
(1981) 03 RAJ CK 0019
In the Rajasthan High Court
Case No : CWrit Petition No. 1375 of 1980

Aggrawal Textiles Industries	Vs	APPELLANT
The State and Others		RESPONDENT

Date of Decision : 02-03-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 252
Water (Prevention and Control of Pollution) Act, 1974 — Section 14, 16, 17, 19, 2

Citation : (1981) WLN 141

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—These three writ petitions filed under Article 226 of the Constitution of India, involve common questions with regard to the validity of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (hereafter referred to as "the Act") and are, therefore, disposed of by a common order.

2. The Act, which came into force in the State of Rajasthan on 23rd March, 1974, was enacted by the Parliament with a view to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. The Act was enacted in accordance with the provisions of Article 252 of the Constitution of India after resolutions in pursuance of Clause (1) of Article 252 of the Constitution had been passed by the houses of the Legislatures of the various states, including the Legislature of State of Rajasthan, to the effect that the matters aforesaid should be regulated in those States by the Parliament by law. Section 3 of the Act provides for the constitution of the Central Board for the prevention and control of water pollution. Section 4 provides for the constitution of the State Boards for the prevention and control of water pollution. Section 16 lays down the functions of the Central Board and the functions of the State Boards set out in Section 17 of the Act. Section 19 empowers the State Government, after consultation with or on the recommendation of the State

Board, to issue notifications restricting application of the Act to such area or areas as may be declared in relation to water pollution, prevention and control area or areas, and after the issue of the said notification, the provisions of the Act would be applicable only to such area or areas. Section 24 prohibits a person from knowingly causing or permitting any poisonous, noxious or polluting matter to enter into any stream or well, and further prohibits a person from knowingly causing or permitting to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or its consequences. Section 25 of the Act enables the State Board to give its consent for the discharge of sewage or trade effluent into a stream or well subject to such condition as it may impose. Section 26 makes the provisions of Section 25 applicable to cases where immediately before the commencement of The Act, any person was discharging any sewage or trade effluent into a stream or well. Section 27 empowers the State Board to review from time to time, any condition imposed u/s 25 or Section 26 and to vary or revoke such condition. Section 28 provides for an appeal to an appellate authority against an order passed by the State Board under Sections 25, 26 or 27 of the Act. Section 29 confers a revisional power on the State Government in relation to orders passed by the State Board under Sections 25, 26 or 27 of the Act. Section 32 enables the State Board to take emergency measures in cases of pollution of stream or well. Section 33 empowers the Board to make an application to a court not inferior to that of Presidency Magistrate or a Magistrate of the first class, for an order restraining the person who is likely to cause pollution of the water in any stream or well by reason of the disposal of any matter therein. Section 41 lays down the punishment for the failure to comply with any direction issued by a court u/s 33 of the Act. Section 43 prescribes the penalty for contravention of the provisions of Section 24; and Section 44 prescribes penalty for contravention of the provisions of Sections 25 and 26.

3. By Central Act No. 44 of 1978, certain amendments were introduced in the Act. Amongst the said amendments was the amendment in Section 4 of the Act, and as a result of the said amendment, the time limit prescribed for constitution of the State Board was omitted and certain changes were made with regard to persons who could be nominated as the members of the State Board.

4. The Central Board for the prevention and control of pollution of water, respondent No. 2 in these writ petitions, is the Central Board constituted in accordance with the provisions of Section 3 of the Act. The State Board for the prevention and control of pollution of water (hereinafter referred to as the "State Board"), respondent No. 3 in these writ petitions, is the State Board constituted in accordance with the provisions of Section 4 of the Act for the State of Rajasthan.

5. By notification dated December 12th, 1978 (published in Rajasthan Gazette

dated January 4, 1979), issued by the State Government u/s 19 of the Act, it was notified that after consultation with the State Board, the State Government was of opinion that it was not necessary to apply the provisions of the Act to the entire State. By the notification aforesaid, the State Government declared certain areas in the State as water pollution, prevention and control areas, and the provisions of the Act were made applicable to the said areas. Amongst the areas, which were declared as water pollution, prevention and control areas, to which the provisions of the Act were made applicable under the said notification dated December 12, 1978, are included the Municipal Boards and industrial areas in District Pali.

6. The petitioners in these writ petitions are running industrial units for the purpose of dyeing and printing of cloth. In so far as M/s. Bheron Textile Industries (petitioner in Writ Petition No. 1376/80) and M/s. Phoenix (Dying and Printing Industries (petitioner in Writ Petition No. 1377/80) are concerned, the said industrial units are situated within the Municipal limits of Municipal Bhard, Pali. As regards M/s. Aggrawal Textile Industries (petitioner in Writ Petition No. 1375/80), there is a dispute as to whether the industrial unit is situated within the municipal limits of Muisici Pali, or the Industrial Area, Pali.

7. In connection with their aforesaid business the petitioners discharge certain effluents, which fall within the ambit of "trade effluent" as defined in Sub-section (k) of Section 2 of the Act. After the coming into force of the Act and the constitution of the State Board, the petitioners moved applications before the State Board under Sections 25/26 of the Act for the grant of consent for discharge or continuation of discharge of the trade effluent in a drain to Bandi River. On the said applications of the petitioners, the State Board passed orders granting consent under the provisions of Sections 25 and 26 of the Act, to the petitioners to discharge the trade effluents from their factories in the Pollution Prevention Area of District Pali subject to certain terms and conditions. According to the terms and conditions, laid down in the said orders, the maximum quantity of effluent which could be discharged was prescribed, and it was further laid down that the trade effluent shall be treated by suitable method so as to conform to the tolerance limit as per Section 2490 Part I, 1974 (as adopted by the Board). In the case of M/s. Aggrawal Textile Industries (petitioner in Writ Petition No. 1375/80), the said consent was granted vide order dated April 13, 1977, initially for a period upto November 30, 1973, and it was further extended upto December 31, 1978. In the case of M/s. Bheron Textile Industries (petitioner in Writ Petition No. 1376/80), the said consent was granted vide order dated December 20, 1976, for a period upto June, 1977. In the case of M/s. Phoenix Dyeing and Printing Industries (petitioner in Writ Petition No. 1377/80), the aforesaid consent was given vide order dated October 5, 1977, for a period upto December 31, 1978. The aforesaid petitioners did not apply for extension of the period of consent given by the State Board under its orders referred to above.

8. Since the petitioners continued to discharge the trade effluents from their

industries even after the expiry of the period prescribed in the orders of consent made by the State Board under Sections 25 and 26 of the Act, the State Board moved applications u/s 33 of the Act before Judicial Magistrate, Pali, and on the said applications, the Chief Judicial Magistrate, passed orders dated June 3, 1980, whereby, a direction was given to the petitioners that the petitioners should not discharge the trade effluent from their commercial and industrial establishments in the Bandi River in District-Pali, without treating it so as to bring it in conformity with the standard allowed by the State Board and also to desist from taking any action which is likely to pollute the water of Bandi River in District-Pali. The State Board has also filed complaints against the petitioners in the court of Chief Judicial Magistrate for punishment of the petitioners in respect of offences under Sections 43 and 44 read with Sections 14 and 25 of the Act.

9. Being aggrieved by the aforesaid order dated June 3, 1980, passed by the Chief Judicial Magistrate, Pali, and the criminal proceedings launched against them by the State Board, which are pending in the court of the Chief Judicial Magistrate, Pali, the petitioners have filed these writ petitions,

10. In the writ petitions, the petitioners have challenged the validity of the provisions contained in Sections 19, 24(1) read with Section 24(3) of the Act as well as the notification dated December 12, 1973, issued by the State Government u/s 19 of the Act, and have prayed that the order dated June 3, 1980, passed by the Chief Judicial Magistrate u/s 33 of the Act as well as the criminal proceedings launched against the petitioners by the State Board pending in the court of Chief Judicial Magistrate, be quashed.

11. Notices were issued to the respondents to show cause, why the writ petitions should not be entertained, and in response to the said notice, replies have been filed by the State Board as well, as by the State Government. In the writ petitions, as originally filed, the Union of India had not been impleaded as a party, but, subsequently, the writ petitions were amended and the Union of India was also impleaded as party, and notices were issued to it. But, it has chosen not to appear. The Rajasthan Industrial Mines and Development Corporation has been impleaded as a respondent in writ petitions Nos. 1375 and 1376 of 1980, and they have also filed a reply to the writ petitions.

12. I have heard Shri H.M. Parakh, the learned Counsel for the petitioners in all the three writ petitions Shri C.K. Garg, the learned Counsel for the State Board, the learned Government Advocate, & Shri M.R. Singhvi, the learned Counsel for the Rajasthan Industrial Mineral Development Corporation.

13. The first contention that was urged by Shri Parakh, the learned Counsel for the petitioners, was that Section 19 of the Act is unconstitutional and void being violative to the provisions of Article 14 of the Constitution inasmuch as it confers an arbitrary and unguided discretion on the State Government to pick out any particular area in the State for declaring it as water pollution, prevention and control area, and apply the provisions of the Act to the said area. For a proper

appreciation of the after said contention urged by Shri Parakh, it would be necessary to set out the provisions contained in Section 19 of the Act, which reads as under:

19. Power of State Government restrict the application of the Act to certain areas-

(1) Notwithstanding anything contained in this Act, if the State Government, after consultation with or on recommendation of the State Board, is of opinion that the provisions of this Act need not apply to the entire State, it may, by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas.

(2) Each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundary of any district or partly by one method any partly by another.

(3) The State Government may, by notification in Official Gazette,-

(a) alter any water pollution, prevention and control area whether by way of extension or reduction; or

(b) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.

A perusal of the provisions contained in Section 19, shows that the provisions are intended to ensure a more effective implementation of the provisions of the Act by enabling the State Government to restrict the application of the Act to particular areas, which may be declared as water pollution, prevention and control areas and thus concentrate its efforts to those areas. The applicability of the provisions of the Act is not dependent on the passing of an order passed u/s 19 and in the absence of an order passed u/s 19, the provisions of the Act would be applicable to the entire State. It is, therefore, difficult to appreciate as to how the petitioners would be benefitted by challenging the validity of the provisions of Section 19 of the Act, because, the declaration of Section 19 as unconstitutional and void, would only mean that instead of the provisions of the Act being restricted in their application to certain areas in the State of Rajasthan, the said provisions would be applicable to the entire State, and the proceedings initiated against the petitioner u/s 33 and under Sections 43 and 44 read with Sections 24 and 25 of the Act would not be incompetent. Thus, no useful purpose would be served by going into the question as to the validity of the provisions of Section 19 of the Act.

14. Even otherwise, there is no merit in the aforesaid challenge to the validity of Section 19 Sub-section (1) as Section 19 postulates that a notification under Sub-section (1) of Section 19 can be issued either when the State Government forms the opinion that the provisions of the Act need not apply to the entire State on the basis of the recommendations of the State Board or the State Government

forms the said opinion after consultation with the State Board. Section 4 of the Act which provides for the constitution of the State Board, prescribes, in Sub-section (2), that the State Board shall consist of a Chairman, being a person having special knowledge or practical experience in respect of matters relating to the environmental protection, or a person having knowledge and experience in administering institutions dealing with the matters aforesaid; such number of officials not exceeding five to be nominated by the State Government: such number of persons not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State : such number of non-official not exceeding three to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which in the opinion of the State Government ought to be represented; two persons to represent the companies or corporations, owned, controlled or managed by the State Government, to be nominated by the State Government; and a full time member Secretary qualified in public health, engineering and having practical experiences in matters relating to environmental protection. The aforesaid provisions contained in Sub-section (2) of Section 4 of the Act, indicate that the State Board is a body composed of members representing the various interests, and it is headed by a Chairman, having special knowledge or practical experiences in respect of matters relating to environmental protection, and its Secretary is a person, qualified in public health and engineering and having practical experiences in matters relating to environmental protection. The State Board is thus an expert body, which is expected to give proper advice to the State Government in the matter of declaration of areas as water pollution, prevention and control areas u/s 19 of the Act.

15. The law is well-settled that a discretionary power is not necessarily a discriminating power. The power that has been conferred on the State Government u/s 19 of the Act in the matter of declaring a particular area as water pollution, prevention and control area so as to apply the Act to the laid area, has to be exercised with a view to fulfil the objects sought to be achieved by the Act as set out in the "Preamble" to the Act namely, prevention and control of water pollution and maintaining or restricting the wholesomeness of water. Moreover, the exercise of the power, that has been conferred on the State Government u/s 19 of the Act is conditioned by the requirement with regard to consultation with the State Board, which as pointed out earlier is an expert body entrusted with the task of drafting a comprehensive programme for the prevention, control and abatement of discharges of waste into streams or wells in the State and to advise the State Government with respect to prevention of abatement of water pollution. Shri Parakh has urged that the consultation with the State Board is restricted to the formation of opinion by the State Government that the provisions of the Act need not apply to the entire State and that the Board is not required to be consulted in the matter of selection of any particular area or areas for being declared as water pollution, prevention and control area

or areas. In my opinion, the aforesaid contention of Shri Parakh cannot be accepted. The requirement with n gird to recommendation by the State Government or consultation with the State Board, contained in Sub-section (1) of Section 19, is not confined to the formation of opinion about the applicability of the provisions of the Act to the entire State. The recommendation of the State Board or consultation with the State Board would be necessary also in lbs matter of selection of an area to be declared as water pollution, prevention and control area, under Sub-section (1) of Section 19 of the Act. In the circumstances, it can be held that Section 19 of the Act does not suffer from the view of conferment of arbitrary an unguided discretion on the State Government in the matter of declaration of an area as areas as water pollution, prevention and control area. The contention of Shri Parakh that Section 19 is violative of the provisions of Article 14 of the Constitution, cannot, therefore, be accepted.

16. The next contention urged by Shri Parakh was that even if Section 19 is held to be valid, the notification dated December 12, 1978, issued by the Slate Government, is liable to be struck down for the reason that in the said notification it has not been mentioned that the State Board had been consulted in the matter of selection of the areas, which have been declared as water pollution, prevention and control areas by the said notification. Shri Parakh has submitted that according to the recital contained in the notification dated December 12, 1978, the consultation with the State Board was not with regard to the applicability of the provisions of the Act to the entire State. I am unable to accept this contention. From a perusal of the writ petitions, I find that the petitioners have no where challenged the validity of the notification dated December 12, 1978, on the ground that the areas which have been declared as water pollution, prevention and control areas under the said notification, were selected without the consultation with the State Board. All that has been pleaded in the writ petitions, is that the said areas have been selected at random without any reference that there was an apprehension of pollution in those areas. In the absence of any averment in the writ petition that in the matter of selection of the said area?, which were declared water pollution, prevention and control area? under the notification dated December 12, 1978, the State Board was not consulted, it is not open to the petitioners to challenged the validity of the said notification on the ground that it was issued without such a consultation in as much as the presumption as to the regularity of official acts would be applicable and the obligation on the part of the State Government to satisfy that the State Board was so consulted, could arise only if the petitioners had challenged the validity of the notification on this ground. In this context, reference may be made to the decision of the in *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, wherein, the Supreme Court while dealing with administrative orders whose validity depended on certain conditions precedent being satisfied, has laid down:

We cannot accept the extreme argument of Shri Aggrawal that the mere fact that the order has been passed is sufficient to raise the presumption that conditions

precedent have been satisfied, even though there is no recital in the order to that effect. Such a presumption in our opinion can only be raised where there is a recital in the order to that effect. In the absence of such recital if the order is challenged on the ground that in fact there was no satisfaction, the authority passing the order will have to satisfy the court by other means that the conditions precedent were satisfied before the order was passed. We are equally not impressed by Shri Pathak's argument that if the recital is not there, the public or courts and tribunals will not know that the order was validly passed and therefore it is not necessary that there must be recital on the fact of the order in such a case before it can be held to be legal. The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged and it is said that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied with.

17. Since in the present case there is no challenge to the validity of the notification dated December 12, 1978 on the ground that the areas certified therein were declared as water pollution, prevention and control areas without consulting the State Board, the presumption as to the regularity of public acts would be applicable, and it must be presumed that the State Board had been consulted in the matter of declaration of the areas specified in the notification dated December 12, 1978, as water pollution, prevention and control areas.

18. Apart from the presumption as to regularity of public acts, there is sufficient material on record to show that the declaration of the areas specified as water pollution prevention and control areas in the notification dated December 12, 1978, was made on the advice of the State Board. This is borne out by the averments contained in sub-paras (ii) and (iii) of Clause (B) of paragraph 11 of the reply to the writ petitions filed on behalf of the State Board, wherein it is asserted that the State Board had advised the State Government for including the Municipal and industrial areas of Pali for applying the provisions of law and that the other areas were also selected by the State Board after due enquiry and survey and sight-inspection reports.

19. It cannot, therefore, be held that the State Board was not consulted in the matter of selection of areas declared as water pollution prevention and control areas by the notification dated December 12, 1978.

20. Another contention that was urged by Shri Parekh to challenge the validity of the notification dated December 12, 1978. was that there was no material before the State Government or the State Board on the basis of which it could arrive at a decision that it was necessary to declare the areas referred to in the said notification as water pollution prevention and control areas. This contention is also without any substance. In the reply to the writ petitions, filed on behalf of the State Board it is stated that all the areas had been selected after due study and survey and site-inspection reports with particular reference to the areas,

which have been selected in District - Pali, it has been stated in the said reply that numerous complaints had been received from the various shades of citizens and authorities of Pali, wherein they had brought to the notice of the State Board the adverse effect of constant pollution of water in and around Pali on account of hundreds of textile industrial units, on the health of human beings and animal life, and that the said complaint," had been checked up by the surveys arranged and conducted by the State Board, and that spot inspections had also been made by the State Board, and that on the receipt and collection of the technical reports the State Board had though if fit to advise the State Government for including the Municipal and industrial area of Pali for applying the provisions of law. The aforesaid assertion in the reply to the writ petitions, filed on behalf of the State Board and supported by the letter date April 18, 1975, sent by the Executive Engineer, Public Health and Engineering Department, Pali, (Annexure R/3(a)) where in. it is stated that dyeing and printing industries had become part and parcel of life of Pali Town, and that, all wastes ultimately go to Bandi River nearby and that Bandi River had naturally become an industrial waste channel for the non-rainy seasons, and that there were no adequate arrangements for the disposal of the industrial wastes from the industrial area. By his letter aforesaid, the Executive Engineer requested that the whole of the Pali Town including the industrial area should be delimited for the purpose of the Act. Another document, to which reference has been made in reply filed on behalf of the State Board, is the letter dated April 15, 1975 (Annexure R-3/3(b)), sent by the Collector, Pali, to the Secretary of the State Board, wherein it has been pointed out that the city of Pali was facing acute problem of pollution of water, and that the source of the pollution was from the discharge of waste water from 140 units of printing and dyeing cloth, and that the water was highly poisonous due to the chemicals used for bleaching, printing and dyeing of cloth, and that the said effluent finds its way in the Bandi River, as a result whereof, the source of drinking water gets polluted and it was posing a hazard to the human population and that the river-water also gets polluted due to the aforesaid discharge, and that for a distance of ten miles the irrigation-wells are reported to have been affected, and that it is damaging the crops which are normally irrigated from wells dug on the banks of the river. In the letter aforesaid, the Collector has stated that there was a need of urgent action against the pollution of water in the public interest. The State Board, in its reply, has also referred to the letter dated July 28, 1976 (Annexure R-3/3(c)) addressed by Shri Shankerlal, Member of the Legislative Assembly, to the Chief Minister of Rajasthan, whereby, the attention of the Chief Minister was invited to the serious water pollution problem in Pali Town, on account of cloth-dyeing and printing industries. In the reply, that has been filed on behalf of the State Government also it is stated that the areas which have been notified as water pollution prevention and control area under the notification dated December 12, 1978, were selected after due stud) and site-inspection reports. In view of the aforesaid replies filed on behalf of the State Government and the State Board, it cannot be said that the various areas, including the areas of Pali District, which have been declared as water

pollution prevention and control areas vide notification dated December 12, 1978, have been picked up arbitrarily

21. The next contention urged by Shri Parekh was with regard to the constitutional validity of the provisions contained in Section 24 of the Act.

22. Section 24 of the Act provides as under:

24. Prohibition on use of stream or well for disposal of polluting matter, etc.-

(1) Subject to the provisions of this Section, - (1) no person shall knowingly come or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes of its consequences.

(2) A person shall not be guilty of an offence under Sub-section (1), by reason only of having done or caused to be done any of the following acts namely:

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream, any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, preparing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(b) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of the State Board, exempt, by notification in the Official Gazette, any person from the operation of Sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may be by a like notification be altered, varied or amended.

Shri Parekh has contended that Sub-section (1) of Section 24 read with Sub-section (3) is violative of the provisions of Article 14 of the Constitution inasmuch as in sub-section (3) an arbitrary and unguided power has been conferred on the State Government to exempt any person from the operation of Sub-section (1). In my view, there is no merit in the aforesaid contention. Similar provisions with regard to power to Government exemption have been upheld by the Supreme

Court in *Sardar Inder Singh Vs. The State of Rajasthan*, and *P.J. Irani Vs. The State of Madras*, . The power of exemption which has been conferred under Sub-section (3) cannot be held to be an uncontrolled or unguided power inasmuch as it has to be exercised by the State Government in consonance with the policy of the Legislature as set out in the "Preamble" to the Act. Moreover, the said power can only be exercised by the State Government, after consultation with or on the recommendations of the State Board, which is an expert body. It cannot, therefore, be said that Sub-section (3) of Section 24 confers arbitrary and unguided power on the State Government, and is violative of the provisions of Article 14 of the Constitution.

23. Another contention that was urged by Shri Parekh with regard to the invalidity of Section 24 of the Act, was that it imposes an unreasonable restriction on the fundamental right of the petitioners, to carry on trade and business guaranteed under Sub-clause (g) of Clause (1) of Article 19 of the Constitution, and it is not saved by the provisions of Clause (6) of Article 19 of the Constitution. In this connection, Shri Parekh has vehemently argued that the problem of prevention of water pollution is a problem of vast magnitude and that it would be beyond the means of an individual to prevent or control the pollution resulting from an industry set up by him and that the prohibition contained in Section 24 of the Act would result in complete closure of the business of the petitioners and that it would thus remit in imposing unreasonable restrictions to carry on their trade and business. I am unable to accept the aforesaid contention of Shri Parekh. It is true that the prevention and control of pollution of water may involve expenditure which may be beyond the means of a particular individual carrying on any particular industry and that it may require co-operation amongst various units and as well as the local authorities to effectively prevent and control such pollution. The Act also envisages that one of the functions of the State Board is to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof and to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions. But, this does not mean that an individual, while exercising his right to carry on his trade or business, is free to pollute the source of supply of water to other citizens, and thereby cause harm to the interest of the general public. It cannot be disputed that pollution of water is a very serious hazard for the health of the general public, and the provisions of the Act which seek to provide for the prevention and control of water pollution and maintaining or restoring the wholesomeness of water are enacted in the interest of general public. The restrictions imposed by Section 24 of the Act, whereby, a person has been prohibited from knowingly causing or permitting any poisonous, noxious or pollution matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well, or knowingly causing or permitting to enter into any stream any other

matter which may tend, either directly or in combination with similar matters to impede the proper flow of the water of the stream in manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences, on restrictions that have been imposed in the interest of general public on the right of a person to carry on his trade or business.

24. The question which next arises for consideration is, whether the aforesaid restriction that has been placed by Section 24 of the Act is an unreasonable restriction. In this context, it may be observed that in Clause (d) of Sub-section (2) of Section 24, it is laid down that a person would not be guilty of an offence under Sub-section (1) if he has caused or permitted the deposit accumulated in a well, pond or reservoir to enter into any stream with the consent of the State Board, in other words, Sub-section (2) of Section 24 enables a person to cause or permit a trade effluent to enter into a stream provided the consent of the State Government is obtained. Sections 25 and 26 of the Act make provisions for the grant of consent by the State Board for discharging any sewage or trade effluent into a stream or well. Section 28 provides for an appeal against an order made by the State Board under Sections 25 and 26, and a further right of revision is conferred u/s 29 of the Act. This shows that the Act contains adequate provisions for grant of consent by the State Board as well as provisions for appeal and revision against the orders passed by the State Board so as to enable a person to carry on his trade or business after obtaining the consent of the State Board. It is, therefore, not possible to hold that Section 24(1) imposes unreasonable restrictions to the right of the petitioners to carry on their trade and business.

25. Shri Parekh has contended that even if the provisions of Section 19 and 24 are held to be valid, the action taken by the State Board in filing applications u/s 33 of the Act against the petitioners and filing complaints against the petitioners under Sections 43 and 44 read with Sections 25 and 26 cannot be upheld. In this regard, Shri Parekh has submitted that it was incumbent on the State Board to have performed its functions u/s 17 of the Act in the matter of prevention and control of water pollution, and that the State Board having failed to carry out the aforesaid functions entrusted to it, could not invoke the provisions of Section 33 as well as Sections 43 and 44, read with Sections 25 and 26 against the petitioners. In my opinion, there is no substance in this contention. Section 17 of the Act prescribes the various functions which are to be discharged by the Board. It cannot be disputed that the functions which have been prescribed u/s 17 of the Act are intended to achieve the object of the Act, namely, prevention and control of water pollution and the maintaining or restoring the wholesomeness of water. But, the prohibition contained in Section 24 cannot be held to be dependent on the discharge of the various functions which have been entrusted to the State Board u/s 17 of the Act. For the purpose of applicability of Section 24, all that is required is, that the State Board should lay down the standards of effluents, and once the standard has been laid down by State Board, the prohibition contained in Section 24, would come into operation, and the only way

for a person to avoid the prohibition contained in Section 24, is to obtain the consent of the State Board under Sections 25 and 26 of the Act. In a case where a person commits a breach of the provisions of Section 24 of the Act, without taking recourse to the provisions of Sections 25 and 26 of the Act, it would be open to the State Board to move an application to a court not inferior to that of a Presidency Magistrate or a Magistrate of the first class, u/s 33 of the Act for restraining the person who is likely to cause such pollution from so causing, and the court may pass an order restraining any person from polluting the water in any stream or well. Similarly, it would be open to the State Board to invoke the provisions prescribing penalties for contravention of the provisions of Section 24, contained in Section 43 of the Act and for contravention of Sections 25 and 26 contained in Section 44 of the Act. In the present case, the State Board has laid down the standards for the effluents which can be discharged, and the prohibition contained in Section 24 would, therefore, be invoked. The petitioners were also conscious of prohibition contained in Section 24 of the Act, and in order to avoid the consequences of the prohibition contained in Section 24, they had moved the requisite applications before the State Board and had obtained the consent of the State Board under Sections 25 and 26 of the Act. Bui, after obtaining the said consent from the State Board, the petitioners did not choose to set up a treatment plant as envisaged by the aforesaid order of consent given by the State Board. Nor did they move the State Board for extension of the period for setting up the treatment plant. In the circumstances, the action taken by the State Board in moving the the court of Chief Judicial Magistrate u/s 33 of the Act and filing complaints under Sections 43 and 44 read with Sections 25 and 26 of the Act, cannot be held to be illegal.

26. Shri Parekh has also contended that u/s 17 of the Act, the State Board was required to make its own independent study for the purpose of laying down the standards for the effluents which could be discharged and that the State Board without making any independent study, had merely adopted the standards laid down by the Indian Standards Institute. The Indian Standards Institute is an institution set up for the purpose of laying down the standards for various commodities. It possesses the necessary expertise for prescribing the standards after scientific analysis. The standards prescribed by the Indian Standards Institute could, therefore, be adopted by the State and the fact that the State Board has chosen to adopt the standards laid down by the Indian Standards Institute, does not lead to conclusion that the State Board has failed to carry out the functions which have been entrusted to the Board.

27. Shri Parekh has lastly submitted that no offence u/s 43 and 44 read with Section 25 and 26 is made out against the petitioners inasmuch as Section 24 of the Act envisages that the act prohibited, must have been done knowingly and that in the present case, the petitioners have not knowingly committed any breach of the provisions of Section 24 of the Act inasmuch they were always willing to co-operate with the Stats Board in the matter of control and prevention of water pollution. In my opinion, the question as to whether the petitioners have

committed a breach of the provisions of Section 24 of Act is a matter arising for determination in the criminal proceedings pending in the court of Chief Judicial Magistrate, and the same cannot be entertained and adjudicated upon in these writ petition.

28. Another contention that was urged by Shri Parekh was that the petitioner in the case of M/s. Aggrawal Textile Industries, does not fall within the ambit of the notification dated December 12, 1978, because, the industrial unit of the said petitioner is situated neither within the Municipal limits of the Municipal Board, Pali, nor within the industrial area of Pali. The aforesaid assertion of the said petitioner, has, however, been disputed by the State Board as well as the State Government. Since the question as to whether the industrial unit of the said petitioner falls within the limits of Municipal Board, Pali or the industrial area of Pali, can be agitated by the petitioner in the criminal proceeding pending in the court of Chief Judicial Magistrate, and it can more appropriately be dealt with in the said proceedings, do not propose to examine it in these proceedings.

29. Since none of the contentions urged by Shri Parekh merits acceptance, the writ petitions are dismissed. But in the circumstance, of the case, there will be no order as to costs.