
(2015) 03 BOM CK 0424

In the Bombay High Court

Case No : Civil Appellate Jurisdiction Public Interest Litigation No.8 of 2012

Campaign against Manual Scavenging

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Constitution of India, 1950 — Article 25, Article 51A(g)

Citation : (2017) 1 BCR 627

Hon'ble Judges : A.S. Oka and A.K. Menon, JJ.

Bench : Division Bench

Advocate : Mr. N.D. Pote i/b Asim Sarode, Kulkarni and Associates, Mr. Mihir Desai, Amicus Curiae, Advocates, for the Petitioner; Mr. A.B. Vagyani GP a/w Mrs. M.P. Thakur, Advocate, for the Respondent Nos. 1, 4 and 6; Mr. Uday Warunjikar, Advocate, for the Applicant in CA No. 187/2014.; Mr. T.J. Pandian, Advocate, for the Applicant in CA No. 45/2015 and for Respondent No.9 in PIL No. 8/2012; Mr. R.V. Govilkar, Advocate, for the Applicant in CA No. 50/2015.; Mr. R.S. Apte, Sr. Advocate i/b Mr.Mandar Limaye, Advocate, for the Warkari Sahitya Parishad; Mr. Sarang Satish Aradhya, Advocate, for the Respondent No. 4; Mr. Gopal Krishna Shivram Hegde, Advocate, for the Respondent No. 8; Mr. Parag Vyas, Advocate, for the Respondent No. 2; Mr. Rahul Shivaji Kadam, Advocate, for the Applicant in CA No. 192/2014

Final Decision : Disposed Off

Judgement

Per A.S. Oka, J. - There are detailed interim orders issued by this Court at different stages. The main interim directions issued by this Court are contained in the orders dated 3rd July, 2014 and 24th December, 2014.

2. An occasion for reconsidering some of the interim directions arises in view of the prayer made by the learned senior counsel appearing for Warkari Sahitya Parishad, Maharashtra which is ordered to be impleaded as a party respondent under the order dated 13th June, 2014. Also there is an application being Civil Application No.50 of 2015 filed by another organisation of Warkari (Devotees of Lord Vithoba/Pilgrims who visit Pandharpur), namely, Warkari Seva Sangh. The

main issue raised by both the organisations of Warkari is as regards the interim directions issued under the order dated 24th December, 2014 in relation to the use of river bed of the river Chandrabhaga for carrying on various activities. Based on the recommendations of the National Environmental Engineering Research Institute (NEERI), this Court issued directions on 24th December, 2014 directing that the river bed of Chandrabhaga shall not be used for any activity including for erection of temporary pendols, booths, shelters or for any other prohibited activity. Clause (v) of the operative part of the order dated 24th December, 2014 reads thus :

"(v) The Officers of the State shall ensure that river bed of river Chandrabhaga shall not be used for erection of any temporary pendols or any other construction or shelters or for any other prohibited activity. The State shall examine whether there are any illegal constructions erected on the river bed or by the side of the river bed as it is alleged that some construction made by ISKCON is illegal. If any such construction is found to be illegally constructed, the State or the Municipal Council, as the case may be, shall take necessary steps for the removal of the illegal structures. The Municipal Council shall ensure that barricades are erected at all important locations for preventing the entry of vehicles to the river bed. We direct the police authorities to render adequate police protection to the staff of the Pandharpur Municipal Council for the purposes of erecting barricades;"

(emphasis added)

3. Before, we deal with submissions made in support of the prayer for modification of the first part of clause(v), we must note that learned Government Pleader assured the Court that necessary steps are being taken for identifying the illegal structures erected on the river bed or by the side of the river bed. He stated that the State Government is examining whether the construction made by ISKON is legal. He assured that the necessary action will be taken.

4. As far as the organisations of Warkari is concerned, in the order dated 24th December, 2014 this Court has extensively dealt with submissions made by the organisations of Warkari, which are applicants in Civil Application No.50 of 2014 and Civil Application No.192 of 2014.

5. Learned Senior Counsel representing Warkari Sahitya Parishad at the outset made it clear that said organisation reveres and respects the river Chandrabhaga and its members are not against the cleanliness of the dry river sand bed. He placed reliance on fundamental right to freedom of religion conferred by Article 25. He urged that there is a long standing custom and tradition which exists for 700 years and more of holding of Bhajans, Kirtans and Gajar on the river bed. He submitted that this practise is an essential part of the religion. He relied upon clause (f) Article 51A which postulates fundamental duties of the citizens as regards value and preservation of the rich heritage of our composite culture. He submitted that during Ashadi Ekadashi festival, there is no occasion to use the river bed as it is covered by the water. He submitted

that during various other festivals, there is a tradition to use dry river sand bed for holding Kirtans, Bhajans, Gajar and Arti. He urged that this is a tradition followed for last 700 years. He urged that there is neither any prohibition in law for conducting Bhajans, Kritans, etc in the dry river sand bed nor there is any prohibition in law for erecting temporary structures in the dry river bed. He submitted that comprehensive effort by all stake holders is required to preserve 700 years old tradition. He relied upon the fact that Maramon Convention is performed on dry river sand bed of river Pamba in Kerala. He urged that performance of religious ceremonies on dry river bed is not uncommon. He assured the Court that pilgrims shall ensure that purity and cleanliness of the river is maintained if they are allowed to hold functions. While adopting the said submissions made by the learned senior counsel appearing for Warkari Sahitya Parishad, the learned counsel representing Warkari Seva Sangh in Civil Application No.50 of 2015 made additional submissions. He relied upon writings of famous Saint Shri Dnyaneshwar. He has drawn support from the said writings in support of his contention that there is a tradition to hold such ceremonies and functions on the river bed. He also relied upon Dohas and Padas of Sant Kabir. He also relied upon writings of Sant Chokhamela and other famous saints. He urged that after construction of dam, the flow of water in the river Chandrabhagha has been controlled and even during the monsoon, the actual water does not cross width of 400 to 500 ft. He also relied upon a detailed project report of the Maharashtra Pollution Control Board titled as "Sanitation and Sewerage Management of Pandarpur". He submitted that the Maharashtra Pollution Control Board is not even a party to the petition and this Court ought to have considered the said report. He, therefore, urged that the direction issued by this Court prohibiting use of river bed for holding such functions be modified .

6. At this stage, the learned counsel appearing for the applicant (another organization of warkari) in Civil Application No.50 of 2015 submits that the applicant has no objection for imposing prohibition on holding of activities on the river bed. His submission is that the authorities should not confuse between the river bed and river bank.

7. In response to a specific query made by the Court, the learned senior counsel representing Warkari Sahitya Parishad states that the temporary pendols/booths are being erected in the river bed for Kirtan, Bhajan, Gajar and other activities without seeking any prior permission of the competent Authority empowered to grant permission.

8. The learned counsel representing the applicant in Civil Application No.187 of 2014 has produced pamphlets which are proposed to be distributed by the said applicant. He submitted that the same will be distributed to Warkari/devotees by the said applicant. He submitted that there are four major festivals Maghi Ekadashi, Chaitra Ekadashi, Ashadi Ekadashi and Kartiki Ekadashi. He submitted that during the last festival, adequate number of toilets were not provided. He pointed out the order of this Court which required the Authorities to ensure that

one toilet is provided for forty devotees. He urged that necessary directions be issued for the next festival which is likely to be held at the end of this month to provide adequate number of toilets. He submitted that the applicant in the said application has assured the Court to co-operate with all the Authorities for the implementation of the directions issued by this Court from time to time. He urged that necessary steps are being taken by the said applicant in terms of assurance recorded by this Court in the order dated 24th December, 2014. However, in response to the query made by this Court, he states on instructions that the organization which he represents is not supporting the prayer made by other two Warkari organisations for modification of the interim directions.

9. Learned counsel appearing as amicus curiae has invited our attention to the Wetlands (Conservation and Management) Rules, 2010 (for short "the said Rules"). He invited our attention to the orders passed in PIL No.87 of 2013 in the case of Vanshakti and Others v. Union of India. He pointed out that the Wetlands Atlas has been prepared by the Central Government. He pointed out that this Court has directed the State Government to take a decision whether it proposes to adopt the Wetland Atlas prepared by the Central Government or the State Government would like to prepare a brief document in respect of the Wetland areas for the State of Maharashtra as envisaged in Sub-Rule (2) and (3) of Rule 6 of the said Rules. This Court issued a specific direction on 14th October, 2013 to the State of Maharashtra to take a decision on this aspect. This Court issued following direction in paragraph 2 which reads thus :

"2. In the meantime, however, we deem it fit and proper to give a direction, in respect of the areas which have been identified as Wetland Areas in the Wetland Atlas by the Central Government, that no reclamation of land and any kind of construction shall be permitted without leave of this Court. The Secretary, Urban Development Department, State of Maharashtra is directed to issue a circular, informing the direction given by this Court to all the Corporations and the Zilha Parishads. Stand over to 29th October, 2013".

In terms of the said direction, the Urban Development Department of the Government of Maharashtra issued a directions under section 154(1) of the Maharashtra Regional and Town Planning Act, 1966. The said direction is to the effect that No municipal Corporation, Municipal Council, Nagar Panchayat, Zilla Parishad or Planning Authority shall permit reclamation of land and any kind of construction in respect of the areas, which have been identified as Wetland Areas in the Wetland Atlas prepared by the Central Government, without permission of this Court. He has placed on record an extract of Wetland Atlas prepared by the Central Government. The extract is taken on record and marked "A-1" for identification. He pointed out the map forming part of the Wetland Atlas. He pointed out that the portion of river Chandrabhagha which passes through the city of Pandharpur has been identified as a Wetland. He invited our attention to relevant portion of the said Rules and in particular Rules 3 and 4. He submitted that the order dated 14th October, 2013 passed in the PIL No.87 of 2013 still

continues to operate. He has also produced on record further orders passed by this Court on 19th March, 2014 and 21st August, 2014 in the same PIL. He pointed out that the last order states that the ad-interim order will continue to operate till further orders.

10. Before dealing with the main issue, we must note here that in terms of the directions issued by this Court under the order dated 24th December, 2014, the State Government has issued a Government Resolution and has constituted a Committee headed by the Divisional Commissioner, Pune. Now the Committee headed by the Divisional Commissioner is supervising the implementation of the interim directions issued by this Court. The Committee has been specifically directed to call representatives of Warkari for relevant meetings as special invitees. As the Committee will be dealing with implementation of the recommendations of NEERI, we clarify that as and when the issues concerning implementation of recommendations of NEERI are considered, the Committee shall issue a notice to Maharashtra Pollution Control Board requesting the Board to nominate one of its officers to attend the meeting.

11. Under the orders of this Court, directions have been issued in what manner the toilets shall be made available. It is duty of the Committee headed by the Divisional Commissioner, Pune to ensure that adequate number of toilets are made available in the proportion of 40 : 1 on the occasion of every festival as directed by this Court. Now the Committee will have to hold regular meetings to ensure that the orders of this Court are effectively implemented.

12. This Court had directed the Railways to take an appropriate decision on the allotment of a land for erection of permanent toilets. Learned counsel representing Railways invited our attention to the averments made in Civil Application No.45 of 2015. He pointed out that the General Manager of Central Railways has agreed in principle to spare its land to the State Government as per the proposal dated 10th February, 2015. He pointed out that the ultimate decision will have to be taken by the Railway Board. He has sought extension of time to take a decision in the matter of making available the requisite land to the State of Maharashtra by a period of two months from 24th February, 2015.

13. The General Manager of the Central Railways has accepted the proposal in principle. Considering the fact that it is necessary to provide adequate numbers of toilets at the entry points of the city of Pandharpur, it is absolutely necessary that the Railways should provide the land as sought by the State Government. We direct the General Manager of Central Railway to forward the copies of the relevant orders of this Court to the Railway Board to enable the Railway Board to take a decision of allotment of the land to the State Government. We are sure that the Railway Board will take into consideration the fact that availability of the land at the entry points of the city is a matter of dire necessity. We have noted in earlier orders that the largest gathering of pilgrims in Pandharpur is always on account of Ashadi Ekadashi which in the year 2015 will be in the third week of July. If the land is allotted at the earliest, the State Government and all the

concerned Authorities can immediately commence construction on the said land. Therefore, we direct the Railway Board to take appropriate decision in the matter of allotment of the land as expeditiously as possible and in any event on or before 20th April, 2015. If the Railway Board approves the recommendations of the General Manager of Central Railways, we direct that the decision of the Railway Board shall be implemented as early as possible and the land shall be placed in possession of the concerned Authority on or before 15th May, 2015 to enable the Authorities to take up the construction of toilets. With these directions, we dispose of Civil Application No.45 of 2015.

14. Now we deal with main issue urged by the Warkari organisations. As far as Warkari Sahitya Parishad is concerned, we have already made a reference to the order dated 13th June, 2014 passed by this Court under which a direction was issued to the petitioner to implead Warkari Sahitya Parishad as a party respondent. The order dated 3rd July, 2014 records the assurances given by the said Warkari Sahitya Parishad in paragraph 13 thereof. In fact an affidavit was filed by Shri Vitthal Patil, the President of Warkari Sahitya Parishad on 1st July, 2014, which is noted in the earlier order passed by this Court. Warkari Sahitya Parishad was aware of the issues involved in this petition. However, the Warkari Sahitya Parishad thereafter never participated in the proceedings of this PIL. In fact, two other organisations of Warkari were extensively heard before passing the order dated 24th December, 2014. After the order dated 24th December, 2014 was passed, the petition appeared before this Court on 30th January, 2015. Even on that date, the said organisation did not appear. Only on 25th February 2015, an oral request was made to this Court to modify the interim direction. By order dated 18th November 2014, this Court had issued the following direction:

"2. We direct Shree Vitthal Rukmini Temple Committee to publish a public notice in different editions of daily newspapers "Sakal", "Lokmat" and "Pudhari" as well as the other newspapers having wide circulation in Vidarbha and Marathwada area calling upon the Warkaris and/or their organisations to remain personally present before this Court on 12th December 2014. In the public notice, the Committee shall set out the nature of the Public Interest Litigation filed in this Court. The public notice shall also set out that this Court may issue directions in relation to arrangements to be made for Warkaris. Apart from publishing public notices, the Temple Committee shall issue notices to the known organisations of Warkaris informing them that the Petition has been fixed on 12th December 2014 for "hearing as to interim relief".

3. We direct the Pandharpur Municipal Council to display such notice in its offices. The Pandharpur Municipal Council shall also inform the various organisations of Warkaris and other religious institutions regarding the date fixed in the matter."

15. Accordingly, the notices were published. Thereafter, this PIL appeared on three dates before the detailed interim order was passed by this Court on 24th December 2014. But the organisations which are now praying for modification chose not to appear.

16. It will be very necessary to make a reference to the order dated 30th January, 2015 passed by this Court. A very peculiar request was made by the learned Government Pleader which is noted in the said order. He pointed out that on account of Ekadashi, pendols were erected on the river bed. He pointed out that if the pendols are removed for implementation of the order of the Court, law and order situation will be created. This Court permitted the Collector and the Municipal Council to allow the pendols or shelters which were already erected to exist for two days i.e. 30th and 31st January, 2015 subject to condition that those who have erected the said pendols or shelters shall give an undertaking in writing to the Collector that they will not indulge in any such activity in future. Learned Government Pleader stated that necessary undertakings were accordingly taken.

17. Perusal of all the earlier orders passed by this Court and specially the orders dated 3rd July, 2014 and 24th December, 2014 will show that in fact very extensive directions have been issued by this Court for the purpose of providing various facilities to Warkari/pilgrims which were never provided to them earlier. In fact, under the orders of this Court, the District Collector of Pandarpur has come out with a scheme of erecting shelters to accommodate the Warkaris/Devotees when they visit Pandarpur in large numbers on account of the festivals. The earlier orders record an admitted position that due to variety of reasons, lakhs of devotees visiting Pandharpur on Ekadashi days used to convert many open spaces in the city of Pandharpur including the river bed into open toilets and therefore, the practise of manual scavenging in the city of Pandarpur continued. We must note here that the Chief Officer of the Pandharpur Municipal Council was bold and fair enough to file an affidavit in this Court frankly pointing out that due to the reasons beyond control, the manual scavenging continued in the city of Pandarpur. In fact, during pendency of this petition, the Municipal Council and the counsel representing the Municipal Council have taken a fair stand and have assisted this Court for resolving the issue of manual scavenging. Under the order dated 24th December, 2014 very comprehensive directions have been issued. If all directions are read together, it will become clear that there were three basic objects sought to be achieved. The first object was to ensure that the manual scavenging should not continue in city of Pandarpur. The second object was to ensure that all facilities are created for the benefit of Warkari/pilgrims including adequate number of toilets. The third object was to ensure that fundamental right of the citizens of Pandharpur to live in pollution free atmosphere is protected. We are surprised to note that instead of co-operating with administration in resolving the issues, notwithstanding the specific orders passed by this Court on 24th December, 2014, structures and shelters were erected on the river bed and in fact, the State Government was forced to move this Court as there was an apprehension that if any attempt is made to remove pendols and shelters, the persons who had erected the same may create a law and order situation. We hope and trust that all Warkari organisations will realise that the entire exercise done by this Court of repeatedly hearing this matter and

issuing several directions from time to time was for the benefit of Devotees so that adequate facilities are made available to them. There is a candid admission by the Warkari Sahitya Parishad that so called traditional activity of erecting booths and other temporary structures on the river bed is always undertaken without obtaining permission of the competent authority. It is an admitted position that all these years, the temporary structures and shelters are being illegally erected without obtaining a permission of competent authority. We fail to understand as to how the so called practise which is followed in breach of law can be protected by invoking Article 25 of the Constitution of India. There is no fundamental right to commit illegality.

18. It is necessary to make a reference to the order passed by this Court on 3rd July, 2014. In paragraph 6 it is observed thus:

6. We have already noted in one of the earlier orders that on various festivals including Ashadhi Ekadashi and Kartiki Ekadashi, devotees who are popularly known as "Varkaris" visit Pandharpur Temple in lakhs. Thus, Varkaris who visit the City of Pandharpur in such large numbers are also to some extent responsible for creating this problem. We have already noted what is stated in the affidavit of the Chief Officer of the Municipal Council. The Pilgrims in large numbers indulge in defecation on the banks of the river, in open spaces and on the side of the roads in the City of Pandharpur. The Court cannot ignore the fundamental duties of the citizens incorporated in the Constitution of India by virtue of Article 51A. If clause (g) of Article 51 A is perused, it lays down that it is a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes and rivers, and to have a compassion for living creatures. Surely, every citizen of India should have compassion for other citizens. The devotees cannot destroy the environment in Pandharpur by defecating on open spaces and on the bank of the river Chandrabhaga. The devotees cannot create dirt and pollute the environment. On one hand, there is a fundamental duty of the citizens visiting the City of Pandharpur and on the other hand there is an obligation of the State under Article 21 of the Constitution of India which confers a right on every citizen to live with dignity and in a clean and pollution free environment. The State is under an obligation to protect the said right of all citizens and in this case, the residents of Pandharpur as well as devotees who visit the City of Pandharpur.

(emphasis added)

The scope of Article 21 has been considerably enlarged. Article 21 encompasses into it a right to live in a pollution free atmosphere and a right to live in healthy conditions.

19. Apart from the prohibition under the said Rules relied upon by the learned counsel appearing *as amicus curiae*, it will be necessary to make a reference to various decisions of the Apex Court. In the case of *Bhagwan Dass v. U.P. and Others* [(1976)3 SCC 784], the Apex Court has held that rivers, river beds and

minerals lying in river beds vest in the State. That is the principle laid down even under section 37 of Bombay Land Revenue Code, 1879 as well as section 20 of the Maharashtra Land Revenue Code, 1966.

20. In paragraph 1 of the decision of the Apex Court in the case of Association of Environment Protection v. State of Kerala and Others [(2013)7 SCC 226], it is observed thus :

"Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man's zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc., because it is believed that they belong to all living creatures".

(emphasis added)

In the context of the argument based on alleged tradition to carry on activities on the river bed, what is noted by the Apex Court is significant. Our sages and saints always preached and also taught people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells etc. because it is believed that they belong to all living creatures. We fail to understand as to how practise of erecting structures in the river bed can become essential part of religion when our sages have taught us to worship rivers. The Apex Court relied upon the "doctrine of the public trust" under the Roman law and held that the rivers, lakes, air, sea, water etc are the public properties which are covered by the said doctrine.

21. We may also make useful reference to another decision of the Apex Court in the case of Intellectuals Forum Tirupathi v. State of Andhra Pradesh and Others [(2006)3 SCC 549]. Again in the said decision, the Apex Court invoked the public trust doctrine. It will be necessary to consider what is held by the Apex Court in paragraph 82 of the said decision which reads thus :

"82. Article 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the

State Legislature."

(emphasis added)

Therefore, while interpreting the scope and purport of the fundamental rights guaranteed by the Constitution, the fundamental duty envisaged by the clause (g) of Article 51A will have to be taken into consideration.

22. We may also make useful reference to the decision of the Apex Court in the case of *Vellore Citizen's Welfare Forum v. Union of India and Others* [(1996) 5 SCC 647] Again in this decision, the public trust doctrine was invoked by the Apex Court. The Apex Court dealt with concept of "sustainable development". What is relevant is paragraph 11 of the said decision which reads thus :

"11. Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Nature Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means.

(i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent" and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental depredation.

(iii) The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign".

This is a decision which introduces a Rule of burden of proof in the matters of environment by making a departure from the traditional Rule. The decision of the Apex Court in *M. C. Mehta and Others v. Union of India* [(1997) 3 SCC 715] invokes the "Precautionary principle". The Apex Court held that Precautionary Principle has been accepted as a part of the law of the land. Various Articles of the Constitution of India including Article 21, 47, 48-A and 51-A(g) give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It lays down that it is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. It is a mandatory duty of the State to anticipate, prevent and attack the causes of environment degradation. In fact the Apex Court in the facts of the case held that in order to protect the two lakes from environmental degradation, it is necessary to limit the construction activity in the close vicinity of the lakes.

23. There are reports submitted by NEERI. It is not necessary to elaborate that NEERI is a reputed expert agency appointed by the Apex Court and various High Courts for dealing with the issue preventing the pollution of rivers and other water bodies as well of rejuvenation thereof. In the first report dated 21st September, 2014 under the caption of Major observations and recommendations, NEERI recommended that the use of the river bed for raising camps/tents/shops/stalls, for parking vehicles (cars and buses) and for laying trench latrines should be forthwith ceased as a measure to prevent pollution of the river Chandrabhagha. It is in the light of this recommendation of the expert body like NEERI that this Court passed an order of protecting the river bed from any such activities. Now there is a second report submitted by NEERI which again makes important recommendations including the same recommendation regarding preventing use of the river bed. NEERI is involved in formulation of a comprehensive scheme for preventing pollution of the river and for rejuvenation of river Chandrabhagha. There is also an order passed by this Court directing the implementation of the recommendations of NEERI. The Committee constituted by this Court will supervise the implementation of the recommendations of NEERI.

24. There are submissions made by learned counsel representing the organisations of Warkari based on Article 25 of the Constitution of India. The scope of Article 25 has been repeatedly interpreted by the Apex Court right from its leading judgment in *Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay* [(1962)SUPP SCR 496] The said judgment holds that the protection of Article 25 and 26 extends to rituals and observances, ceremonies and modes of worship which are intergral parts of religion. Thus, unless such ceremonies are found to be an integral part of religion, the protection under Article 25 cannot extended. The learned amicus curiae has relied upon the decision of the *Commissioner of Police and Others v. Acharya Jagdishwarandanda Avadhuta and Anr* [(2014)12 SCC 770]. In paragraph 9 of the said decision, the Apex Court observed thus :

"9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc. of the given religion.

What is meant by "an essential part or practices of a religion" is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practise means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practise is essential to the religion is to find out whether the nature of religion will be changed without that

part or practise. If the taking away of that part or practise could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution. No body can say that essential part or practise of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non- essential part or practices."

(emphasis added)

The test laid down by the Apex Court to determine whether a practise or part thereof is essential to a religion is to find out whether the nature of the religion will be changed without that part or practise. If the taking away that part of practise could result in a fundamental change of the character of that religion, then such part could be treated as an essential or integral part.

25. What is sought to be contended across the bar is that holding of Bhajans, Kirtans and Gajar on the river bed is an essential part or practise of the religion. The order of this Court does not prevent Warkari/pilgrims from organising Kirtan, Bhajan and Gajar. The order of this Court holds that the said activities cannot be carried out on the river bed. Thus, by no stretch of imagination, it can be said that act of imposing ban on erecting temporary structures on the river bed will amount to the change in the character of the religion or its beliefs. The test laid down by the Apex Court is whether a practise is an essential part of religion. The fundamental right under Article 25 is available in case of essential or integral part of religion. Therefore, by no stretch of imagination, Article 25 can be invoked by the Warkari/organisations for using the river bed. Even assuming that Article 25 is applicable to such activities, the right under Article 25 is not unqualified. We have already held that any such activity on the river bed will further pollute the river Chandrabhagha thereby creating health hazards to the citizens. While interpreting the scope and purport of the fundamental rights guaranteed by Article 25 of the Constitution, the fundamental duty envisaged by the clause (g) of Article 51A will have to be taken into consideration. Therefore, looking at the issue in all possible angles, it is impossible to accept that the prohibition on activities on the river bed will amount to infringing the fundamental right under Article 25 of the Constitution of India. Moreover, the practise of illegally erecting structures in the river bed cannot be protected by invoking Article 25.

26. Apart from this, the Wetland Rules of 2010 and the orders passed by this Court in PIL 87 of 2013 will have to be considered. In terms of the said order, the State Government has issued the directions prohibiting all local authorities from permitting reclamation of land or any kind of construction in the areas which have been identified as the Wetland Areas in Wetland Atlas prepared by Central Government without prior to permission of this Court. The extract of the Wetland

Atlas produced before this Court prima facie shows that river Chandrabhagha passing through Pandharpur is covered by the Wetland area as shown by the Wetland Atlas prepared by the Central Government. Apart from the directions issued by this Court to all concerned, the Wetland Rules of 2010 will also apply to the river bed in this case.

27. While we make it very clear that no relief can be granted to the organisation of Warkaris, it is obvious that it is the responsibility of the State as well as Municipal Council identify the locations where the pendols/booths can be allowed to be erected for holding bhajan, kirtan and Gajar etc. We direct the Committee constituted under the orders of this Court to look into these aspects and issue necessary guidelines to ensure that certain areas are identified for holding of such activities. It is obvious that in the identified locations and areas, such activities can be carried out only with the permission of the Authorities.

28. In view of this order and in view of what happened in January 2015, now the State will have to ensure that the precautionary measures are taken to prevent the use of river bed of river Chandrabhagha for erection of temporary pendols, structures etc. If the State takes precautionary measures, no person indulging in illegal activities can threaten the State to create a law and order situation if action is taken.

29. In Civil Application No.50 of 2015, the applicant Warkari Seva Sangh has relied upon traditions reflected from the writings of all leading saints right from Sant Dynaneshwar. We are sure that Warkaris who claim to be bound by rich traditions will co-operate in implementation of directions issued by this Court with the object of keeping the city and the river free of pollution. We hope that the Devotees who are following teachings and writings of the well known saints will also follow what is taught by the famous Saint Ghagde Maharaj. He always preached that cleanliness is next to godliness. We hope that Warkari organisations will keep in mind what is observed in the case of Association for Environment Protection (supra). Our sages and saints always preached and taught the people to worship earth, sky, rivers, sea, plants, flora and fauna. The river bed forms the integral part of a river.

30. Therefore, we reject the prayers made by the organisations of Warkari, with direction which are issued above to the Committee constituted by this Court to identify the areas where activities of Bhajan, Kirtan and Gajar can be held.

31. Subject to the directions issued as above, the prayer for modification of interim directions is rejected.

32. Learned Government Pleader will communicate to the Chairman of the Committee constituted under the orders of this Court that it is necessary for the committee to hold regular meetings so that all the issues at grass root level can be dealt with.

33. The State has yet not responded on the issue of implementation of the

provisions of the statute. We grant time to the State to file an affidavit as on this aspect. Such affidavit shall be filed on or before 30th March, 2015. For considering the said affidavit, the petition shall be listed on 31st March, 2015 under the caption of "Directions".

34. Learned counsel for the Municipal Council pointed out that substantial compliance has been made as regards the directions issued by this Court in relation to erecting barricades for preventing the entry of vehicles to the river bed and placing Kalsash (large pots) for collections of the organic material.