

(1993) 04 GUJ CK 0029
In the Gujarat High Court

Gujarat Water Pollution Control Board	APPELLANT
Vs	
Kohinoor Dyeing and Printing Works and Others	RESPONDENT

Date of Decision : 29-04-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Water (Prevention and Control of Pollution) Act, 1974 — Section 33, 33(3)(i)

Citation : (1993) 2 GLR 1368

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—The question of quite great public importance, perhaps arising for the first time in the group of these 7 Criminal Revision Application in the matter of proceedings u/s 33 of the Water [Prevention & Control of Pollution] Act, 1974, mainly pertains to the interpretation of Section 33 of the Act itself and in particular that of the expression "to desist from taking such action as is likely to cause pollution" appearing in Clause (i) of Sub-section (3) of Section 33 of the Act.

2. In all these matters, having regard to the common question of law involved therein and, arising out of more or less identical facts-situation, This Court at the joint request and with the consent of the learned Advocate for the petitioner-Board and the learned A.P.Ps., has decided to hear and decide all of them together by this common judgment. It may be mentioned here that at the time of hearing of these matters, neither the respondents nor their learned Advocates have remained present despite the fact that the matters stood duly notified on the final hearing board since 15th March, 1993, i.e., for about a month and half!!

3. To state few relevant broad facts of these proceedings as far as they are necessary to determine the point involved, the Petitioner-Gujarat Water Pollution Control Board, Surat [for short "the Board"] is a statutory body established under the provisions of Section 4 of the Water [Prevention & Control of Pollution] Act, 1974 [for short "the Act"] for the purpose of prevention and control of water

pollution and maintaining and restoring the wholesomeness of water and for the said purpose is conferred with various statutory powers and functions as provided in the Act. As against the same, the respondents herein are the owners and/or Managers of the respective units carrying on various industrial activities such as manufacturing cotton textile, textile printing and dyeing, etc., situated in Surat. The Board accordingly in discharge of its duties, on finding the respondent-Units contravening provisions of Sections 25 and 26 of the Act, had earlier launched several prosecutions by filing the criminal cases before the concerned learned Magistrates. In all these complaints, it is commonly alleged that the management of the defaulting units ran by the respondents, discharge large quantity of effluent water, polluting the river "Modhiba" without being treated through the drains of the Corporation, *infer alia* praying for conviction and sentence against the respondents. It further appears that thereafter several applications u/s 33 by the petitioner-Board came to be filed before the learned Magistrate *inter alia* praying for restraining the respondents from polluting the river "Modhiba". On 15-7-1986, the learned Magistrate passed an ad-interim order restraining the respondents from discharging the alleged effluent water outside their factory compound until further orders, by making the notice returnable on 22-7-1986. Thereafter, after hearing the respective parties, the learned Magistrate by an Order dated 12-8-1987 confirmed the ad-interim relief granted earlier and ordered to continue the same till final disposal of the criminal cases. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Magistrate, the respondents preferred Criminal Revision Applications before the Court of the learned Sessions Judge, Surat which came to be partly allowed by the impugned judgment and order dated 22-12-1989, the operative order of which reads as under:

Accordingly, the aforesaid Revision Applications are partially allowed. The order of the trial Court is modified as indicated above, and the concerned Courts shall call upon the parties and verify whether the directions contained therein and the respective stipulated periods have been complied with and honoured or not. If, in a given case, the trial Court finds that there is a fault on either side, it shall deal with the matter in accordance with the facts of the case and according to the aforesaid Pollution Control Act and Rules framed thereunder. It may issue consequential directions with a view to see that the provisions of the Act and the Rules framed thereunder are carried and various orders issued thereunder are implemented and enforced.

During the said stipulated period, it shall keep the matters pending before it, and shall review the situation every month by posting different cases, on the last working day of the month, and to verify from the Board as well as the persons concerned the state of affairs prevailing at that time, and thus monitor the progress of the Pollution Control activity, so that it may be implemented and fulfilled within the stipulated period. At the end of the exercise the Board and the persons may approach the trial Court with a request if any further directions are required, or as the case may warrant for terminating the proceedings.

It is under these circumstances that the petitioner-Board has approached This Court by way of the present group of seven Revision Applications challenging the impugned judgment and order passed by the learned Session Judge.

4. Mr. K.H. Baxi, the learned Advocate appearing for the petitioner Board while challenging the impugned judgment and order passed by the learned Session Judge has made the following submissions:

(i) That the same are ex-fade illegal being contrary to the very spirit and object underlying the Act and in particular Section 33 of the said Act.

(ii) That the inferences drawn by the learned Judge from the impugned orders passed by the learned Magistrates directing the respondents to "desist" from discharging the effluent water into the river as a "blanket ban ordering them to close their units is contrary to evidence and law, and is based on complete misreading of the orders.

(iii) That the learned Judge has further erred in concluding that the impugned order u/s 33 of the Act passed by the learned Magistrate was in nature of an "ad-interim injunction" and that too in absence of any such powers vested in the Court !

(iv) That the learned Judge has further erred in giving directions to the parties which are not open either u/s 33 of the said Act or u/s 397 of the Criminal Procedure Code.

(v) That the instant cases are of the year 1985. Not only that, but as number of such other cases are also pending on the file of learned Magistrates having regard to the gravity and seriousness of the problem of pollution, all the Courts of the State may be directed to dispose them of as expeditiously as possible.

The learned Advocate fur the petitioner-Board making good his above submissions has first of all invited attention of This Court to some of the erroneous observations and findings recorded by the learned Judge in paragraphs 7, 8 and 9 of his judgment, which reads as under:

7. I am adopting this course, largely because, at this interim stage, the aforesaid different persons are required to come before This Court, as under the orders under Revision, their factories and units are ordered to be shut down. If the words used by the respective Magistrates are not to that effect, certainly the result of the same. (Emphasis supplied by Mr. Baxi).

8. One thing is certain that, according to the said Clause (i) quoted hereinabove, the Court of the Magistrate is certainly empowered to issue directions to the person, who is likely to cause or has caused pollution of water in the stream or well, to desist from taking such action as is likely to cause pollution. Once this aspect is borne in mind and the order under Revision is examined in the background of the said clause, it becomes at once clear that the respective learned Magistrates have exceeded the jurisdiction vested in them by the Statute

and pass the orders which were not contemplated by the said Clause (i).

(Emphasis supplied by Mr. Baxi)

9. To issue a prohibitory order is something more than what is contemplated by the word "desist", in order to understand the word "desist", we have to also keep before our mind its antonym - the word "persist". When a person is persisting in doing something, which in the context of the said Pollution Control Act would be to persist in polluting the stream. The person is to be directed to desist from that course. "Desist" is something, which would also encompass within it a situation, where without closing or shutting a factory or a unit, steps could be taken to prevent the pollution or the offending activity. Instead, what we find in the order of the respective Magistrates is that, indiscriminately an almost blanket-ban has been put for discharge of effluent, in the effect therefore is to shut down the unit and close the factory.

5. Mr. Baxi, the learned Advocate for the Petitioner-Board taking exception to the observations made in para Nos. 7, 8 and 9 of the judgment submitted that men; is no material worth the name on record to take the view that because of the impugned orders passed by the learned Magistrates, factories and units were ordered to be shut-down. Mr. Baxi further inviting specific attention of This Court to the observation made in above para 7 to quote "if the words used by the respective Magistrates are not to the effect, certainly the result is the same" [emphasis supplied], submitted that it clearly goes to show that it is only the inference of the learned Judge, without any material on the record! Not only that but the said reasoning is totally inconsistent with the very spirit and object of the relevant provision u/s 33 of the Act. Mr. Baxi thereafter further submitted that the learned Judge in para 8 having already observed that "-the learned Magistrate is certainly empowered to issue directions to the person who is likely to cause pollution in the stream or well and to "desist" him from taking such action as he is likely to cause pollution", subsequently quite unfortunately has slipped into an error in holding that in the instant cases, the learned Magistrate by asking the respondents to "desist" from discharging effluent water into the river has indiscriminately issued a blanket-ban, thereby shutting down the units and closing the factories! Similarly, while commenting upon the observations made in para 9, Mr. Baxi, with utmost respect to the learned Judge, submitted that the same was complete misreading of the impugned order passed by the learned Magistrate. If we peruse the impugned order of the learned Magistrate, by no stretch of imagination, it can be said that the same was a "Prohibitory Order". Mr. Baxi submitted that the learned Judge having rightly appreciated the connotation of the word "desist" as something which encompasses the situation where without closing or shutting down the unit, the steps could be taken to prevent the pollution or offending activities has somehow lost meaningful tract of the same and came to interpreter the impugned order as the "Prohibitory Order"! Mr. Baxi submitted that it is too much to read the order of the learned Magistrate as the in discriminatory one and putting a blanket-ban against the

respondents to discharge effluent - in effect shutting down the units and closing their factories! Mr. Baxi thereafter invited attention of This Court to para 10 of the impugned judgment, which reads as under:

10. The very idea of the formation of the Pollution Control Board is to strike a balance between the Industrial Development on one hand and the pollution control on the other. To pass order at the interim stage to close down the unit would be disturbing that very balance, which is sought to be maintained by the said Pollution Control Act

Commenting upon the above para 10 of the impugned judgment of the learned Judge, Mr. Baxi further submitted that the learned Judge has clearly erred in treating the application u/s 33 as an interim application which has effect of closing down the units. This finding is also once again contrary to the spirit and object of Section 33 of the Act. Mr. Baxi thereafter further invited attention of This Court to para 11 of the impugned judgment, which reads as under:

11. There is an elaborate machinery under the Act and the Rules framed thereunder, whereby the aforesaid balance is delicately maintained, and for that purpose, from time to time the Board officials and the persons authorised by it under the powers given to them under the Act, check the discharge and see whether the standards prescribed from time to time are being conformed with or not. These matters have been pending before the trial Court since 1984 and upwards, and if from that date the blanket-ban is to be imposed, necessarily whatever investments have been made for installing a factory and other infrastructure, would remain idle, and correspondingly, the labour force connected with it would also suffer. This could not be the objective of Clause (i) quoted above. To my mind, when we examine the consequence of the orders passed by the learned Magistrates in all the matters, and when we put them in the background of the aforesaid Clause (i), the importance of the word "desist" would further be realised. In order when a person is directed to desist, in my opinion, it would have been enough if the person is asked to comply with the prescribed standards within a given period, failing which the Court can keep control over the matter by issuing further directions, as may be called for, which may eventually entail the extreme direction of shutting down of the factory. However, without affording an opportunity to the party first to desist from taking that action which is likely to cause pollution, straightway directing it to close the factory is, to my mind, an extreme penalty imposed upon the party before the conclusion of the trial, in the course of which alone it could be proved whether the person against whom the application is filed, is polluting the stream or not.

Mr. Baxi further commenting upon the observations made in para 11 submitted that the inferences drawn and findings recorded therein are also based on some unwarranted assumptions derived from some wild speculations! Mr. Baxi further submitted that when Section 33 itself prescribes extraordinary remedy under the Act, and the Pollution Board accordingly rightfully resorts to the same, the learned Magistrate was perfectly justified in passing an order restraining the

respondents from polluting the river water. If under such circumstances, the impugned order of the learned Magistrate directing the respondents to desist from causing pollution is passed, then in that case, the unwarranted inference of the learned Judge that the same was a blanket-ban which in turn would render the investments made in installing the factory and other infrastructures would remain idle and correspondingly, the labour force connected with it would also suffer has no scope at all.

6. Mr. Baxi thereafter invited attention of This Court to the rest of y the paragraphs of the impugned judgment and submitted that looking to the scheme of the Act as a whole, and in particular the provisions contained in Section 33 of the Act, there is no other provision by virtue of which any Court has any authority to give directions beyond the scope of the said Section 33 of the Act. According to Mr. Baxi, u/s 33 of the Act, the learned Judge should have either accepted, endorsed and confirmed the order passed by the learned Magistrate or rejected the same. There was no other vla-media open in such proceedings. Mr. Baxi further submitted that the complaints filed by the Board under Sections 25 and 26 of the Act against the respondent had nothing to do with the proceedings taken up u/s 33 of the Act which stands entirely on a separate and distinct footings, and that the same was a self-contained provision. Mr. Baxi further submitted that there is nothing common in between Section 25 which pertains to "restrictions on new outlets and new discharges", Section 26 which pertains to the provision regarding "existing discharge of sewage or trade effluent" and Section 33 which pertains to "the power of the Board to make application to Courts for restraining apprehended pollution of water in stream or wells."

7. On the basis of the above submissions, it was finally urged by Mr. Baxi that the impugned judgments and orders passed by the learned Sessions Judge being ex-fade unwarranted and illegal, the same deserve to be quashed and set aside and that the order passed by the learned Magistrate be confirmed and restored. The learned Advocate for the petitioner further urged that taking into consideration the gravity and seriousness of the pollution problem and its continuous deleterious effect on the environment, all the Courts in the State be directed to expedite clearing of the pending cases. Mr. Baxi, in support of this submission has invited attention of This Court to the decision of the Supreme Court rendered in case of M.C. Mehta Vs. Union of India (UOI) and Others, , wherein in para 21, it has been observed as under:

it is submitted before us that whenever the Board constituted under the Water Act initiates any proceedings to prosecute industrialists or other persons who pollute the water in the river Ganga, the persons accused of the offences immediately institute petitions u/s 482 of the Code of Criminal Procedure, 1973, in the High Court and obtained stay order, thus frustrating the attempt of the Board to enforce the provisions of the Water Act. They have not placed before us the facts of any particular case. We are, however, of the view that since the problem of pollution of water in the river Ganga has become very acute, the High

Courts should not ordinarily grant orders to stay of criminal proceedings in such cases and even if such an order of stay is made, in any extra-ordinary case, the High Courts should dispose of the case within a short period, say about 2 months from the date of the institution of such case. We request the High Courts to take up for hearing all the cases where such orders have been issued u/s 48 of the Code of Criminal Procedure, 1973, staying prosecutions under the Water Act within two months. The Counsel for the Board constituted under the Water Act shall furnish a list of such cases to the Registrar of the concerned High Court for appropriate action being taken thereon.

8. Mr. Baxi in his further attempt to make out a case for expeditious disposal of the pending cases has also submitted a Chart giving the list of pending Pollution Cases as on 31st March, 1993. The said Chart reads as under:

CHART		No.				I
District	Water	Act	Air	Act	Cr.P.C.	Total Surat
280 62 - 342 Ahmedabad	273 77 3 353	Valsad	277 18 - 295	Vadodara	147 15 1	
263 Bharuch	149 8 - 157	Rajkot	127 7 15 149	Panchmahals	35 3 - 38	Mehsana
34 13 - 47 Kheda	32 1 - 33	Jamnagar	10 6 - 16	Amreli	4 1 - 5	Bhavnagar
4 1 - 5						
Kutch 1 - - 1	Banaskantha - 1 - 1	Gandhinagar	3 - - 3	Sabarkantha	1 - - 1	Dangs
- - - -	- - - -	- - - -	- - - -	- - - -	- - - -	- - - -
			1377	213	191	709

On the basis of above Chart, Mr. Baxi finally urged that many Pollution Cases are pending since quite sometime in the subordinate Courts which require urgent disposal.

9. Now, unfortunately, in all these matters, though the learned 7 Advocates have filed their appearance, still however for whatever reasons, they have not appeared before This Court, and bearing in mind the importance of the point involved and the serious and far-reaching consequences of the decision of This Court was likely to bring about on either side, This Court has given its anxious thoughts to the other side of the picture ably discussed by the learned Judge before appreciating and ultimately upholding the submissions made by the learned Advocate for the petitioner, supported by the learned Addl. Public Prosecutors.

10. Now, having heard Mr. Baxi, the learned Advocate for the Board on "the most important question of law involved, it must be stated that there is a considerable force in the submissions made by him and that the same deserves to be accepted in its entirety without any reservation. The learned A.P.P. appearing for the Slate have also supported the submissions made by Mr. Baxi.

11. Now, in order to appreciate the submissions made by Mr. Baxi in its proper perspective and to reach at the right conclusion, it is equally necessary first of all to have in forefront before us the Statement of Objects & Reasons underlying the Act, which reads as under:

STATEMENT OF OBJECTS & REASONS

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy.

12. Bearing in mind the aforesaid Statement of Objects and Reasons, it is also equally further necessary to have a brief look at the relevant provision under Sections 32 and 33 of the Act. Section 32 of the Act pertains to the "Emergency measures in case of pollution of stream or well." Section 33 pertains to the power of the Boards to make application to Courts for restraining apprehended pollution of water in streams or wells. The said Section 33 reads as under:

(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, the Board may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.

(2) On receipt of an application under Sub-section (1), the Court may make such order as it deems fit.

(3) Where under Sub-section (2) the Court makes an order restraining any person from polluting the water in any stream or well, it may in that order-

(i) direct the person who is likely to cause or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or, as the case may be, to remove from such stream or well, such matter, and

(ii) authorise the Board, if the direction under Clause (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to undertake the removal and disposal of the matter in such manner as may be specified by the Court,

(4) All expenses incurred by the Board in removing any matter in pursuance of the authorisation under Clause (ii) of Sub-section (3) or in the disposal of any such matter may be defrayed out of any money obtained by the Board from such disposal and any balance outstanding shall be recoverable from the person concerned as arrears of land revenue or of public demand.

13. It is also further necessary to know and bear in mind the definition 7 meaning of the word "pollution" as defined in Section 2(e) of the Act, which

reads as under:

2 (e) "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Further, over and above the definition meaning of the word "Pollution", it may also be pointed out - "Water pollution can affect adversely and even catastrophically every beneficial use of water such as public supply, industrial use, the production of fish and other aquatic foods, irrigation, stock watering, transport, recreational activities, and amenities.

Cholera, Typhoid fever, and Dysentery have long been known to be associated with polluted water, in which the causative organisms are transported and survive until they enter, directly or indirectly, the human host. Mortality rates for these diseases vary from virtually nil to 50 per 1,00,000 and the gross inequalities are largely a reflection of the adequacy of pollution control of water used for drinking. Water polluted by the virus of infectious hepatitis has been known to be responsible for major epidemics." [Ref; Lai's Commentaries on Water Air Pollution & Environment [Protection] Laws: 3rd Edition].

The matter does not rest here as over and above the water-borne diseases enlisted above, water pollution is responsible for many undetectable viral and other diseases of serious nature where a person may contact with cancer even and ultimately prove fatal).

14. Thus, the above statement of object and reasons of the Act, the definition meaning given to the word "pollution" in Section 2(e) of the Act and the object underlined in Section 33 clearly stand out as the lighthouse to guide the law enforcing agency and the Courts of law while dealing with the cases under the Pollution Act. Now on closely examining the above referred Section 33, it clearly appears that the Parliament in its uppermost anxiety and concern for the protection of health, life and well-being of the people, animals, plants and even of aquatic organisms in the flora and fauna of the country from even the apprehended pollution, in its highest wisdom has engrafted this special provision with a view to provide urgent and emergent remedy so as to immediately prevent and make desist the defaulting units from causing pollution by discharging the effluent water in stream or river. The Parliament apparently was quite conscious of the fact that if such rough and ready, urgent and instantaneous, urgent and preventive measures like the one as provided in Section 33 were not prescribed, then in that case, the way in which the cases in the Criminal Courts get lingered on, piled-up and protracted, the ultimate object of enacting the special Act as that of stopping the water pollution would stand

totally frustrated despite the fact that the Act specially came to be enacted for the said purpose only. This indeed is the most important aspect to be deeply borne in mind to appreciate the general submissions made by the learned Advocate for the petitioner.

15. In fact, the bare reading of the said Section 33 clearly projects the following picture, whereby-

(i) by virtue of Sub-section (1) of Section 33, it empowers the Board to make application to the; specified Courts for restraining apprehended pollution of water in streams and wells;

(ii) by virtue of Sub-section (2) of Section 33 it vests discretionary powers in specified Courts to pass appropriate orders as it deems fit and proper; and

(iii) by virtue of Clause (i) of Sub-section (3) of Section 33, on application being made by the Pollution Control Board, the specified Court can direct the person who is likely to cause or has caused the pollution of water in stream and/or well to desist from taking such action as it is likely to cause pollution, etc.

16. Thus. Section 33 of the Act is a special section which gives special right, special remedy and special powers to the Court, and therefore, it is a self-contained section in itself, independent of other provisions of the Act. Thus, Section 33 comes into operation only on the basis of the ingredients provided therein, namely, the apprehension of the Pollution Control Board about the likely pollution by any person.

17. It is important to point out that Sections 25 and 26 contain powers that too of the Board whereas Section 33 contains right of the Board and the powers are with the Court, which is a substantial difference and signifies the intent of the Legislature to cast corresponding duty on the Court in the matters of pollution which is hazardous to life (human, plants and animals).

18. Thus, bare reading of Section 33 makes it clear that the application u/s 33 is independent and not dependent on the lodging of any complaint enquiry, etc. Not only that but the Criminal Procedure Code also recognises such exceptions of special powers and procedure, and the same is clear by express provisions of Sections 4 and 5 of the said Cods. It is true that ordinarily though the Courts of learned Magistrates are not vested with such powers, however, such powers in Section 33 of the Act are saved by virtue of the operations of Sections 4 and 5 of Criminal Procedure Code. Now in order to appreciate the basic difference between Sections 25 and 26 and Sections 32 and 33 of the Act, it is necessary to closely examine each of these Sections and for which it stands. Section 23 pertains to the restrictions on new outlets and new discharges which makes it mandatory to obtain previous consent of the Board before bringing into use any new or altered outlet for the discharge of sewage or trade effluent into stream or well. Similarly, Section 26 pertains to the provision regarding existing discharge of sewage or trade effluent which makes it compulsory to obtain consent order

which is commonly known as permission of the Pollution Control Board. Now for any breach of Sections 25 and 26 of the Act, the person would be liable to be punished u/s 44 of the said Act. Thus, Sections 25 and 26 of the Act are the regulatory measures. Now alongwith the said two provisions, the Act has also provided for emergency measures u/s 32 which pertains to the emergency in case of pollution of streams or well. While Section 33 pertains to power of the Board to make application to the Courts for restraining, appreciating pollution in water, in streams and wells. Thus, from the above, it is very clear that Sections 32 and 33 are the independent provisions and they operate in their respective fields irrespective of relevant provisions of Sections 25 and 26 of the Act.

19. This now takes us to some of the observations made by the learned Judge as regards import of the word "desist" appearing in Clause (i) of Sub-section (3) of Section 33 of the said Act. It is very clear from the judgment that the learned Judge has interpreted the impugned order passed by the learned Magistrate as a "blanket-ban" prohibiting the respondents from discharging effluent water into the river, virtually amounting to the "closure" of the defaulting units, so much so that he has gone to the extent of saying that "(even) if the word used by the respective Magistrates are not to that effect, yet certainly, the result is the same" (emphasis supplied). Now this assertion by the learned Judge per se is misreading of the impugned order passed by the learned Magistrate. In fact, while passing the impugned order, the learned Magistrate has not done anything more than what was warranted under the relevant Clause (i) of Sub-section (3) of Section 33. In the opinion of This Court, to read the word "closure" in place of word desist would be practically amounting to rewriting the entire Clause (i) of Sub-section (3) of Section 33, which is simply not permissible". In fact, when the learned Magistrate directed the respondents to desist from discharging effluent water into the river, the respondents could and should have easily and positively responded to the same by consulting some experts and technicians as to what could be the ways and means by which, or the one hand, they can run their units uninterrupted, and at the same time, on the other hand, comply with the orders of the Court. If this was done, This Court is sure that the respondents would not have felt regretted as they would have been advised to establish the Water Treatment Plant which could have easily served the very purpose. Thus, when the learned Magistrate passed the impugned order, two remedies were open before the respondents, namely; (i) either to stop discharge of effluent water by consulting the experts on the line and having the treatment plant in their factory premises itself and/or in the alternative (ii) to close down the unit, which as a last resort, would indirectly solve the problem of complying with the directions given by the Court. But once again, merely because the second alternative was available, it cannot be said that while passing the impugned orders, the learned Magistrates have asked the defaulting units to "desist" from discharging effluent water in the river by closing down their units. It may be stated that Section 33 of the Act does not empower the Magistrates to direct the defaulting units to close down their units and indeed, the same has not been done by him while passing

the impugned orders Now out of the aforesaid two remedies open to the respondents, if they in response to the Court's directions, instead of opting for the first one, choose the second, i.e., closing their units, then in that case, by no stretch of imagination can it be said mat the learned Magistrate has imposed a "blanket-ban"!!

20. Further still the observation of the learned Judge in para 11 of his judgment to the effect that "these matters have been pending before the trial Court since 1984 and upwards, and if from that date the "blanket ban" is to be imposed, necessarily whatever investments have been made for installing the factory and other infrastructure would remain idle and correspondingly, the labour force connected with it also suffer. This could not be the objective of Clause (i) quoted above." Now this observation of the learned Judge is also without any substance, as in the facts of the present cases, the same is ultimately based on unwarranted assumptions that by passing the order u/s 33 of the said Act, the learned Magistrate has imposed a blanket-ban" indirectly ordering to close down the defaulting units! It is indeed not difficult to appreciate that once the major premise is wrong, the conclusion that is to follow is bound to go wrong! and that it appears to have happened in the present cases. With due respect to the learned Judge, it may be stated that above unwarranted observations run counter to Section 33 itself! It is undoubtedly true that in some given cases wherein some defaulting units instead of positively responding to and opting for the treatment plants, etc., for the purpose of complying with the impugned order passed by the learned Magistrate - decide of their own to close down their units, [though not directed by the Court], then such closure may have a chain reaction by way of industry going off partially or fully causing some problems in matter of investments, employment, stoppage of production, etc. But the alleged closure is nothing but creation and result of their own voluntary act of closing down their units instead of positively taking some measures to stop discharge of the effluent. Thus, it is difficult to appreciate the foist failing of defaulting units themselves by misreading the word "desist" from the Order and Section, as the "closure" and thereby resulting into blanket-ban. Further, for the sake of argument, if in exceptional cases where the economically small unit because of their financial constraints were not in a position to comply with the order of the learned Magistrate to stop discharge of effluent in the river by having some treatment plant and as a result, the situation may develop where they have no option left open but to dose down their units resulting into the aforesaid problems of financial loss, unemployment, stoppage of production, etc. Now undoubtedly these are some of the vital considerations which could not be lightly brushed aside, but at the same time, they cannot be said to be out of the mind of Parliament when it enacted the present Act especially engrafting therein emergent provisions by way of Sections 32 and 33. Under the circumstances, when the Parliament in its full wisdom, conscious of the consequential effect of the word "desist" appearing in Clause (i) of Sub-section (3) of Section 33, engrafted it as it is in the Act, this clearly means that in all probability what

appears to have been weighed upon it is the anxiety of continuous risk and hazard to the health of mankind, animals and aquatic organisms, affecting its larger section, rather comparatively small and not that acute socio-economic problem of a small section of the society. Thus, when any person is befaced with a choice between the two evils, there is no course left open to anybody except to choose that evil which causes lesser harm. Further, the problems entailing from the alleged "closure of any unit are temporary, affecting the small segment of the society. Not only that but the same can be, if not tackled should certainly be risked to save the living condition of the human being, animals, etc. No doubt, unemployment is one of the important problem and it should be first on the anvil of any nation, but while finding solution to this problem through the network of enormous industries creating grave problem of pollution is something like "to solve one problem by creating another". Such cross-check entries are no solution at all. The existence of some industries, or for that purposes industrial development for greed of some handful vested interests and/or greed for more production at the cost of people in the area [victimised by the pollution], can never be permitted. Generally, it is observed that persons who are affected by the pollution are poor residing on the river banks, having no finance nor voice in the Government to defend their cause. It is only under such Pollution Acts they could defend themselves. If this cause of victims is lightly interpreted, it means the cry of poor would be render in wilderness more particularly against the powerful vested interests having access to the Government. Moreover, to allow such persons at the mercy of vested interests is no less than to surrender to the rule of jungle where might is right and the big fish swallow the small. This aspect will have to be borne in mind whether we like it not! The overall social perspective must definitely carry its weight upon the limited sectional interests. This is the only way this problem can be looked at. To give an example, if in a given case, when a particular limb of a person is found to be suffering from some malignant disease and if not operated and eliminated immediately, the spread over of the same was likely to endanger the life itself and if under the circumstances he is medically advised to be immediately operated upon in order to save his life, then in that case any wise person would opt for operation of that particular malignant limb and get it eliminated rather than risking his life. Thus, when the choice is between the survival of a particular limb and the life, the limb has to step down in favour of the life. Thus as in case of limb v. life, the limb has to be sacrificed. Similarly in case of industries creating pollution v. health and life of survivals, the defaulting unit has to give way in favour of the overall interest of survival.

21. Coming to the scope as to whether the word "desist" appearing in Clause (i) of Sub-section (3) of Section 33 of the Act could be interpreted and read as "closure", let us first of all see as to what is the original dictionary meaning of the said word "desist". While referring various dictionary meaning of the word "desist", it means "to leave off, abstain, seize and/or to stop". Further, having regard to ordinary rules of interpretation, when the question arises as to how a

particular word or expression of a section is to be interpreted, what is to be seen is whether it is clear, ambiguous and capable of any interpretation or not? Likewise, applying this test, the word "desist" appearing in Clause (i) of Sub-section (3) of Section 33 is on face of it quite unambiguous, and therefore, incapable of any interpretation whatsoever, and in that view of the matter, there was no room left open for the learned Judge to read the word "closure" in place of the word "desist". Thus, the word "desist" should be construed in its ordinary sense and must be given full effect. Accordingly, when the word "desist" used in Clause (i) of Sub-section (3) of Section 33 alongwith rest of the expression, namely, "from taking such action as it is likely to cause the pollution", it means that what the legislature intended is "to leave off, abstain, seize and/or to stop" that particular activity of an industrial unit which was likely to cause pollution and not the entire unit. In this view of the matter also, the reading of the word "desist" in any other manner is not permissible. It may also be further stated, at this stage, that in some such cases where it is not economically viable for industrial units to have a treatment plant, as a result of which they may be constrained to close down the entire unit, then even, the Court would not be justified in reading the word "closure" in place of "desist" appearing in Clause (i) of Sub-section (3) of Section 33 of the said Act. This view of the Court is fully supported by the observations made by the Supreme Court in case of P.K. Unni v. Nirmala Industries reported in , which reads as under:

The Court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what is said : See *Nalinakhya Bysack Vs. Shyam Sunder Halder and Others*, . Assuming there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court cannot add words to a state or read words in to it which are not there, especially when the literal reading produces an intelligible result. "No case can be found to authorise any Court to alter a word so as to produce a casus omissus": Per Lord Halsbury, *Mersey Docks v. Henderson* 1888 (13) App Cas 595. we cannot add the legislature's defective phrasing of an Act, we cannot add and mead, and, by construction, make up deficiencies which are left there": *Crawford v. Spooner* 1846 (6) Moor P. C. 1

22. Thus, examining the Clause (i) of Sub-section (3) of Section 33 from all possible angles, namely. Statement of Objects & Reasons of the Act, the object underlying Sections 32 and 33 of the said Act, definition meaning of the word "pollution" as given in Section 2(e) of the Act, how the same should be interpreted in the light of ordinary rules of interpretation in the background of the facts and circumstances of these cases, it is very clear that the learned Judge has committed patent and obvious error in appreciating and interpreting the word "desist" in its proper perspective.

23. Further, in view of the fact that Section 33 of the Act is an independent proceeding, as held above, the learned Judge while exercising his jurisdiction u/s 397 of the Criminal Procedure Code, either should have confirmed the impugned

orders passed by the learned Magistrate or set aside the same, but under no circumstances, he was justified in opting for alternative course by giving directions to the parties to the proceedings.

24. This takes us now to equally important concern voiced by the learned Advocate for the petitioner-Board in pointing out from the Chart No. I submitted that the Pollution Cases are not proceeded with as expeditiously as possible in some of the subordinate Courts! Now in order to verify, confirm and have the latest position regarding the pending Pollution Cases, and further in order to avoid some inadvertent possible mistakes in the matter of statistical data on the point furnished by the petitioner-Board, This Court in the midst of hearing had called for upto date information from all the subordinate Courts by flashing wireless messages to each one of it, and indeed This Court is happy to note and take on record the efficient response displayed by all the learned Judges and Magistrates in doing needful in the matter within the shortest possible time of 4 days ! Remarkable indeed! Accordingly, This Court would further be failing in its duty if it does not pat their back for efficient and excellent work "The said complied Chart reads as under:

CHART II

Statement Showing The Number Of Cases Of-

(I) AIR (Prevention & Control of Pollution) Act, 1981;

(II) Water (Prevention & Control of Pollution) Act, 1974; And

(III) Environment Protection Act, 1986.

Pending as on 1st April, 1993 in the subordinate Courts of the State.

Name of the AIR ACT, 1981 WATER ACT, 1974																	
												Court					
85	86	87	88	89	90	91	92	Total	85	86	87	88	89	90	91	92	Total

Amrell J.M.F.C. Court	...	...	...	Nil	...	...	...	...	-	-	-	-	1	-	2	3	Kodinar
Banaskantha	...	...	...	Nil	...	...	...	...	...	...	...	Nil	...	...	...	...	Bharuch Chief
Court	...	...	...	...	...	...	...	...	-	1	-	1	1	-	1	-	Ankleshwar Court
8	-	5	13	6	27	13	73	Jt. Court, Ankleshwar	-	-	-	1	-	-	4	2	2
3	6	5	28	6	56	Jt. Court, Rajpipla	-	-	-	-	1	-	-	-	1	-	Bhavnagar J.M.F.C, Rajpipla
-	-	1	1	-	-	-	-	Nil	-	-	-	1	-	-	1	-	-
-	-	-	-	-	-	-	-	Nil	Kutch C.J.M., Bhuj	-	-	-	1	-	1	-	-

Name of the AIR ACT, 1981 WATER ACT, 1974																	
												Court					
85	86	87	88	89	90	91	92	Total	85	86	87	88	89	90	91	92	Total

Junagadh C.J.M., Junagadh - - - - - 1 - - - - 2 3 Veraval Court - - - - -
 1 - 1 - 1 - - - - - 1 2nd Jt. C.J. (J.D.) & J.M.F.C. Mehiana J.M.F.C. Court, Kadi- - 1
 - - - - 3 4 - - - 1 1 6 5 - 13 J.M.F.C., Kalol - - - 2 - - - - 2 - 4 - - 1 3 1 1 10
 Panchmahal J.M.F.C., Dahod - - - 1 - - - - 1 - - - - - 2 - 2 C.J.M.. Godhra - - - - -
 - - - Nil - - - - - 1 - 1 J.M.F.C., Lunavada - - - - - Nil - - - - - 1 1 2
 J.M.F.C., Kalol - - - - - Nil - - - - 1 - 2 - 3 J.M.F.C., Halol - - - - - Nil - 1 -
 - 3 4 15 9 32 Rajkot C.J.M., Rajkot - - - - - Nil - 1 1 - 2 1 - - 5 J.M.F.C.,
 Rajkot - - - - 1 1 - - 2 - 2 7 2 1 7 3 1 22 J.M.F.C., Gondal - - - - - Nil - - - - 3
 1 1 - 5 J.M.F.C., Jetpur - - - - 1 - - - 1 - - - 18 - 5 3 26 Jt. J.M.F.C., Dhoraji- - - -
 - - - - Nil - - - - 2 - - 2 Jt. J.M.F.C., Jetpur- - - - - Nil - - - - 1 3 5 1 10
 J.M.F.C., Upleta - - - - - Nil - - 2 - - - - 2 J.M.F.C., Vankaner - - - - - Nil
 - - 2 - - - - 2

_____ Name of the AIR ACT, 1981 | WATER ACT,
 1974 ----- -- |----- Court
 85 86 87 88 89 90 91 92 Total| 85 86 87 88 89 90 91 92 Total _____

_____ Sabarkantha - - - - - Nil - - - - - Nil Surat C.J.M.,
 Surat - - 2 17 33 3 3 2 60 1 6 11 13 39 37 71 37 215 J.M.F.C., Kathore - - - - -
 - - Nil - - - - - 2 2 J.M.F.C., Bardoli - - - - - Nil - - - - 2 2 2 6 Jt. J.M.F.C.,
 Bardoli - - - - - 2 - 2 - - - 2 11 6 2 21 Surendranagar C.J.M., S'nagar - - - - -
 - Nil - - - - - 1 1 J.M.F.C., Wadwan - - - - - Nil - - - - 3 - - 3 J.M.F.C.,
 Sayla - - - - - Nil - - - - - 11 Jt. J.M.F.C., Dh"gdhra - - - - - Nil 1 - - - -
 - - 1 Vadodara 2nd Jt. J.M.F.C., - - - - - Nil 3 1 - - - - 4 Vadodara 3rd Jt.
 J.M.F.C., - - - - - 1 - 1 - - - - 1 1 2 Vadodara 4th J.M.F.C., - - 2 3 1 - - - 6 - 4
 17 15 7 33 43 - 119 Vadodara J.M.F.C. (Muni.) - - - - - 1 - 1 - - - 2 1 - - - 5
 J.M.F.C., Savli - - - - - Nil - - - - - 2 - 2 Valsad C.J.M., Navasari - - - - 1 - - -
 1 - - - - 1 - - - 1

_____ Name of the AIR ACT, 1981 | WATER ACT,
 1974 ----- -- |----- Court
 85 86 87 88 89 90 91 92 Total| 85 86 87 88 89 90 91 92 Total _____

J.M.F.C., Pardi - - - 2 7 9 - - 18 - - 5 6 31 28 24 29 123 J.M.F.C., Umargaon - - -
 - 1 1 - - 2 - - 1 3 2 1 - 7 14 J.M.F.C., Gandevi - - - - - Nil - - - 2 1 - 1 - 4
 Ahmedabad Chief MM - - 9 29 4 8 2 - 52 - 2 11 12 20 41 40 17 143 Ahmedabad
 (Rural) C.J.M., Ahmedabad - - - - 1 - - - 1 - - 1 1 1 2 1 - 6 2nd JL J.M.F.C. - - - -
 - - - - Nil - - - - 1 - - 3rd Jt. J.M.F.C. - - - - 1 - - - 1 - - - - - Nil J.M.F.C.,

Dholka - - 2 - - - - - 2 - - - - - Nil Jt. J.M.F.C., Dholka- - - - - Nil - - - - -
 - - - 1 J.M.F.C., G'nagar - - - - - Nil - - - - 1 1 - - 2 J.M.F.C., Sanand - 1 - 3 -
 - - 1 5 - 1 - - 3 - 1 1 6 Jamnagar J.M.F.C., Dwarka - - - - 1 - - - 1 - - - - - Nil
 C.J.M., Jamnagar - - - - - Nil - - - - - 2 2 4 Kheda 4th Jt.(S.D.)Nadiad)- - -
 - - - - Nil - - - - 1 - 1 2 C.J.M., Nadiad - - - - - Nil - - - - 2 2 1 2 7 2nd Jt.
 (J.D.) Nadiad - - - - - Nil - - - - - 1 - 1 2nd Jt (J.D.) Anand - - - - - Nil -
 1 1 2 - 1 - 1 6 Jt. J.M.F.C., Khambat- - - - - Nil - - - - 1 - 1 2 Jt. J.M.F.C.,
 Borsad - - - - - Nil - - - - - 2 2 - - - - - 168 986

25. While comparing the above two charts, it appears that the Chart No. I submitted by the learned Advocate for the petitioner-Board is upto 1st April, 1993, while Chart No. II compiled out of the information received from subordinate Courts shows position of pending cases upto 31st December, 1992, and in that view of the matter due to gap of three months in between, the number of pending cases to that extent do not tally exactly, and that is the only difference.

26. From the above two charts, it prima facie appears the number of Pollution Cases are just pending before the trial Courts, waiting their turn for disposal. Mr. Baxi accordingly, though by the large is quite right when he submitted that such cases should be disposed of as expeditiously as possible. Still, it must be stated that it would indeed not be just and proper to mechanically put all the Pollution Cases at a par with Supreme Court decision rendered in case of M.C. Mehta v. Union of India (supra). In that case, the problem of pollution in river "Ganga" had become very acute, and therefore, the Supreme Court went on to especially request the High Court, in the facts and circumstances of that particular case, to decide the same within 2-3 months" time. Now, if any of the cases enlisted in above Charts, there is indeed such grave urgency, as the one noted in case of M. C. Mehta v. Union of India (supra), then certainly as directed by the Supreme Court, the Pollution Cases are definitely required to be decided within 2-3 months time, otherwise, some reasonable time will have to be given to the trial Courts in deciding the same. Of course, when This Court says that some reasonable time should be given, it does not necessarily mean that concerned subordinate Courts are stopped from disposing of the matters at their earliest convenience, as the pollution itself is a very serious problem. Every Court will have to see that the said cases are attended to and decided as expeditiously as possible. Though every case may not get finally decided within 2-3 months, but at the same time, the concerned Court surely shall have to bear in mind one most important aspect, namely, that any judgment and order passed by it, under the Pollution Act, is likely, to be carried further before the superior Courts right upto the Supreme Court, by any of the aggrieved parties. Now, this statutory process of exhausting remedy right upto the Supreme Court is quite time-consuming and till the time final verdict is obtained in the matter, the problem of pollution may go on becoming quite acute! causing irreparable loss to beneficiaries under the Act. Therefore, at every stage, that is to say from the very first step of the ladder of Courts heirarchy, viz., the Court of the learned Magistrate, thereafter the Session

Court, thereafter the High Court, and finally the Supreme Court, if the matter is to go on consuming time, at every stage, this painful lingering process could as well aggravate the problem of pollution still further, and in a way could as well negate and defeat the very purpose and object for which the Pollution Act came to be enacted by the Legislature! It is for this special reason that every Court entertaining the pollution matters will have to keep this picture before its mind in order to see that pollution matters do not go out of sight. Further, it is desirable that every Court should maintain a special register of the Pollution Cases so as to keep track upon them for immediate disposal.

27. It is indeed painful to note that the matters under the Pollution Acts have remained pending right from the year 1985, i.e., to say for long eight years! The obvious question, under the circumstances would be "whether the alleged pollution could have waited all these years without exploiting the environment and thereby simultaneously adversely affecting the cluster of survivals as referred to above?" Is not the problem of pollution as grave and serious as that of the place where fire has broken out which once broken out goes on spreading, causing damage both to life and property! If the extinguishment of fire is the emergent requirement, is not pollution equally emergent problem requiring speedy attention and justice? Every Court, in fact when it is called upon to decide the pollution matters, must bring to its consciousness this emergency aspect. It is only when the judicial consciousness is fully enlightened, that the cases will stop delaying/piling up in the Court rooms. It is true that pollution in some cases, at the initial stage, may not be that grave and acute, but at the same time, with the passage of time and industrialisation, the same may become quite grave and acute! Under such circumstances, merely because at the initial stage problem which did not appear to be that grave, it should not give any ground to any Court to relax till the time it becomes quite serious and then to rush up the proceedings. Thus, taking into consideration the aforesaid discussion and the facts and circumstances of these matters, the present group should have been disposed of at quite earlier stage. Sometime, such matters are not attended by the Courts immediately because it is a matter of common knowledge that Courts are practically over-burdened with the back-log of cases, and the cases are generally decided as they are placed before it in the ordinary course by the office. As a matter of fact, in order to get decided the pollution matters earlier, it is the duty of the Pollution Boards, the real aggrieved party, to file some Urgent-Note highlighting the gravity and seriousness of the problem, and thereby requesting the concerned Court to fix the matter for early final hearing. If this is not done, it is very likely that the proceedings may get delayed for no fault of the Court! Thus, henceforth, it will be the duty of the Pollution Boards to see that their matters get disposed of as early as possible by requesting the concerned Courts at regular intervals for disposing of the same by getting fixed dates.

28. The end result of the aforesaid discussion to be briefly summarized T> reads as under:

(i) That Section 33 of the Act is an independent provision, and accordingly, the proceedings initiated thereunder being quite distinct, the aggrieved Pollution Board was empowered to make an application to the Court, and to pray for urgent necessary reliefs restraining the respondents who were likely to cause pollution, and the learned Magistrate in his turn was quite justified in directing the respondent to desist from taking such action as was likely to cause pollution.

(ii) That the expression "to desist from taking such action is likely to cause pollution" cannot be given a meaning as to giving direction of "closure of units" as the same amounts to re-writing the Clause (i) of Sub-section (3) of Section 33 of the Act.

(iii) That having regard to the clear-cut provisions of Section 33 of the Act as well as u/s 401 of the Criminal Procedure Code, there is no scope for any direction being given to the parties as has been done in the instant cases;

(iv) That the pollution has become a menacing global problem and every day that it passes it is assuming an alarming proportion and grave situation of the worst type of subtle terrorism, and in that view of the matter, the law enforcing agencies like the Air and Water Pollution Control Boards and the Courts of Law have a special role to play and accordingly the sacred duty to be discharged to the Society in seeing that the complaints under the said Act are attended to and decided as expeditiously as possible on the emergency basis. If this urgency and importance of the Act, in the context of the national and international/global situation is not understood in its proper spirit and perspective, and made a culture to live with, then no amount of legislation and the platform cries against the pollution in medias like newspapers, magazines, radio, TVs, Seminars at national and international level, is going to have any worthwhile meaning! The aforesaid medias are of course quite good and useful enough, but the same are good to the limited extent only, that too at the most get focused the attention of masses to the gravity and seriousness of the problem of pollution, and to inform and educate them against the further increasing dangers to air/water pollution, calling for ultimate immediate action. The gap between the words and action, between enacting piece of legislation and effectively enforcing the same shall have to be bridged by the honest, sincere, efficient, duty-conscious, socially oriented law enforcing agencies namely, both the Pollution Control Boards and the Courts who are the ultimate trustees of the beneficiary (Society) under the Act. If this bridge is shaking or inefficient, then no object of the Act would be in a position to cross over to the other end. These two are the ultimate trustees of the sovereign will of the people, and therefore, heavy responsibility lies with the said two agencies. If any of them shows remissness in taking action against the defaulting units that will further aggravate the pollution problem.

(v) That the delinquent industrial units, accused of discharging the effluent water in the river also should not take the proceedings in the spirit of confrontation making it a prestige issue and rather should reasonably co-operate in the manner which saves the situation for all, as the Managers and the Owners of the

said Units are as much integral part of the society which can also ultimately become the victim of the pollution.

(vi) That in order to forestall the delay of pending cases in the Court, the complainant after filing the complaint, should be on guard to see that the proceedings before the Court are conducted as expeditiously as possible without wasting any time to the disadvantage of the object for which the Acts came to be specially enacted. This can be done in the following manner:

(a) After initiating the first step of proceedings before the Court, the Complainant should take next step of taking direct service of the summons to be served upon the accused and or witnesses from the Court, and in case if he feels any difficulty in serving the same on any ground, he should certainly initiate third step of requesting the concerned Court to give Police assistance for effective service of the summons, which the Court shall grant.

(b) He should take special care to know the relevant provisions contained in between Section 61 to 90 prescribed in Chapter-VI of the Code which pertains to the "Processes to Compel Appearance" and as to in what manner the services of summons are to be effected, and in case if the accused is not available, what are the other alternative ways and means in which the same can be effectively served upon him, etc.

(c) Thereafter, on every date fixed for hearing before the Court, the complainant must remain present in time, and if for circumstances beyond control it was not possible to appear, then to send appropriate application giving reasons for seeking the adjournment.

(d) That in case the accused seeks some adjournments, the Complainant should consider it as his duty to oppose and object the same in writing, and yet if for whatever reasons the Court grants the same on unreasonable ground, then he should press hard for the cost, and in a given case, for exemplary cost also. If the complainant feels that even the, exemplary cost does not make any deterring effect and the accused is delaying the proceedings, then grievance should be made to the superior Court for expeditious disposal of the cases, by filing appropriate application.

(e) Not only that but he should also see that moment the accused appears before the Court, his plea is immediately recorded and the case is not adjourned under some fictitious pretexts.

(f) That he should not waste any time in stepping-in in the Witness Box for getting examined himself and/or any other witnesses before the Court.

(g) That even on the days on which there is strike in the Court, looking to the gravity and seriousness of the pollution problem, the complainant must appear before the Court and insist for the trial of the cases, exemplary cost, etc. Not to do this should be treated as not discharging duty faithfully.

(h) In the event, the trial Court decides a case in favour of the accused, he should at once apply for certified copy of the same and move the higher-ups and the superior Court as expeditiously as possible, and not the manner in which the Board has moved in the present Criminal Revision Applications, i.e., beyond time for which ultimately delay condonation applications were filed and the same came to be granted. Such a negligence would unnecessarily further prolong the proceedings for the simple reason that for the purpose of delay condonation, a separate application is to be filed. Not only that but the other side is required to be heard. Many a times, services of the Court are cleverly avoided which in turn further delays the proceedings. The time factor in pollution matters is a very important factor which the complainant must bear in mind. Accordingly, in order to see that such delays do not take place in future, all the complainants should be vigilant, and if any one of them is found guilty in the said regard, the department should strictly deal with him. This is indeed extremely important and necessary because, the success or failure of any law and its objects ultimately depends upon the quality of human agency through which it projects through. Thus, howsoever lofty and ideal a particular Act may be, if the person to whom it is entrusted is inefficient or having no social consciousness, the sense of accountability, and in a given case corrupt, then nothing could be achieved by way of any goal and quite rightly so as what the Law by itself, standing alone in black and while cold prints in a book can do? In fact, it is only when the spark of the Legislative intent kindles the very same sense of anxiety, urgency and responsibility on the part of Law Enforcing Agency that the Law would be able to manifest itself and blossom into the full flowering of social justice.

(i) In fact, if the complainant fails to discharge any of the aforesaid duties, without any just and reasonable ground, the department must take appropriate action against him. This is indeed extremely important and necessary because the success or failure of any Law and its objects ultimately depends upon the quality of human agency through which it has to project itself.

(vii) Similarly also, alike some of the duties mentioned above for the complainant, the concerned Court has also certain duties to see, viz.

(a) Cases are not adjourned on mere asking unless it is unavoidably must in the interest of justice;

(b) The plea of the accused should be recorded at once without adjourning the matter to some future date;

(c) That all the necessary witnesses should be examined at the earliest"

(d) In case, for whatever reasons, if the complainant is absent when the case is called out, the accused should not be mechanically acquitted, rather the cases should be adjourned to some future date. Even if on the adjourned date, if the complainant does not remain present, this also should not be a ground to acquit the accused. In fact, under such circumstances, when the complainant is found to be recalcitrant, the learned Magistrate should at once bring it to the notice of

the superior officer regarding the alleged misconduct of the complainant. In a given case, it would be quite within the right of the activist Court to secure presence of the complainant by issuing warrants even. The idea is neither any defaulting industrial units or even the complainant could be permitted to trifle and play with the honour and dignity of any Legislation and obstruct it on reaching to its goal of social justice for which it is made.

(e) In substance, under no circumstances, the object of the Act should be made to crucify on the altar of the freelance adjournments and the dialatory tactics of the accused.

29. In the result, this group of seven Criminal Revision Applications succeed and are allowed. The impugned judgment and order passed by the learned Session Judge, Surat is hereby quashed and set aside. The order passed by the learned Magistrate is hereby confirmed. However, This Court of its own, suspends the operation, implementation and enforcement of this judgment for a period of one month from today. Rule made absolute.