

Chapter-4

Judicial Activism and Water Pollution

The environmental issue has generated a new life through the wave of judicial activism. Public Interest Litigation has become the most important component of the Indian environment law. PIL offers litigants with many procedural benefits – it has a wide *locus standi*. The judiciary is stepping in to respond to the needs and demands of the people affected by pollution especially the poor and marginalised sections of the society.

Right to life is a natural right embodied in Article 21. Article 21 of the Constitution guarantees the right to life and personal liberty. “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The right guaranteed in Article 21 is available to citizens as well as non citizens. Life is not limited to bodily restraint or confinement to person only but something more than mere animal existence.¹ Life is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.² It has much wider meaning which includes life, personal liberty, right to livelihood, better standard of life, and hygienic condition in work place, pollution free environment (potable water and pure air). The Supreme Court held that ‘right to life’ includes pollution free water and air.³

Article 19(1)(g) guarantees that all citizen shall have the right “to practice any profession, or to carry on any occupation, trade or business.” Some restrictions are imposed on this right under Article 19(6). These restrictions must be

1. reasonable and,
2. in the interest of general public.

The right to carry on business being a fundamental right this right can be exercised subject to the restriction imposed by law in the interest of public. The expression ‘in the interest of general public in Article 19(6) is of wide, it includes public health, right to pollution free environment. No citizen has right to carry on his business and his choice place if his doing so is injurious to public

¹*Kharak Singh v. State of U.P.*, AIR 1963 SC 1295

²*Meneka Gandhi v. Union of India*, AIR 1981 SC 746

³*Subhash Kumar v. State of Bihar*, AIR 1991 SC 420

health and environment or even cause inconvenience to others. Trade or business which is injurious to public health, environment and public welfare can be suppressed or prohibited.

In our bio-system and eco-system water is very necessary substance in life. Without water life does not exist. It must be preserved and protected from all types of pollutants. Growing industrialization and urbanization have been primarily responsible for causing pollution in streams, rivers, lakes and other surface water resources. The problem of water pollution has drawn the attention of entire world community. Indian Government enacted various laws to deal with the problems of environmental pollution. When the subject has acquired high importance and become a matter of caution and judicial notice so, the judiciary in India has played pivotal role in interpreting the laws in such a manner which not only helped in protecting environment but also in promoting sustainable development. There are number of cases on this point. Most of the cases have come before the courts through 'Public Interest Litigation.'

4.1 M. C. Mehta v. Union of India⁴ (Kanpur Tanneries)

This case is related to water pollution caused by tanneries. The case was brought to the Supreme Court by a social worker M. C. Mehta through public interest litigation requesting the court to prevent tanneries from functioning, till they installed primary treatment plant because neither the concerned authority (like Central Pollution Board and U. P. Pollution Board) nor the people were giving adequate attention to stop the pollution of river Ganga.

The Supreme Court held that the pollution of Ganga is affecting the life, health and ecology of the Indo-Gangatic Plain. No law and authority can succeed in removing the pollution unless the people cooperate. It is the sacred duty of all those who reside or carry on business around the river Ganga to ensure its purity. Tanneries at Jajmau area near Kanpur have been polluting the Ganga in a big way. The court issued the direction for the closure of those tanneries which failed to take minimum steps required for the primary treatment of industrial effluent. It was also held that even though the closure of tanneries will cause unemployment and loss of revenue to state exchequer but the harm to the life, health and ecology that these units are causing outweighs the argument in favour of their continuance.

⁴ AIR 1988 SC 1037

Water is the most important natural resource for living organism. River valleys are the cradle of civilization from the beginning of the world. Aryan civilization grew around the river Ganga. The river Ganga is a sacred river of India. Our religious feelings are also related to it. It is the popular belief that the river Ganga is the purifier of all but the situation is now that action has to be taken to prevent the pollution of the water of the river. Many towns and villages are situated on the bank of river Ganga. They drink it, bathe in it and irrigate. Many large industries are also situated on its bank. It is tragic that the Ganga is being polluted by man in numerous ways, by dumping of garbage, throwing carcass of dead animals and discharge of effluents by municipalities, factories or industries. All these affect the human life as well as aquatic life in the river.

When this petition came up for preliminary hearing, the court directed the issue of notice under O 1, r 8 of the Civil Procedure Code (CPC) treating this case as a representative action by publishing the gist of the petition in the newspapers in circulation in northern India and calling upon all the industrialists and the municipal corporations and the town municipal councils having jurisdiction over the areas through which the river Ganga flows to appear before the court and to show cause as to why directions should not be issued to them as prayed by the petitioner, asking them not to allow the trade effluents and the sewage into the river Ganga without appropriately treating them before discharging them into the river.

In this case Justice Venkatarmiah initially exhibited the importance of and need for protecting our environment. He referred to Article 48 A and 51-A of the Constitution and the proclamation adopted by the United Nations Conference on Human Environment held at Stockholm. This proclamation also stated:

“The discharge of toxic substances or of other substances and release of heat in such quantities or concentrations as to exceed the capacity of environment to render them harmless must be halted in order to ensure that serious irreversible damage is not inflicted upon eco-system.”

The Indian Parliament passed the Water Act 1974. The aim of this Act is not only to prevent and control the pollution but also to maintain the wholesomeness of water. Therefore, any poisonous, noxious or polluting matter exceeding the standards as laid down by the State Pollution Boards, which directly or indirectly poses threat to the wholesomeness of water or impedes the

free flow of river, water courses or inland water, subterranean water, sea or tidal water is an offence under this Act. For such purpose polluting water includes any liquid, gaseous or solid substances but other than the domestic sewage. It was observed by the court that ‘the effluent discharged from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks.

The Supreme held that the tanneries should set up primary treatment plants and/ or they should stop working. Poor finance is not the logic. It is irrelevant to consider whether a tannery is financially incapable to establish primary treatment plant. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot put up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure. Thus, the Supreme Court ordered the closure of the tanneries of Jajmau area of Kanpur city.

In this case we find that after the decision of the Supreme Court many tanneries have been made efforts for the primary treatment of the effluent before it is discharged to the river Ganga. The State Government under the guidance of the UP pollution Control Board take appropriate steps in the preparation of the primary treatment plant. The treatment plant makes the industrial waste free from heavy metals, toxic chemicals and abnormal acidic. That’s not so harmful to the aquatic life, human life or for the ecology like the direct discharge of effluent in the river. Untreated sewage reduces the content of oxygen. The court activated the State Pollution Control Board and Central Pollution Board.

*M .C. Mehta v. Union of India*⁵ is a continuation of the above case in which a writ petition was filed for prevention nuisance caused by the pollution of the river Ganga. The petitioner pleaded that the Kanpur Nagar Mahapalika is not abiding by its obligatory duties provided under section 114, 251, 405, or 407 of the U. P. Nagar Mahapalika Adhiniyam, 1959 and it is allowing the pollution of the Ganga. Such pollution of river Ganga in Kanpur was occurring because of:

⁵AIR 1988 SC 1115

- (a) Discharge of untreated sludge and sewage, textile waste and tannery effluents into the river by 16 Nalas,
- (b) fodder waste, dung and refuse choked the sewers and found its way through the sewer into the river,
- (c) practice of throwing night soil into the river,
- (d) defection by economically weaker section, and
- (e) Dhobi Ghats etc.

It was found that sewer cleaning was never done systematically and many sewers were under-sized and not properly maintained. Such polluted water was the cause of misery sickness and death due to waterborne disease such as malaria, jaundice, typhoid, cholera etc.

The Supreme Court observed that it was a public nuisance which was widespread in area and indiscriminate in effect. It also observed that although Parliament and the state legislature have enacted many laws imposing duties on the Central and State Boards and the Municipalities for prevention and control of pollution of water, many of those provisions have just remained on paper without any adequate action being taken pursuant thereto. On account of failure of authorities to obey the statutory duties for several years the water in the river Ganga at Kanpur has become so much polluted that it can no longer be used by the people either for drinking or for bathing. The Court issued specific directions to the Kanpur Municipal Corporation are:

1. Take appropriate steps to prevent pollution of water on account of waste accumulated at the dairies and may either direct the dairies to be shifted to a place outside the city or arrange for removal of waste from the existing dairies.
2. Take steps to increase the size of the sewers in the labour colonies. Wherever sewerage line is not constructed steps should be taken to lay it.
3. Construct sufficient number of public latrines and urinals for free use of the poor people in order to prevent defecation by them on open land.
4. Steps shall be taken by the Kanpur Nagar Mahapalika and police authorities to ensure that dead bodies or half burnt bodies are not thrown into the river Ganga. Because all these activities makes the water polluted.

5. Licenses should not be issued to establish new industries unless adequate provisions have been made for the treatment of trade effluents flowing out of the factories. Immediate action should be taken against the existing industries if they are found responsible for pollution of water.
6. Central Government should direct all educational institution to include the subject of national environment relating to protection and the improvement of the natural environment including forests, lakes, rivers and wild life in text books.
7. Create national awareness about the deterioration of the environment.
8. The Government of India and state governments and union territories may consider organizing 'keep the city clean week', 'keep the town clean week' and 'keep the village clean week' to promote consciousness of cleanliness.
9. The court put the major responsibility on the Nagar Mahapalika of Kanpur for the pollution of the river near Kanpur city.

The Supreme Court stated that it is submitted before us that whenever the Board constituted under the Water Act initiates any proceedings to prosecute industrialists or other person who pollute the water in the river Ganga, the person accused of the offences immediately institute petitions under section 482 of the Criminal Procedure Code, 1973 in the High Court and obtain stay orders thus frustrating the attempt of the Board to enforce the provisions of the Water Act. The problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceeding in such cases and even if such an order of stay is made in any extraordinary case, the High Courts should dispose of the case within a short period, say about two months, from the date of institution of such case. We request the High Courts to take up for hearing all the cases where such orders have been issued under section 482 of the CPC 1973 under the Water Act within two month.

Thus, we can say that Supreme Court issued various directions to municipalities and Nagar Mahapalika in the state of UP for the prevention of pollution of water in the river Ganga. We also find that judiciary tried to create awareness among the masses on protection of water by giving order to organizing the clean week programmes at grass root level. The judiciary is also creating

the interest of children on environment protection by including the lessons on environment in text books.

4.2 Indian Council for Enviro-Legal Action v. Union of India⁶

This case is related to the problem faced by the people for the sake of pollution of water and soil by the Chemical Industries in a small village Bichhri in Rajasthan. The case was brought to the Supreme Court by public interest litigation.

The court ordered the Government to strengthen the environment protection measures and take remedial action to remove sludge. It also ordered that industrial units not complying with its orders should be closed.

In a small village of Bichhri in Rajasthan, there came into existence a cluster of Chemical Industries, some of which manufactured highly toxic pollutant acid 'H' and other similar toxic chemicals. All industries are pollution prone, unless treatment plant is installed. The 'H' acid industry gives rise to enormous quantities of highly toxic effluents in particular, iron based and gypsum based sludge – which without proper treatment poses a serious threat to mother earth. It poisons the earth, the water and everything that comes in contact with it. The untreated waste water of chemical unit 'H' were allowed to flow out freely and the untreated sludge was thrown in the open in and around the bowels of the earth polluting the aquifers and the sub-terranean supply of water. The water in the wells and in streams had turned dark and dirty and toxic rendering it unfit for human consumption. It had become unfit for cattle's to drink and for irrigation the land. The soil had got so much polluted that it had become unfit for cultivation. The result of it spread diseases, death and disaster in the villages and surrounding areas. The villagers revolted against all this resulting in stoppage of manufacturing 'H' acid and ultimately these industries were closed. But the consequences of their action remained in existence causing damage to the village.

The Supreme Court has held that if by the action of private corporate bodies a person's fundamental right is violated the Court would not accept the argument that it is not 'State' within the meaning of Art.12 and therefore, action cannot be taken against it. If the Court finds that the Government or authorities concerned have not taken the action required of them by the law and

⁶ AIR 1996 SC 1446

this has resulted in violation of the right to life of the citizens, it will be the duty of the Court to intervene.

Supreme Court passed several orders and appointed expert committees which substantiated the facts stated in the court. It also requested the National Environmental Engineering Research Institute to study and investigate the situation and to submit their report. The Court found the result of these investigations that-

- (a) Out of 2440 tons of sludge, about 720 tons was still there. In spite of the court's order they did not remove the sludge. The sludge inside the temporary tank was highly contaminated,
- (b) The ground water was also contaminated due to discharge of H-acid sludge which contaminated soil. The analysis also showed high degree of impurities in sludge/soil and also in well water and ground water.

The Supreme Court held that the writ was maintainable and directed the Government and concerned authorities to perform their statutory duties under various Acts- Environment Protection Act, 1986, Water Act, 1974, Air Act, 1981 and Hazardous Waste Rule, 1989. This is social interest litigation on behalf of the villagers whose right to life is invaded and infringed by the respondents as is established by the various reports of the experts. The Court held that the respondents were responsible for all the damage to the soil, to the underground water, well water and to the village in general. Regarding the determination of cost of remedial measures, the Court held that the Central Government had power to decide it. The Court passed the order based on the principle of Polluter Pays. According to which the responsibility for repairing the damage is that of the offending industry. Under the Polluter Pays Principle the offending industries were directed to compensate for the losses due to damage and to pay towards the cost of restoration of environmental quality. The Supreme Court expressed the view that the said principle of 'polluter Pays' can be enforced by the government even under section 3 of the Environment Act, 1986 which empowers the Government to "*take all such measures as it deem necessary or expedient for the purpose of protecting and improving the quality of environment.*" Further section 5 of the Act clothes the Central Government with the power to issue directions for achieving the objects of the Act. Thus, the Court directed the closure of all such industries. The Court further directed that the Central Government shall determine the amount required carrying out the remedial measures

including the removal of sludge from the sites of the industries and the same shall be paid by the respondent industries. The villages could claim damages for the loss suffered by them by instituting appropriate suits. In future all chemical industries were to be established after taking into consideration all environmental aspects. Thus, in this case judiciary established the idea of sustainable development.

4.3 Municipal Council, Ratlam v. Vardichand and Others⁷

In this case residents of Ratlam filed litigation in the nature of public interest under Section 133 of the Criminal Procedure Code alleging that the Municipality had failed to prevent the discharge from the nearby Alcohol plant of malodorous fluids into the public street and provide sanitary facilities on the roads.

The Supreme Court directed the Municipality to follow the statutory duties to stop the effluents from the Alcohol plant flowing into the street.

The residents of the Municipality used to suffer from stench and stink caused by open drains, effluents from alcohol plant flowing into the streets and poor sanitation including open public excretion by nearby slum dwellers. The residents moved the Magistrate under section 133 of the Cr. P. C. requiring the Municipality to do its duty towards the member of the public. The Magistrate issued direction to the Municipality to draft a plan for the removal of nuisance within a period of six months. The Municipality instead of complying the order of the Magistrate moved an appeal to Sessions Court which reserved the order of the Magistrate. In further appeal, the High Court set aside the order of the Sessions Court and approved the Magistrate's order. The Municipality went for further appeal to the Supreme Court. The Court rejected the appeal and held that where there existed a public nuisance in a locality due to open drains, pits or public excretion by humans for want of lavatories, the Court could require Municipality under Section 133 of the Cr.P.C. and in view of Section 123 of the Municipalities Act to abate the nuisance by taking affirmative action on a time bound basis. The Supreme Court directed the Municipality to provide for drainage system within one year, stops, effluent from alcohol plant into the streets and improve other sanitary conditions. The State Government also shall take action to stop the pollution and will make available by ways of loans and grants sufficient financial aid to the Ratlam Municipality

⁷ AIR 1980 SC 1662

to enable it to fulfill its obligation under this order. The Sub- Divisional Magistrate will also use his power under S. 133, I.P.C. to abate the nuisance. Although both Indian Penal Code and Criminal Procedure Code, “are of ancient vintage the new social justice orientation imparted to them by the Constitution of India makes them a remedial weapon of versatile use “ for the protection of environment. It means that in this case the Indian Judiciary has given a new social justice orientation through Cr. P.C. and I.P.C.

4.4 U. P. Pollution Control Board v. M/s ModiDistillery and Other⁸

In this case, the Uttar Pradesh Water Pollution Board filed a complaint against M/s Distillery under section 44 of the Water (Prevention and Control) Act, 1974. The issue involved is whether the Chairman, Vice-Chairman, managing Director and members of the Board of Directors of Messer’s Modi Industries Limited, the Company owing the industrial unit called Messer’s ModiDistillery could be proceeded against the said industrial unit. The Supreme Court held that they could be so prosecuted.

M/s Modi Distillery, a unit of the Modi Industries was engaged in business of manufacture and sale of industrial alcohol. It was discharging highly noxious and polluted trade effluents into the Kali river through the Kadrabad drain. The effluents were discharging in the river without the consent of the Board. Section 26 of the Water Act requires that it is mandatory for every existing industry to obtain the consent of the Board to discharge its effluent into a stream, well, sewer or on land. Last date to submit the application was December 31, 1981. Modi Distillery applied for the consent on March 27, 1981. The Board found the application incomplete in many respect and it issued a letter to complete the application. The industry did not respond to it. The Board accordingly to letter refused to grant the consent in the public interest and that the industry did not have proper arrangements for treatment of its trade effluents. It further issued a notice to the industry to furnish certain information regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the company but the respondent did not furnish the information called for. The Board issued two more letters drawing the attention of the respondents that they were deliberately violating the provisions which renders them liable to be punished under Section 44. On these facts Chief Judicial Magistrate issued the

⁸ AIR 1988 SC 1128

process against the Chairman, Vice-Chairman, Managing Director and Member of the Board of Directors of the company. They did not appear before the CJM and went to the High Court of Allahabad for revision under Section 397 of the Cr. P. C. The High Court quashed the proceedings of the CJM and pronounced that all the respondents could be made liable for the acts of its unit, M/s Distillery. It was further observed that the complaint of the Board made to CJM suffered from serious procedural and legal infirmities.

The Supreme Court took a strong view of it and quashed the judgment of Allahabad High Court. It was held that the Water Act, 1974 was passed with a view to provide for the abatement, prevention and control of pollution of rivers, streams for maintaining or restoring wholesomeness of water courses. On the other hand High Court quashed the proceedings of the Board giving freedom to pollute the river Kali through Kadrabad drain. The CJM could give the direction to remove the technical flaw in the complained filed by the Board. Such indifferent attitude of the judge had failed the purpose of the law. The supreme Court passed an order that the Chairman, Vice-Chairman, Managing Director and the Member of the Board of Director of M/s Modi Industries could be prosecuted because they were incharge of and responsible of M/s Modi Distillers.

In this case the Supreme Court made the indifferent judgment that the courts must take prompt and sufficient action to check it even if there are some technical or procedural flaws in the statutory law.

4.5 Vellore Citizen's Welfare Forum v. Union of India⁹

The case was filed by as public interest litigation and was directed against the pollution which was being caused by enormous discharge of untreated effluent by the tanneries and other industries in the state of Tamil Nadu. Due to untreated discharge of the effluent, entire surface and subsoil water of river Palar had been polluted resulting in the non- availability of the potable water to the residents of the area. According to a survey, nearly 35,000 hectares of agricultural land in the tanneries belt had become either partially or totally unfit for cultivation. These effluents had spoiled physic-chemical properties of the soil and had contaminated the ground water by

⁹ AIR (1996) 5 SCC 647

percolation. Nearly 350 wells out of total of 467 used for drinking and irrigation purposes had been polluted. In the judgment the Supreme Court adopted the principle of sustainable development.

As per the affidavits filed, on behalf of the State of Tamil Nadu, in the Court, these tanneries and other industries were persuaded for about ten years to control pollution generated by them. They were given the option either to construct common treatment plants for a cluster of industries or to set up individual pollution control devices. The Central Government had agreed to give subsidy for the construction of Common Effluents Treatment Plants. It was a pity that till the decision of the case most of the tanneries operating in the state of Tamil Nadu had not taken any step to control the pollution caused by the discharge of effluent. The Supreme Court had been monitoring this petition for almost five years but failed to control the pollution generated by these tanneries and other industries. The Supreme Court observed:

It is no doubt that leather company of India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 % of the of the country's export. Though it is important to the country and provides employment to the people but it has no right to destroy the ecology, degrade the environment and pose as health- hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.

The Supreme Court pointed out that the traditional concept that development and ecology are opposed to each other is no longer acceptable. Need of the hour is Sustainable development. The principle of sustainable development expressed the view that "The Polluter Pays Principle and the Precautionary Principle" are essential features of sustainable development and they have been accepted as the part of land.

The Supreme Court also held the constitutional provisions contained in Articles 21, 48-A and 51A (g). The Central Government not takes any measures to protect and improve the environment so The Supreme Court issued the following directions to the Central Government:

1. The Central Government shall constitute an authority under section 3(3) of the Environment Protection Act, 1986 within one month and shall confer on it all the necessary powers including the power to issue directions under section 5 of the Act.

2. The authority so constituted shall apply and implement the “Precautionary Principle” and the “Polluter Pays Principle.” The authority shall with the help of expert opinion and after giving opportunity to the concerned assess the loss to ecology in the affected areas and shall also identify the individuals or families who have suffered because of the pollution.
3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. The said amount could be recovered from the polluters, if necessary, as arrears of land revenue.
4. The authority shall direct the closure of the industry in case it evades or refuses to pay compensation awarded against it.
5. A pollution fine of Rs. 10,000 each on certain industries was imposed. This money along with the amount of compensation recovered from the polluters was to be deposited under a separate head called Environment Protection Fund. This fund was to be utilized for compensating the affected persons and for restoring the damaged environment.
6. The authority in consultation with NEERI and the Central Board shall frame the schemes for reversing the damage caused to the ecology and environment.
7. To close all those tanneries who fail to take consent from the Board.
8. No new industry to be set up within the prohibited area.

The Supreme Court also requested the Madras High Court to constitute a special Bench- “Green Bench” to deal with this case and other environmental matters. The Supreme Court also directed the State of Tamil Nadu to pay Rs. 50,000 towards legal fee and other expenditures incurred by Mr. M. C. Mehta who was the petitioner in this case.

4.6 Rural Litigation and Entitlement Kendra and Devaki Nandan Pandey v. Union of India¹⁰

¹⁰ AIR 1985 SC 652

In this case the Supreme Court of India received a letter from Rural Litigation and Entitlement Kendra, Dehradun. This case involving issues relating to environment and ecological balance. It is relating to the closing down of large number of leases of lime-stone quarries which were polluting the environment, causing ecological imbalance and hazard to the health of not only human being but also of all intimate and animate things.

The Supreme Court ordered closing down of mining operations.

This case brings into focus the conflict between development and conservation, and serves to emphasize the need for reconciling the two in the larger interest of the country. The Court observed that since olden time trees are 'necessary for human existence and civilization to thrive.' Mussoorie Hill is the area of people's residency and the mining which denuded the Mussoorie hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of ground water which fed many rivers and springs in the river valley. Mining operation was also polluting the ground water and the water of rivers and streams. The Court appointed an expert committee to advise the bench on the technical issues and on the basis of the report of the committee the court found that the mining operation was creating the problem to the environment as well as living organs. So, the court ordered the closure of the limestone quarries. The Court observed that to live in healthy environment is the fundamental right of every citizen as well as there must be hygienic conditions for living organs. Pure water is very necessary for man, cattle and for irrigation. So development at the cost of environment is not tolerable. The Supreme Court also held that preservation of the environment and keeping the ecological balance unaffected is a task which not only of the government but also every citizen. It was also decided that reforestation program must be taken up by the government immediately for these exploited areas. A monitoring committee is set up to look after such programs to bring back the natural normalcy in the Doon Valley. Such committee should also ensure that the scree is removed from the natural streams and the flow of water is maintained. Thus, in this case Supreme Court also followed the principle of sustainable development.

4.7 M. C. Mehta v. Shriram Foods and Fertilizer Industries and Union of India¹¹ (Popularly known as Oleum Gas Leakage Case)

¹¹ AIR 1987 SC 965

In this case public interest litigation filed by M. C. Mehta, seeking closing down of the caustic chlorine plant of Shriram Foods and Fertilizer industries on account of leakage of oleum gas resulting in the death of one person and injurious effects on the health of many. In this case Supreme Court made a monumental judgment.

In this case many questions raised by the petitioner. After Bhopal tragedy what safety devices are imposed on corporations employing hazardous technology and producing toxic or dangerous substances and if any liquid or gas escapes which is injurious to the workmen and the people living in the surrounding areas, on account of negligence or otherwise, what is the extent of liability of such Corporations and what remedies can be devised for enforcing such liability with a view to securing payment of damages to the persons affected by such leakage of liquid or gas. At the very outset the Court disposed of the question as to whether the plant could be allowed to recommence the operation in the present state and condition and if not what measures were required to be adopted against the hazards of possibility of leaks, explosion, pollution of air and water (water pollution through the air pollutant mixed in the water substances which is the cause of many waterborne diseases) for this purpose. The Court gave priority to this question because some other important consequences were related with it which required the immediate attention. First, about 4000 workers would be thrown out of employment because of the closure of the plant. Second, the short supply of chlorine which was being produced by the said plant could have affected many activities in Delhi. Third, the production of downstream products would have also been seriously affected resulting to some extent in short supply of these products.

Several expert committees were appointed to suggest certain measures to remove the existing defects in the plant before the plant is allowed to function. After the court was satisfied that all the safety and control measures had been complied with by the management in satisfactory manner, it was held that pending consideration of the issue of relocation or shifting of the plant to some other place, the plant should be allowed to be restart subject to certain stringent conditions and the provisions of the Water Act, 1974, and Air Act, 1981 should be strictly observed. The court also suggested the Government to set up Ecological Sciences Research Group (consisting of independent, professionally competent experts in different branches of science and technology) for the dissemination of information and the need to set up Environment Courts to deal with environmental cases. In this case the Supreme Court evolved a new principle of *absolute liability* in place of *strict liability* that was evolved in Rylands v. Fletcher provides that a person who for

his own purpose brings on to his land and collects and keeps there anything likely to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the 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 if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. The enunciation of the new principle of absolute liability is justified on the following grounds: If the enterprise is permitted to carry on an 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 overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. 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. It was held 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 dangerous activity the enterprise is absolutely liable to compensate all those who are affected by the accident. Thus, the private corporations were brought within the ambit of Article 12.

The analysis of the above cases shows that the Supreme Court applied the principle of sustainable development while deciding the cases. Unless people will cooperate the goal of sustainable cannot be achieved. On the basis of these cases we can say that Water is not only important for us but also for coming generation so we must not pollute it. The Supreme Court also activated the State Pollution Control Board and the Central Government to take appropriate step for the control of pollution.