

(1992) 05 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 1640 of 1991

Jayant Vitamins Ltd. and Another

APPELLANT

Vs

Rampur Distillery and Chemical Co. Ltd. and Others

RESPONDENT

Date of Decision : 08-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Industries (Development and Regulation) Act, 1951 — Section 10, 11, 11A, 13, 29B(1)

Citation : (1992) J LJ 524

Hon'ble Judges : S.K Jha, C.J; V.S. Kokje, J

Bench : Division Bench

Advocate : R.G. Wagmare, for the Appellant; S.C. Bagdia, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Kokje, J.—The Petitioners challenged setting up of a Solvent Extraction plant by the Respondent No. 1 adjacent to their own plant producing bulk drugs like Vitamin C etc. The Petitioners contend that they have set up their plant in the year 1974 selecting a backward area of Ratlam for its free unpolluted environment as the process of manufacture of their product involves complex technologies including fermentation, which involves bacteria highly susceptible to pollution. The Petitioners also claim to have set up a residential colony on 54.25 acres of land nearby their factory. The Respondent No. 1 purchased a plot of land in the year 1984 admeasuring 25.5 acres in the vicinity of the Petitioners land. They wanted to set up a fertiliser plant on the land. The Petitioners objected to the setting up of the first Respondent's plant for manufacture of fertiliser on the ground that it would be a source of tremendous pollution in and around the area of village Dosigaon and the said activity was of hazardous nature." It appears that because of the objection raised by the Petitioners and the general atmosphere of hyper sensitivity and over cautiousness created by the Bhopal Gas Tragedy, the first Respondent had to abandon their plan to setup a fertiliser plant at the site adjacent to the Petitioners land in Ratlam. The fertiliser plant was

shifted to Khargone. According to the Petitioners themselves they started negotiations with the first Respondent for purchase of the land of the Respondent No. 1 for extension of their unit. However, the negotiations foundered and the Petitioners did not succeed in acquiring the first Respondent's plot of land for their extension.

2. Thereafter, the first Respondent decided to set up a solvent extraction plant on the plot and after getting necessary permissions, sanctions started construction of the factory. It is at this stage that this petition was filed challenging the setting up of a solvent extraction plant by the first Respondent on their plot of land adjacent to the Petitioners plant

3. The Petitioners objected to the setting up of a solvent extraction plant by the first Respondent adjacent to their plant on the ground of pollution because of leakage of Hexane, which is used in the solvent extraction plant, which according to the Petitioners is environmental hazard. Leakage of hexane nearby their own plant which generates high pressure hydrogen would be according to the Petitioners an explosion hazard and may bring about a situation like Bhopal Gas Tragedy. The Petitioners further contend that permissions and sanctions from various department of Government have been secured by the first Respondent by misrepresentation and by furnishing wrong data. They point out that according to the conditions of registration contained in the Annexures to the letters dated 6.11.1990, issued in favour of the Respondent No. 1 by the Respondent No. 5 Union Ministry of Industries, the first Respondent's plant could not be established within the municipal limit of Ratlam, whereas actually the land on which the plant is being put up is within municipal limit of Ratlam. It is further contended by the Petitioners that the Municipal Corporation of Ratlam, Respondent No. 2, granted sanction to construct against the building byelaws of 1981, which require a 30ft. wide road giving access to the factory and also requires that convenience of traffic has to be taken into account while granting sanctions. According to the Petitioners the first Respondent's plant does not have access through a 30ft. wide road and actually there is no motorable road on which trucks and other automobiles could pass. The Petitioners further contend that the plot of land on which the first Respondent is setting up a factory, is not declared to be an Industrial area by the Municipal Corporation, Ratlam and as such plan for construction of the factory could not have been sanctioned by the Respondent No. 2, Municipal Corporation, Ratlam under its bye-laws. It is further contended that there being no drainage facilities available for the plant, the Respondent No. 2 Municipal Corporation could not have sanctioned the plan for construction of factory on the first Respondent's plot of land. The Petitioner further contend that the Respondent No. 6 the Director, Industrial Health and Safety should not have granted permission to set up a solvent extraction plant near the Petitioners plant because the cumulative effect of emanation of High Pressure Hydrogen gas from the Petitioners plant and escape of hexane from the first Respondent's plant would be an explosion hazard, which the Respondent No. 6 was duty bound to prevent. The Petitioners also contend that under the

environmental guidelines for Industries, issued by the Government of India, Ministry of Industries, an industrial site has to maintain a distance at- least of 25 k.m. from ecologically and/or otherwise sensitive areas, which include religious and historical places and archaeological monuments. According to the Petitioners they have put up a temple at a huge cost, which falls in the category of religious and historical places as well as that of an archaeological monument According to the Petitioners, the first Respondent's plant would be using coal fired boilers which will emit flying coal ash, which ash will be harmful for the temple and its architecture. The Petitioners also point out that under the same guidelines and Industrial site has to be at-least 1/2 k.m. away from a high way and railway. It is also contended by the Petitioners that the same guidelines provide from green belt near a factory site, which has not been and could not be provided nearer the first Respondent's site. The permissions granted to set up a plant according to the Petitioners are violative of guidelines also. The Petitioners also contend that all the authorities, who have granted various permissions, sanctions were duty bound to provide a hearing in the matter to the owners of the factories in the vicinity and the public living in the surrounding area.

4. The first Respondent in its return has denied the allegations made in the petition and has also contended that the Petitioners have filed this petition malafide in order to pressurise and compel the first Respondent to transfer their plot to the Petitioners for their expansion programme. The first Respondent has also contended that the Petitioners themselves have violated the pollution control laws. They do not deserve to be heard by this Court as they have not come with clean hands. It is also contended that there is a deliberate delay in filing this petition and on the ground of delay also the petition deserved to be dismissed. A plea as to the availability of alternative remedy has also been raised by the first Respondent. On merits, the first Respondent has pointed out that Hexane is not a gas but is a liquid at normal atmospheric temperature and it s not possible that at normal atmopspheric temperature it would escape in the air and come in contact of Hydrogen in the air, though, it has been accepted that splint of Hexane may take place accidentally at times, which may cause a fire hazard, to control for which effective measures could be taken. However, it is denied that there is any possibility of an explosion hazard because of escape of hexane. As regards the various permissions detained, it is contended that all that was required under the particular law has been done and there is no breach of any law, which may entail cancellation, revocation or withdrawal of sanction.

5. Returns have also been filed on behalf of Respondents Nos. 2, 3, 4, 6 and 7. The Petitioners have also filed their rejoinder.

6. We have heard the learned Counsel for both the sides and have also persued the record. One thing stares us in the face and that is the cavalier and perfunctory manner in which the petition, especially the relief clause, is drafted. The Petitioners have sought relief by way of writ of certiorari and/or writ of mandamous and/or other appropriate writ, directions for quashing and/or

cancelling the various permissions granted by the Respondent No. 2 to 9 as per the details given in annexure F and to restrain the first Respondent from implementing, making use and/or taking any further action and/or steps in pursuance of the said permissions, sanctions and/or licence as per the particulars given in Annexure-F hereto and/or proceeding with the implementation of project on their property in survey No. 7 at Dosigaon and/or from taking any steps whatsoever in connection therewith. A bare reading of the relief clause would suggest that some details are to be found in Annexure-F. But surprisingly Annexure-F is a list of permissions/sanctions required by the first Respondent. As many as 8 items have been listed in the list without any date or details of any order of sanction. At the cost of some space, it would be proper to reproduce Annexure-F in this order in order to fully expose the scope of the reliefs sought:

Annexure-F: LIST OF PERMISSIONS/SANCTIONS REQUIRED BY 1st RESPONDENT:

1. Licence/Registration to be detained from Department of Industrial Development Ministry of Industry, New Delhi;
2. Approval/sanction of development plan for setting up of factory building from the Municipal Corporation of Ratlam;
3. Licence/Registration from the Director of Industrial Health & Safety (Chief factories Inspectorate), Indore;
4. Permission/approval from the Water Pollution Control Board under the Water (Prevention & Control of Pollution) Act, 1974;
5. Permission/approval from Water Pollution Control Board under Air (Prevention & Control of Pollution) Act, 1982;
6. Permission/sanction from the Water Pollution Control Board under Environment (Protection) Act, 1986;
7. Permission/licence under the Petroleum Act and the Rules framed thereunder for transportation and storage of Hexane.
8. Permission/sanction of Explosives Authorities, Nagpur, under Explosives Act.

7. It was expected of the Petitioners to have given details of the licences/sanctions/registration/approval/permission sought to be quashed along with the full details about the orders by which such sanctions etc. were granted, the number of the order and the date on which it was passed and the authority which passed it. We find that absolutely no details were supplied and it has transpired during hearing that some of the licences, registration, permissions, sanctions sought to be quashed were not even applied for and were not necessary. By item No. 3 Annexure-F as regards licence/registration from the Director of Industrial Health and safety (Chief factories Inspectorate) Indore is sought to be quashed. The Director has been made Respondent No. 6 in this petition and in his return he has denied having received any application from the Respondent No. 1 for registration of the factory and issuance of licence. As

regards item No. 7 relating to permission of a licence under the Petroleum Act and the rules framed thereunder for transportation and storage of Hexane and item No. 8 relating to permission/sanction of explosive authorities, Nagpur under the Explosive Act, details as to which authority is expected to issue such a permission/licence and expected to grant such permission/licence and under what provisions of law have not been stated and the concerned authorities have not even been made parties to this petition. The array of Respondents also shows that the State of Madhya Pradesh and the Government of India have been made parties without specifying particular Ministry or Department of these Governments, which are supposed to be concerned with this petition and are liable to answer. In a petition like this, by which the Petitioners were seeking to stall the establishment of a unit involving a huge amount of money, the Petitioners were expected to be serious and careful in drafting the petition and in seeking the reliefs, they cannot expect this Court to conduct a roving enquiry into all the sins of commissions and omissions allegedly committed by the Respondents, and after an investigative exercise hap the culprit and punish him or to find out illegal and invalid orders for itself and quash them. The minimum that was required of the Petitioners before bringing this petition was to have enquired into and collected the details of the licences, registrations, approvals, sanctions and then to have placed the details before this Court for quashing of specific licence/registration approval sanction. Not only, that the Petitioners have failed in doing so but we are surprised to find that the authorities, who have issued these licences/permissions, etc. have not even been served with a demand of justice, which is essential for issue of a writ of mandamus. All that the Petitioners have done, is to have sent general petitions to the Prima Minister of India, Minister (Environment), Government of India, the Minister of Industries State of Madhya Pradesh, the Minister of State for Aawas and Paryavaran, Government of M.P., the Petitioners have also addressed letters to the Chairman, M.P. State Water Pollution Control Board and the Chairman Central Pollution Control Board. All these representations contained arguments against the first Respondent being allowed to set up a plant near the Petitioners plant. There is nothing on record to suggest that copies of these representations were ever supplied to the first Respondent to enable it to meet the case of the Petitioners. Surprisingly, there is no notice at all addressed to the first Respondent informing it about the objections of the Petitioners to the establishment of their unit. All that has been stated in this regard in this petition is in para 37, which reads as under:

The Petitioners have demanded justice by addressing various letter to different authorities of the Respondents i.e. State Government and Central Government including Hon"ble Prima Minister copies where of are hereto annexed and marked as Annexure E Collectively. However, justice has been denied to the first Petitioner.

This can hardly be called an effective demand of justice. We could have dismissed this petition outright on the ground of lack of particulars and

vagueness of the reliefs sought, and because of effective demand of justice. However, since arguments have been addressed, at length, we have to go into the merits of the case.

8. The first and foremost objection raised by the Petitioners against the setting up of first Respondent's plant is that there will be a leakage of Hexane in the area from the first Respondent's plant, which will come in contact with the high pressure Hydrogen generated in the Petitioners' plant and would cause an explosion hazard. In order to convince thus Court of this explosion hazard, the Petitioners were expected to put before this Court scientifically unquestionable data based on expert's opinion. All that they have done is, to put on record a letter written by one Dr. Nitya Nand, Former Director, Central Drug Research Institute & Chairman, Indian Pharmacopoea Committee, who now happens to be the Director (Technical) of the Petitioner No. 1 Company addressed to Shri B.S. Tiwari Chairman, M.P. Prevention and Control & Water Pollution Board, Bhopal. In the opening paragraph of the letter itself, Dr. Nitya Nand has candidly admitted that he was Writing the letter in support of the application of the Petitioners appealing not to allow setting up of the solvent extraction plant close to their unit. He also admits in this letter that he was Director (Technical) of the Petitioner No. 1 Company. The contents of this letter have, therefore, to be taken with a pinch of salt and cannot be taken as an independent expert opinion. Even in this letter, there is no definite opinion given that establishment of a solvent extraction plant using Hexane near the site of the Petitioners plant will create an explosion hazard. What is stated in this regard is that the solvent extraction plant will use Hexane, which is very low boiling and highly inflammable and is contra-indicated near hydrogen and oxygen producing plants. The main thrust of the opinion is as to the loss which would be caused to the Petitioners if the first Respondent's plant is allowed to set up near the Petitioner's plant. What is stated in this regard in the opinion is as follows:

Vitamin C manufacture requires high technology which is part fermentation and part synthetic requiring high pressure hydrogenation. As large quantity of hydrogen gas is required for hydrogenation, JVL, has set up its own electrolysis plants for generation of hydrogen with high pressure compressors for its storage and feeding to the autoclaves. Thus the reactions involved in production of Vitamin C are highly specialised and have the following special requirements for pollution and safety control.

(a) Fermentation step involves working with microorganisms which are very sensitive to environmental conditions, and thus require very clean, pollution free conditions, and any contamination of the environment can prove disastrous for this step.

(b) High pressure hydrogenation is very hazardous, and has very specific requirements of open space around the plant. The catalyst used is sensitive to poisoning by the atmospheric pollutants. The electrolysis of water produces hydrogen and oxygen, of which oxygen is released into the atmosphere. Both

these gases are hazardous, one is combustible and the other helps combustion, and any solvent build up around this area where these gases are produced does pose serious potential hazard to explosion.

(c) The Jwalin Pharma products requires a very clean atmosphere for their production as the products go directly for human consumption.

Thus, the functioning of the plant, and the quality of the products that it produces would be greatly endangered if the proposed solvent extraction plant is allowed to be set up at this site. The solvent extraction plant will use hexane, which is very low boiling and highly inflammable and is contra-indicated near hydrogen and oxygen producing plants. It will also pollute the atmosphere and will be had for fermentation step also.

It would be clear from the above extract that the complaint is as regards the damage which would be caused to the production in the Petitioners plant more than any damage to the public at large by creation of general atmospheric pollution.

9. The Respondents not only have refuted these allegations but have contended that the bogie of atmospheric pollution and explosion hazard is not merely false but is false to the knowledge of the Petitioners themselves. In the return the first Respondent has contended that there is no atmospheric pollution or an explosion hazard created by a solvent extraction plant whether it is located near the hydrogen generating plants or away from it. They have also contended that Hexana is not a gas and there is no possibility of its escape in the air, at the most it can spill on the ground any may cause a fire hazard, which can be controlled by taking effective steps. It is also contended by the first Respondent that a similar solvent extraction plant using the same technology was set up by M/s. Balaji Protins nearer the Petitioners' plant and the Petitioners had not objected to setting up of such a plant in the vicinity. It is also contended that the Petitioners waited for long after knowing that a solvent extraction plant was being set up as they themselves knew that it cannot be objected on any logical or reasonable grounds. The first Respondent has relied upon an opinion obtained by it after filing of this petition from Professor M.K. Sarkar of the Department of Chemical Engineering, Indian Institute of Technology, New Delhi. This opinion is expressly on the points involved in this petition, as it has been sought and given specifically in the light of the questions raised in this petition. After elaborately explaining the processes employed by the first Respondent as well as by the Petitioners Industries, Shri Sarkar has given his opinion on the specific points. The gist of the report is (i) that Haxena is a liquid and not a gas and, therefore, its escape in the air is not possible and, therefore, no danger of escape of the Hexane causing Bhopal Gas Tragedy like situation.

(ii) A fermentation process requires microorganism to grow in special media which must be protected from outside contamination. Even in cleanest environment the same protection is necessary. Hence, all inputs to a

fermentation system are properly sterilized and filtered. Strict Control of environment is maintained internally. Therefore, no external pollution concentration is relevant in the system. Consequently, comments on the pollutants of the solvent extraction plant affecting microorganisms in the fermentation plant are not valid. Consequently, Haxena escaping from the first Respondent's plant or any other kind of pollution caused by the first Respondent's plant cannot affect in any manner the process of fermentation or other process of production in the Petitioner's plant.

(iii) High pressure hydrogen and hexane can be allowed to exist in close vicinity and is in fact being so allowed in a number of plants in the country manufacturing edible oil products in which high pressure hydrogenation of edible oil is carried out in the same plant side by side with the solvent extraction of oil using hydrogen as media.

(iv) High pressure hydrogen is both explosive and fire hazard while hexane being a liquid cannot leak out as a gas. Only spills can occur which can cause fire hazard. Both the systems require their independent safety systems and their locations near each other does not cause any special problem.

10. On page 8 of the return filed by the Respondent No. 1 in Clause (E) of preliminary objections the first Respondent clearly relied on the report of Shri M.K. Sarkar, which is marked as Annexure R-I FF to the return. The Petitioners have filed a rejoinder on 19.2.1992 to the return filed by the Respondent No. 1. However, in this rejoinder on page 6-7 along with clause-E of the preliminary objections raised in the return, professor Sarkar's report has been criticised in the following words:

With regard to the purported report of prof. M.K. Sarkar, with due respect to the said Mr. M.K. Sarkar and his report, it is submitted that the same may be an opinion of an Expert which may differ from person to person and from the opinion of the Petitioner. The said report as can be seen is a tailor made report and the same is apparent from the fact that the said report ventures to discuss and express the views and opinions on the matter which are directly in issue in the above petition and pending before this Hon''ble Court. This tends to interference with the administration of justice and process of this Hon''ble Court.

The rejoinder further discusses and tries to meet the points raised in Shri Sarkar's report but the Petitioners have not referred Shri Sarkar's report to any other expert, and obtained his opinion. The rejoinder affidavit is by Petitioner No. 2 Shri P.K. Shrivastava, whose capacity or qualifications have not been disclosed in the rejoinder. But it is clear from the petition that the Petitioner No. 2 is the Vice-president of the Petitioner No. 1. We do not know how far the Petitioner No. 2 is qualified to opine on a technical subject on which already contrary opinions of Shri Nitya Nand, one of the Directors of the Petitioner No. 1 Company and Shri M.K. Sarkar who is on the staff of Indian Institute of Technology, Delhi have been put on record.

11. After examining the material on record and the two contrary reports we find that the Petitioners have failed to prove their point. The specific opinion of Prof. M.K. Sarkar has not been effectively countered and only opinion of one of the Directors of the Petitioner No. 1 Company has been put on record in support of the Petitioner's contentions. We, therefore, cannot hold that the first Respondent's plant is either causing air pollution or is such an environmental hazard, which requires interference by this Court by issue of a writ of mandamus quashing all the permissions etc. for putting up a plant on the site in question.

12. We deal now with the point raised by the Petitioners alleging that the plant is being erected in breach of the conditions, on which registration of the unit was granted to the Respondent No. 5. The Petitioners have annexed a letter dated 6th November, 1990 (Annexure-C to the petition), issued by the Government of India, Department of Industrial Development, Secretariate for Industrial Approval (III Section) in favour of the first Respondent. The letter communicates to the first Respondent that with reference to the first Respondent's application dated 5.9.1990, proposal to put up a new Industrial undertaking at Dosigaon, Distt. Ratlam in the State of M.P. had been taken on record and the first Respondent had been allotted registration No. 1132 (190) dated 6.11.90. Articles of manufacture are stated to be solvent extraction oil, preparation of oil/oil cakes from minor seeds excluding cotton seeds, de oil cakes and Soya floor D-oil/flakes. The capacity is also mentioned in the letter. At the end it is stated that the registration is subject to the conditions given in enclosure I and II to the letter. Annexure-I to the letter incorporates a condition No. 8(d), which reads as under:

The new industrial undertaking or the industrial activity for the manufacture of new articles or the industrial activity affecting substantial expansion shall not be located within the standard urban area or municipal limits of other cities or towns (which includes Ratlam).

The Petitioners further invited attention to the condition No. 16, which is to the effect that if at any time it comes to the notice of the Government that the applicant had furnished false information in the application form, or had canceled certain material facts, the registration would be liable to be cancelled. According to the Petitioners the site being within the municipal limits of the Ratlam Municipal Corporation, setting up of a factory there is in violation of the conditions of the registration granted to the first Respondent and it appears that the first Respondent got the registration by misrepresenting that the site did not fall within the urban or municipal area.

13. The Respondent No. 1 in its return has asserted that no misstatements were made by the Respondent No. 1 for obtaining registration. It was contended that the discussion as to whether conditions of registration were valid or not were purely academic because a new industrial policy has been declared by the Government of India doing away with the requirement of registration and licence for new industries except for a few industries. It is submitted that by Notification No. 477 (E) dated 25.7.1991 all the previous notification on the subject have

now been superseded. The Industries have now under the new policy been divided into two categories. In the first category for which no registration or licence is required, a solvent extraction plant falls. In the second category Industries for which registration and licence would be required fall. According to the new Industrial Policy, the only requirement as regards location of Industry is that the proposed site should not be located within 25 k.m. from the periphery of the standard urban area limits of cities having population of more than 10 lacs according to the 1991 census. The city of Ratlam having a population less than 10 lacs, does not fall in this category. It was further argued on behalf of the Respondent No. 1 that even assuming that the declaration of the New Industrial Policy did not wipe out the requirement of fulfilment of conditions for registration imposed vide Annexure C to the petition, the condition of the location within the municipal limit was obviously beyond the scope of the Notification itself. The Notification No. 201 (m) dated 18.3.1985 itself prescribes as a condition that the Industrial Undertaking should not be located or proposed to be located (i) within the Standard Urban Area limit as determined in the census of India 1981 of a city having a population of more than 10 lakhs; (ii) within the Municipal limits of a city with a population of more than 5 lakhs, as determined in the said census. The conditions attached to the letter Annexure-C to the petition as Annexure R-I clearly go contrary to the Notification itself by prescribing a more restricted limit for location than what is allowed under the Notification itself.

14. After appreciating the arguments advanced on the point by both the sides, we find that after the declaration of the New Industrial Policy of 1992, anything contrary to the policy, which held field earlier lost its efficacy. The relevant portion of the Notification No. 477 (E) dated 25.7.1991 reads as under:

In exercise of the powers conferred by Sub-section (1) of Section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and in supersession of notification of the Government of India in the Ministry of Industry (Department of Industrial Development No. 238/E/IDRA/76 dated the 25th March 1976 S.O. 120 (E) dated the 18th March, 1985 S.O. 140 (E) dated the 31st March, 1986 S.O. 483 (E) dated the 8th August, 1986 S.O. 834 (E) dated the 11th November, 1985 S.O. 892 (E) dated The 8th October, 1987 S.O. 629 (E) dated the 30th June, 1988 and S.O. 759 (E) dated the 25th September, 1989 except as respects things done or omitted to be done before such supersession, the Central Government hereby exempts from the operation of the provisions of Sections 10, 11, 11A and 13 of the said Act. the industrial undertakings specified below:

1. Small Scale and ancillary industrial undertakings covered by the Notification No. S.O. 232 (E), dated the 2nd April, 1991 subject to the condition that the Article (S) of manufacture is:

(1) not included in Sch. I or Sch. II to this notification or included in Sch. III to this notification;

II Industrial undertakings not covered by this Ministry's Notification No. S.O. 232 (E) dated 2nd April, 1991, subject to the provisions contained in A and B below;
A (i) The article (s) of manufacture shall not be an article (s) included in Schedule I, Schedule II or Schedule III to this Notification, and

(ii) The proposed project shall not be located within 25 kms. from the pariphery of the standard urban area limits of cities having a population of more than 10 lakhs according to the 1991 Census. This condition shall not apply to (a) electronics, computer software and printing industries and other non-polluting industries that may be notified from time to time and (b) other industries provided they are located within industrial areas designated by the State Government (s) before July 24, 1991.

It would be clear from this Notification that Notification No. 201 (E) dated 18.3.1985 has been expressly superseded and the new requirement as to location is that the proposed project shall not be located within 25 kms. from the priphery of the Standard Urban Area of the cities having a population more than 10 lakhs according to the 1991 Census. Ratlam obviously does not have a population of more than 10 lakhs and, therefore, there is no bar under any law to locate an Industry within the municipal limits of Ratlam. Moreover, even examining the case under the Notification on No. 201 (E) dated 18.3.85, the conditions contained in Annexure-A, which is clearly contrary to the Notification itself. The Government could not have while putting conditions for registration of a unit, prescribed a condition about the location which is more stringent than the conditions of location of the Industries contained in the Notification relating to which the registration was being granted. When the Notification on No. 201 (E) dated 18.3.85 permitted location of an industry within the municipal limits of a city with population of less than 5 lakhs, it cannot be prescribed as a condition for registration as a delicensed industry under the same Notification that the Industry shall not be located within the urban area or municipal limits of any city or town. The condition being opposed to the Notification itself cannot be enforced at law.

15. We now proceed to examine the allegations regarding violation of environmental guidelines for Industries. The nature and purpose of the guidelines as set out in paragraphs 2.1 of the guidelines is as under:

2.1: In order to help the concerned authorities and the entrepreneurs it is necessary to frame certain broad guidelines for setting an industry. It is also necessary to identify the parameters that should be taken into account while setting up an industry. With this in view, the following environmental guidelines are recommended for setting of industries to ensure optimum use of natural and man-made resources in sustainable manner with minimal depletion, degradation and or destruction of environment. These are in addition to those directives that are already in existence under the Industries (Development and Regulation) Act.

It is obvious that the guidelines are mere recommendations to ensure optimum

use of natural and man-made resources in sustainable manner with minimal depletion, degradation and/or destruction of environment. In para 2.2 of the guidelines under the heading areas to be avoided, it has been provided as under:

2.2: In setting industries, care should be taken to minimise the adverse impact of the industries on the immediate neighbourhood as well as distant places. Some of the natural life sustaining systems and some specific land used are sensitive to industrial impacts because of the nature and extent of fragility. With a view to protecting such, an industrial site shall maintain the following distances from the areas listed:

(a) Ecologically and/or otherwise sensitive areas : at least 25 km. depending on the geo-climatic conditions the requisite distance shall have to be increased by the appropriate agency.

(b) Coastal Areas : at least 1/2 k.m. from high tide line.

(c) Flood plain of the Riverine Systems:

at-least 1/2 k.m. from flood plain or modified flood plain affected by dam in the upstream or by flood control systems.

(d) Transport/Communication System at least 1/2 k.m. from highway and railway.

(e) Major Settlements (3,00,000 population): distance from settlements is difficult to maintain because of urban sprawl. At the time of setting of the industry if any major settlement's notified limit is within 50 k.m., the spatial direction of growth of the settlement for at least a decade must be assessed and the industry shall be sited at least 25 k.m. from the projected growth boundary of the settlement.

Note: Ecological and/or otherwise sensitive areas include (i) Religious and Historic Places; (ii) Archeological Monuments (e.g. identified zone around Taj Mahal); (iii) Scenic Area; (iv) Hill Resorts; (v) Beach Resorts; (vi) Health Resorts; (vii) Coastal Areas rich in Corals, Mangroves, Breeding Grounds of Specific Species; (viii) Estuaries rich in Mangroves, Breeding Grounds of Specific Species; (ix) Gulf Areas; (x) Biosphere Reservers; (xi) National Lakes, Swamps; (xiii) Seismic Zones; (xiv) Tribal Settlements; (xv) Areas of Scientific and Geological Interest; (xvi) Defence Installations, specially those of security importance and sensitive to pollution : (xvii) Border Areas (International) and (xviii) Air Ports.

It would be obvious that care has to be taken in setting industries to minimise adverse impact of the industries on the immediate neighbourhood as well as distant places. It has been stated in the guidelines aforesaid that some of the natural systems and some specific land uses are sensitive to industrial impact because of the nature fragility. The guidelines provide that an industrial site shall maintain a distance of at-least 25 k.m. from ecological and/or otherwise sensitive

areas. The note appended to paragraph 2.2 explains that ecological and/or otherwise sensitive areas include (1) religious and historic places (2) Archeological Monuments and several other places mentioned in the note. The Petitioners objection is that the first Respondent has set up an industry within 25 k.m. of a temple set up by the Petitioners, which according to them is an ecological and/or other sensitive area within the meaning of the guidelines being religious and historic place and an archeological monument. If every temple is taken to be a religious place for the purpose of the guidelines, it would be impossible to site any industry nearer any populated area. Every temple cannot, therefore, be taken to be a religious place for the purpose of the guidelines. It appears that the words "religious place" used in the explanatory note to paragraph 2.2 of the guidelines refers to a city or town known for centuries as a religious place (Tirtha Kshetra). The Petitioners seem to have constructed a temple in the midst of or closer nearby an industrial area. The Petitioners own industry being nearer to the first Respondent's proposed industry must be within 2.5 k.m. of their temple. If the interpretation of the Petitioners is accepted than anyone would put up a temple nearby his own running unit to make it impossible for anyone else to set up any other industry in the area. The temple built by the Petitioners also cannot, therefore, be called a historic place because admittedly it is of a recent origin. The Petitioners' temple is obviously not an archeological monument. It would, therefore, be futile to say that the Petitioners' industry could not be allowed to be established on the proposed site because it is within 25 k.m. of an ecological and/or otherwise sensitive area.

16. The other objection of the Petitioners is that under the guidelines an industrial site has to maintain a distance of at- least 1/2 k.m. from highway and railway. This guideline seems to be impractical. Again, the Petitioners own industry must be at least the same distance from the highway or the railway as it is adjacent to the proposed site of the first Respondent's industry. The Respondent has in answer to paragraph 23 of the petition denied that the railway line is within a distance of 1/2 k.m. from the proposed site of its unit. Thus, it is a disputed question of fact as to whether the unit is situated within a distance of 1/2 k.m. from the railway line, which cannot be decided in this petition. Even assuming that it is so situated, the guidelines as already discussed are merely recommendations and cannot be enforced through a Court of law. No doubt, a complaint could be made that the guidelines were not uniformly made applicable and Article 14 of the Constitution of India is thereby violated. But in the present case the Petitioners are sailing in the same boat with the first Respondent and are trying to enforce the guidelines against the first Respondent only. This cannot be done in exercise of jurisdiction under Article 226 of the Constitution of India.

17. The guidelines also provide for a green belt of a particular width around particular industry. Paragraph 2.3 relating to siting criteria provides for this. Again the requirement is recommendatory alone as already discussed and in any case before an industry is set up, the green belt is not expected to be put up. The first Respondent's plant is only at its construction stage and it cannot be

said at present whether they will not comply with these guidelines as regards green belt, if at-all it is required to be complied with. There is, therefore, no force in the allegations on this point also:

18. It has also been contended that the first Respondent's proposed unit shall use coal fired boilers which will give rise to problem of flying coal ash and atmospheric pollution would be caused thereby. The first Respondent has accepted that its plant is going to use coal fired boilers but has denied that use of coal fired boilers will cause any atmospheric pollution. In the opinion of Shri M.K. Sarkar, Professor of the Department of Chemical Engineering I.T.I. Delhi relied on by the Respondent No. 1 and referred to above, at the bottom of page 3 the following opinion has been given about the coal-fired boilers:

For steam generation there is a provision in the project, for a modern fluidized-bed-type (FBC) coal fired boiler. This boiler furnace would consume a maximum of 1.5 tons of coal/hour to generate 7 tons of steam/hour. Since combustion is very efficient in an FBC boiler furnace, there will be no generation of smoke in the chimney. Also temperature in an FBC system being around 850 C. No generation in the chimney gases would be less than 100 mg/NM³. With proper control of mechanical dust separators (MDC) dust emission in the chimney gases will not exceed 500 mg/NM³. With a 30M high chimney contribution of dust concentration to the ambient air from this chimney source will not exceed 50-100 mg/NM³ under most adverse weather conditions. Average contribution should be much less than these figures. Indian coals having very low sulphur content (.58) will not cause any pollution due to sulphur dioxide (SO₂) emissions. There could be some low level dust pollution in the coal preparation plant as well as in the areas where dry discharge of fly-ash is effected from dust collectors. This pollution would be highly localised within the boiler house and also could be effectively managed. From above it could be concluded that the boiler system would contribute dust pollution in the ambient to a very nominal extent. Even then, the present project has provision for a bag house for emission control of the boiler furnace as an added precaution for lowering particulate emission. With such provisions, air pollution from this industry could be considered nearly non-existent.

We have no reason to doubt the correctness of this opinion in absence of anything to the contrary pointed out specifically. We, therefore, accept this opinion. Moreover, as per the consent granted by the M.P. Pollution Control Board, vide letter dated 16.4.91 Annexure R-I-p, the industry has to submit ambient air monitoring report every three month and there are specific standards to which the polluted air must conform set up by the M.P. Pollution Board. If any violation of the requirement detrimental to air pollution comes to the light, it can be taken care of by the authorities concerned. Setting up of the plant cannot be stopped or stalled on assumption that it is certainly going to create pollution hazards.

19. It has also been contended that the sanctions granted by the Ratlam

Municipal Corporation for the construction of the factory building was illegal being against the bye-laws. It is contended that 30ft. wide road is required by the bye-laws is not available near the factory site and, therefore, the Ratlam Municipal Corporation could not have sanctioned the plans for construction of the factory. It is also pointed out that there are no motorable roads available by way of access to the factory and, therefore, under the bye-laws plans for construction could not have been sanctioned. The first Respondent has denied that 30 ft. wide road was not available near the factory building. The Municipal Corporation, Ratlam has stated in its return that it has not granted the sanction in violation of the bye-laws. They have infact stated that the bye-laws do not make any provision about it. It is not safe to enter into these factual controversies and interpretation of bye-laws when under the M.P. Municipal Corporation Act effective alternative remedies are available for redressal of a grievance that plans for construction of a building were sanctioned by the Municipal Corporation in violation of the bye-laws or any other laws.

20. It has further been pointed that the Municipal Corporation, Ratlam could not have sanctioned plans for construction as the concerned area has not been declared to be a factory area or an industrial area. In answer the Municipal Corporation, Ratlam has stated in its return that under the M.P. Nagar Tatha Gram Nivesh Adhiniyam a development plan has been published in which the area has been shown to be an industrial area and, therefore, it was not necessary to declare the area to be an industrial area again under the Municipal Corporation Act or bye-laws made thereunder. It is an admitted fact that many industries including the Petitioners' own industry are situated in the area. The sanction of the plans of the first Respondent's plant cannot be challenged on the ground that the area in which the proposed site is situated has not been declared to be an industrial area. In any case, adequate alternative remedy is available under the M.P. Municipal Corporation Act for challenging the sanction of a plan for construction of a building. An objection has also been taken that the plan of construction of any building on the proposed site of the first Respondent's plant could not have been sanctioned because there are no drainage facilities on the plot. The first Respondent has denied that no drainage facilities are available and the Municipal Corporation, Ratlam in its return has stated that sufficient provision for internal drainage and septic tank has been made to the satisfaction of the Respondent No. 2, Municipal Corporation by the first Respondent. We need not go into this because it would be a disputed question of fact as also because of availability of alternative remedy under the M.P. Municipal Corporation Act for challenging the sanction on this ground also.

21. We now come to the general argument about atmospheric pollution, which will allegedly be caused by the proposed plant of the first Respondent and its ill effects on the neighbourhood. The Petitioners tried to give this litigation a colour of public interest litigation by asserting that the pollution caused by the first Respondents plant would affect the lives of the workers and other persons living nearby apprehending that the Bhopal Gas Tragedy like situation would be

created. The Petitioners tried to impress upon this Court that it was absolutely necessary to stop the construction of the first Respondent's plant. In reply, the first Respondent has contended that all that was necessary to set up an industry under the law was done by the first Respondent and it has obtained all permissions, sanctions, clearances, etc. as the law required. As already discussed above, we have found that it has not been proved that the proposed plant of the first Respondent would create pollution of any kind. We need not, therefore, discuss the authorities cited at the Bar highlighting the importance of pollution Control. The proposition that all kinds of pollutions are to be eradicated or controlled at any cost cannot be disputed but it is equally true that the bogie of pollution should not be allowed to be raised for ulterior selfish motives by disgruntled litigants to hamper or stop the process of industrialisation. In this particular case the mala fides of the Petitioners are writ large on the proceedings. They have brought this petition raising a false alarm as to pollution hazard, which they allege, is likely to be created if the first Respondent's plant is allowed to be set up near the Petitioners' plant. It is an admitted fact that the Petitioners coveted the land on which the first Respondent is putting up its plant for the purpose of expansion of their own industrial activity. It is clear that they were guided by self interest rather than the interest of the public at large or the interest of a cleaner environment. The cavalier manner in which the petition was brought suggests that the Petitioners themselves had no faith in the pleas they have taken in this petition but they wanted to pressurise the first Respondent by obtaining a stay order against construction of the first Respondent's plant first and then by trying to delay the disposal of this case. We, therefore, find no force in this case, which in our opinion, has been brought with ulterior motive as a pressure tactic and to compel the first Respondent to transfer its plot of land to the Petitioners by employing arm twisting methods. We strongly disapprove of such tactics and while dismissing this petition deem it fit to impose a heavy cost on the Petitioners.

22. The petition is, therefore, dismissed. The Petitioners shall pay Rs. 10,000/- as costs of this petition to the first Respondent. The costs shall be recovered from the pay order No. 304904 Branch 6205 C.P. Bombay State Bank of India for Rs. 5,00,000/- which has been deposited by the Petitioners with the Additional Registrar of the Indore Bench of the High Court. The Addl. Registrar to realise the amount of the pay order from the Bank for this purpose and pay Rs. 10,000/- to the first Respondent and return the balance amount to the Petitioners.