

(2004) 11 PAT CK 0001
In the Patna High Court
Case No : L.P.A. No. 970 of 2003

Bihar State Pollution Control Board and another	APPELLANT
Vs	
Hiranand Stone Works and Others	RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 17, 21, 25, 31A
Constitution of India, 1950 — Article 21, 249, 250, 252
Environment (Protection) Act, 1986 — Section 23, 3(2)(v), 5
Water (Prevention and Control of Pollution) Act, 1974 — Section 17, 21, 25, 26

Citation : (2005) 1 PLJR 57

Hon'ble Judges : Nagendra Rai, Acting C.J.; R.S. Garg, J

Bench : Division Bench

Advocate : Shivendra Kishore, for the Appellant; A.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—This letters patent appeal has been filed under Clause 10 of the Letters Patent of the Patna High Court, by the Bihar State Pollution Control Board, being aggrieved by the order dated 15.9.2003 passed in CWJC No. 4122 of 2003 Ed.- Reported in Hiranand Stone Works Vs. State of Bihar and Others, where under the learned Single Judge has held that the decision to reject the writ petitioner's application was based on a ground which had no application to the case. The learned Single Judge after quashing the Board's decision dated 13.5.2003 required the appellant to reconsider the writ petitioner's application. The necessary facts for disposal of the writ application are that the original petitioner Hiranand Stone Works is a proprietorship firm and is owned by Nand Kishore Tekriwal. The petitioner firm is registered as small scale industry unit having its registration No. 03-01-02641-PMT-SSI dated 30.11.1982. The petitioner after being registered as SSI with financial assistance of Bihar State Financial Corporation, established a stone crusher for manufacturing stone chips at village Pakartalla. According to the petitioner, the original respondent Bihar State Pollution Control Board (for short "Board") asked the petitioner firm to

obtain its consent under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (In short "Air Act") for running its unit and the petitioner accordingly applied for grant of consent. Vide order dated 22.2.1990 the Board granted conditional consent under Annexure 2 (to the writ petition). Thereafter, it is submitted, the petitioner regularly applied for grant of consent and complied with the conditions put by the Board from time to time and last of such consent was given on 29.7.2000 asking the petitioner; (a) to construct 12, high wind breaking wall around the unit within the consent period; (b) the crushing and screening sections shall be housed properly; (c) the water spraying shall be done at crushing and loading points; and (d) tree plantation shall be done and maintained.

2. The petitioner was served with a notice issued by the respondent Assistant Engineer on 29.11.2001 calling upon the petitioner to submit an application for consent along with compliance report. According to the petitioner, he submitted an application form with compliance report and prescribed fee on 20.12.2001. Thereafter, the petitioner was served with order dated 14.5.2002, issued by the Member Secretary, informing the petitioner that the conditions put vide consent order dated 29.7.2000 having not been complied with, the application for renewal of the consent stands rejected. The copy of the order is dated 14.5.2002 and is Annexures 5 to the original writ application. The petitioner, however, took exception to the said communication and vide its letter dated 28.5.2002 informed the respondent that he had complied with the conditions, therefore, consent may be granted. The respondents vide their letter dated 12.8.2002 informed the petitioner that even from the petitioner's letter dated 28.5.2002 it was clear that the petitioner had not complied with the condition and hence it was not possible to consider his application for consent. After service of the said letter, the petitioner again on 13.11.2002 submitted an application in prescribed form along with the fee stating therein the complete coverage of crushing and screening area, construction of 12" high wall and plantation were done. He also informed that work of spraying water has also been completed and as such consent be given. The application of the petitioner is Annexure 8 to the original writ application. The petitioner again was served with memo No. 100 dated 27.2.2003 informing the petitioner that from letter dated 11.7.2002 of the President of the Board, it would be clear that the petitioner was running the unit without consent, therefore, he should show cause as to why proceedings be not initiated for closure of the crusher. The petitioner submitted his reply and informed the Board that he had the consent order in his favour which was effective till 31.3.2001 but much before that date, he had closed the unit and unless the consent is granted in his favour, he shall not run the unit. The petitioner submitted in his writ application that he having complied with all the conditions levied against him in the consent order, his application ought to have been considered and the respondent could not proceed against him. He prayed that rule nisi in the nature of writ of mandamus be issued against the respondents to grant consent to the petitioner.

3. The respondents appeared in the matter and filed their counter affidavit on 19.5.2003. Along with the counter, they filed Annexure-G letter dated 13.5.2003 bearing reference No. T-1361 observing that the Board has refused the application for consent and after passing of the order of refusal, the petitioner was required to shift his unit to a location, which is in conformity with the guidelines of the Board. The respondents also raised a plea that they have framed guidelines and as the unit was within a distance of 200 meters from the highway etc., the petitioner could not be granted consent. They had raised a number of other pleadings which we shall consider later on.

4. Subsequent to the filing of the counter affidavit, the petitioner submitted an application for amendment on 23.6.2003 making a prayer that Annexure G appended to the counter affidavit where under the consent has been refused be quashed because the guidelines contained in Annexure A were not applicable to the existing units. The matter was heard in detail and the learned Single Judge vide order dated 15.9.2003 held that the guidelines were in fact for establishment of industries, they were to affect the location of the industrial units, new or existing with proposal for expansion/modernization/diversification. Paragraph 1 of the notification dealt with the procedure for obtaining site clearance and the opening words of sub-para (1) of this paragraph were :

"Any person, who proposes to establish or expand or modernise or diversify any industrial unit or project in any part of the State of Bihar...."

4A. It was also observed by the learned Single Judge that para 2 of the notification also refers to criteria for the approval/clearance of site/location in respect of new industrial unit or existing one with proposal for "expansion / modernization / diversification and as the petitioner was an existing unit and he had no proposal for expansion / modernization / diversification, the guidelines contained in Annexure A would not apply.

5. The learned Single Judge accordingly quashed the refusal order and directed the appellant herein to reconsider the application in accordance with law preferably within two months from the date of receipt/production of a copy of the said order.

6. Being aggrieved by the said order, the original respondents have preferred this appeal.

7. During the pendency of this appeal, the appellants filed a supplementary affidavit along with guidelines dated 8th November, 2003, which are under the provisions of Sections 17, and 25 / 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Sections 17 and 25 of the Air (Prevention and Control of Pollution) Act, 1981. They submitted that in view of the new guidelines which has superseded the earlier guidelines dated 1st October, 1996, and 8th April, 1999, every industry is required to observe these guidelines and as under these guidelines, the petitioner unit cannot be allowed to continue within a distance of 200 meters, the petitioner is obliged to shift the industry or in any case must

apply afresh for a consent order.

8. The respondent original writ petitioner has filed an additional affidavit submitting, inter alia, that the guidelines are bad, illegal and without any authority in law to the extent they prohibit the operation of existing unit in specified location, such as in the present case 200 meters from the National Highway or State Highway.

9. Learned counsel for the appellants submitted that from a perusal of the original guidelines, if read in their true perspective, it would clearly appear that the Board being alive to its duties which it has to discharge in accordance with law and under the scheme of the Act, was justified in asking the petitioner to shift the location of the industry and missing of a word here or there that the guidelines would apply even to the existing units, would not allow the petitioner to run an industry within the battery limit and pollute the air. It is also submitted that the Board being authorised under the law to take every step to maintain the pollution free environment, was entitled to take every step including drastic steps of issuing a direction to the petitioner to shift the location of the industry. According to them, the provisions of the different Acts authorise them to issue direction and control the battery limit.

10. Learned counsel for the respondent supporting the judgment of the learned Single Judge submitted that a fair perusal of the 1996 guidelines would make it clear that it was to apply to new industrial units or existing one with proposal for expansion/modernization/diversification. He submits that the petitioner is not a new industrial unit and it has no proposal for expansion or modernisation or diversification, therefore, 1996 guidelines would not apply. Challenging the scheme dated 8th November, 2003, (Annexure-A) it is submitted that Section 3(2)(v) of the Environment (Protection) Act, 1986 (In short "Environment Act") authorises the Central Government to put restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out. Section 5 of this Act empowers the Central Government to issue directions for closure, prohibition or regularisation of any industry. The Central Government vide notification No. 152 (E) dated 10.2.1988 in exercise of powers conferred u/s 23 of the Act delegated powers vested in it u/s 5 of the Act to different State Governments including the State of Bihar. Vide notification No. 23 E dated 8.1.1997, the Central Government delegated powers u/s 5 of the Act to the Chairman, State Pollution Control Board, including the Chairman of the Bihar State Board to issue any directions to any industry or any local or other authority in respect of violation of Standard and Rules relating to hazardous wastes notified under the Act. Hence, the guidelines dated 8.11.2003 are in excess of the powers delegated to them. It is further submitted that vide notification No. 327 (E) dated 10.4.2001, the Central Government delegated powers to the Chairman of different State Boards including the Bihar Board to issue directions in respect of bio-medical waste, hazardous chemical, industrial solid waste and municipal solid waste including plastic waste. It is further

submitted that rule 5 sub rule (1) of the Environment (Protection) Rules, 1986, laid down 10 factors for consideration by the Central Government for prohibiting or restricting location of industries and carrying on processes and operation in different areas. According to them, in the present case, the restriction put on operation of industries within prescribed battery limit could not be issued by the Board which is not competent or in favour of which no powers have been delegated by the Central Government. It is also submitted that rule 5 of the 1986 Rules has not been observed, therefore, the guidelines in relation to shifting of the existing unit is bad. It is submitted that vide notification No. 85(E) dated 29.1.1992, as many as 69 industries have been notified which would require environmental clearance and vide notification No. 1148 (E) dated 21.11.2001 the Central Government specified 30 industries which would require environmental clearance and as the stone crushing industry is not specified in both the lists, the Board could not issue such guidelines.

11. It is submitted that in view of the notifications issued by the Central Government from time to time, the fixation of battery limit for stone crushing unit by the Board or its Chairman is without any authority of law. It is further submitted that the restrictions put on the stone crushing unit is on discharge of suspended particulate. The limit of discharge of suspended particulate is up to 600 micro-grams per cubic meters within 3 to 10 meters from the process equipment, therefore, the fixation of battery limit would be bad. The submission in fact is that a stone crushing unit should not discharge suspended particulate beyond 600 micro-grams per cubic meter air and if it violates the said standard and requirement then its distance from the highway, forest, or other places would become immaterial. It is further submitted that Sections 17 and 25 of the Air (Prevention and Control of Pollution) Act, 1981 do not authorise a Board to put prohibition on any industry in any location or area as such the guidelines are bad, and illegal. It is also submitted that the petitioner unit being in continuous operation since 1982 to 2001, and the Board having given consent order and as there is no adverse report against the petitioner in relation to discharge of suspended particulate, the petitioner cannot be asked to shift the unit especially when the petitioner unit has complied with the conditions after undergoing the heavy expenses. It is lastly submitted that the guidelines are discriminatory and violative of the equity because the Board in compliance of the said guidelines asked the respondent unit to shift his unit but umpteen number of existing units such as Bata Tannery, Macdowells distillery, Shankar distillery, thermal power stations, re-rolling mills, milk dairies like Sudha, biscuit and bakery industries etc. are existing in violation of the present guidelines and are carrying on their activities in violation of the new guidelines and no action has been taken against such persons. The respondents submitted that 1981 Act is a remedial legislation in the interest of the public and not a prohibitory legislation. According to the respondents, the guidelines having not been notified in the official gazette, would not be applicable.

12. The appellants in their argument submitted that the guidelines contained in

notification No. 139-CH dated 1.10.1996 were under consideration of the State Board during the pendency of the appeal. The State Board after considering the entire material available and taking into consideration the pollution control and to provide a better environment to the public at large came out with the new guideline dated 8.11.2003. It is submitted that in accordance with the provisions of Sections 17 and 25 / 26 of the Water (Prevention & Control of Pollution) Act, 1974 (In short "Water Act") and Sections 17 and 25 of the Air (Prevention & Control of Pollution) Act, 1981, they are entitled to issue fresh guidelines if they are of the opinion that the earlier guidelines have become inapt and in the changed circumstances the guidelines are required to be re-issued. According to them, the new guidelines are for approval of sites for the location/relocation of industrial units, new or existing or existing with proposal for expansion/modernisation/diversification. According to them, in terms of clause 3(3), the battery limit of the industry at the site must be at a distance, as specified in Annexure HI, IV and V from human habitation, railway line, river, national or State highway. It is also submitted that Annexure IV to the guideline contains the list of major polluting industries. Battery limit of categories of industries listed against serial No. 9, 18, 24, 25, and 27 is 200 meters minimum and battery limit of the rest of the industries is 500 meters minimum from the national/State highways, railway line, river and habitation. The stone crushing unit is at serial No. 25 of Annexure IV, therefore, it must stand to the standard of 200 meters battery limit from national / State highway, railway line, river and human habitation. It is submitted that as the petitioner unit is only at a distance of 25 meters from the State highway, it is required to relocate itself.

13. Before we proceed to consider the rival contentions of the parties, we must refer to the preambles of the three Acts, namely, Air (Prevention & Control of Pollution) Act, 1981, Environment (Protection) Act, 1986 and Water (Prevention & Control of Pollution) Act, 1974.

14. Preamble of The Air (Prevention and Control of Pollution) Act, 1981 [Act No. 14 of 1981] is as under :-

"An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards for conferring on and assigning to such Boards" powers and functions relating thereto and for matters connected therewith.

Whereas decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution;

And whereas it is considered necessary to implement the decisions aforesaid insofar as they relate to the preservation of the quality of air and control of air pollution;"

15. Preamble of The Environment (Protection) Act, 1986 (29 of 1986) is as follows;

"An Act to provide for the protection and improvement of environment and for matters connected therewith.

Whereas decisions were taken at the United Nations conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;"

16. Preamble of The Water (Prevention and Control of Pollution) Act, 1974 [Act No. 6 of 1974] is as under:-

An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Whereas it is expedient to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution and for conferring on and assigning to such Boards powers and functions relating thereto:

And whereas Parliament has no power to make laws for the States with respect to any of the matters aforesaid except as provided in Articles 249 and 250 of the Constitution;

And whereas in pursuance of clause (1) of Article 252 of the Constitution resolutions have been passed by all the He uses of the Legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect that the matters aforesaid should be regulated in those States by Parliament by law;"

17. A fair reading of these preambles would make it clear that the Air Act has been enacted to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. It would also be clear from the preamble of the Water Act that the Act has been enacted to provide for the prevention and control of water pollution and the maintaining or

restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

18. It would also be clear from the preamble of the Environment (Protection) Act, 1986, that this Act has been enacted to provide for the protection and improvement of environment and for matters connected therewith.

19. Submission of the respondents are that as the site of industry can be provided or battery limit can be fixed under the Environment (Protection) Act, 1986 only, the Board cannot issue such guidelines.

20. It is to be seen from the guidelines that the same have not been framed under the provisions of Act 14 of 1981. In fact the guidelines have been issued under the provisions of Sections 17, 25 / 26 and 17, 21 of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The learned counsel for the respondents submitted that a fair perusal of Section 17 of the Air Act would show that the same relates to functions of State Board. He submits that according to clause (h) of Section 17 of this Act, the Board, subject to the provisions of the Air Act and without prejudice to the performance, of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, may advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution.

21. It is submitted that Section 17 of this Act does not authorise the State Board to issue such guidelines.

22. In our opinion, Section 17 of the Air Act authorises the Board under clause (a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof; clause (e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution. Clause (f) further entitles to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas. Under clause (g) the Board is authorised to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or any aircraft.

Under clause (j) the Board may do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(Emphasis supplied)

23. If the Board is entitled to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof, it is authorised to take steps for prevention, control or abatement of air pollution, it is also authorised to take steps for prevention, control or abatement of air pollution in air pollution areas and is also entitled to do all such other things and to perform all such other acts, as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act, then it would not be possible for us to hold that the Board could not issue the guidelines. The Board has not been constituted to perform empty formalities. It is not a tiger without teeth and nails. In fact it has to prevent and control and in doing so for achieving the purpose of the Act and for purpose of carrying into effect the purpose of the Act, it frames guidelines, then the guidelines would certainly be binding upon all. It is further to be seen that Section 21 of the Air Act provides that no person shall, without the previous consent of the State Board, establish or operate any industrial plant in any air pollution control area. It is not in dispute before us that the whole of Bihar is declared as air pollution control area. If Section 21 of the Act clearly provides that no person shall without the previous consent of the State Board establish or operate any industrial plant then consent of the State Board would be necessary. The guidelines in fact have been framed to make a unified policy which may control and govern all concern. In absence of a policy, an allegation could have been made against the Board that it was passing orders on basis of pick and choose or kick and choose. The guidelines are in form of a general information to all the industrial units which are proposed to be established or operating in accordance with guidelines. They are required to perform or run their industrial operations in accordance with the guidelines. It is not the case of the petitioner that petitioner's stone crushing unit alone has been picked up and he alone is being asked to shift his unit at a distance of 200 meters. True it is that limit of suspended particulate is 600 micro gram per cubic meter air but that does not mean that an industry which is not discharging beyond 600 mg can be allowed to operate within the battery limit.

24. If the argument of the respondents is accepted, it would lead to a situation where an industrial/stone crushing unit would come and say that they do not discharge the suspended particulate beyond 600 micro gram per cubic of air, therefore, they should be allowed to operate the stone crushing unit in the heart of the city. After all the guidelines do not only operate against any industry but they control whims, caprice and arbitrariness of the authority which has framed the guidelines. If the appellant Board is not acting in accordance with its own guidelines, then this court would certainly issue a direction against the Board to take steps against all such industries which are running contrary to the guidelines framed by the appellant Board.

25. Section 17 of the Air Act says that subject to the provisions of this Act, and

without prejudice of the performance, of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 the functions of the State Board shall be as provided u/s 17. Section 17 in fact clothes the Board with additional powers that are enumerated there u/s 17 of the Water Act provides the functions of the State Board. Clause (a) says that the Board would be entitled 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. Section 17 also provides further powers and authorities in favour of the Board.

26. Section 31A of the Air Act relates to powers to give directions. It reads as under:-

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

Explanation.-For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

27. According to Section 31A, the Board may in exercise of its powers and performances of its functions under the Air Act, issue any direction in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such direction. It is also made clear in Section 31A that the power to issue direction includes the power to direct (a) closure, prohibition or regulation of any industry, operation or process; or (b) the stoppage or regulation of supply of electricity, water or any other service.

28. From the language of Section 31A of the Act, it would be clear that the Board has authority to issue any direction in writing to any person and such person shall be bound to comply with such direction. Assuming for a moment that the Board had not issued any guidelines then too the Board to achieve the object under the Air Act can issue a direction relating to closure, prohibition or regulation of any industry, operations or process. The Board can also issue a direction to an existing unit that it should shift its location and observe the battery limit. The powers u/s 31A of the Air Act are in addition to Section 17. Section 17 of the Act is not fully exhaustive, therefore, the general powers to issue directions in writing were also conferred upon the Board. The mandate of the Act is that any person, officer, or authority shall be bound to comply with such directions. Once the directions are issued then the direction cannot be condemned on the ground that these run contrary to the provisions of the Environment Protection Act. The Environment Protection Act is a general Act

while Air Act and Water Act are special Acts. These two Acts would not be superseded by the provisions contained in the general Act. The law on this point is very clear. The law says that when there is an Act which relates to generality, of the things, and there is an Act which is in relation to special actions, then the special Act would be given preference over the general Act. If the Central Government has issued certain directions and has notified certain industries as hazardous or pollution creator and stone crushers have not been included then the Board would not be forbidden from exercising its power under the provisions of the Air Act or Water Act.

29. If the Board has the authority to issue directions for closure, prohibition or regulation of any industry, operation or process then it certainly has the power to direct shifting of the unit. The Board has simply asked the petitioner that it should close its operation and shift. If the respondent is not agreeable to shift then the direction to close the unit would be a direction issued u/s 31A of the Act and the petitioner would be bound to observe the said direction and close the unit for all times to come. In our opinion small technicalities should not defeat the public interest. If autonomy to some extent is not given to the Board, for every small thing it would be required to look at State Govt. In fact in matters of pollution, the Board must be held to hold sufficient powers.

30. The guidelines dated 8.11.2003 in our considered opinion cannot be held to be bad.

31. Rural Litigation and Entitlement Kendra Vs. State of U. P., the Supreme Court observed that the controversy before the Court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. The Court observed that the Court may not be taken to have said that for a public interest litigation, procedural laws do not apply. The Court observed that technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court. In the said matter, the Supreme Court in a public interest litigation issued a direction that the mining operation be stopped.

32. At this stage we must also observe that the Board in its guidelines has observed that the following factors shall be considered before approving the proposed location or directing relocation of existing units :-

- (i) Standards of quality of air and water laid down under the concerned Acts;
- (ii) Existing concentration of various pollutants, including noise in the area;
- (iii) The likely emission or discharge of environmental pollutants from the proposed industry, process or operation;
- (iv) The topography and climatic features of the area;
- (v) Conservation of biodiversity of the area;
- (vi) Environmentally compatible land-use in the area;

- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation in the area;
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958;
- (ix) Proximity to human settlement, state or national highway, railway line (non-captive), besides proximity to river;
- (x) Likely process-hazards, including hazard likely to occur during handling, storage and transportation of the chemicals; and
- (xi) Provisions of the Wild-life (Protection) Act, 1972 and the Environment (Protection) Act, 1986.

33. The guidelines also say that the criteria for relocation of existing unit would be when the Board has compelling reasons to improve the quality of environment apart from other criteria. Clause 3 of the guidelines says that criteria for the approval/ clearance of proposed site/location in respect of relocation of existing units or proposed industrial unit or existing one with proposal for expansion/modernisation/diversification which are specified in Annexures III, IV and V shall be as provided under clause 3 i.e. ambient air quality of site must be within the limits prescribed and the battery limit of the industry at the site must be at a distance, as specified in Annexure III, IV and V for human habitation, railway line, river, national or State highway.

34. In the matter of Mehta (M.C.) vs. Union of India 1994 (3) SCC 717 the Apex Court asked the industries to control and abate the air pollution by adopting treatment measures and ordered the closure of those industries which did not comply with the directions regarding installation of air pollution control system. M.C. Mehta Vs. Union of India and Others, the Supreme Court issued numerous directions regarding environmental pollution in the capital and lastly making the orders of closure of 168 industries, observed that the listed 168 industries cannot be permitted to operate and function in Delhi. The Supreme Court observed that these industries may relocate/ shift themselves to any other industrial estate in the National Capital Region.

35. In the matter of Mehta (M.C.) vs. Union of India, 1996(4) SCC 351 with a view to preserve the environment and control pollution within the vicinity of tourist resorts of Badkhal and Suraj Kund, the Court directed the stoppage of mining activity within two kilometer radius of these two tourist resorts. Again M.C. Mehta Vs. Union of India and others, the Apex Court in the matter of Taj Mahal issued directions for relocation of 292 industries located and operating in Agra which were damaging the Taj. The Court observed that precautionary principle and the polluter pays principle have been accepted as part of the law of the land. It was also observed that Article 21 of the Constitution of India guarantees protection of life and personal liberty.

36. S. Jagannath Vs. Union of India and others, , the Apex Court issued a

direction of demolition and removal of industries/shrimp culture industries set up in coastal regulation zone. The Court observed that sea coast and beaches are a gift of the nature and recreational utility of the said area has to be maintained.

37. The Supreme Court of India has been directing the industries to close down the units and to shift or relocate them from one place to another in order to preserve and protect the environment. It has to be noted that closure or relocation of industries carrying on hazardous or dangerous activity is not a solution to the problem of the environment and pollution. In any case if there is no direction for closure then a direction for relocation can always be issued. When the activity of the industries are dangerous or threat to public health then either it has to be closed or it has to be relocated or shifted from the existing operation area.

38. In the present matter we are of the considered opinion that the appellants are absolutely justified and acted within their jurisdiction in issuing the guidelines. If the petitioner is of the opinion that he is not required to shift the existing unit then he must feel content and close the operations. The submission of the petitioner that he has spent a good fortune in observing the conditions earlier imposed against him should not detain this Court unnecessarily. The expenditure for earning profits by running industry would not be sufficient to allow the petitioner to play with the health of the public at large. The distance of two or five meters from the highway in fact is too close a distance to a hazardous activity or to the pollution. The public of this country is entitled to breathe in fresh air and have freedom of movement everywhere without fear of anything.

39. The order passed by the learned Single Judge is hereby set aside. In view of the new policy declared by the Pollution Control Board, the petitioner must apply afresh and if he satisfies the authorities that he conforms to the standards and criteria approved and fixed by the Board then the Board shall grant consent order in favour of the original writ petitioner/respondent herein. The appeal is allowed.

Nagendra Rai, A.C.J.

I agree.