the other hand through the Public Interest Litigations (PILs) and expeditious judicial interventions, the Pollution Control Boards have found a strong ally for redressal of public grievances concerning pollution and environmental degradation.

This issue of "Parivesh" is an effort to put up a brief before the readers concerning PILs. The information contained in this issue has been collected and collated by my colleague Shri Pradeep Mathur, Aast. Law Officer under the guidance of Shri T.Venugopal, Director and Shri R.N.Jindal, Sr.Env. Engineer. The word processing has been done by Smt. Sushma Dutta, DEO. Dr.B.Sengupta, Member Secretary has taken initiative for the publication of 'Parivesh' in the present form.

(Dilip Biswas)
Chairman
Central Pollution Control Board

GENESIS OF PUBLIC INTEREST LITIGATION

Constitutional Provisions And Laws On Environment

The Supreme Court of India in numerous matters elaborated the scope of Article 21 of the constitution of India, which deals with **protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by Law.** In the matter of *Rural Litigation and Entitlement Kendra Vs State of U.P.* - the Hon'ble Supreme court held that the right to unpolluted environment and preservation and protection of nature's gifts has also been conceded under Article 21 of the Constitution of India. The Constitutional provisions provide the bed-rock for the framing of environmental legislations in the country. Article 48-A of the Constitution deals with the **Protection and Improvement of Environment and Safeguarding of Forests and Wildlife – The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.** On the basis of the said provisions, the Environment (Protection) Act, 1986 and the Wild Life (Protection) Act, 1972 (as amended in 1986) have been enacted by the Parliament. Under Part IV-A of the Directive Principles of State Policy, Fundamental Duties have been added under Article 51-A by the 42nd Amendment of the Constitution in 1976. Under Article 51-A(g) provides the **Fundamental Duties with respect to the environment which includes - To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.**

The Environment related Laws enacted by the Parliament under Articles 252 and 253 of the Constitution of India. The Water (Prevention and Control of Pollution) Act, 1974 was promulgated as a Central Legislation under Article 252 of the Constitution. Since, the "water" is listed under the State list, a Resolution from two or more State Assemblies empowering the Parliament to enact the Legislation on the State List was required. The Water (Prevention and Control of Pollution) Act, 1974 became effective at the State level when it was adopted by the concerned State Assemblies. The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were promulgated under Article 253 of the Constitution of India, which empowered the Parliament to enact legislations on such matters as necessary for compliance of International Agreements in which India has been a party.

Since 1974, some of the major environmental enactments which have been passed by the Parliament are as follow:

- ◆ The Water (Prevention and Control of Pollution) Act, 1974: (6 of 1974)
- ◆ The Water(Prevention and Control of Pollution)Cess Act,1977:(36 of 1977)
- ◆ The Air (Prevention and Control of Pollution) Act, 1981: (14 of 1981)
- ◆ The Environment (Protection) Act, 1986: (29 of 1986)

- ◆ The Public Liability Insurance Act, 1991: (6 of 1991)
- ◆ The National Environment Tribunal Act, 1995: (27 of 1995)
- ◆ The National Environment Appellate Authority Act, 1997: (22 of 1997)

In addition to these Acts, several Rules have also been incorporated under the Environment (Protection) Act, 1986. These Acts and Rules are important guidelines to sort out the environmental problems. Some of the major Rules notified are:

- ◆ The Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organism Genetically Engineered or Cells Rules, 1989
- ◆ 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
- ◆ The Bio-Medical Waste (Management and Handling) Rules, 1998
- ◆ The Recycled Plastics Manufacture and Usage Rules, 1999
- ◆ The Municipal Solid Wastes (Management and Handling) Rules, 2000
- ◆ The Noise Pollution (Regulation and Control) Rules, 2000
- ◆ The Ozone Depleting Substances (Regulation) Rules, 2000
- ◆ The Batteries (Management and Handling) Rules, 2001

The Constitution of India has basic features in respect of the power of judicial review by the Supreme Court. Under Part III of the Constitution, which guarantees fundamental rights to the people and under Part IV, the State is under obligation to implement the Directive Principles. Article 39-A of the Constitution provides "Right of Access to Courts" to the citizens. In exercise of its powers of judicial review, the Court enforces the constitutional and legal rights of the underprivileged by transforming the right to life under Article 21 of the Constitution and by interpreting the Articles 48-A and 51 A (g) of the Constitution. The Hon'ble Supreme Court of India has given a new dimension to the environmental jurisprudence in India with a view to meeting the problems in the environmental field.

The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. PIL in Indian Law has been introduced by the Hon'ble judges. The traditional concept of *Locus Standii* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, environmentally conscious individuals, groups or NGOs may have access to the Supreme Court/High Courts by way of PIL. The Hon'ble Supreme Court while

taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

According to Hon'ble Mr. Justice Kuldip Singh, Former Judge, Supreme Court of India - the Constitution of India is a living tree and is not a static document. The Courts have to interpret the Constitution keeping in view the needs of the present generation. Some of the leading public interest litigations are Taj Mahal case, Hazardous industries matter in Delhi, Vellore Citizen's Welfare Forum case and Rural litigation and Entitlement Kendra case relating to lime stone queries in Dehradun. These cases have been discussed here.

GUIDELINES FOR ENTERTAINING LETTERS/PETITIONS AS PUBLIC INTEREST LITIGATION

The full Court of the Hon'ble Supreme Court on 1.12.1988 issued guidelines to be followed for entertaining letters/petitions received in the Court as public interest litigation. The full Court decided that the petitions falling under the following categories alone would ordinarily be entertained as public interest litigation:

- (1) bonded labour matters;
- (2) neglected children;
- (3) non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in individual cases);
- (4) petitions from jails complaining of harassment, for pre-mature release and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as fundamental right;
- (5) petitions against police for refusing to register a case, harassment by police and death in police custody;
- (6) petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping, etc.;
- (7) petitions complaining of harassment or torture of villagers by co-villagers or by police of persons belonging to Schedule Castes and Schedule Tribes and economically backward classes;
- (8) **petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wildlife and other matters of public importance;**
- (9) petitions from riot-victims; and,
- (10) family pension.

All letter-petitions received in the PIL Cell (Public Interest Litigation Cell) in the Supreme Court would first be screened in the Cell and only such petitions as are covered by the above mentioned categories would be placed before a Judge to be nominated by the Hon'ble Chief Justice of India for directions after which the case would be listed before the bench concerned. To begin with, only one Hon'ble Judge might be assigned this work and the number increased to two or three later depending on the workload.

It was also decided that the cases falling under the following categories would not be entertained as public interest litigation and these might be returned to the petitioners or filed in the PIL Cell, as the case might be:

- (1) landlord tenant matters;
- (2) service matter and those pertaining to pension and gratuity;
- (3) compliant against Central/State Government Departments and Local Bodies except those relating to item Nos. (1) to (10) above;
- (4) admission to medical and other educational institutions; and
- (5) petitions for early hearing of cases pending in High Courts and Subordinates Courts.

In regard to the Petitions concerning maintenance of wife, children and parents, the petitioner might be asked to file a Petition under sec.125 of Criminal Procedure Code, 1973 or a Suit in the Court of competent jurisdiction and for that purpose to approach the nearest Legal Aid Committee for legal aid and advice.

AUTHORITIES CONCERNING ENVIRONMENTAL ISSUES CONSTITUTED ON THE DIRECTIONS OF THE HON'BLE SUPREME COURT

Various Authorities have been constituted under the Environment (Protection) Act, 1986 in compliance with the directions of the Hon'ble Supreme Court during the pendency of the public interest litigations. These Authorities have been constituted for specific assignments, which are:

- (1) *The Dahanu Taluka Environment Protection Authority* – In the District of Thane, Maharashtra, to protect the ecologically fragile areas in Dahanu Taluka and to control pollution in the area (Constituted on 19.12.1996);
- (2) *The Central Ground Water Authority* - For the purpose of regulation and control of Ground Water Management and Development (Constituted on 14.1.1997);
- (3) *Aqua Culture Authority* – To deal with the situation created by the shrimp culture industry in the Coastal States and Union Territories (Constituted on 6.2.1997);

- (4) *The Water Quality Assessment Authority* - To direct the agencies (Govt./local bodies/non-Governmental) for taking action in accordance with the powers and functions of the Authority (Constituted on 29.5.2001);
- (5) *The Environment Pollution (Prevention and Control) Authority* for NCR of Delhi - for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (Constituted on 29.01.1998);
- (6) *The loss of Ecology (Prevention and Payments of Compensation) Authority* for the State of Tamil Nadu; To assess the loss to the ecology and environment in the effected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families (Constituted on 30.9.1996); and
- (7) *The Taj Trapezium Zone Pollution (Prevention and Control) Authority*- The Authority should within the geographical limits of Agra Division in the Taj Trapezium Zone in the State of Uttar Pradesh, to monitor progress of the implementation of various schemes for protection of the Taj Mahal and programmes for protection and improvement of the environment in the said area (Constituted on 17.5.1999).

IMPORTANT DECISIONS OF THE HON'BLE SUPREME COURT IN THE PUBLIC INTEREST LITIGATIONS

1. TAJ POLLUTION MATTER: M.C.Mehta Vs UOI & Ors. W.P.(C) No.13381/1984

This writ Petition was filed by Shri M.C.Mehta, Advocate as a public interest litigation regarding pollution caused to the Taj Mahal in Agra. The sources of air pollution in Agra region were particularly iron foundries, ferro-alloys industries, rubber processing, lime processing, engineering, chemical industries, brick kilns, refractory units and automobiles. The Petitioner also alleged that distant sources of pollution were the Mathura Refinery and Ferozabad bangles and glass industries. It was also stated that the sulphur dioxide emitted by the Mathura Refinery and the industries located in Agra and Ferozabad when combined with moisture in the atmosphere forms sulphuric acid and causes "acid rain" which has a corroding effect on the gleaming white marble. The industrial and refinery emissions from brick kilns, vehicular traffic and generator sets were alleged primarily responsible for polluting the ambient air in and around Taj Trapezium Zone (TTZ) as identified by the Central Pollution Control Board. The Petitioner also referred the "Report on Environmental Impact of Mathura Refinery" (Varadharajan Committee) published by the Government of India in the year 1978. Subsequently, the reports of the Central Pollution Control Board under the title "Inventory and Assessment of Pollution Emission: In and Around Agra-Mathura Region (Abridged)" and the report of the National Environmental Engineering Research Institute (NEERI) entitled "Over-View Report" regarding status of air pollution around the Taj published in the year 1990 were also referred. On the directions of the Hon'ble Supreme Court, the

NEERI and the Ministry of Environment & Forests had undertaken an extensive study for re-defining the TTZ (Taj Trapezium Zone) and re-alienating the area management environmental plan.

The NEERI in its report had observed that the industries in the TTZ (Districts of Agra Mathura, Ferozabad and Bharatpur) were the main sources of air pollution in the area and suggested that the air polluting industries in the area be shifted outside the TTZ. The Hon'ble Supreme Court after examining all the reports viz, four reports from NEERI, two reports from Varadarajan and several reports by the Central Pollution Control Board and U.P.Board, on 31.12.1996 directed that the industries in the TTZ were the active contributors to the air pollution in the said area. All the 292 industries were to approach/apply to the GAIL before 15.2.1997 for grant of industrial gas-connection. The industries which were not in a position to obtain gas-connections, to approach UPSIDC/U.P.Government before 28.2.1997, for allotment of alternative plots in the industrial estates outside TTZ. Those industries, which neither applied for gas-connection nor for alternate industrial plots should stop functioning using coke/coal as fuel in the TTZ w.e.f. 30.4.1997. The supply of coke/coal to these industries shall be stopped forthwith. The GAIL should commence supply of gas to the industries by 30.6.1997, with these directions the issue relating to 292 industries was disposed off.

Now, none of the 292 industries is using coal/coke as fuel. As per the information given by the Government of Uttar Pradesh to the Hon'ble Supreme Court, the present operational status of those industries is as follows:

Units closed	:	187
Units based on electricity	:	53
Units based on CNG/LPG/Electricity	:	42
Units not using any fuel	:	03
Units not found	:	07
Total	:	<hr/> 292 <hr/>

Constitution Of Mahajan Committee: The Mahajan Committee was constituted by the orders of the Hon'ble Supreme Court dated 5.2.1996. The Mahajan Committee was consisted of Shri Krishan Mahajan, Advocate and two senior scientists of the Central Pollution Control Board. The Hon'ble Supreme Court on 30.8.1996 directed the Mahajan Committee to inspect the progress of the green belt developed around the Taj Mahal every three months and submit progress report in the Court for the period of next three years.

Earlier, on the basis of the report submitted by the NEERI regarding development of green belt around Taj Mahal, the Hon'ble Supreme Court on 30.8.1996 and 3.12.1996 directed the Ministry of Environment & Forests, Government of India for monitoring and maintenance of the trees planted in the green belt. The officials of the Central Pollution Control Board were also directed for inspection of the Green

Belt area in every three months. The Central Pollution Control Board had submitted so far 35 reports in compliance of the Hon'ble Supreme Court orders.

On the directions of the Hon'ble Supreme Court, dated 13.9.2000 the Central Pollution Control Board inspected the Foundry Nagar Industrial area, Agra and the premises of the Taj and submitted its report with its recommendations. The Hon'ble Court on 7.11.2000 while accepting the recommendations of the Central Board directed that the four Ambient Air Quality Monitoring Stations be installed in Agra region and these stations be run continuously for one year all the seven days in a week. These air quality monitoring stations are to be run by the Central Pollution Control Board and monitoring report of these stations be submitted in the Court every month. The Central Pollution Control Board submitted a detailed proposal for establishing four air quality monitoring stations in Agra region before the Court. The Hon'ble court considered the proposal of the Central Board and accepted the recommendations of the Mahajan Committee in the matter on 4.5.2001 and directed that the full cost towards the hardware for monitoring stations and hardware for Central Laboratory would be provided by the Mission Management Board (MMB) (functioning under the Ministry of Environment, Government of Uttar Pradesh and is located in Lucknow) and with regard to the remaining amount of operational cost would be made available by the Central Government to the Central Pollution Control Board within four weeks from the date of the order. The Central Board has established four ambient air quality monitoring stations in Agra and these stations have been commissioned in the month of January, 2002. Monitoring reports are being submitted to the Hon'ble Court on regular basis since February, 2002.

Apart from the establishment and operation of four monitoring stations in Agra, the Hon'ble Supreme Court, is monitoring several other important issues which were directly related to the pollution problems of Agra and TTZ area. The following issues are under active consideration of the Hon'ble Supreme Court:

1. industries located in Agra including foundry units;
2. compliance of direction of the Hon'ble Supreme Court by the Mission Management Board;
3. traffic management & encroachment within the 500 metre zone of the Taj Mahal;
4. slaughter house;
5. Agra Heritage Fund;
6. opening of Taj Mahal in the night;
7. unauthorized construction within 100 metre from the southern gate of the Taj Mahal;

8. booking window at Taj Mahal for collection of Toll Tax;
9. supply of gas to the industries located in Firozabad;
10. brick kilns located 20 km away from Taj Mahal or any other significant monument in the TTZ area including Bharatpur Bird Sanctuary ;
11. promotion of Non-Conventional Energy Source; and
12. security of Taj Mahal.

2. GANGA POLLUTION MATTER: Writ Petition (Civil) No. 3727/1985 (M.C.Mehta Vs UOI & Ors.)

The Central Pollution Control Board filed an Interlocutory Application (IA) in 1999 before the Hon'ble Supreme Court seeking directions from the Hon'ble Court in respect of the municipalities/Nagarपालikas/local bodies located in the State of Uttar Pradesh, Bihar and West Bengal to maintain sewage treatment plants/ sewerage systems, pumping stations, crematoria, low cost community toilets or any other assets or infrastructure created under the Ganga Action Plan (GAP). The Hon'ble Court on 28.3.2001 after consideration of the replies of the States of Uttar Pradesh, Bihar and West Bengal directed that it was appropriate that the Central Pollution Control Board jointly with the respective State Pollution Control Boards, examine and inspect the functions of the aforesaid assets/infrastructure created under the Ganga Action Plan in the State of Bihar, West Bengal, Uttar Pradesh and Uttaranchal (*Now, the State of Uttaranchal was included, the Uttaranchal has been carved out as 27th State of India*) and submit a comprehensive report indicating to what extent the orders of this court have been complied with by the respective authorities. The Central Board after carrying out in-depth inspection in each of the States, jointly with the concerned Pollution Control Board, submitted the report before the Hon'ble Supreme Court. The Central Pollution Control Board along with the State Pollution Control Boards of Uttar Pradesh, Bihar and West Bengal carried out inspection of 35 sewage treatment plants in Uttaranchal, Uttar Pradesh, Bihar and West Bengal from May 28th, 2001 to June 19th, 2001. The State Board of Uttaranchal had not started functioning during the period of inspection, the U.P.Pollution Control Board joined the inspection of 3 sewage treatment plants in Uttaranchal. The inspection report of the Central Pollution Control Board provided an overview of the operation and maintenance, performance evaluation of sewage treatment plants, conclusions and recommendations for four States. Out of 35 sewage treatments plants planned under Ganga Action Plan Phase – I (3 STPs in Uttaranchal, 10 STPs in UP, 7 STPs in Bihar, and 15 STPs in West Bengal), 32 are commissioned and 29 were found functioning. Based on the inspections of the STPs and examination of various issues, the Central Pollution Control Board recommended that the staff responsible for operation and maintenance of STPs should be professionally qualified and trained. There should be detailed operational manual for each STP. There should be one laboratory in each town where sewage treatment plant with activated sludge unit is incorporated and the laboratory should be have basic facilities for analyzing pH, conductivity, BOD, COD, SS, Volatile SS and Dissolved Oxygen. The treatment plant

should be monitored for its performance on daily basis for BOD, COD and SS. There should be a separate cell in the State Pollution Control Board for monitoring and management of sewage treatment plants. The decentralized approach in management of sewage needs to be encouraged. The Co-operative group housing societies, multistoried housing complexes, big hotels etc. need to set up appropriate on site wastewater treatment facilities for recycling of wastewater for gardening and other non-domestic uses to the extent possible. The STPs should be brought under regulatory mechanism for effective monitoring and pollution control. The municipalities must apply and obtain consent from the concerned State Pollution Control Boards under the Water (Prevention and Control of Pollution) Act, 1974. The Hon'ble Court accepted the report of the Central Board and directed the concerned State Governments to submit their comments on the said report. The matter is under consideration of the Hon'ble Supreme Court.

3. VEHICULAR POLLUTION IN DELHI: Writ Petition (Civil) No.13029/1985 (M.C.Mehta Vs UOI & Ors.)

This writ petition was filed in the year of 1985 under Article 21 of the Constitution of India regarding air pollution in Delhi. The Petitioner challenged the inaction on the part of the Union of India, Delhi Administration (now known as Government of National Capital Territory of Delhi) and other Authorities whereby smoke, highly toxic and other corrosive gases were allowed to pass into the air due to which the lives of the people of Delhi were put to high risk especially in thickly populated areas where most of the hazardous industries were functioning. The residents of the area were suffering from chronic ailments of nose, throat and eyes due to air pollution. The Petitioner prayed before the Hon'ble court that pollution is due to industries and vehicles and appropriate directions might be issued to the owners of vehicles emitting noxious carbon monoxides, oxides of nitrogen, lead and smoke from their vehicles. During the pendency of this Writ Petition, the Hon'ble Supreme Court passed several orders/directions to deal with the situations arising from time-to-time and impressed upon the concerned authorities to take urgent steps to tackle the acute problem of vehicular pollution in Delhi.

The important directions issued by the Hon'ble Court on 26.7.1998:

- (i) augmentation of public transport to 10,000 buses by 1.4.2001;
- (i) elimination of leaded petrol from NCT Delhi by 1.9.1998;
- (ii) supply of only pre-mix petrol by 31.12.1998 for two stroke engines of two wheelers and autos;
- (iii) replacement of all pre-1990 autos and taxies with new vehicles on clean fuels by 31.3.2000;
- (iv) no 8 year old buses to ply except on CNG or other clean fuels by 1.4.2000;

- (v) entire city bus fleet (DTC & private) to be converted to single fuel mode on CNG by 31.3.2001;
- (vi) new ISBTs to be built at entry points in North and South-West to avoid pollution due to entry of inter state buses by 31.3.2000;
- (vii) GAIL to expedite and expand from 9 to 80 CNG supply outlets by 31.3.2000;
- (viii) two independent fuel testing laboratories to be established by 1.6.1999;
- (ix) proper inspection and maintenance facilities to be set up for commercial vehicles with immediate effect;
- (x) comprehensive inspection and maintenance programme to be started by transport department and private sector by 31.3.2000; and
- (xi) CPCB/DPCC to setup a few more stations and strengthen the air quality monitoring stations for monitoring critical pollutants by 1.4.2000. The Hon'ble Court also directed that the time frame as fixed by the Environment Pollution (Prevention and Control) Authority should be strictly adhered to by all the authorities.

The Hon'ble Supreme Court on 26.3.2001 further directed that in public interest and with a view to mitigate the sufferings of the commuter public in general and the school children in particular some relaxation and exemptions were given.

While dealing with the issues relating to conversion to CNG mode of public transport in NCT Delhi, the Hon'ble Supreme Court on 5.4.2002 further directed that under Articles 39(e), 47 and 48-A it is the duty of the of the State to secure the health of the people, improve public health and protect and improve the environment. The Hon'ble Court observed that the Environment (Prevention and Control) Authority was a statutory Authority constituted u/s 3 of the Environment (Protection) Act, 1986 and its directions were final and binding on all persons and organizations concerned. The directions of the said authority should be complied with.

The Hon'ble Supreme Court earlier extended the limit for the conversion of commercial vehicles to avoid the unnecessary hardship, the first time it was extended to 31.5.2001 and then to 31.1.2002. On 5.4.2002, the Hon'ble Supreme Court has relied on the judgment of *Vellore Citizen Welfare Forum Vs Union of India & Others (1996) 5 SSC 64* in which precautionary principle and 'polluter pays principle' was discussed. The Hon'ble Court also referred various studies which co-related the increase of air pollution with increase in cardiovascular and respiratory diseases and also the carcinogenic nature of respirable suspended particulate matter (RSPM) – PM-10 (i.e. matter less than 10 microns in size). The Hon'ble Supreme Court also referred the CPCB Newsletter "Parivesh", published in September, 2001 relating to air pollution and human health, and observed that there was need to control air pollution, and one of the measures was to reduce the use of diesel.

The Hon'ble Supreme Court issued the following directions for compliance:

1. The Union of India would give priority to Transport Sector including private vehicles all over India with regard to the allocation of CNG, i.e first the transport sector in Delhi, and in other polluted cities of India.
2. Those persons who have placed orders with the bus manufacturers and not taken the delivery of the bus should do so within 2 weeks failing which their permits should stand automatically cancelled.
3. Those owners of the diesel buses continued to ply diesel buses beyond 31.1.2002, in contravention of this Court's orders, the Director of Transport, Delhi would collect from them costs @ Rs.500/- per bus per day increasing to Rs.1000/- per day after 30 days of operation of the diesel buses w.e.f. 6.4.2002.
4. The NCT of Delhi should phase out 800 diesel buses per month from 1.5.2002 till all the diesel buses are replaced.
5. The Union of India and all Government Authorities including Indraprashta Gas Limited (IGL) should:
 - (a) Allocate and make available 16.1 lacs kg per day (2 mmscmd) of CNG in the NCT of Delhi by 30.6.2002 for use by the transport sector.
 - (b) Increase the supply of CNG whenever the need arises.
 - (c) Prepare a scheme containing a time schedule for supply of CNG to the other polluted cities of India which includes Agra, Lucknow, Jharia, Kanpur, Varanasi, Faridabad, Patna, Jodhpur and Pune.
 - (d) The Union of India might supply LPG in addition to CNG as an alternate fuel or to supply any other clean non-adulterable fuel as the Bhure Lal Committee might recommend.

4. POLLUTION BY INDUSTRIES IN DELHI: M.C.Mehta Vs Union of India & Ors. Writ Petition (Civil) No.4677/1985,

This Writ Petition was filed by Shri M.C.Mehta in 1985 regarding the pollution in Delhi by the Industries located in residential areas of Delhi. The Hon'ble Supreme Court after considering the reports submitted by the Central Pollution Control Board and the Delhi Pollution Control Committee, finally ordered vide its various orders, dated 8.7.1996, 6.9.1996, 10.10.1996, 26.11.1996 and 19.12.1996. These orders in brief are:

(i) Hazardous/Noxious heavy and large industries

The Hon'ble Court vide its order, dated 8.7.1996 directed that 168 industries falling in 'Ha' and 'Hb' categories under the Master Plan of Delhi – 2001 (MPD-2001) and which

were hazardous/noxious/heavy and large industries, to stop functioning and operating in city of Delhi w.e.f.30.11.1996. However, those industries could relocate/shift themselves to any other industrial estate in the National Capital Region (NCR) or outside.

(ii) The Hon'ble Court vide its order, dated 6.9.1996 ordered that 513 industries falling under 'H' category under the MPD-2001, should stop functioning and operating in the city of Delhi w.e.f.31.1.1997. However, those industries could relocate/shift themselves to any other industrial estate in NCR.

(iii) Hot Mix Plants

The Hon'ble Court vide its order, dated 10.10.1996 directed that 43 Hot Mix Plants operating in Delhi be relocated/shifted to any other industrial estate in the NCR region. It was also directed that those 43 Hot Mix Plants close down and stop functioning and operating in the city of Delhi w.e.f. 28.2.1997.

(iv) Brick Kilns

The Hon'ble Court vide its order, dated 26.11.1996 directed that 246 brick kilns operating in the Union Territory of Delhi falling under category 'H' under the MPD-2001, should close their functioning w.e.f.30.6.1997. However, these brick kilns could relocate/shift themselves in NCR.

The Hon'ble Supreme Court further directed that it was liberty to the brick kiln owners to indicate before 31.1.1997 in writing to the NCT of Delhi and Delhi Pollution Control Committee that the concerned brick kilns intended to shift to the new technology of manufacturing bricks by flyash – sand – lime technology. The Delhi Pollution Control Committee should monitor the setting up of the new project of the concerned brick kiln. After obtaining the consent and no objection certificate from the Delhi Pollution Control Committee and also from the Central Pollution Control Board, the concerned brick kiln permitted to operate at the same site, if it is permitted under Delhi Master Plan – MPD-2001. The Hon'ble Court further directed the NCT of Delhi to render all possible assistance to the concerned brick kiln owners to changeover the new technology and in the setting up of the modern plants with flyash- sand-lime technology.

(v) Arc/Induction Furnaces

The Hon'ble Court vide its order, dated 26.11.1996 directed that the 21 arc/induction furnaces falling under 'H' category industries under the MPD-2001 to close down and stop functioning and operating in the Union Territory of Delhi w.e.f.31.3.1997. However, these arc/induction furnaces could relocate/shift themselves to any other industrial estate in the NCR.

(vi) The Hon'ble Court vide its order, dated 19.12.1996 directed that 337 industries falling under 'H' category industries under the MPD-2001 were directed to close down and stop functioning and operating w.e.f. 30.6.1997 in Union Territory of Delhi. However, those industries could relocate/shift themselves to any other industrial estate in the NCR.

(vii) 'F' category industries located in residential area

The Hon'ble court vide its order, dated 12.9.2000 directed and appointed the Ministry of Urban Development to act as the Nodal Agency for the matter of relocating/shifting of 'F' category industries as per MPD-2001 functioning and operating in residential areas of Delhi. The said Nodal Agency was directed to supervise the implementation of various orders/directions passed by the Hon'ble Court as well as implementation of the Master Plan of Delhi. The powers under Sections 3(3) and 5 of the Environment (Protection) Act, 1986 were given to the said Nodal Agency for implementation. The Hon'ble court on 7.12.2000 directed that under the supervision of the Nodal Agency, the Government of National Capital Territory of Delhi, the Municipal Corporation of Delhi and the Delhi Development Authority would close all the polluting units functioning in non-conforming/residential areas or zones within a period of four weeks from the date of the order. The Hon'ble Court further directed that the Nodal Agency was at liberty to direct closure of the polluting units under its supervision.

5. POLLUTION IN RIVER YAMUNA: Writ Petition (Civil) No.725/1994, News Item 'HT', dated 18.7.1994, A.Q.F.M. Yamuna Vs Central Pollution Control Board & Ors.

A news item titled '...and Quite Flow Maily Yamuna...' was published in a daily News Paper 'The Hindustan Times', New Delhi on 18.7.1994. The said news item was based on findings of Central Pollution Control Board. The Hon'ble Supreme Court took suo-moto cognizance of this news item and issued notices on 2.12.1996 to the Central Board with the directions to conduct investigations in the cities of Ghaziabad, NOIDA and Modi Nagar with a view to having an assessment of environment impact and to the status of pollution due to generation of industrial wastes, municipal sewage, household wastes and other types of wastes. It was also directed that the Central Board shall give positive suggestions/schemes to be made operative, so far as controlling pollution. The Central Pollution Control Board conducted inspections in the cities of Ghaziabad, NOIDA and Modi Nagar and submitted a detailed report on 18.12.1996 for the consideration of the Hon'ble Court. After examining the report of the Central Board, the Hon'ble Court issued notices to the National River Conservation Directorate (NRCD) and also to the Ghaziabad Municipal Corporation for their response.

The Central Board further submitted that the plan for cleaning of Kali Nadi was required to be evaluated in detail through a Committee of experts. On the suggestions of the Central Board, the Hon'ble Supreme Court ordered on 20.3.1998 that the committee which was constituted in the Writ Petition (Civil) No. 914/1996 might also be associated for the evaluation of the project proposal for the Kali Nadi and Ghaziabad, NOIDA action plans and evaluate the appropriate technology to be adopted for these projects. On the directions of the Hon'ble Court, the Committee under the Chairmanship of Shri P.K.Kaul, Ex- Cabinet Secretary submitted its reports before the Hon'ble Court for consideration. The matter is still under consideration of the Supreme Court.

The Central Board is regularly monitoring water quality of river Yamuna and drains joining it in Delhi, in compliance of the Hon'ble Court's order. Till date, several reports, have been submitted for the consideration for the Hon'ble court. In it's reports, the

Central Board recommended that there should be proper collection of wastewater generated in Delhi by augmenting sewerage facilities, laying down by sewer lines. Untreated sewage should not be allowed to flow into the storm-water drains. Sewage treatment plants are required to be operated to their full capacity. The existing sewerage network should be appropriately maintained using three tier maintenance schedule. Adequate sanitary arrangements for slums and J.J.Colonies, and use of wastewater after treatment for irrigation, gardening and other uses were suggested. Delhi might exchange treated wastewater to fresh water with the State of Haryana.

The Hon'ble Court directed the Ministry of Environment & Forests and Ministry of Urban Development, Government of India to study the problem with regard to the treatment of sewage in Delhi and give their positive and concrete suggestions, so that after 31st March, 2003, no untreated sewage should go to the river Yamuna. The matter is still under consideration of the Hon'ble Court.

Yamuna Pollution Matter

The Hon'ble Court on 10.4.2001 after considering various reports submitted by the Central Pollution Control Board on the status of Yamuna River, observed that it was not the denied fact that right to life guaranteed under Article 21 of the Constitution include a right to clean water. This right to clean water being deprived to 31.8 million citizens of Delhi because of the large scale pollution of the river Yamuna. The entire pollution takes place only in the stretch of the river Yamuna that passes through Delhi which is about 22 km. The quality of water of river Yamuna, when it enters in Delhi, is far superior than when it leaves Delhi and by the time Yamuna enters into Agra canal. The Hon'ble Court further directed that when an Integrated Action Plan was furnished, steps might be taken so as to ensure that at least by 31.3.2003 the minimum desired water quality (i.e. of class-C) in the river Yamuna is achieved in Delhi Stretch. The Hon'ble Supreme Court further directed the Ministry of Urban Development to submit how its Integrated Action Plan could be implemented within the prescribed time frame. The Chief Secretary of Delhi would also inform this Court as what steps could be taken to ensure to attain the required quality of water in the river Yamuna so that it could no longer be called "Mailee Yamuna" after 31.3.2003.

The Hon'ble Court on 6.11.2001 while considering the status of pollution in the river Yamuna observed that the deterioration of water quality became a serious health hazard for the inhabitants of Delhi. The Government with all the resources at their command should ensure that unpolluted water or tolerable standard of water was maintained. The Hon'ble Court directed the Delhi Administration to submit a time schedule as to what it would propose to do and also indicate the phases in which the pollution level will come down to ensure that after 31st March, 2003 no untreated sewage enters river Yamuna.

The Hon'ble Court on 4.12.2001 directed that the Government should not allow construction of additional floor or increase FAR without increasing the corresponding civic amenities because any such addition in the construction would increase population and the extinction of the river Yamuna. The Hon'ble Court further directed the Central Government to consider and inform the Court whether any amendment is

required of the Environment (Protection) Act, 1986 so that the requirement of Environment Impact Assessment for the purposes of the town planning is incorporated.

Distilleries Matters

The Hon'ble Court considered the petitions filed by the Distilleries located in Haryana on 23.1.2001 and directed that a committee comprising Additional Secretary, Ministry of Environment & Forests or such other senior officer as may be deputed by the Ministry and the Chairmen of Central Pollution Control Board and Haryana State Pollution Control Board be constituted and the said Committee, should take decision with regard to allowing all or any of the distilleries to operate or not to operate. The said Committee might seek such technical assistance, as it may deem fit and proper. Accordingly, the Committee consulted experts who were well acquainted with the distilleries and its effluent treatment, to evolve criteria for treatment and disposal of distillery wastewater. Some of the distilleries in Haryana were allowed to operate after compliance of this criteria developed by the Committee.

6. POLLUTION IN NOIDA, GHAZIABAD AREA: Writ Petition (Civil) No.914/1996, Sector 14 Residents' Welfare Association & Ors. Vs State of Delhi & Ors.

This Writ Petition was filed by the association of the residents of Sector 14, NOIDA regarding the discharge of effluents from the Delhi territory through Shahadra/Gazipur drain, which flow via Chilla Regulator, and passing through various sectors of the NOIDA area. The petitioner has alleged that various colonies, which are part of the Delhi territory, also discharge their untreated sewage besides industrial effluent through the above drains as a result of which the residents of NOIDA area are being adversely effected and get exposed to the environmental problems like the foul smell, mosquito breeding, stagnant water accumulation, discharge of untreated sewage, groundwater pollution, etc. The Hon'ble Supreme Court after hearing the matter on 6.1.1998 directed that a committee under the Chairmanship of Shri P.K.Kaul, Former Cabinet Secretary be constituted to deal with the problem and submit their report. The said committee after deliberation with different officials of local bodies of the Delhi and NOIDA submitted their reports suggesting short term measures and long term measures. The Hon'ble Court after consideration of the reports of the committee directed the Environment Pollution (Prevention and Control) Authority for NCR for monitoring and implementation of the recommendations of the Committee.

7. NOISE POLLUTION BY FIRECRACKERS: Writ Petition (Civil) No.72/1998 (Noise Pollution – Implementation of the laws for restricting use of loudspeakers and high volume producing sound systems) Vs UOI & Ors.

The Hon'ble Court after hearing the matter on 27.9.2001 issued following directions to all the States and the Union Territories to control noise pollution arising out of bursting of firecrackers, on the eve of the Dushehra and Diwali festivals and other festivals : -

- (i) The Union Government, the Union Territories as well as all the State Governments should take steps to strictly comply with the rules framed under

the Environment (Protection) Act, 1986. These Rules are related to the noise standards for firecrackers mentioned at S. No. 89 of Notification No.GSR 682(E), dated 5.10.1999.

- (ii) The use of fireworks or firecrackers should not be permitted except between 6.00 p.m. and 10.00 p.m. No fireworks or firecrackers should be used between 10.00 p.m. and 6.00 a.m.
- (iii) Firecrackers should not be used at any time in silence zones.
- (iv) The State Education Resource Centres in all the States and the Union Territories as well as the management/principals of schools in all the States and Union Territories should take appropriate steps to educate students about the ill effects of air and noise pollution.

The Hon'ble Court also directed that these directions should be given wide publicity both by electronic and print media.

8. IMPORT OF HAZARDOUS WASTE : Writ Petition (Civil) No. 657/1995 (Research Foundation for Science, Technology and Natural Resource Policy Vs UOI & Ors.)

This Writ Petition was filed as Public Interest Litigation seeking Hon'ble Court's intervention to impose ban on the import of toxic wastes from the industrialized countries into India. The High Power Committee was appointed by the Hon'ble Court vide its order, dated 13.10.1997 to look into various aspects of hazardous wastes and suggest measures. The Hon'ble Court after hearing on 12.2.2001 passed an order to acknowledge the receipt of the report of the High Power Committee headed by Prof. M.G.K.Menon. The Hon'ble Court also considered the report relating to the hazardous wastes off loaded at Alang in Gujarat. The reports were filed by the Central Pollution Control Board vide its affidavits dated 29.2.2000 and 10.8.2000 in compliance of Hon'ble Court's order. The Hon'ble Court further directed that since, there was no specific finding by the National Institute of Oceanography, Goa, the Union of India should file an affidavit indicating whether the material imported was hazardous or not. If necessary, opinion of the High Power Committee be obtained. The matter is pending with the Hon'ble Court.

9. POLLUTION IN PORBANDAR, GUJARAT : Dr. Kiran Bedi Vs Union of India & Ors. Writ Petition (Civil) No. 26/98

Dr. Kiran Bedi, an IPS Officer filed this Petition in public interest for the protection of the Monument at Porbander, the birthplace of the Father of the Nation. The Hon'ble Supreme Court after consideration of the submissions of the petitioner on 16.10.1998 directed the Central Pollution Control Board to submit a report about the conditions prevailing in and around the memorial built in memory of the Father of the Nation at Porbander. In its report, the Central Board was directed to furnish the report on the fish-drying activity carried on in the area surrounding the memorial as also the overall

sanitary conditions prevailing in this area. The conditions of the roads leading to the memorial should also be reported. The report should indicate the specific distance from the memorial to the land or plots on which fish drying activities were carried on. The hygienic conditions around the memorial and the landing sites for the fishing vessels including the distance of the landing sites from the memorial should be reported. The Central Board was directed to suggest, in consultation with the Gujarat Maritime Board whether the landing sites for the fishing vessels could be shifted to a distance of 3 kilometres at least from the memorial and also suggest proposals for shifting of fish drying activities.

A team from the Central Board after visiting Porbander city submitted its inspection report on the status of condition of sanitation in the city, fishing activities and suggested short-term and long-term recommendations. The Hon'ble Supreme Court after examining the matter on 9.4.1999 directed that the area between Manik Chowk and Sardar Vallabh Bhai Patel Road should be treated as "Walking Plaza" and no vehicular traffic would be allowed on this road subject to the special permission of the S.P.(Traffic) or the Collector of the District for urgent Government works. No hawkers would also be allowed in this area. No fish drying activity would be carried out in and around an area of three kilometres from Kirti Mandir. The State of Gujarat and Municipality of Porbander should submit the progress made concerning the sewerage system. The Hon'ble Supreme Court on 19.9.2000 observed that sufficient steps were taken to protect the birthplace of Mahatama Gandhi and fishing area has been shifted to a distance of 4½ kilometres. The appropriate authority has taken steps for having the sewerage system in the city in place. In view of that, no further orders were necessary. The Writ Petition was disposed off on 9.4.1999.

10. MANAGEMENT OF MUNICIPAL SOLID WASTE : Writ Petition (Civil) No.286/1994, Dr.B.L. Wadehra Vs Union of India & Ors.

This Writ Petition was filed under Article 32 of the Constitution of India. The Petitioner prayed before the Hon'ble court to issue directions to the Municipal Corporation of Delhi (MCD) and New Delhi Municipal Council (NDMC) to take action in accordance with the Municipal Laws specifically for collection, removal and disposal of garbage and other wastes. On the directions of the Hon'ble Supreme Court, the concerned authorities filed their replies. In its reply the MCD submitted that the total number of garbage collection centres were 1604 (337 dalao, 1284 dustbins, 176 open sites and 7 steel bins). The garbage collection trucks collected the garbage from the collection centres and took it to the nearest Sanitary Land Fill (SLF). In its reply, NDMC stated that average of 300-350 tonnes of garbage generated in the NDMC area and there were 944 garbage collecting places (650 trolleys and 394 dustbins). The Court on 1.3.1996 passed the order that the ambient air was so much polluted that it was difficult to breath. The people of Delhi were suffering from respiratory diseases and throat infections. River Yamuna, - the main source of drinking water supply – was the free dumping place for untreated sewage and industrial waste. The rapid industrial development, urbanization and regular flow of persons from rural to urban areas had made major contribution towards environmental degradation. Apart from Article 21 of the Constitution of India which guarantees "Right to Live" Article 48A and 51A (g) of the Constitution are as under :-

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

Article 51A(g) – To protection and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”.

In light of the facts and circumstances stated above, the following directions were issued for compliance

1. The experimental schemes of MCD and NDMC for distribution of polythene bags, door-to-door collection of garbage and its disposal was approved. The garbage/waste should be lifted from the collection centers everyday and transported to the designated place for disposal. All receptacles/collection centers should be kept clean and tidy everyday.
2. The Government of India through its Secretary, the Ministry of Health, Government of NCT of Delhi, MCD through its Commissioner and NDMC through its Administrator were to construct and install incinerators in all the Hospitals/Nursing Homes with 50 beds and above under their Administrative control. This was to be done within 9 months.
3. The All India Institute of Medical Sciences through its Director was to install sufficient number of incinerators to dispose of the hospital waste.
4. The MCD and NDMC were to issue notices to all the private hospitals/nursing homes in Delhi to meet their own arrangements for the disposal of their garbage and hospital waste and construct their own incinerators.
5. The Central Pollution Control Board and the Delhi Pollution Control Committee should send their inspection team regularly in different areas of Delhi and New Delhi to ascertain that the collection/transportation and disposal of garbage/waste was carried out satisfactorily. The Central Pollution Control Board and the Delhi Pollution Control Committee should file their reports after every two months for a period of two years.
6. The Government of NCT of Delhi was to appoint Municipal Magistrates (Metropolitan Magistrates) for the trial of offences under the MCD Acts and NDMC Acts. Residents of Delhi were to be educated through Doordarshan that they should be liable for penalty in case they violate any provision of these Acts in the matter of collecting and disposal of garbage and other wastes.
7. The Doordarshan through its Director General was to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and New Delhi Act.

8. The Secretary, Ministry of Defence Production, Government of India should make arrangements to have the 200 tippers supplied to MCD as expeditiously as possible.
9. The Development Commissioner, Government of NCT of Delhi was to handover the two sites near Badarpur or Jaitpur/Tejpur quarry pits and Mandi Village near Jaunpur quarry pits. These sites were to be handed over to MCD within three months.
10. The compost plant at Okhla should be revived and put into operation w.e.f.1.6.1996 and four additional compost plants as recommended by Jagmohan Committee should also be examined for construction.
11. The MCD should not use the filled up Sanitary Land Fills (SLF) for any other purposes except for forest and gardens. The MCD was to develop forests and gardens on these sites. The work of afforestation should be undertaken by the MCD w.e.f. 1.4.1996.
12. The MCD and NDMC should construct/install additional garbage collection centers in the form of dhalaos/trolley/steel bins within four months.
13. The Union of India and NCT/Delhi Administration were to consider the request from MCD and NDMC for financial assistance.
14. The NCT/Delhi Administration and MCD and NDMC were to engage an expert body like NEERI to find out alternate method or methods of garbage and solid waste disposal in case non-availability of SLF methods.

Earlier, in compliance of the Hon'ble Supreme Court's order dated 1.3.1996 and 23.1.1998 the Central Pollution Control Board conducted inspection and surveyed different areas of Delhi/New Delhi to ascertain the collection transportation and disposal of garbage/waste and submitted bi-monthly reports to the Supreme Court. In its reports the Central Board made recommendations in respect of collection transportation and disposal of garbage/waste. In all 11 reports have been submitted in the Supreme Court by the CPCB. As per estimate of the CPCB the municipal solid waste (MSW) generated in Delhi was around 4000-5000 tonnes per day in 1997 and is likely to go as high as 10,000 tonnes per day in 2005. In view of these estimates, the CPCB observed that there will be tremendous strain on municipal infrastructure services in terms of water supply, waste water collection, conveyance and treatment, and disposal of municipal solid waste. This Writ Petition was transferred on 23.1.1998 to the Hon'ble High Court of Delhi.

11. MANAGEMENT OF SOLID WASTE IN CLASS-I CITIES – Writ Petition (Civil) No.888/1996 (Almitra H.Patel Vs Union of India & Ors.)

This writ petition was filed by Ms. Almitra H.Patel regarding management of solid waste in Class-I cities. In its petition the petitioner alleged that the practices adopted by the municipalities for disposal of garbage in urban areas were faulty and deficient. The

management of solid waste by the municipalities had direct impact on the health of the people in the country. The petitioner had appreciated the guidelines and recommendations made by the Central Pollution Control Board for the management of municipal waste. In its reply, the Central Pollution Control Board submitted that the responsibilities of management of solid waste were vested with the municipal corporations of the municipalities which are under the administrative control of respective states/union territories. At the central level, the Ministry of Urban Affairs is the nodal Ministry to deal with the matters relating to municipal solid wastes. The Central Pollution Control Board itself has taken several initiatives for improvement, collection, transportation disposal and utilization of municipal solid wastes. On the basis of the replies of the various departments, Central/State Pollution Control Boards and concerned State Government, the Hon'ble Supreme Court on 16.1.1998 directed to constitute a committee to look into all aspect of solid wastes management in Class-I cities of India. The Chairman of the Committee was nominated Shri Asim Barman. The said committee has submitted its report in the month of March 1999 before the Supreme Court for consideration. The committee made several recommendations including technical aspects also for the management of solid waste in class I cities. The recommendations have further categorized under three heads (i) mandatory recommendations for citizens/associations; (ii) mandatory recommendations for local bodies/state Governments; and (iii) Discretionary recommendations for urban local bodies. On the basis of the report of the committee, draft rules known as the Management of Municipal Solid Wastes (Management and Handling) Rules, 1999 were framed and circulated to all the State Governments for their suggestions and w.e.f. 25.9.2000 the Municipal Solid Wastes (Management and Handling) Rules, 2000 came in to effect.

In pursuance of the Hon'ble Supreme Court's order, dated 24.11.1999 the Central Pollution Control Board carried out inspections and submitted a comprehensive report with regard to five cities (Bangalore, Calcutta, Chennai, Delhi and Mumbai) in the Supreme Court. In its report, the Central Pollution Control Board gave their observations in the implantation of the recommendations, mentioned in the Barman Committee (Constituted by the Hon'ble Supreme Court). The matter is pending in the Supreme Court for consideration.

12. POLLUTION IN MEDAK DISTRICT, ANDHRA PRADESH: Writ Petition (Civil) No.1056/1990 (Indian Council for Enviro Legal Action & Others Vs. UOI & Others)

This Writ Petition was filed in 1990 in the Supreme Court by the Indian Council for Enviro Legal Action & Others. against the industries and the CETP managements of PETL at Pathancheru and Bolaram for the pollution of the ground water and surface water caused by the discharge of the effluents from these CETPs. Among others, the A.P. Pollution Control Board and the Central Pollution Control Board were made respondents in this case.

The Patancheru Industrial Estate was established in the year 1975 at Pathancheru in Medak district of Andhra Pradesh and is about 15 kms from Hyderabad. Bulk drugs,

chemicals, textile, leather finishing industries etc. are located in this industrial estate and to take care of the effluents a common effluent treatment plant is set up and operated by M/s. Pathancheru Envirotech Limited and has 72 member industries. The total effluent handled by the PETL is about 2860 cu m per day. To provide treatment of the industrial effluents PETL obtains domestic sewage from BHEL which is located nearby and also raw water from Isakawagu drain and discharges the treated effluent in the Isakawagu drain which falls into Nakkawagu drain which finally discharges into Manjira river after traversing a distance of about 40 kms. Manjira River is the major source of water supply for the city of Hyderabad.

The Bolaram Industrial Estate is located in the Bolaram village in the district of Rangareddy in Andhra Pradesh and is about 35 km from Hyderabad city. The main water polluting industries in this industrial estate are the bulk drug industries. The CETP was established in this industrial estate and presently there are 25 member industries contributing to this CETP. The CETP at present is handling around 340 cu m per day of effluent. In order to homogenize and enhance the treatability of effluents domestic sewage is added. The treated effluents presently are discharged on land for plantations.

The Hon'ble Supreme Court vide its order, dated July 29, 1997 in I.A. No. 2 & 9-11 in WP (C)No. 1056/90 inter-alia directed the Central Pollution Control Board to take up the following activities :

A. CPCB was to assess the following :

- i) capacity of Common Effluent Treatment Plants (CETPs) installed at Patancheru and Bollaram;
- ii) functioning of these CETPs;
- iii) extent of treatment carried out in the CETPs;
- iv) whether the discharge from these CETPs meet the pollution control standards of CPCB;
- v) extent of the areas damaged around the industries as a result of discharge of effluent from industries;
- vi) extent of such damage;
- vii) whether individual units have complete effluent treatment plants or only primary treatment is provided to the effluents; and
- viii) The quality of effluent discharged from the individual effluent treatment plants belonging to each of these industries and whether they meet the prescribed standards.

B. The Hon'ble Court further directed CPCB to suggest:

- i) Steps which should be taken to restore the affected areas to their non-polluted conditions;
- ii) Steps which were required to be taken for proper functioning of the two CETPs, known as 'Progressive Effluent Treatment Limited' (PETL), Bollaram and 'Patancheru Envirotech Limited (PETL)', Patancheru;
- iii) The time frame within which these steps can be taken;
- iv) CPCB to deal comprehensively the entire problem and suggest some measures as they think appropriate for rectifying the situation; and
- v) CPCB, in their report, to mention about the industries which have their own effluent treatment plants, indicating whether it was a complete plant or whether it was only for primary treatment of effluents

The CPCB conducted detailed investigations in the Bollaram and Patancheru areas and submitted a comprehensive report of effluent management in Nakkawagu drainage basin to the Hon'ble Supreme Court in March 1998. Vide its report the Central Board suggested mechanism of self-regulations of member industries to Patancheru and Bollaram Common Effluent Treatment Plants. The CPCB has suggested the following inlet standards for CETP so that the effluent received in the CETP are amenable for biological treatment.

Parameters	Desirable limit (not to exceed)	Maximum Allowable Limit
COD	15000 mg/l	20000 mg/l
TDS	15000 mg/l	20000 mg/l
SS	1000 mg/l	1000 mg/l
pH	6.5 – 8.5	6.5 – 8.5

CPCB also suggested norms for the discharge of treated effluent for individual industries (large) and also the following norms for treated effluents from the CETP.

Parameters	Disposal to Nakkavaagu with cunnette system	Disposal to land for afforestation	Disposal to sewer
pH	6.5-8.5	5.5-9.0	5.5-9.0
O & G	10 mg/l	10 mg/l	20 mg/l
BOD	100 mg/l	150 mg/l	350 mg/l
TDS	3000 mg/l	3000 mg/l	-

The CPCB further dealt with the problem of disposal of the treated effluents from these CETPs and suggested the following four options and also given an Intercomparison of Various Options.

Option I : In this option, large industries should treat their effluent to bring down BOD to 1000 mg/l and following norms of TDS, COD, SS as discussed earlier discharge their effluent to CETP. CETP would also receive the effluent from SSI units meeting the norms of COD & TDS and should collect sewage from local areas/sewer network. CETP must achieve the sewer standard and discharge treated effluent to main sewer which leads to sewage treatment plant.

Option II : In option II, the same rule for option I was applicable to industries both large and small, alongwith collection of sewage. However, instead of disposal to sewer, CETP effluent would be discharged to land for afforestation, under this option.

Option III : The same proposition with respect to the provision of industrial effluent at individual level as sewage collection from local area holds good, but here CETP effluent disposal to Isakavaagu/Nakkavaagu with cunnette system was suggested.

Option IV : In this option, large industries were allowed to discharge into Isakavaagu/Nakkavaagu with a stringent limit of BOD 300 mg/l, COD 250 mg/l and TDS 2100 mg/l. Of course, the drains have to be provide with cunnette. Incase of SSI, effluent would be treated at CETP and discharged to Isakavaagu/Nakkavaagu drain.

Note :

- Cunnette system would provide sufficient velocity with aeration due to turbulence all along the drain. Cunnette also ensure prevention of infiltration/seepage to the groundwater,
- Operation and maintenance of cunnette should be done by CETP Authority;
- While discharging to Nakkavaagu drain with the assumption of 20 to 30% dilution available, the resultant BOD was expected to be 70 to 80 mg/l of the mixed water in drain which would further come down to 30 mg/l before meeting the Manjira river due to self purification; and
- With the above dilution factor, the TDS was expected to be 2500 mg/l, which would further be diluted in the Manjira river.

Inter-comparison of Various Options :

Intercomparison of various options dictates that Option I provides the maximum certainty. Moreover, this ensures less vigilance. This also helps Nakkavaagu to be free from any abuse. Such is the case with Option II, but in such a situation, groundwater monitoring has to be made. But Option II, is the cost-effective system. In Option III, wastewater has to be discharged to Isakavaagu/Nakkavaagu, not directly but with cunnette system. In this case, chances of foul play by any individual industry cannot be ruled out. Option IV has one inherent difficulty that large industry has to meet stringent standard. The chances of violation are very high. In options III and IV, Nakkavaagu cannot be free from effluent. Strict vigilance is also required. The overall comparison of Option III and IV may be more cost-effective in comparison to Option II. It is also observed that in case of Option I, dilution available will be around 40 times,

which in future, will increase to around 60 stimes. Transferring of effluent (3 mld) from one basin to another, will not alter hydraulic load of the basin.

The Hon'ble Supreme Court inter-alia further directed the Central Pollution Control Board and A.P.Pollution Control Board to jointly recommend measures short-term, mid-term and long-term to contain water contamination of Isakavaagu and Nakkavaagu, and ensure satisfactory functioning of the CETPs at Patancheru and Bollaram and restore the affected areas to normal conditions. In compliance of these directions, a joint action plan was submitted to the Hon'ble Supreme Court. The Option I as mentioned above was finally agreed to be implemented and the PETL management had already deposited Rs.2 crores with Hyderabad Water Supply & Sewage Disposal Board and a time schedule has already been drafted for laying of the pipeline connecting PETL with K & S main. In the meantime NGOs from Musi river basin had raised objections to the proposed laying of the pipeline as they claim that Musi is already heavily polluted and transfer of the effluents from the CETP at Bollaram and Patancheru will further aggravate the problem.

At present the Amberpet Sewage Treatment Plant has only primary treatment and secondary treatment is non-existent. Unless, the Amberpet Sewage Treatment Plant is upgraded and provided with secondary treatment which consists of biological treatment system, the treated effluent from CETP should meet the standards stipulated for disposal into inland surface waters. If the sewer standards are to be followed for discharge of the treated effluents from CETP, the Amberpet Sewage Treatment Plant needs to be upgraded to provide the secondary biological treatment system.

It was submitted for consideration of the Hon'ble Supreme Court that the upgradation of Amberpet Sewage Treatment Plant be taken up simultaneously alongwith the laying of the pipelines from CETPs for discharge of the effluents from CETP into K&S main so that both the systems are ready more or less at the same time.

That the treated effluents from CETP with a TDS levels of a maximum of 10,000 mg/l, when discharged into public sewer, to K&S main, are expected to achieve a dilution of about 1:75 (considering the volume of treated effluents from the CETP as 3 MLD and the sewage received at Amberpet-STP as 225 MLD). By such dilution, the TDS levels in the combined effluent will be brought within the acceptable level of 2,100 mg/l for disposal into inland surface water or on land for irrigation.

At present, TDS limit of 15,000 mg/l for inlet of CETP was required to be met by the industries. However, in order to reduce the TDS load on CETP and consequently on STP and at the receiving water body/land, the industries were required to reduce the TDS in a phased manner. By the time, the discharge of treated effluent from CETP into the public sewer was materialized through laying of 18km pipe line and as well as the STP was augmented, the industries contributing to CETP should reduce the TDS levels upto 10,000 mg/l. This should be followed by further reduction of TDS levels upto 5000 mg/l in another 3 years from then.

The Hon'ble Court after hearing the matter on 10.10.2001 finally directed that further proceedings in the matter would be monitored by the Andhra Pradesh High Court. The

High Court would ensure the implementation of the orders passed by the Hon'ble Supreme Court and would deal the Writ Petition as well as Application filed therein in accordance with the law.

13. POLLUTION BY CHEMICAL INDUSTRIES IN GAJRAULA AREA: Writ Petition (Civil) No.418/1998 (Imtiaz Ahmad Vs UOI & Ors.) – Pollution by Chemical Industries in Gajraula area

The Petition was filed in 1998 regarding pollution caused by several industries, a distillery, two single super phosphate industries, a silica washing industry, a tyre & tube manufacturing unit etc. located in the Gajraula (Jyotiba Phule Nagar) District, U.P. It was alleged that those industries were discharging untreated effluent and letting out emission beyond the prescribed limit as a result of which the health of the people and agricultural crops in the region severally got affected. The discharge from the industries carrying industrial and chemical waste entered in the Bagad nullah which ultimately pollutes the river Ganga. The Hon'ble court issued various directions to control the pollution in the area and the Central Pollution Control Board submitted inspection reports in compliance of the Hon'ble Court orders.

The Central Board submitted its inspection report on 20.3.2001 after conducting inspection of M/s Insilco. In compliance of Hon'ble Court's order dated 31.10.2001, the Central Board submitted comments on the report of the NEERI in respect of the Sodium Absorption Ratio (SAR) issue concerning silica washing industry.

The Hon'ble Supreme Court on 28.2.2002 after considering the report of the NEERI and subsequent comments of the Central Board, observed that the concerned industry M/s Insilco had complied with required norms and measures in accordance with the recommendations of the Central Board. Therefore, M/s Insilco was permitted to continue with the industry operating at present premises. The Hon'ble Court referred the recommendations of the Central Board and further directed that the recommendations of the Central Board should be considered as a part of the order of this Court and all industries including M/s Insilco should abide by the said recommendations.

Further, the U.P.State Pollution Control Board was directed to take effective measures for necessary inspections in terms of the recommendations of the Central Board. The U.P. State Industrial Development Corporation (UPSIDC) should draw an environmental management plan in accordance with this order and it was further directed that no new large or medium polluting unit should be allowed to establish or the existing units should not be allowed any expansion without the consent of the appropriate Authority of the State of U.P., with these directions the writ petition ordered for 'disposed off' accordingly.

14. POLLUTION IN RIVER GOMTI : Writ Petition (Civil) No. 327/1990 (Vineet Kumar Mathur Vs UOI & Ors.)

This writ petition was filed in 1990 regarding pollution caused by the industries located in the cities of Luchnow, Sitapur and Lakhimpur Khiri. The Central Pollution Control

Board submitted various inspection reports in respect of the status of pollution in the river Gomti. In the same matter, the Hon'ble court ordered that it appeared that Nagarpalikas and Municipalities were directly discharging the polluted water into the river Gomti without any treatment. It was suggested that modern low cost technologies are now available where with least expenses the water could be treated before discharge into the river. The Hon'ble Court on 29.3.2001 directed the Central Board to submit a detailed scheme indicating for adoption of these modern low cost technologies. The Central Board submitted on 9.5.2001 the details of the low cost technologies for treatment of sewage. The Hon'ble Court on 7.11.2001 after considering of the submission of the Central Board directed the State of U.P. to acquire necessary land for having the oxidation ponds in different cities through which the river Gomti passes. The State of U.P. submitted that in view of the policy decision of the high level meeting of National River Conservation Authority (NRCA) held on 13.1.2001, it might not be necessary for the State to identify the land in towns referred in the Court order unless and until the NRCA include the towns for providing appropriate sewage treatment by way of oxidation ponds. The Hon'ble Court on 16.1.2002 observed that since, these towns have been identified as the main source of pollution of river Gomti, it was the obligation of the State to provide necessary land required to have oxidation ponds and directed the State of U.P. to acquire the necessary land required for the said towns for having oxidation ponds and complete the process of acquisition within three months from the date of this order. The State of U.P. should submit an affidavit that identification of land and the acquisition process also completed in the aforesaid towns so that further directions could be given for providing funds for having the oxidation ponds. The matter is under consideration of the Hon'ble Court.

LEADING CASES ON ENVIRONMENTAL LAWS

(I) OLEUM GAS LEAK CASE ON STRICT LIABILITY : Writ Petition (Civil) No.12739 of 1985, M.C.Mehta Vs Union of India & Ors.

The petitioner, Shri M.C.Mehta filed this Writ Petition in the year 1985 under Article 32 of the Constitution of India, and sought directions from the Hon'ble Court that various units of Shriram Industries were hazardous to the community therefore directed to be closed. After hearing the arguments, the three judges Bench passed the judgment on 17.2.1986, permitted the Shriram Food and Fertilisers Industries (hereinafter referred to as SFFI) to restart its power plant and also plants for manufacture of caustic chlorine including its by-products and recovery plants like soap, glycerin and technical hard oil subject to certain conditions given in the three judges Bench judgment. The only point in dispute related whether the units of SFFI should be directed to be removed from the place where they were presently situated and relocated in another place where there would not be much human habitation so that these would not be any real danger to the health and safety of the people is to be decided.

But while the writ petition was pending, there was a leak of oleum gas from one of the units of SFFI on 4th and 6th December, 1985. A Number of applications were filed by the Delhi Legal Aid & Advice Board and the Delhi Bar Association for award of compensation to the persons who suffered on account of leakage of oleum gas. When

the matter for compensation heard by three judges Bench it was felt that since the issues raised involved substantial question of law relating to the interpretation of Article 21 and 32 of the Constitution, and the case was referred to a larger Bench of five judges.

On behalf of SFFI Industries, a preliminary objection was raised that the Court can't proceed to decide compensation since there was no claim for compensation originally made in the writ petition and those issues could not be said to arise on the writ petition. The Petitioner even not applied for amendment of the Petition so as to include a claim for compensation for the victims of the oleum gas. After hearing the counsels of the both sides, the Hon'ble Court held as follows :

“These applications for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hypertechnical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of Law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court”.

The Hon'ble Court further observed that if the court was prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who could not approach the court for justice, there was no reason why these applications for compensation of the persons affected by the oleum gas leak should not be entertained under Article 21 of the Constitution.

“As regards to the first question as to what is the scope and ambit of the jurisdiction of this Court under Article 32, the Hon'ble court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people particularly in the case of poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning”.

The Hon'ble Court observed that the industry was located in an 'air pollution control area' and also subjected to regulation of the Air (Prevention and Control of Pollution) Act, 1981. Moreover, the SFFI industries was engaged in the manufacturing of caustic soda, chlorine, etc. It's various units were set up in a single complex surrounded by thickly populated colonies. The Chlorine gas is admittedly dangerous to life and health. If the gas escaped either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well being of the people living in

the vicinity could be seriously affected. Thus, the SFFI was engaged in an activity which has the potential to invade the right of life of large section of people.

The Court while determining the liability of the industry, the question as to what was the measure of liability of an enterprise which was engaged in a hazardous or inherently dangerous activity including if by an accident persons died or were injured. Did the rule in **Rylands Vs Flecher** apply? The rule in Rylands Vs Flecher was evolved in the year 1866 and it provided, "a person who for his own purposes bring on to his land and collect and keeps there anything likely to do mischief if it escaped must keep it at his peril, if he failed to do so, was prima facie liable for the damages". The liability under this rule was strict and it was no defence that thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that a person who on his land collected and kept anything likely to harm and if such things escaped and did damage to another, he was liable to compensate for the damage caused.

This rule applies only to non-natural user of the land or where the escape was due to an act of God and an act of a stranger or by the default of the person injured. The Hon'ble Court observed that an enterprise which was 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 caused to anyone on account of hazardous or inherently dangerous nature of the activity which it had 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 reasonable 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 must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous matter of inherently dangerous activity. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, 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 over-heads. 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. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. The Hon'ble Court 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-à-vis the tortious principle of strict liability under the rule in **Rylands vs. Fletcher**.

The Hon'ble Court observed that the measure of compensation be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater 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.

The Hon'ble Court further ordered that it would not be justified in setting up a special machinery for investigation of the claims for compensation made by the victims of oleum gas leak. But the Delhi Legal Aid and Advice Board directed to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from the date of this order and the Delhi Administration was directed to provide necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court would nominate one or more Judges as may be necessary for the purpose of trying such actions so that they might be expeditiously disposed of. With these directions the petition was disposed of on 20.12.1986.

(II) BICHHRI CASE ON STRICT LIABILITY AND POLLUTER PAY PRINCIPLE: Writ Petition (Civil) No.967/1989 with 94/1990, 824/1993 and 76/1994 (Indian Council for Enviro-Legal Action and Others Vs Union of India & Ors.)

This Writ Petition was filed by an NGO on behalf of the people living in the vicinity of chemical industrial plants located in a Village Bichhri in District Udaipur, Rajasthan. The problem began in the year 1987 when the Hindustan Agro Ltd. started producing chemicals like oleum (concentrated form of Sulphuric acid) and Single Super Phosphate. The real calamity occurred when a sister concern, the Silver Chemical commenced production of H-acid in the same complex. Due to production of H-acid, large quantity of highly toxic effluents and iron and gypsum sludge caused damage to the land. Another industry named M/s Jyoti Chemical was also established to produce H-acid besides other chemicals. All those chemical industries were located in the same complex in Village Bichhri. It was estimated that about 2400-2500 tonnes of highly toxic sludge was produced while producing 375 tonnes of H-acid. Because of high quantity of sludge from those industries thrown in the open, in and around in the complex, the leachate from toxic sludge percolated deep into the ground polluting the aquifers and subterranean supply of water. The water in the wells and the stream turned dark and dirty and became unfit for human consumption. The Water became unfit even for cattle and for irrigation. The soil was spoiled and turned unfit for cultivation. Due to that, death and disaster in the village and surrounding areas were reported. The District Magistrate himself directed to close down both the units, M/s Silver Chemical and M/s Jyoti Chemicals. The manufacturing of H-acid was stopped from the month of January, 1989.

The toxic sludge damaged the soil, groundwater, human beings, cattle and economy of the village.

The Indian Council for Enviro-Legal Action filed this Writ Petition in August, 1989 with the prayer to the Court that appropriate remedial action may be initiated. The Rajasthan Pollution Control Board in its affidavit stated that (i) the Hindustan Agro Chemicals Ltd. obtained NOC from the Board for manufacturing sulphuric acid and alumina sulphate. But, this unit changed its products without clearance from the Board and started manufacturing oleum and single super phosphate (SSP). The consent was refused and directions were issued under the Air (Prevention and Control of Pollution) Act, 1981 to close down the unit; and (ii) the Silver Chemical stated to be manufacturing of H-acid without obtaining NOC from the Board. The Waste generated from the manufacture of H-acid was highly acidic and contained very high concentration of dissolved solids alongwith several other pollutants. The unit was closed in 1989; (iii) the Jyoti Chemical had applied for NOC for producing ferric alum and oleum in 1988. The unit again applied for consent for manufacturing of H-acid but the consent was refused and the industry was closed in 1989. The Rajasthan Board also submitted that the sludge lying in the open in the premises of these industries ought to be disposed of in accordance with the provisions of the Hazardous Waste (Management and Handling) Rules, 1989 notified under the Environment (Protection) Act, 1986. The State Government of Rajasthan stated that the State Government was aware of the pollution being caused by these industries. Therefore, the State Government had initiated action through Rajasthan Pollution Control Board. The Ministry of Environment & Forests, Government of India stated that M/s Silver Chemical was merely granted letter of Intent but it never applied for conversion of the letter of Intent into Industrial Licence and was an offence under the Industries (Development and Regulation) Act, 1951. M/s Jyoti Chemicals did not approach the Government at any time even for a letter of Intent.

The Ministry of Environment & Forests also submitted a report of the Centre for Science and Environment (CSE), NGO. In its report, the Centre for Science and Environment after conducting the inspection of the village Bichhri stated that the effluents were very difficult to treat as many of the pollutants were non-compliant in nature. Setting up such highly polluting industry in a critical groundwater area was ill-conceived. About 60 wells appeared to have been significantly polluted. The aquifer was showing sign of pollution. After considering the replies of the Rajasthan State Pollution Control Board, the State of Rajasthan, the Ministry of Environment & Forests and the industries, the Court on 11.12.1989 requested the National Environmental Engineering Research Institute (NEERI) to study the situation in and around village Bichhri and submit their report. After in depth study, NEERI submitted its report and suggested both short term and long term measures required to be taken in the area. The Court noted the statement of the Petitioner that though the manufacture of H-acid might have been stopped but large quantity of highly dangerous effluent/sludge had accumulated in the area and unless properly treated, stored and removed; it would be a serious danger to the environment. Accordingly, directions were issued to the Rajasthan Pollution Control Board to arrange for its transportation, treatment and safe storage in accordance with the procedure provided in the Hazardous Waste (Management and Handling) Rules, 1989 and also reasonable expenses for the said operation were directed to be borne by those industries.

The Central Board has also analysed the soil, sludge and water samples concerning this matter. The indepth investigations were taken up and reports were submitted to the Hon'ble Supreme Court for consideration.

Earlier, on 5.3.1990 the The Hon'ble Court directed that the sludge lying on the land be removed immediately to avoid the risk of seepage of toxic substances into the soil during the rainy season. On 4.4.1990, the Court further directed the Ministry of Environment & Forests, Govt.of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron based sludge and 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 directed to be recovered from the industries located in the Complex. The Rajasthan Pollution Control Board submitted a report that about 720 tonnes out of the total contaminated sludge scraped from the sludge dump side was disposed of in six lined entombed pits covered by lime/fly ash mix, brick soling. The remaining scraped sludge and contaminated soil was laying near entombed pits for want of additional disposal facility. After final hearing, the Court passed the final order on 13.2.1996:

“they are in the view that if an enterprise which is engaged in a hazardous or inherent industry which posses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, it is an absolute and non delegable duty to the community to ensure that no harm to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken. It is therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm to any one on account of an accident, the enterprise is strictly and absolutely liable to compensate all those who are effected by the accident and such liability is not subject to any of the exceptions as laid down in tortious principles of **strict liability** under the rule laid down in Rylands Versus Flecher. The law laid down in the case of Oleum Gas leak case (M.C.Mehta Vs. UOI & Ors) is also applicable in the present case and the industries (Respondent No.4 to 8) are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the groundwater and hence they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area which is about 350 hectares. The **polluter pays principle** demands that the financial cost of preventing or remedying damage caused by pollution should lie with the industries which caused the pollution”.

The Central Government should determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of the industries within six weeks and the said amount were liable to be paid by the industries. If the said amount was not paid by the industries, the factories, plant, machinery and all other immovable assets of these industries be attached. So far as the claim for damages for the loss suffered by the villagers in the affected area was concerned, it was opened to them or any organization on their behalf to file suits in appropriate Civil Court.

The Central Government should consider whether it would not be appropriate that chemical industries were treated as a category apart. All chemical industries whether big or small should be allowed to be established only after taking into consideration all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment even the existing chemical industries if found on such scrutiny that it was necessary to take any steps in the interest of the environment, appropriate directions may be issued under Sections 3 & 5 of the Environment (Protection) Act, 1986. The Central Government and the Rajasthan Pollution Control Board should file quarterly report with respect to the progress in the implementation of these directions. The need for creating environment courts to deal with all matters, Civil and Criminal relating to the environment be considered. The industries (Respondent No.4 to 8) should pay a sum of Rs.50,000/- by way of costs to the petitioner who fought this litigation over a period of more than six years with its own means. The Writ Petitions were disposed of with the aforesaid directions.

(III) POLLUTION BY TANNERIES IN TAMIL NADU CASE ON PRECAUTIONARY PRINCIPLE AND POLLUTER PAYS PRINCIPLE: Vellore Citizen Welfare Forum Vs Union of India & Ors., W.P.(C) No. 914/1991

The Vellore Citizen Welfare Forum filed this Writ Petition as public interest litigation. In this petition, the Welfare Forum alleged that the tanneries and other industries were discharging untreated effluent into the agriculture fields, roadsides, waterways and open lands in the State of Tamil Nadu. The untreated effluent of these tanneries and industries were finally discharged in the river Palar which was the main source of water supply to the residents of the area. The Welfare Forum further alleged that the entire surface and sub-soil water of river Palar was polluted resulting in non-availability of potable water to the residents of the area. Due to the operation of these tanneries in the state of Tamil Nadu environmental degradation was caused. According to the survey conducted by the Tamil Nadu Agricultural University Research Centre, Vellore, nearly 35,000 hectares of agricultural land in the tanneries belt had turned out partially or totally unfit for cultivation. These tanneries used about 170 types of chemicals in the Chrome tanning processes. These chemicals include common salt, lime, sodium sulphuric, chromium sulphate, fat liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Approximately 35 cubic metre of water is used for processing 1 kg finished leather resulting in dangerously enormous quantity of toxic effluents which were let out in the open by the tanning industries. The effluents have spoiled physico chemical properties of the soil and have contaminated groundwater by percolation.

An independent survey was conducted by Peace Members, Non-Governmental Organization and Peddiar Chatram Anchayat Unions found that 350 wells out of total 467 used for drinking and irrigation purposes were polluted. Women, children were forced to walk miles to get drinking water. On the request of the Legal and Aid Advise Board of Tamil Nadu, two lawyers visited the area and submitted their report indicating the pollution caused by the tanneries. It was reported that the entire Ambur town and the villages situated nearby did not have good drinking water. During rainy days and floods, the chemicals deposited into the river bed were spreading out quickly. The State Government also informed the Court about the 59 villages that were affected by the

tanneries. In those villages, there was acute shortage of drinking water. The Tamil Nadu Pollution Control Board also submitted that their Board perused for the last 10 years to control the pollution generated by these tanneries. These tanneries were given option by the Board that either to construct common effluent treatment plants (CETPs) for a cluster of industries or to setup individual pollution control devices. The Central Government were earlier agreed to give substantial subsidies for the construction of CETPs. The Hon'ble Court observed that it was pity that till date most of the tanneries operating in the State of Tamil Nadu did not take any step to control the pollution caused by the discharge of effluent. On the direction of the Hon'ble Court, the National Environmental Engineering Research Institute also submitted the feasibility report for setting up of CETPs for clusters of tanneries situated at different places in the State. The NEERI, the Tamil Nadu Board and Central Board visited the tanning units and other industries in the Tamil Nadu and submitted their reports.

The Hon'ble Court observed that the leather industry was of vital importance to the country as it generated foreign exchange and provided employment avenues. But, it had no right to destroy the ecology, degrade the environment and cause a health hazard. It could not be permitted to expend or even to continue with the present production unless appropriate action taken by the industry itself. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" would be the answer. The "Sustainable Development" has been 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" means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The "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 eco-system. The "*Precautionary Principle*" and the "*The Polluter Pays Principle*" were the essential features of "*Sustainable Development*".

The Hon'ble Court on 28.8.1996 directed the Central Government to constitute an Authority under section 3(3) of the Environment (Protection) Act, 1986 and to confer on the Authority all the powers necessary to deal with the tanneries and other polluting industries in the State of Tamil Nadu. The authority so constituted would invoke the *precautionary principle* and the *polluter pays principle*. The Authority should determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The Authority should direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. A fine of Rs.10,000/- each on all the tanneries in the districts of North Arcot, Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. was imposed. The said fine was directed to be paid before 31.10.1996. The Chief Justice of the Madras High Court was requested to constitute a special bench "Green Bench" to further monitor this case.

The Ministry of Environment & Forests, Government of India constituted the Loss of Ecology (Prevention and Payments of Compensation) Authority in the year 1996 and appointed Mr. Justice P.Bhaskaran, as its Chairman. The Authority after detailed studies and deliberations delivered its award on March 12, 2002. Accordingly, 546

tanneries in the District of Vellore to pay a compensation amounting to Rs.26.82 crores to 29,193 families as pollution damages.

The Central Board has also analysed the soil, sludge and water samples concerning this matter. The indepth investigations were taken up and reports were submitted to the Hon'ble Supreme Court for consideration.

Published By : Dr. B. Sengupta, Member Secretary, Central Pollution Control Board, Delhi – 32
Printing Supervision & Layout : P.K. Mahendru, Satish Kumar and Mohd. Javed
Fax : 91-11-2217079/2204948 EPABX : 2225792, 2222073, 2222856 TELEX : 031-66440 PCON IN
e-mail : cpcb@alpha.nic.in; Website : <http://cpcb.delhi.nic.in/>
Printed at : National Institute of Science Communication
Dr. K.S. Krishnan Marg, New Delhi - 12