

(1995) 01 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 269 of 1989

H.P. State Pollution Control Board

APPELLANT

Vs

Nu-Chem Industries Paonta Sahib and Another

RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 17, 17(1), 18, 19, 2
Constitution of India, 1950 — Article 253
Criminal Procedure Code, 1973 (CrPC) — Section 16(1), 16(2A), 313, 37, 38
Prevention of Food Adulteration Act, 1954 — Section 20
Water (Prevention and Control of Pollution) Act, 1974 — Section 4

Citation : (1995) 2 ILR HP 786

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Shyama Dogra, for the Appellant; Bhupinder Gupta, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal is directed against the order of Sessions Judge, Solan and Sirmour Districts at Nahan in Criminal Appeal No. 19-N/10 of 1989 dated September 2, 1989 whereby the order of Judicial Magistrate, First Class (II), Paonta Sahib dated March 21, 1989 has been set aside.

2. Himachal Pradesh State Board of Prevention and Control of Water Pollution (hereafter "Pollution Board") filed a complaint u/s 39 of the Air Prevention and Control of Pollution Act, 1981 (hereafter "Air Pollution Act") against the accused complaining that accused-1 is an industry engaged in the production of lime while accused-2 is the Managing Director and incharge of and responsible for the conduct of the business of the company, operating since October, 1983. It is a specified industry under the Air Pollution Act within the air pollution control area, but was operating without the previous consent of the Pollution Board as required u/s 21 of the Air Pollution Act. On this complaint, the accused were summoned. Accused Niraj Gupta appeared and accusation was put to him on

September 5, 1986 to which he pleaded not guilty and claimed trial. In support of its case, complainant examined P.J.S. Dadhwal (PW-1), Yash Pal Verma (PW-2) and R.R. Gautam (PW-3). Certain documents were also filed in support of the allegation.

3. The accused was examined u/s 313, Code of Criminal Procedure. He denied the case against him and stated that the industry was not causing any air pollution so a false complaint has been filed against him. Accused Niraj Gupta also, appeared as a witness (DW-1). The trial Court examined whether the complainant had proved that the accused was operating the industrial plant specified in the Schedule of Air Pollution Act, within the air pollution control area, without the previous consent of the Pollution Board as required u/s 21 of the Air Pollution Act. It held that the complainant had been able to prove that the accused was operating the unit since 1983, which was specified in the Schedule, in an air pollution control area, without obtaining prior consent of the complainant. Accordingly, accused-1 (Sic. accused-2?) was convicted and sentenced to pay fine of Rs. 400/- and in default of payment of fine, to undergo imprisonment for one month.

4. The judgment was challenged by accused Niraj Gupta in the Court of Sessions Judge, Solan and Sirmour Districts. By decision of September 2, 1989, the appeal was allowed on the ground that the complaint had not been filed by the Pollution Board but by P.J.S. Dadhwal, Assistant Engineer under the authority of the State Board and he has only signed it. In such a case, decision of apex Court in AIR 1970 SC 318, Dhian Singh v. Municipal Board was applicable and in absence of the prior sanction of the Pollution Board, the complaint could not be filed without compliance of Section 43 of the Air Pollution Act since the requisite sanction had not been obtained before filing the complaint which was mandatory. It vitiated the trial. The accused could not be convicted in the absence of the requisite sanction. The second ground taken by the Appellate Court is based on the concession of Public Prosecutor for the Pollution Board that accused-2 could not be convicted without passing an order of conviction against accused-1. Not satisfied with this judgment, the Pollution Board has preferred this appeal.

5. Before discussing the submissions advanced by the learned Counsel for the parties, it would be appropriate to quote some of the relevant provisions of the Air Pollution Act in order to facilitate the reference.

2. Definitions. - In this Act, unless the context otherwise requires.-

(a) "air pollutant" means any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant;

(c) "approved appliance" means any equipment or gadget used for the burning of any combustible material or for generating or consuming any fume, gas or

particulate matter and approved by the State Board for the purposes of this Act;

(d) XXX XXX XXX

(e) XXX XXX XXX

(f) XXX XXX XXX

(g) XXX XXX XXX

(h) "chimney" includes any structure with an opening or outlet from or through which any air pollutant may be emitted;

(i) "control equipment" means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant;

(j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

(m) "occupier", in relation to any factory or premises, means* the person who has control over the affairs of the factory or the premises and whether the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory or the premises;

(o) "State Board" means, -

(i) in relation to a State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a State Board for the Prevention and Control of Water Pollution u/s 4 of that Act, the said State Board; and

(ii) in relation to any other State, the State Board for the Prevention and Control of Air Pollution constituted by the State Government u/s 5 of this Act.

6. The State Boards are constituted u/s 5 of the Air Pollution Act and its functions are provided u/s 17. These functions are:

17. Functions of State Boards.- (1) Subject to the provisions of the Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the functions of a State Board shall be-

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;

(c) to collect and disseminate information relating to air pollution;

(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such person as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) to lay down, in consultation with Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

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

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

7. u/s 18, it has power to give the following kinds of directions:

18. Power to give directions,- In the performance of its functions under this Act-

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board. Shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the

Central Government for its decision.

Chapter IV deals with prevention and control of air pollution. Section 19 deals with power of State Govt. to declare air pollution control areas. Section 21 deals with restrictions on use of certain industrial plants. It provides that:

21. Restrictions on use of certain industrial plants.- (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area.

(2) An application for consent of the State Board under Sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant for the purpose of any industry specified in the Schedule, such person shall make the application under this Sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in Sub-section (1), the State Board shall, by order in writing, either grant or refuse, for reasons to be recorded in the order, the consent applied for.

(5) Every person to whom consent has been granted by the State Board under Sub-section (4), shall comply with the following conditions, namely:

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or Clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf;

Provided that in the case of a person operating any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area immediately before the date of declaration of such area as. an air pollution control area, the period so specified shall not be less than six months:

Provided further that:

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under Clause (ii), or

(c) after the erection or re-erection of any chimney under Clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

6. If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in Sub-section (5) require or requires variation (including the charge of any control equipment, either in whole or in part, the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

7. Where a person to whom consent has been granted by the State Board under Sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

7-A. Section 22 provides that:

22. Persons carrying on industry etc., not to allow emission of air pollutants in excess of the standards laid down by the State Board. No person carrying on any industry specified in the Schedule or operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under Clause (9) of Sub-section (1) of Section 17.

8. Section 23 deals with furnishing of information to State Board and other agencies in certain cases:

(1) Where in any air pollution control area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where such emission occurs or is

apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in Sub-section (1), whether through intimation under that Sub-section or otherwise, the State Board and the authorities or agencies shall, as early as practicable, cause such remedial measures to be taken as are necessary to mitigate the emission of such air pollutants.

(3) Expenses, if any, incurred by the State Board, authority or agency with respect to the remedial measures referred to in Sub-section (2) together with interest (at such reasonable rate, as the State Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by that Board, authority or agency from the person. (SIC) as arrears of land (SIC) or of public demand.

9. Section 24 deals with power of entry and inspection. It is in the following terms:

24. Power of entry and inspection.-

(1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place-

(a) for the purpose of performing any of the functions of the State Board entrusted to him;

(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;

(c) for the purpose of examining and testing any control equipment, industrial plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such control equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder.

(2) Every person carrying on any industry specified in the Schedule and every person operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by the State Board under Sub-section (1) for carrying out the functions under that Sub-section and if he fails to do so without a reasonable cause or excuse, he

shall be guilty of an offence under this Act.

(3) If any person wilfully delays or obstructs any person empowered by the State Board under Sub-section (1) in the discharge of his duties, he shall be guilty of an offence under this Act.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), or, in relation to the State of Jammu and Kashmir, or any area in which that Code is not in force, the provisions of any corresponding law in force in that State or area, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued u/s 94 of the said Code or, as the case may be", under the corresponding provisions of the said law.

10. Section 25 refers to power to obtain information from the occupier or any other person carrying on any industry or operating any control equipment or industrial plant and for the purpose of verifying the correctness of such information, the State Board or such officer shall have the right to inspect the premises where such industry, control equipment or industrial plant is being carried on or operated.

11. Section 26 deals with power to take sample of air or emission and procedure to be followed in connection therewith. Report of the result of analysis on sample taken u/s 20, is provided u/s 27, while Section 28 deals with the establishment of State Air Laboratory and Section 31 provides for appeals by any person aggrieved by an order made by the State Board under this Act. It also provides limitation for doing so.

12. Chapter VI provides for penalties and procedure. Sections 37 to 40 are as follows:

37. Failure to comply with the provisions of Section 21(5) or Section 22 or with orders or directions issued under the Act.-

(1) Whoever fails to comply with the provisions of Sub-section (5) of Section 21 or Section 22 or with any order or direction given under this Act shall, in respect of each such failure, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees, or with both, and in case the failure continues, with an additional fine which may extend to one hundred rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in Sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to six months.

38. Penalties for certain acts.-whoever

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by

or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act; or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to the Board or any offices or other employee of the "Board any information required by the Board or such officer or other employee for the purpose of this Act, or

(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under Sub-section (1) of Section 23, or

(f) in giving any information which he is required to give under this Act, makes statement which is false in any material particular, or

(g) for the purpose of obtaining any consent u/s 21 makes a statement which is false in any material particular.

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

39. Penalty for contravention of certain provisions of the Act. - Whoever contravenes any of the provision of this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with fine which may extend to five thousand rupees, and in the case of continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

40. Offencer by companies.- (1) Where an (SIC) this Act has been committed (SIC) every person who, at the time (SIC) offence was committed, was directly in incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due dilligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against

and punished accordingly.

Explanation - For" the purposes of this section,-

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

13. Then, Section 43 deals with the cognizance of offences. It states that:

43. Cognizance of offences. - No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the State Board, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 54 deals with power of State Government to make rules.

14. Statement of Objects and Reasons to Pollution Act, 1981, highlights the importance of the Pollution Act. It reads:

With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are also densely populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, have confirmed that the cities of Calcutta, Bombay, Delhi etc. are facing the impact of air pollution on a steadily increasing level.

2. The presence in air, beyond certain limits, of various pollutants discharged through industrial emission and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incinerations, etc., has a detrimental effect on the health of the people as also on animal life, vegetation and property.

3. In the United Nations Conference on Human Environment held in Stockholm in June, 1972, in which Indian Participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The Government has decided to implement these decisions of the said Conference in so far as they relate to the preservation of the quality of air and control of air pollution.

4. It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution and of a State Board for the Prevention and Control of Air Pollution in the Union territories. It is also proposed that the State Boards constituted under the said

Act will also perform the functions of State Boards in respect of prevention, control and abatement of air pollution. However, in those States in which State Boards for the Prevention and Control of Water Pollution have not been constituted under that Act, separate State Boards for the Prevention and Control of Air Pollution are proposed to be constituted.

15. Importance of the subject is demonstrable by the fact that certain fundamental changes were made in the Pollution Act, 1981 in 1987 (by Act No. 47 of 1987). The statement of objects and reasons provides that:

The Air (Prevention and Control of Pollution) Act, 1981 was enacted under Article 253 of the Constitution to implement the decisions taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972 in which India participated.

2. The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and have brought these to the notice of Government. The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Government and the Central and State Boards. Taking into account the views expressed, Government have decided to make certain amendments to the Act in order to remove such difficulties.

3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:

(i) The Central Board is proposed to be empowered to exercise the powers and perform the functions of a State Board in specific situations, particularly when a State Board fails to act and comply with the directions issued by the Central Board. It is also proposed to recover the cost of exercise of such powers and the performance of such functions by the Central Board from the person or persons concerned, if the State Board is empowered to recover such costs under the provisions of the Act, as arrears of land revenue or of public demand.

(ii) It is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board even while establishing an industrial plant.

(iii) It is proposed to empower the Boards to obtain information regarding discharge of pollution in excess of specified standards by the industries operating even outside the air pollution control areas.

(iv) In order to prevent effectively air pollution, the punishments provided in the Act are proposed to be made stricter.

(v) In order to elicit public co-operation, it is proposed that any person should be able to complain to the courts regarding violations of the provisions of the Act after giving a notice of sixty days to the Board or the officer authorised in this

behalf.

(vi) It is proposed to omit the Schedule to the Act so as to make the Act applicable to all the industries causing air pollution.

(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishment or stoppage or regulation of supply of services such as, water and, electricity.

(viii) It is proposed to empower the Boards to approach courts to pass orders restraining any person from causing air pollution.

(ix) For increasing the financial resources of the Boards, it is proposed to empower them to raise moneys by means of obtaining loans and issue of debentures.

4. The Bill seeks to achieve the above objects.

16. It may not necessary to quote all these changes since the present case is to be decided under Pollution Act, 1981. However, Section 43 may be quoted so that difference between the old and this Section may be seen:

43. Cognizance of offences.-(1) No Court shall take cognizance of any offence under this Act except on a complaint made by-

(a) A Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or -officer authorised as aforesaid, and no court inferior to that of a Metropolitan first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under Cl.(b) of Sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion against the public interest.

17. It was contended by Mrs. Shyama Dogra, learned Counsel for the Pollution Board, that it has been wrongly construed by the First Appellate Court that there is no valid sanction for initiating the prosecution against, the accused. As a matter of fact, it is not a case of sanction but a case of authorisation. There is marked difference between authorisation and sanction. Section 43 of the Air Pollution Act provides for previous sanction in writing of the State Board for initiating a complaint giving jurisdiction to the Court to take cognizance of any offence under the Act. Section 20 of the Prevention of Food Adulteration Act, 1954 (hereafter "Food Act") requires written consent or initiating the prosecution. Sanction requires application of mind by the authority before according the same for prosecution. Authorisation is purely administrative in nature and does not

require application of mind to the facts of the case before order of authorisation for prosecution is passed. In order to point out the difference between "sanction" and "authorisation", reliance was placed on decisions like: 1962 (1) Cri.L.J. 166 *Madurai City Co-operative Milk Supply Union v. Food Inspector, Madurai Municipality* *Dhian Singh Vs. Municipal Board, Saharanpur*, and another *Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal*, , *Municipal Council Jaipur v. Bhura Santosh Kumar Datta Vs. Chairman, Sapatgram Small Town* *Committed and Another, The Corporation of Calcutta Vs. Md. Omer Ali and Another*, ; 1978 Cri.L.J.811, *A.K. Roy and Another Vs. State of Punjab and Others, A.K. Roy and Anr. v. State of Punjab and Anr.*; and 1988 (1) Crimes 943 *Union Products, Amritsar v. State of Himachal Pradesh*.

18. From the opposite side, Shri Bhupender Gupta contended that the proceedings could be launched with the previous sanction in writing of the Pollution Board. Since this has not been done, the Court could not take cognizance of the offence mentioned in the complaint. Neither the complaint nor document (Ext. PB) records that sanction of the Pollution Board has been obtained for filing the complaint against the accused. Shri P.J.S. Dadhwal, Assistant Engineer, may have general power for filing the complaint by virtue of document (Ext. PB) but he has not obtained specific sanction from the Board for instituting the complaint in this case. General authorisation (Ext. PB) would not be valid while dealing with a specific case. Reliance was placed on 1979 FAJ. All 23, *Lachham Singh v. State*.

19. Section 20 of the Food Act may be quoted as under:

20. Cognizance and trial of offences.-

(1) No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14-A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in Section 12, if he or it produces in court a copy of the report of the public analyst with the complaint.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under Sub-section (1-2A) of Section 16 shall be cognizable and non-bailable.

20. Section 43 provides that Court can take cognizance of any offence under the Air Pollution Act only when:

(a) the complaint disclosing commission of offence under the Air Pollution Act is

made by:

(i) the State Board; and in case it is not moved by the State Board, then:

(ii) with the previous sanction in writing of the State Board;

(b) no Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate First Class would try such a case.

It is plainly clear that when a complaint is made by the Board, previous sanction to launch the prosecution is not required. It is necessary when the State Board is not itself the complainant. Sub-section (3) of Section 5 of the Air Pollution Act states that every State Board, constituted under the Air Pollution Act, shall be a body corporate with the name specified by the State Government in the notification issued under Sub-section (1) having perpetual- succession and a common seal with power, subject to the provisions of the Air Pollution Act, to acquire and dispose of property and to contract, as may by the said name sue or be sued. Therefore, the State Board can initiate the complaint for the prosecution of the accused competently. Being a corporate body, it can initiate action through its officers. For doing so, only authorisation is necessary. This requirement has been fulfilled if one looks at the complaint in this case. The State Board is a complainant and Shri P.J.S. Dadhwal is the authorised representative to pursue it. Para 5 of the complaint states that:

That the Assistant Environmental Engineer of the Board is duly authorised to prosecute the defaulter by resolution of the Board and the accused are being prosecuted on behalf of the Board.

Therefore, when a complaint is filed by the State Board, previous sanction in writing for prosecuting the accused for commission of offence is not necessary. This is not a case where P.J.S. Dadhwal, Assistant Environmental Engineer has filed a complaint of his own requiring previous sanction in writing of the State Board. Accordingly, the contention that general authorisation (Ext. PB) would still require specific sanction to prosecute the accused, is clearly untenable as the complaint is filed by the State Board and the officers covered by its resolution (Ext. PB), are prosecuting the same. See: Dhian Singh Vs. Municipal Board, Saharanpur, .

21. Next, it was contended that the trial Court should also have convicted and sentenced the company alongwith its Managing Director. The omission appear to have taken place on the ground that the trial Court may have erroneously considered that the Company could not be sent to jail, therefore, it could not be convicted for the offence or it may have thought that since its affairs were managed by Niraj Gupta, the purpose of the Act was achieved by convicting and sentencing him. This approach, according to the learned counsel for the Pollution Board, is completely illegal. Both the accused deserve to be convicted and punished in this case. In order to support the contention, she placed strong reliance on AIR 1974 SC 434 Smt. Manibai and Anr. v. The State of Maharashtra

Municipal Corporation of Delhi Vs. J.B. Bottling Company Private Limited, State (Delhi Admn.) Vs. I.K. Nangia and Another, ; K.K. Nandi Vs. Amitabha Banerjee, FAC 210 M.C.D. v. Chela Ram and Anr. (1987) 3 SCC 684 , N.A. Palkhivala and Another Vs. Madhya Pradesh Pradushan Niwaran Mandal, R. Banerjee and others Vs. H.D. Dubey and others, ; and Section 39 of the Air Pollution Act.

22. Shri Bhupender Gupta submitted that since the Company has not been convicted and punished, there is no justification for convicting and punishing the Managing Director of the Company. Reference was made to City Corporation of Trivandrum Vs. V.P.N. Arunachalam Reddiar and Another, Daulat Ram Vs. State of Punjab, Dhian Singh Vs. Municipal Board, Saharanpur, ; and Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others,

23. Before dealing with the main question, it is necessary to decide whether the accused have committed the offence. The allegation is that accused-1 is engaged in. the production of lime since October, 1983. It is a specified industry under the Air Pollution Act within the air pollution control area requiring consent of the Board u/s 21 of the Air Pollution Act. Accused-2 is the Managing Director, directly incharge of and responsible for the conduct of the business of the Company. Therefore, both the accused are deemed to be guilty of the offence, liable to be proceeded against and punished u/s 39 of the Air Pollution Act. It has been stated by P.J.S. Dadhwal, Assistant Environmental Engineer, (PW-1) that accused-1 is manufacturing lime of different varieties. While doing so, smoke, gasses and dust are emitted into the atmosphere due to the burning of coal. The industry is located in the air pollution control area (Ext. PA) and the accused have no consent from the Pollution Board for" running the industry. It has been stated that he has been authorised by the Board to prosecute the accused and denies that the complaint has been filed without the consent or the Board. It has been denied that by running the industry, the accused were not creating air pollution.

24. Yash Pal Verma, Junior Engineer (PW-2) has also stated that the accused have not taken the consent of the State Board for running the industry. He had visited it number of times and has denied that the Unit is lying closed.

25. R.R. Gautam, Legal Assistant (PW-3) has also said that the accused have not obtained consent from the Board for running the industry. Document Ext. PB has also been proved by the complainant's witnesses. It has been admitted that design of chimney was sent by the accused and was approved by the State Board subject to certain conditions. It has also been stated that the industry is causing air pollution.

26. Niraj Gupta (DW-1) states that height of the chimney in the industry was about twelve metres, but admits that the Board had asked him to raise the height of the chimney to thirty metres and that the design submitted by him earlier was of thirty metres height. He also states that daily coal consumption of the industry was about three-and-a-half tonnes causing no air pollution thereby

denying the suggestion that by burning of three-and-a-half tonnes coal daily, the smoke was releasing carbon monoxide and other deadly gasses. He admits that he has not provided any apparatus in the industry which could provide extra air to the kiln. He did not know that due to the deficiency of Oxygen, release of Carbon Dioxide and Carbon Monoxide is more. He refers to the remittance of Rs. 1300/- and letter for consent to the Board and also the sending of the design of chimney but complains that the Board did not respond to his communications. He admits the issuance of certain communications from his office but denies some other which are not favourable to him, but the fact remains that the industry had started functioning before he sent these communications. Further, when the Board approved the design for the installation of the chimney subject to certain conditions, it was not installed promptly and effectively in accordance with the requirement of the Board. The industry was operated without consent from the Board, this is the result of the carefau study and understanding of the whole matter, violating Section 21 of the Air Pollution Act with impunity.

27. Today, we are extremely concerned with different kinds of threats to our environment. These are due to the massive industrialisation, mechanisation, motorisation and chemicalisation etc. They have resulted in poisoning the air, the rivers and the soil. Human life cannot sustain without air, food and water. In case there is pollution of air by poisonous gasses, smoke, smog and radiation, existence of life and vegetation would be seriously affected. Trees are being cut indiscriminately denudating lands, finishing (SIC) cover resulting in changed weather conditions, causing draughts, floods, extinction of rare species of plants, animals and birds. Minerals are being processed haphazardly causing air and water pollution, chemicals thrown into the rivers making the system all the more detrimental to the existence of human and plant life. Numerous legislations have been enacted to arrest the situation. Some work has been done but there is urgent need of doing much more in this behalf. Guide lines have been laid down by the apex Court and High Courts in numerous cases, for example, Delhi Gas Leakage, The Ganga Pollution Cases, Dehradun Quarring case, Calcutta Taj Hotel case and Kasauli Environment Pollution case etc.

28. Specifically speaking, air pollution involves undesirable introduction into the space of substances which are either foreign to it or are in excess of the normal requirement, therefore, harmful to man and his environment. Air consists of 75% nitrogen, 23% oxygen, 1.26% argon. Traces of other gases such as neon, Krypton, helium, hydrogen, xenon and ozone, 0.04% of carbondioxide and water vapours. (See: Pramod Singh Environmental Pollution and Management(1985).

It has been said by the same learned author that:

Pollutant emissions could be divided into two main groups - particulate and gaseious. The former consists of fine sol-ids or liquid droplets suspended in air. The larger sized particles are grit, fly ash, dust, and soot and the smaller sizes are smoke, mist and aerosol. Gaseous pollutants include the ideal gases such as sulpher dioxide, nitrogen oxides, carbon monoxide, ozone, hydrocarbons,

inorganic acids, fluorine (SIC) in varying amount besides the (SIC) by the gaseous contents.

29. Section 2(a) of the Air Pollution Act defines air pollutant as:

Any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

Air Pollution may, therefore, be due to combustion of fuels to produce energy for heating, power, transportation, industrial and commercial process, incineration, agricultural activities, sewerage treatment plants, unplanned construction and demolition activities etc. Air pollutant has serious affect on the quality of life, regional in particular and global in general. Increased precipitation, smog, storms, increased acidity of rain droplets are stated to be the result of air pollution. Globally, effects of air pollution are devastating. There is intimate connection between air pollution and human health. According to Dr. Irving J. Selikoff:

Air pollution is modern man's wolf at the door...we don't really know what many of the substances in the air do to people. It may take 50 years to know that.

Some of the effects of air pollution have, however, been stated to be as under:

1. Sufficiently high concentration of carbon monoxide, sulpherdioxide and nitrogen oxide, particulate matter and photochemical smog cause or aggravate chronic pulmonary diseases such as bronchitis, asthma, emphysema etc.
2. Cardiac vascular diseases have been related to long term exposure to atmospheric pollutants like carbon monoxide emitted from motor vehicles, burning of coal and oil furnaces smoking, and lead emitted from vehicular or industrial pollution.

It effects plants and animals too in their nature, growth, existence and annihilation. Common air pollutants, their sources and pathological effects on man has been summarised by Chhatwal, Encyclopaedia of Environmental Pollution and its Control (1989) (Vol. I p. 158) as under:

Pollutants Source Pathological effects on man

- 1 . Aldehydes Thermal decomposition of facts, oil, glycerol. Irritate nasal and respiratory tracts.
2. Ammonia Chemical Processes -dye making, explosives fertilizers. Inflamm upper respiratory passage.
3. Arsenic Coal and oil furnaces glass manufacturing, Damage kidneys cause jaundice, lung and skin cancer.
4. Benzene Refineries, motor vehicles smelters, Long term exposure may cause

leukemia

5. Cadmium Coal and oil furnaces. Long term exposure damages kidneys.
6. Carbon-monoxide Gasoline motor exhausts, Steel plants, smelters, oil and coal furnaces. Damages Lungs, weakens bones, Starves body of oxygen, damages heart.
7. Chlorine Chemical industries tract, mucous. Attacks respiratory membranes
8. Fluoride Ions Smelters, steel plants. Affects teeth.
9. Hydrocarbons Unburned gasoline vapour. Fog formed with combination of oxide of nitrogen affect respiratory system.
10. Hydrogen Fumigation, blast furnaces, chemical manufacturing. Interfere with nerve cells, produce dry throat, affect vision, headache.
- 11 . Hydrogen Chloride From incinerators. Irritates eyes lungs.
12. Hydrogen fluoride. Petroleum refineries fertilizer plants. Irritates skin, eyes, mucous membranes.
13. Hydrogen Sulfide. Refineries, sewage treatment pulp mills chemical industries. Irritate eyes cause nausea, bad smells.
14. Manganese Steel plants, power plants. Long term exposure cause Parkinson's disease.
15. Nickel Smelters, coal and oil furnaces. High exposure may cause lung cancer.
16. Nitrogen oxides Soft coal, motor vehicle exhausts. Bronchitis, lowers resistance to influenza.
17. Ozone Formed in sunlight from oxides of nitrogen and hydrocarbons. Irritates eyes aggravate asthma.
18. Phosgene Chemical and dye manufacturing pulmonary edema. Induce cough irritation and fatal.
19. Lead Smelters, Motor vehicles exhausts. Brain damage, affects growth high B.P.
20. Sulphur dioxide. Smelters, coal and oil combustion. Obstructs breathing irritates eyes.
- 21 . Suspended solids (as, soot, smoke). Manufacturing Process Incinerators. Cause Emphysema, eye irritation and possibly cancer.
30. Therefore, it can safely be understood that air pollution not only hazards human life physically but also has socio-economic effects around. Consequently, there is immediate requirement of enforcing laws stringently which task is to be performed by the authorities to whom the task of implementing such laws has

been assigned.

31. Adverting to the questions being discussed, It is plainly clear from Section 40 of the Air Pollution Act that not only the person who, when the offence was committed, was directly incharge and was responsible to the Company for the conduct of the business of the Company, but also the Company shall be deemed to be guilty of the offence and liable to be proceeded against and punished for the same, provided it is proved by the person that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence. In the facts and circumstances of this case, there is no doubt about the commission of the offence by both the accused. Looking to the seriousness of the offence, hyper technical pleas about the maintainability of the complaint and its prosecution are hardly acceptable, more so, in an offence of the nature requiring no mensrea on the part of the wrong-doer. In addition to this, these are offences against the society. Understanding the importance of the matter, provisions relating to penalties and Courts taking cognizance of offences have been amended by Act 47 of 1987 from April 1, 1988. Section 43, reproduced above, also envisages now that any person, who has given a notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid, can also file a complaint alleging commission of offence under the Act and seek punishment of wrong-doer. Resultently, it can be said that Section 43 has been made quite comprehensive in scope and application. Section 43 as it existed before April 1, 1988, was neither meant to be mandatory nor can be given narrow interpretation, more so, when read with Section 40. Both the accused have, therefore, committed offence u/s 21 of the Act and are liable to be punished u/s 39 of the Act.

32. The appeal is, therefore, allowed and each of the accused is punished with fine of Rs. 5,000/-. Since it was not pointed out that the accused were still continuing commission of the offence, additional fine for every day for the continuing contravention after the conviction by the trial Court is not being imposed. However, the Board would be at liberty to proceed against, the accused in accordance with law.