
(2014) 11 BOM CK 0071

In the Bombay High Court

Case No : Public Interest Litigation Nos. 15, 28 of 2010, 183 of 2012 and Civil Application Nos. 60, 61, 105 of 2014

Dattatraya Hari Mane

APPELLANT

Vs

The State of Maharashtra
 Kolhapur Municipal Corporation Vs Dattatraya Hari Mane

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 48A, 51A, 51A(g)

Citation : (2015) 2 ABR 55 : (2015) 3 BomCR 198

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : D.V. Sutar, S.S. Patwardhan and Rahul Walvekar, Advocate for the Appellant; S.S. Patwardhan, V.P. Malvankar, AGP, D.M. Gupte, Umesh Pawar i/by Tejpal S. Ingale, Ramesh D. Rane, Shyamali Gadre i/by Little and Co. and Sharmila U. Deshmukh, Advocate for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—Rule. Advocates mentioned above representing the concerned Respondents waive service. We have heard the learned counsel appearing for the Petitioners, the learned counsel representing various Respondents as well as the learned AGP for the State on the prayer for issuing interim directions against third to sixth Respondents in PIL No. 183 of 2012 (The Maharashtra Pollution Control Board, The Municipal Corporation for the City of Kolhapur, and the Ichalkaranji Municipal Council). We are issuing Rule on interim relief returnable on 22nd December, 2014 for the purposes of issuing interim directions against the other Respondents and further interim directions against all the Respondents.

2. By these Petitions, the Petitioners have invited the attention of the Court to the pollution caused to River Panchaganga due to release of untreated sewage water from Kolhapur and Ichalkaranji Cities into the River and various other factors. The Petitions raise concern regarding the pollution of river Panchaganga due to various factors. It is pointed out that due to pollution there was a mass

spread of epidemic of Hepatitis. The third Respondent in PIL No. 183 of 2012 is the Maharashtra Pollution Control board (for short "MPCB"). The fourth Respondent in the PIL No. 183 of 2012 is the Municipal Corporation of City of Kolhapur constituted under the provisions of the Maharashtra Municipal Corporations Act, 1949. The fifth Respondent is the Municipal Council of Ichalkaranji which is constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The aforesaid Respondents have been described with reference to their status in PIL No. 183 of 2012. The cities of Kolhapur and Ichalkaranji are adjacent urban bodies. Kolhapur being the Municipal Corporation area has a larger population of more than 5,00,000. Both the cities are located on the bank of the Panchaganga River. As noted by the CSIR National Environment Engineering Research Institute (NEERI), the Panchaganga River originates in Western Ghats. It is a major tributary to the river Krishna. The Panchaganga river starts from prayag sangam of four streams known as Kasari, Kumbhi, Tulsi and Bhogawati. On north of Kolhapur it has a wide alluvial plain. Thereafter, it resumes its course eastwards. From Kolhapur, it flows for about 65 kilometers till it falls into the Krishna River at Kurundwad. The said proposal of NEERI records that increasing pollution of the river has caused serious health hazards to the residents in terms of high incidents of jaundice and other deceases. Ichalkaranji town gets water supply from River Panchangaga as well as Krishna. In the year 2012, more than 500 new cases of jaundice were reported in the city of Ichalkaranji. The main reason for pollution, as stated by NEERI, is the inadequate domestic waste water treatment facilities in the cities and other areas.

3. In the Petitions, it is pointed out that the areas falling within the limits of the fourth Respondent Corporation and the fifth Respondent Municipal Council are not the only areas contributing to the pollution of River Panchaganga. It is pointed out that on the bank of the said River or adjacent to the said River, there are 174 villages, various industrial estates and various sugar factories and distilleries. These villages and industries are also contributing to the pollution.

4. Article 48A of the Constitution of India was made a part of the Directive Principles of State Policy in the year 1976 which lays down that the State shall endeavour to protect and improve the environment. In the year 1976, Part IVA dealing with Fundamental Duties was included in the Constitution of India. Article 51A of the Constitution of India provides for the fundamental duties of the citizens. Clause (g) of Article 51A of the Constitution of India reads thus:

"51A. Fundamental duties.

It shall be the duty of every citizen of India.

(a)

(b)

(c)

(d)

(e)

(f)

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

The Apex Court has time and again held that the public law doctrine is applicable to India. The Apex Court in the case of M.C. Mehta Vs. Kamal Nath and Others, held thus:

34. Our legal system--based on English common law--includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

(emphasis added)

In another decision in the case of Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, , the Apex Court held thus:

"59. The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main motto of social life has been "to live in harmony with nature". Sages and saints of India lived in forests. Their preachings contained in vedas, upanishadas, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. It was regarded as a sacred duty of everyone to protect

them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.

60. The Constitution of India, which was enforced on 26-1-1950 did not contain any provision obligating the State to protect environment and ecology, but the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After almost three decades of independence, the legislature recognised the importance of protecting and improving environment and safeguarding forests and wildlife and Article 48A was inserted in Part IV of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 whereby a duty was imposed on the State to "endeavour to protect and improve the environment and safeguard forests and wildlife of the country". By the same amendment Article 51A was inserted in the form of Part IVA which enumerates fundamental duties of every citizen. Article 51A(g) declares that it shall be 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".

Thereafter, the courts repeatedly invoked Articles 48A and 51A for protecting environment and ecology and several orders were passed in public interest litigation mandating the State to take action for protecting forests, rivers and antipollution measures.

61. The importance of the public trust doctrine was also recognised by this Court and the same was applied for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people."

(emphasis added)

The concerned Respondents viz. The fourth Respondent Corporation and the fifth Respondent Council, the Maharashtra Pollution Control Board, the State of Maharashtra and the Maharashtra Industrial Development Corporation are the State within the meaning of Article 12 of the Constitution of India and, therefore, it is their duty to protect and improve the environment. They are under an obligation to keep the river Panchaganga free of pollution. Moreover, the Municipal Authorities have legal obligations under the concerned Municipal laws. There is a corresponding duty in the citizens to protect and improve the natural environment including the lakes and rivers. In such matters, the citizens have a major role to play as some of them actively and also passively contribute to the pollution.

5. The allegations made in the Petition can be broadly summarized as under:-

A] The fourth Respondent Corporation discharges 100 million litres sewage water per day in Panchangaga River through various Nallas (streams) including Dudhali

and Jayanti Nallas. What is discharged is untreated waste water generated in the City. The same is the case with Ichalkaranji city;

B] Neither the fourth Respondent nor the fifth Respondent are implementing the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short "Water Act");

C] Ichalkaranji is a town which is well known for large number of Power Looms. The Power Looms discharge polluted/acidic water in the gutters which is eventually carried to the Panchaganga River;

D] The waste water from various Nallas including nallas known as Kala Odha and Chandur Nalla in the city of Ichalkaranji is discharged in Panchaganga River. What is discharged is untreated sewage water;

E] It is pointed out that Kolhapur and Ichalkaranji towns have population of about more than 5 lakhs and 3 lakhs respectively and surrounding rural area has population of 2 to 3 lakhs;

F] Polluted water is drawn by the Ichalkaranji Municipal Council from Panchaganga River for the purposes of supply to the citizens of Ichalkaranji.;

G] Effluent Treatment Plan set up by the Ichalkaranji Municipal Council is not working properly and hence, untreated sewage is discharged into the River from Kala Odha pump house;

H] There are no water filtration tanks. Both the fourth and fifth Respondents are not complying with the provisions of the Municipal Solid Waste (Management and Handling) Rules 2005; and

I] The performance of the existing Sewage Treatment Plant (STP) at Kasba Bawda in Kolhapur is very poor. A new plant is proposed at the site having capacity of 75 MLD. The sewage treatment plant at Ichalkaranji has limited capacity of 20 MLD. It has a very old sewage system;

6. The main prayer is for directing the Respondents to stop releasing untreated sewage water from Kolhapur and Ichalkaranji into the river Panchaganga and take steps for preventing pollution of Panchaganga. Various other prayers have been sought regarding implementation of the Water Act including an action of initiating criminal proceedings. There is a prayer to direct the concerned Respondents to implement directions of this Court in Writ Petition No. 929 of 1997 on 16th December, 1997 Dhanajirao Jivarao Jadhav and others Vs. State of Maharashtra and others, .

7. On 10th May, 2013, an order was passed by the Division Bench of this Court directing the Maharashtra Pollution Control Board to take all steps and action to ensure implementation of the directions issued by it. The Maharashtra Pollution Control Board (for short "MPCB") was directed to issue further directions in accordance with law. Thereafter, PIL Nos. 15 and 28 of 2010 were clubbed with this Petition. We must note here that this Court had issued directions to NEERI to

submit a report. By order dated 6th December, 2013, this Court appointed NEERI to make a study and submit a report. Paragraphs 2 to 4 of the said order read thus :-

"2. It is not desirable to wait till the end of March, 2014 to see whether the Kolhapur Municipal Corporation complies with its statement made in the affidavit. In view of the seriousness of the matter, it is necessary to take protective and remedial action immediately. We therefore appoint NEERI to make a report and submit the same to this Court on all relevant issues regarding the pollution in the Panchaganga river including in respect of the above questions.

3. NEERI is requested to make a comprehensive report on all issues relating to pollution of the Panchaganga river, identify the causes for the same, suggest remedial measures and opine whether the present projects being undertaken by the authorities have sufficient capacity and technical capability to meet the requirements projected by the Kolhapur Municipal Corporation and the Ichalkaranji Municipal Council and the requirements stipulated by the MPCB and applicable statutory norms. The report must indicate all factors that are contributing to the pollution.

4. All parties shall furnish any information that NEERI may require in this regard. NEERI shall be at liberty to seek directions and orders from this Court to ensure compliance with this order. NEERI will be entitled to seek information from any relevant party and not merely the parties to this Petition."

8. Paragraph 5 of the said order directs that costs and fees of NEERI shall be paid equally by the fourth and fifth Respondents subject to further orders.

9. The order dated 20th December, 2013 reads thus :-

"Dr. Shivani Dhage, former Deputy Director and presently appointed by NEERI as water expert appeared before us and submitted a project report dated December, 2013. The same is taken on record and marked "X" for identification. It is clarified that the project to be undertaken by NEERI shall be from Prayag Chikhali and Kurundwad, which is a stretch of about 45 kms and the catchment area. The MPCB has agreed to ensure that NEERI has access to any of the industries that may be required to be inspected for the purpose of implementing the project irrespective of where the industry/factory is located. The MPCB shall ensure that permission is given to NEERI for this purpose without further orders of this Court.

2. The affidavit sought to be filed by Respondent No. 4 shall be filed in the office.

3. The affidavit claims that the order dated 6th December, 2013 was complied with so far as it related to the commission of the pumping station at Jayanti Nala by Respondent No. 4.

4. Complaints have been made on behalf of the Petitioner regarding the discharge of effluent by certain sugar factories. The Petitioner is at liberty to move to the MPCB for appropriate directions.

5. Needless to clarify that all the authorities including MPCB are bound to take any action in accordance with law and the pendency of this Public Interest Litigations will not prevent them from doing so.

6. In the event of any proceedings being filed against the MPCB by any party, industry or factory in respect of the action taken by the MPCB, MPCB shall give notice thereof to the Petitioner's Advocate.

7. Stand over to 15th January, 2014."

10. By the said order, project proposal of study to assess the Kolhapur and Ichalkaranji sewage pollution of Panchaganga River submitted by NEERI was taken on record.

11. Thereafter, preliminary recommendations (Study Report of April 2014) and Supplementary Action Plan for abatement of Panchaganga river of April, 2014 made by NEERI were placed on record and affidavits have been filed by the fourth and fifth Respondents dealing with the implementation of the said report.

12. Considering the magnitude of the pollution caused to the River Panchaganga, in principle, we find no difficulty in coming to the conclusion that the interim recommendations of the NEERI and the final recommendations which may be submitted by NEERI will have to be implemented subject to the directions which may be issued from time to time by this Court. The main causes of pollution can be broadly divided under the following categories:-

(a) Pollution created by the cities of Ichalkaranji and Kolhapur due to various reasons such as disposal of untreated sewage water in the river and lack of proper STP or ETP facilities therein;

(b) The pollution caused by the actions or omissions of the citizens;

(c) The pollution caused by the industries including the sugar and Power Loom industries;

(d) Pollution created by the villages adjacent to River Panchaganga;

(e) Pollution created by industries in the industrial estates set up by the Maharashtra Industrial Development Corporation (MIDC).

13. Before we issue interim directions, it will be necessary to make a reference to the stand taken by the Maharashtra Pollution Control Board (MPCB). There are various affidavits filed by the MPCB. There is an affidavit dated 13th March, 2013 filed by Shri Suryakant S. Doke, the Regional Officer of the Maharashtra Pollution Control Board, Kolhapur. The said affidavit extensively deals with various issues concerning the fourth and fifth Respondents as well as the pollution created by the industries. What is stated in the affidavit can be summarized as under :-

[A] MPCB has prepared Kolhapur action plan to prevent pollution of river Panchaganga in consultation with the fourth Respondent which requires the fourth Respondent to arrest the flow of 12 nallas carrying untreated sewage to

Panchaganga River, to upgrade the existing STP and to install additional 50 MLD STP at Kasba Bawda. It is stated that the fourth Respondent has not adhered to the provisions of the said action plan;

[B] Under the provisions of the Water Act, directions were issued to the fourth Respondent Corporation on 20th November, 2000 and 16th January, 2004. Again on 13th April, 2010, directions were issued to the fourth Respondent Municipal Corporation. The said directions are set out in clause K of the affidavit which read thus :-

" i) To submit concrete proposal alongwith time bound program for the installation of the integrated STPs with the sanction of funds by the State and Central Govt. with Bar Chart to the MPCB.

ii) To prepare a concrete proposal for the remaining 30% domestic effluent collection and treatment thereof and get approval from various authorities, so that the MPCB will consider release of matching Fund of Rs. 16 lakhs as approved earlier for the alternate efficacious technology being finalized by the Kolhapur Municipal Corporation, provided such a proposal is submitted to MPCB for further approval.

iii) To diver/trap 12 nallas and by proper Bhadhara, give proper chemical dosing on the lines of Kerala Treatment as agreed during the course of hearing, so as to avoid discharge of untreated, under-treated sewage into River Panchganga.

iv) The Kolhapur Municipal Corporation shall apply for renewal of consent giving details of the pollution control devices and solid waste management alongwith the arrears of fees with time bound concrete proposal within 30 days time.

v) To furnish Bank Guarantee of Rs. 5 Lakhs ensuring the compliance of above conditions, consent conditions, authorization and environmental standards, directions issued by the Board from time to time which shall be valid for a period of three years to be submitted within 15 days time."

[C] It is stated that the fourth Respondent Corporation did not comply with the said directions;

[D] On 24th November, 2011, directions were issued to the fourth Respondent Corporation under the provisions of the Water Act, the Air (Prevention and Control of Pollution) Act, 1981 and the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short the Said Rules of 2000);

[E] On 19th December, 2011, MPCB issued exhaustive directions containing long term and short term measures to the fourth Respondent Municipal Corporation. However, it is stated that notwithstanding the grant of number of opportunities, the Municipal Corporation has not complied with substantial part of the said directions. It is stated that the fourth Respondent has not made operational the Solid Waste Processing Plant at Kasba Bawda. It is stated that steps have not been taken to divert various Nallas to ensure that untreated sewage water is not

discharged in the river. The construction of STP at Kasba Bawda has not adhered to the time bound schedule;

[F] Various instances of discharge of huge quantity of untreated sewage effluent in the Panchaganga River have been set out in the affidavit;

[G] Further directions were issued on 15th June, 2012. It is stated that four prosecutions have been lodged against the fourth Respondent Municipal Corporation;

[H] The same affidavit deals with action taken against fifth Respondent Municipal Council. Reliance is placed on proposed directions issued to the Municipal Council on 29th December, 2007. Reliance is placed on further directions issued on 15th June, 2012 to the said Municipal Council. It is stated that the fifth Respondent Council has not complied with the said directions;

[I] The affidavit also deals with the action taken against the defaulting industries including textile industries;

[J] What is important is that the affidavit states that the fourth Respondent Corporation is generating 96 MLD of sewage out of which only 43.5 MLD of sewage is being given primary treatment. As a result, rest of the sewage which is not even given primary treatment is discharged into Panchaganga River either through Nalla or through pipeline. The treatment given to 43.5 MLD is also inadequate in terms of the standards laid down by the Environment (Protection) Rules, 1986. It is stated that Ichalkaranji generates 40 MLD effluent. It is stated that STP already set up can deal with only 20 MLD sewage everyday. It is stated that STP is not maintained properly. It is stated that only 12 MLD sewage per day is collected and taken to STP. Thus, it is stated that 28 MLD of sewage is being discharged without any treatment in the Panchaganga River. It is stated that as far as pollution to the river is concerned, contribution of fourth Respondent Corporation is 52% and the contribution of the fifth Respondent is 23%. The remaining contribution is by the other local authorities and industries.

14. What is stated in the affidavit by the MPCB is dealt with by the affidavit of Shri Nitin Desai, Chief Officer of the fifth Respondent Municipal Corporation. It is stated in the affidavit that Ichalkaranji Textile Development Cluster has set up a Common Effluent Treatment Plan (CETP) having capacity of 12 MLD.

15. There is another affidavit filed by Shri Bharat B. Nimbarte, the Joint Director (Water Pollution Control) of the MPCB. Directions issued on 11th June, 2013 under the Water Act to the fourth Respondent Corporation have been set out in the said affidavit. The said directions are :-

(i) KMC has been directed to complete & commission 76 MLD new Kasba Bawda STP's work within the time stipulated in the directions, which will take into consideration major portion of sewage collection, treatment & disposal thereof after complying with the Environmental Standards laid down in the Consent as per Environment (Protection) Rules, 1986. MPCB has given time limit upto

August, 2013 as agreed by the KMC during the course of hearing for completing 24 MLD 1st Phase of the STP, out of 76 MLD STP,

(ii) KMC has been further directed to complete 2nd to 4th Phase of STPs at Kasba Bawda by the end of September, 2013; and,

(iii) The remaining phases upto 6th stage to be completed by the end of December, 2013. In the meantime, it has been directed to lift the sewage by making appropriate lifting arrangement within 45 days time starting from 15/6/2013 and for short term to arrest domestic effluent at various nallas, so as to prevent its discharges into the river Panchganga to the extent possible. Necessary bank guarantees have been asked to be submitted to ensure time bound compliance of the directions issued by the MPCB,

(iv) KMC has to operate & maintain existing STP with primary treatment of 43.5 MLD capacity round "O clock, so as to ensure that pre-treated effluent is disposed off as per consent conditions."

16. Similar directions issued to the Ichalkaranji Municipal Council have been also incorporated in the said affidavit which read thus :-

"(i) IMC has been directed to operate & maintain existing STP of 20 MLD round "O clock, so as to achieve the Environmental Standards and also to take efforts to see that 20 MLD effluent is collected and taken for further treatment to the existing STP as per its capacity.

(ii) IMC has been further directed to provide 12+12 MLD STP as agreed by it on or before March, 2014,

(iii) IMC also agreed that it will arrest Chandur Odha and Kabnoor Nalla with proper Bandharas and regulate the discharge of sewage into the Panchganga river, so as to prevent the pollution of Panchganga river to the extent possible. Also directions given to regulate Kala Odha discharge into the Panchganga river. Necessary bank guarantees have been asked to be submitted to ensure the compliance of directions."

The affidavit incorporates directions issued to industries.

17. Shri Sunil Pawar, Chief Officer of the Respondent dealt with the said directions by filing affidavit dated 11th October, 2013. It is submitted that DPR for setting up STP of capacity of 24 MLD was submitted to the State Government. The State Government has forwarded the same to Government of India for final sanction. It is contended that all possible steps have been taken by the Municipal Council to minimize the pollution of the river.

18. There is an affidavit dated 10th October, 2014 filed by Shri Manish B. Pawar, the Hydraulic Engineer of the fourth Respondent Corporation. It refers to National River Conservation Plan sanctioned by the National River Conservation Directorate. It deals with various short term and long term measures taken by the said Corporation including making arrangements for artificial ponds for

immersion of Ganesh idols.

19. On 27th June, 2014, another affidavit has been filed by Shri Suryakant S. Doke, the Regional Officer of MPCB. The said affidavit has been filed after survey of industries in Panchaganga River Basin in May, 2014. The affidavit summarizes the action proposed to be taken against the industries which are contributing to the pollution of the river Panchaganga.

20. It is necessary to consider the suggestions made by the NEERI. The NEERI has submitted a report in April, 2014 styled as study report. The study report is accompanied by a supplementary note on action plan for abatement of Panchaganga River. The study report contains recommendations in clauses 15 and 16 (pages 86-91). The recommendations deal with flow of and flows into River Panchaganga, functioning of Wastewater Treatment systems, Industrial Waste water Management Practices, Weeds and Sanitation Issues and introduction of Environmental Management System (EMS) through Public Processes for the fourth and fifth Respondents for Protection of River Panchaganga and Health of Population. The supplementary note submitted by NEERI deals with issues for rejuvenation of River Panchaganga. It records the issues identified for critical evaluation and immediate attention for rectification so that the river quality will improve and meet the stipulated class A-II standards.

21. There are responses filed by the fourth Respondent Corporation and the fifth Respondent Council to the recommendations of NEERI. In principle, both the local authorities seem to have accepted the recommendations of NEERI. There is some dispute whether recommendations which are claimed to be implemented are really implemented.

22. There is no dispute between the parties that elaborate long term measures are required to be taken for preventing the pollution of Panchaganga River and for rejuvenation of river Panchaganga so that the river water quality will improve and meet the stipulated A-II class standard. Long term as well as short term measures will have to be taken by all concerned. Steps will have to be taken not only by the fourth and fifth Respondents but by several agencies involved in the process. It is true that the major role will have to be played by the third Respondent MPCB, fourth Respondent Kolhapur Municipal Corporation and fifth Respondent Ichalkaranji Municipal Council.

23. At this stage, we must note here that a Division Bench of this Court in the case of Dhanajirao Jivarao Jadhav and others versus State of Maharashtra and others notes the problems faced by Kolhapur in paragraph 17 which reads thus:

"17. From the above narration, the following picture emerges:--

(i) That the city of Kolhapur was facing a very grave and serious problem of supply of polluted drinking water which fact has been acknowledged by the third respondent also.

(ii) The reasons for the heavy pollution was attributed to discharge of untreated

sewage and sullage directly into the river Panchganga primarily through Dudhali and Jayanti Nalas coupled with the breakdown of existing sewage Treatment Plant.

..... "

The Division Bench issued elaborate directions in terms of paragraph 26 of the said decision. The said directions are essentially against MPCB (the third Respondent in the decision) based on the provisions of the Water Act. MPCB is bound by the said directions. Directions were also issued to the fourth Respondent Corporation (the fifth Respondent in the decision). The relevant directions read thus:

"26. In the circumstances, the petition is disposed of with the following directions:--

(i) The third respondent shall periodically monitor the level of pollution of the water of river Panchganga at the three sources of confluence and also at the discharge point of the treated effluents and shall ensure supply of potable water to the city of Kolhapur. The third respondent shall, every two months, publish in the local newspaper the reports of the test carried out.

(ii) The fifth respondent, Maharashtra Pollution Control Board, would keep a strict vigilance on the activities of the industries discharging effluents in rivers and see that standards prescribed under the various enactments, including the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, are maintained.

The fifth respondent should also maintain a strict vigil on the activities of the following industries, so that untreated effluents are not discharged in River Panchganga:

- (1) Rajaram Sahakari Sakhar Karkhana Ltd., Kasba Bawda.
- (2) Datta Sahakari Sakhar Karkhana Ltd., Asurle-Purle.
- (3) Kumbhi-Kasari Sahakari Sakhar Karkhana Ltd., Kuditre.
- (4) Bhogawati Sahakari Sakhar Karkhana Ltd., Shahunagar-Parite.
- (5) United Distilleries, C/o Bhagawati Sahakari Sakhar Karkhana Ltd., Shahunagar-Parite.
- (6) Vhatkar Industries, Jawahar Nagar.
- (7) Tanning Industries (Tanneries) situated at Jawaharnagar, Subhashnagar and Udyamnagar.
- (8) C.R. Hospital.
- (9) Fertilizer Industry, Yawluj.

Periodical visits should be made by the higher officer of the fifth respondent so that, if there is any connivance on the part of the concerned persons, it could be detected and immediate action taken. Report of such inspection should be given to the Committee of Experts constituted as per the directions given below:--

Immediate action should be taken by respondents Nos. 3 and 5 jointly to see that untreated sewage is not directly discharged into river Panchganga from sources, including the Dudhali and Jayanti Nallas."

The said directions are still binding as the same continue to remain in operation.

24. In PIL 183 of 2012, even the Zilla Parishad of Kolhapur has filed an affidavit in which an assurance is given to take all possible steps which could be taken by the Zilla Parishad. There are 174 village panchayat areas adjacent to banks of the Panchaganga River. The State Government and the Zilla Parishad will have to exercise statutory powers by issuing necessary directions to the village panchayats. The recommendations of the NEERI contain suggestions regarding working of CETP. There are two industrial estates of MIDC near the bank of River Panchaganga. Therefore, even the MIDC has a role to play.

25. Thus, several statutory agencies including the State Government have a role to play in preventing pollution to River Panchaganga. However, statutory authorities or agencies involved cannot devise its own methods to deal with the issues. All the concerned authorities will have to implement one comprehensive plan. A very well reputed expert agency like NEERI having a vast experience in the field has been already appointed. Only way to do the task effectively is to implement the recommendations of NEERI in the reports which are already on record and the further recommendations in the further interim reports and final report which may be submitted by NEERI.

26. At the same time, the citizens have a role to play. Even the citizens, due to lack of awareness contribute to the pollution of the River. The pollution can be created by immersion of Idols made up of plaster of paris. "Nirmalya" and other organic material is discharged in the river in huge quantity. The river is used for immersion of ashes. Garbage is thrown either in the river or on the bank of the river. Vehicles are taken to the banks of the river and the river water is used for washing the vehicles. Apart from undertaking awareness programs, several preventive measures will have to be taken. On this aspect, this Court will be guided by the detailed directions issued by order dated 7th March, 2014 in PIL No. 176 of 2012 for preventing pollution to River Godavari.

27. The interim directions will have to be issued broadly on the following points :-

(1) Implementation of recommendations of NEERI both interim and final. Implementation by the MPCB of the directions issued by this Court in the case of Dhanajirao Jivarao Jadhav;

(2) Implementation by the industries and all concerned authorities of the statutory directions issued by MPCB;

(3) Various steps to be taken by the fourth Respondent Municipal Corporation and fifth Respondent Municipal Council;

(4) Various steps to be taken by the fourth and fifth Respondents, MIDC, Zilla Parishad and the State Government for ensuring participation of citizens in awareness programs;

(5) Security measures including availability of sufficient police personnel;

28. The interim directions which we propose to issue will have to be scrupulously implemented. Therefore, continuous monitoring will be necessary. This object can be achieved by constituting a Committee headed by the Divisional Commissioner, Pune who shall be the Chairman of the Committee. The Committee shall consist of following members apart from the Chairman :-

(a) The Commissioner of the Kolhapur Municipal Corporation;

(b) The Collector of the District Kolhapur;

(c) The Chief Officer of Ichalkaranji Municipal Council;

(d) An appropriate officer of higher level nominated by the MPCB;

(e) The Chief Executive Officer of Zilla Parishad, Kolhapur;

(f) A representative of NEERI to be nominated by NEERI;

(g) An expert in the field appointed by the Divisional Commissioner after consulting the Petitioners and the fourth and fifth Respondents;

(h) such other persons as may be nominated by the Divisional Commissioner.

29. The Divisional Commissioner, Pune shall appoint any Revenue Officer in his office not below the rank of a Deputy Collector to act as Co-ordinator/Secretary of the Committee. The Divisional Commissioner shall complete the constitution of the Committee within a period of one month from today. It will be open for the said Committee to constitute Sub-Committees.

30. We direct the fourth Respondent Municipal Corporation and fifth Respondent Municipal Council to make available necessary secretarial and other staff to the Committee on permanent basis as per the requisitions which may be issued by the Divisional Commissioner. It will be the responsibility of the said two municipal authorities to make arrangements for providing vehicles to the members of the Committee whenever they make site visits. Arrangements for their stay shall be made by the said two authorities. The other infrastructure, stationary, printers, etc. shall be made available by both the said Respondents to the said Committee.

31. The District Superintendent of Police shall appoint an officer not below the rank of Deputy Superintendent of Police. The officer so appointed shall be responsible for providing security to the municipal staff as well as staff of the MPCB for the purposes of implementation of the directions issued under this

order as well as the directions issued by the Committee. Appropriate number of police officers and police constables shall be assigned specifically for this work by the Deputy Superintendent of Police. Appropriate action shall be taken by the Superintendent of Police within a period of one month from today. The Deputy Superintendent of Police so appointed shall attend the meetings of the Committee as and when called upon by the Committee. He shall ensure that the police effectively assist all concerned authorities in the implementation of the directions of this Court.

32. We must note here that there is a Civil Application being Civil Application No. 60 of 2014 filed by the Kolhapur Municipal Corporation in which a prayer is made for extending the time to commission 76 MLD capacity STP at Kasba Bawda till 31st May, 2014. The affidavit of Shri Rajendra Kalgonda Patil, the Environmental Officer of the said Municipal Corporation dated 4th July, 2014 records that 90% of the work of the STP at Kasba Bawda is completed. By disposing of the Civil Application, we propose to grant time to the fourth Respondent Municipal Corporation to complete and commission the STP by 31st January, 2015, if already not done. No further time shall be granted.

33. At this stage, we issue the following interim directions:-

(I) The appointment of NEERI in terms of the earlier order passed by this Court on 6th December, 2013 shall continue till further orders;

(II) The reports and the recommendations made therein so far submitted by NEERI are accepted. NEERI shall submit the final report containing the recommendations as expeditiously as possible;

(III) The petition shall be fixed under the caption of "Directions" on 22nd December, 2014 when representative of the NEERI shall make a statement regarding the possible outer limit within which the report shall be submitted. Payment of costs and charges payable to NEERI shall be made by the fourth and fifth Respondents in equal proportions. This order shall be communicated to NEERI by the Advocate for the fourth Respondent;

(IV) We direct the Maharashtra Pollution Control Board, the Kolhapur Municipal Corporation, the Ichalkaranji Municipal Council, the Zilla Parishad, Kolhapur and the State Government to take all possible steps to implement the recommendations in the study report of NEERI submitted in April, 2014 as well as in the supplementary note on action plan for abatement of Panchaganga River;

(V) The Divisional Commissioner, Pune shall constitute a Committee headed by him as its Chairman. The Committee shall consist of following members apart from the Chairman :-

(a) The Commissioner of the Kolhapur Municipal Corporation;

(b) The Collector of the District Kolhapur;

(c) The Chief Officer of Ichalkaranji Municipal Council;

- (d) An appropriate officer of higher level nominated by the MPCB;
- (e) The Chief Executive Officer of Zilla Parishad, Kolhapur;
- (f) A representative of NEERI to be nominated by NEERI;
- (g) An expert in the field appointed by the Divisional Commissioner after consulting the Petitioners and the fourth and fifth Respondents;
- (h) Such other persons as may be nominated by the Divisional Commissioner.

(VI) The Divisional Commissioner, Pune shall appoint any Revenue Officer in his office not below the rank of a Deputy Collector to act as the Secretary of the Committee. The Divisional Commissioner shall complete the constitution of the Committee within a period of one month from today. It will be open for the said Committee to constitute various Sub-Committees.

(VII) We direct the fourth Respondent Municipal Corporation and fifth Respondent Municipal Council to make available office premises, necessary secretarial and other staff to the Committee on permanent basis at Kolhapur and Ichalkaranji as per the requisitions which may be issued by the Divisional Commissioner. It will be the responsibility of the said two municipal authorities to make arrangements for providing vehicles to the members of the Committee whenever they make site visits. Arrangements for their stay shall be made by the said two authorities. The other infrastructure, stationary, printers, etc. shall be made available by both the said Respondents to the said Committee.

(VIII) The District Superintendent of Police, Kolhapur shall appoint an officer not below the rank of Deputy Superintendent of Police. The officer so appointed shall be responsible for providing protection to the municipal staff as well as staff of the MPCB for the purposes of implementation of the directions issued by this Court as well as the directions issued by the Committee. Appropriate number of police officers and police constables shall be assigned specifically for this work by the Deputy Superintendent of Police. Appropriate action shall be taken by the Superintendent of Police within a period of one month from today. The Deputy Superintendent of Police so appointed shall attend the meetings of the Committee as and when called upon by the Committee. He shall ensure that the police personnel so appointed effectively assist all concerned authorities in the implementation of the directions of this Court.

(IX) The committee headed by the Divisional Commissioner (for short "the Committee") shall monitor the implementation of the recommendations of NEERI as well as the implementation of various interim directions issued by this Court from time to time. The Committee shall call for periodical reports from all concerned Respondents on implementation of the directions issued by this Court from time to time. Quarterly reports shall be submitted by the said Committee to this Court as regards the implementation of the orders of this Court as well as the recommendations of the NEERI. It will be open for the Committee to make its own suggestions on all the aspects. First of such quarterly reports on the

progress made till 10th February 2015 shall be submitted on or before 28th February, 2015. For consideration of the first report, the Petition shall be fixed on 9th March, 2015 under the caption of "Directions";

(X) We make it clear that the Maharashtra Pollution Control Board and all concerned shall implement the directions issued by this Court by Judgment and Order dated 16th December, 1997 in the case of Dhanajirao Jivarao Jadhav & Ors. Vs. State of Maharashtra & Ors.;

(XI) We direct the fourth and fifth Respondents and all other parties to the Petition to implement the statutory directions already issued under the Water Act as well as other enactments and which will be hereafter issued by the Maharashtra Pollution Control Board. If the directions are not implemented, MPCB shall take action against the defaulters in accordance with law;

(XII) We direct the fourth and fifth Respondents to prepare and implement comprehensive awareness programs for the citizens to ensure that they perform their fundamental duty. The fourth and fifth Respondents shall take help of local NGOs as well as school and college students for implementation of the public awareness programs. Both the fourth and fifth Respondents with the assistance of the local Law and other Colleges and the District or Taluka Legal Services Authority shall organize seminars/street shows as a part of awareness campaign;

(XIII) We direct the fourth and fifth Respondents to display boards of adequate size at strategic locations in both the cities calling upon the members of the public not to throw garbage or any material whatsoever in the river. The boards shall display an appeal to the members of the public to perform their fundamental duty to maintain the River Panchaganga free of pollution. They shall make such appeal through the print and electronic media at regular intervals;

(XIV) We direct the fourth and fifth Respondents to make available facility of sufficient number of temporary artificial ponds at various locations for immersion of Ganesh and other idols during the concerned festive seasons. The fourth and fifth Respondents shall make a public appeal to the citizens to use the facility of artificial ponds. Both the fourth and fifth Respondents shall provide sufficient number of permanent artificial ponds for immersion of ashes and other organic material during the course of traditional obsequies. Adequate publicity shall be given in media as well as by erecting boards near the bank of river that such facilities are available. Board shall contain fervent appeal to members of the public to use the artificial ponds.

(XV) As regards the immersion of Nirmalya and other organic material, in addition to above, large pots shall be kept at the advantageous locations on the bank of the River with display boards of a large size containing an appeal to the members of the public not to throw the Nirmalya and other organic material in to the river water and discharge the same in the pots specifically provided for the purposes. The fourth and fifth Respondents shall erect barricades at relevant entry points to the bank of the river to ensure that the vehicles are not taken

near the riverbed for the purposes of washing;

(XVI) Both the Municipal Authorities shall consider of creating special cells for implementation of these directions. For that purpose, they will be entitled to apply to the State for creation of additional posts;

(XVII) The Zilla Parishad, Kolhapur and the State Government shall consider of issuing directions to all concerned local village panchayats to take all steps as directed to be taken by the fourth and fifth Respondents. Both of them shall submit action taken reports on or before 21st December, 2014. The State Government shall submit a report before the said date as regards the constitution of the Committee;

(XVIII) For the purposes of considering the question of issuing interim directions against Respondent Nos. 7 to 9 in PIL No. 183 of 2012, the Petition shall be listed on 22nd December, 2014 under the caption of "Directions". The Petitioners in PIL No. 183 shall ensure that service is effected on the 8th and 9th Respondents through Court as well as privately;

(XIX) If the fourth Respondent Corporation has not yet completed and not commissioned the work of 76 MLD capacity STP AT Kasba Bavda, the same shall be done on or before 31st January 2015. Civil Application No. 60 of 2014 is accordingly disposed of;

(XX) The advocates representing fourth and fifth Respondents shall serve an authenticated copy of this order to the Divisional Commissioner, Kolhapur as well as to NEERI. All concerned to act upon an authenticated copy of this order.