

(2011) 01 SC CK 0005

In the Supreme Court Of India

Case No : Writ Petition (C) No. 260 of 2004

Kalyaneshwari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 21, 32

Citation : (2011) AIRSCW 2010 : (2011) 3 CHN 77 Supp : (2011) 3 KCCR 251
SN : (2011) 1 SCALE 651 : (2011) 3 SCC 287 : (2011) 1 SCC(L&S) 498 : (2011)
1 SCR 894 : (2012) 3 SLJ 476

Hon'ble Judges : S. H. Kapadia, C.J.; Swatanter Kumar, J.; K. S. Panicker
Radhakrishnan, J

Bench : Full Bench

Advocate : H.P. Raval, ASG, A. Mariarputham, AG, Manish Singhvi and Manjit Singh, AAGs, Harish Chandra, Rajeev K. Virmani and I. Venkatanarayana, Ashish Mohan, K.K. Mohan, Aruna Mathur, Yusuf Khan, Avneesh Arputham and Megha Gour, for Arputham, Aruna and Co., Gopal Prasad, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Edward Belho, K. Enatoli Sema, Rituraj Biswas, Anirudh Sharma, Arvind Kumar Sharma, Mukesh K. Giri, R. Ayyam Perumal, Hemantika Wahi, Nupur Kanungo, A. Subhashini, Avijit Bhattacharjee, Sarbani Kar, Debjani Das Purkayastha, Bidyabrata Acharya, Rekha Pandey, S.W.A. Qadri, C.S. Khan, Ch. Shamsuddin, D.S. Mahara, Anil Kaityar, Radha Shyam Jena, Vibha Datta Makhija, B.S. Banthia, Khwairakpam Nobin Singh and Sapam Biswajit Meitei and Corporate Law Group, John Mathew, Sanjay R. Hedge, Pradeep Misra, Anil Shrivastav, Sanjay V. Kharde, Asha G. Nair, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Gopal Singh, Manish Kumar, Rituraj Biswas, Naresh Bakshi, D. Bharathi Reddy, Aruneshwar Gupta, Rashmi Virmani, Sandeep Narain, Mukta Dutta, Ashish Kothari, for S. Narain and Co., Pragyan P. Sharma, Rupesh Gupta, Siddharth Lodha, P.V. Yogeswaran, T.V. George, Atul Jha, Dharmendra Kumar Sinha, Shrish Kumar Misra, Ajay Kumar Singh, Dipak Kumar Jena, Minakshi Ghosh Jena, Manmohar, Naresh K. Sharma, Anuvrat Sharma, T. Harish Kumar, P. Prasantha, V. Vasudevan, Devanshu Kumar Devesh and Milind Kumar and Lawyers' Knit and Co., Kuldip Singh, Ashok K. Srivastava, Sunil Fernandes, G.N. Reddy, Haripesh Singh, Kamal Mohan Gupta, R. Sathish, Pragyan P. Sharma, P.V. Yogeswaran and D. Mahesh Babu, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This petition under Article 32 of the Constitution of India has been filed by the Petitioner Kalyaneshwari (a registered Society), through its Chairman, with a prayer that a writ of mandamus be issued directing the Union of India and other Respondent-States to immediately ban all uses of asbestos in any manner whatsoever; further that a committee of eminent specialists be constituted to frame a scheme for identification and certification of the workers/victims suffering from asbestosis or other asbestos related diseases or cancer. The Petitioner also prayed that the respective Governments should be directed to identify the workers/victims in the respective States and Union Territories and to provide them due treatment as well as to take measures to prevent harmful effects of asbestos in the factories or establishments where such activity is being carried out and also to initiate criminal proceedings against all the responsible persons including the owners of such factories, organizations and associations for infringing the right to life of the asbestos victims.

2. The above writs/directions have been prayed for on the premise that Petitioner, Kalyaneshwari, is a non-governmental organization, registered under the Societies Registration Act XXI of 1860. It is a voluntary organization allegedly promoted to serve the general public without distinction of caste or religion and working for the protection of consumers interest. This Court in the case of Consumer Education and Research center and others Vs. Union of India and others, accepted the well established adverse effects of asbestos including the risk beyond the work place and held as under:

17. It would thus be clear that disease occurs wherever the exposure to the toxic or carcinogenic agent occurs regardless of the country, the type of industry, job title, job assignment or location of exposure. The disease will follow the trail of the exposure and extend the chain of carcinogenic risk beyond the workplace. It is the exposure and the nature of that exposure to asbestos that determines the risk and the diseases which subsequently result. The development of the carcinogenic risk due to asbestos or any other carcinogenic agent, does not require a continuous exposure. The cancer risk does not cease when the exposure to the carcinogenic agent ceases, but rather the individual carries the increased risk for the remaining years of life...

3. The Petitioner alleges that developed countries all over the world have drastically reduced the manufacture of asbestos and some of them have even banned different types of asbestos. In India, the use of this carcinogenic material is increasing every year approximately at the rate of 12% and the Petitioner drew attention of the concerned authorities towards this issue and requested them to take stringent actions, but to no effect. The World Trade Organisation considered this aspect in the EC-Asbestos case, [WT/DS135/ ABR] adopted on 5th April, 2001 where its appellate body observed that available scientific data reveals that a high mortality rate persists despite the so called 'safe' use of

Chrysotile Asbestos. Surveys carried out more than 30 years after the introduction of controlled use policy in United Kingdom indicate a significant increase in deaths from Lung Cancer and Mesothelioma, not only among the workers but even to the families residing nearby such plants. Citing the example of some countries and the measures being taken by different organizations, request was made for banning import, manufacture and use of asbestos and it is averred that 'controlled use' is hardly workable. It is also averred by the Petitioner that in most parts of the world, there was a drastic reduction in manufacture and use of asbestos. In fact, efforts are being made to ban on use of asbestos in any form. On the contrary, in India, use of asbestos was permitted indiscriminately on the premise that its controlled use is absolutely safe. There is a large number of victims in India who are suffering from various effects of asbestos in one form or the other. The Petitioner claims to have identified five hundred plus victims from five different States, namely, West Bengal, Rajasthan, Jharkhand, Andhra Pradesh and Tamil Nadu. The Petitioner claims that in order to find out the exact health scenario of asbestos workers, it got 14 direct workers of an asbestos unit examined by qualified occupational health doctors and the results were shocking, inasmuch as 13 workers were suffering from asbestosis with five workers being in advanced stage. Though these workers are covered under State ESI Scheme, no proper and adequate treatment is being provided to them. Thousands of poor and ignorant people in Udaipur District in Rajasthan were engaged in asbestos mining before the Ministry of Mines decided in the year 1996 not to issue or renew any asbestos mining licenses in India. Still today, some of them are engaged in illegal mining, which they do at the instance of local asbestos products manufacturers. It is also averred by the Petitioner that there is complete failure on the part of the manufacturers in providing safety equipments to workers, regular health checkup, monitoring air borne dust and maintaining health register of the workmen. The Petitioner also claims to have already documented more than 500 victims suffering from asbestos related diseases from the above-noted five States and, upon examination by well-known chest specialists, they have been identified as suffering from such diseases. The cost of the treatment is quite high. First, no compensation has been paid to these victims and second, even if some compensation was paid it was too meagre to meet the expenses. All these victims are suffering for. no fault of theirs but due to exposure to asbestos over which, they hardly have any control. There is no law in place which directs payment of compensation to such victims. No medical records are being maintained to regulate the treatment of victims of Asbestosis: The carcinogenic properties of asbestos including Chrysotile or White Asbestos, are well-established and the same is a universally accepted fact. Despite overwhelming evidence, asbestos which has been banned in other countries is still being manufactured, imported and used in India and the Government has failed to take proper action which compelled the Petitioner to approach this Court by filing the present Writ Petition in larger public interest as there is apparent violation of Articles 14 and 21 of the Constitution of India.

4. This petition was filed in the year 2004. Thereafter, notice has been issued to the Respondents, various affidavits have been filed and the matter has been heard from time to time. One of the main objections raised by the Respondents and, particularly, Respondent No. 37 i.e. Asbestos Cement Product Manufacturers Association is that the present Writ Petition is an abuse of the process of the Court and has been instituted at the behest of a business rival. The petition lacks bona fide and is intended to take unnecessary advantage of the proceedings before the Court. This issue, to a large extent, has been dealt with by a Bench of the Gujarat High Court in B.K. Sharma Vs. Union of India (UOI), Yet, the present petition has been filed with the intention of creating impediment in the establishment and running of the industrial units in various States dealing with production or manufacture of asbestos in accordance with law and without infringing any right of others whatsoever. This issue is of some significance and we shall proceed to deliberate on the same and record our conclusion at a later stage. First, we would like to deal with the merits of the case and what directions, if at all, can be issued by this Court.

5. Several States, Union Territories as well as Union of India have filed separate affidavits, In the affidavit filed on behalf of the Union of India, it is stated that the organized sector in India uses only imported variety of Chrysotile asbestos which is considered to have least harmful impact on the health of workers engaged in the manufacture of asbestos products and sufficient precautionary measures are being taken by the industry to protect the workers from excessive exposure to the hazardous impact of asbestos fibre. Meeting the contentions raised by the Petitioner as aforesaid, it is submitted on behalf of the concerned Respondents that only selective references have been made by the Petitioner to unnecessary inflate the impact of asbestos fibre on public health. No recognition has been given by the Petitioner to the strict emission norms prescribed for the industries manufacturing asbestos products by Ministry of Environment and Forest and other efforts undertaken by the Ministry have also not been referred to by the Petitioner. Prescription of stringent emission norms is one of the main effort made by the concerned Ministry. The prescribed norms in the Environment (Protection) Act, 1986 are as follows:

These standards are 2.0 mg/Nm³ of total dust and 4 fb/cc of pure asbestos material, now being revised to 0.5fb/cc. Ministry of Labour has revised the permissible work place emission norms vide notification dated April 2001 bringing it down to 1 fb/cc from 2 fb/cc. The report of WHO in this regard has been quoted out of context. In the said report it has been clearly stated that further research is required to determine the adverse impact of Asbestos Fibre on human health.

6. The asbestos product only contains 8-10% asbestos fibre and the rest is cement (50%), clay (30-35%) and fly ash; wood, pulp, etc. which are not considered harmful for human health. Even here the asbestos fibres are locked with cement matrix particles and there is no scope for its disintegration/

spreading in the air in normal circumstances. Referring to the proceedings before the Calcutta High Court, the Union of India submitted that the Calcutta High Court refused to impose any ban on the manufacture and use of asbestos in Writ Petition No. 412 of 2002, copy of which has been placed on the record. It is the stand of the Union of India that the Petitioner has not furnished any details of the industries which are working contrary to law and where the workers are exposed to such hazardous health conditions. It is only then that the Government can take action in accordance with law and the petition, as such, lacks specific particulars.

7. States have taken different stands in their respective affidavits. However, all of them have stated that appropriate measures are being taken to ensure working of such units in accordance with law. In the affidavit filed on behalf of the State of Kerala, it is averred that there is only one factory carrying on manufacture of asbestos cement sheets and allied products in the entire State. This factory has obtained licence under the provisions of the Factories Act. It is further pointed out that this factory was established with fully automatic fibre handling system in the year 1986. After that, no asbestos manufacturing factory has been established in the State. While referring to the judgment of this Court in the case of Consumer Education and Research Centre (*supra*), it is averred that strict instructions were issued to the Inspector of Factories and Boilers to take urgent steps for implementation of the directives of this Court. There is constant watch/review upon the standards of permissible exposure limit. Value of fibre/cc should be in line with the international standards and it would not exceed 0.1 fibre/ cc at any time in the last three years. Some states like Himachal Pradesh, Tripura, Mizoram, Sikkim, Arunachal Pradesh and Manipur have stated that there is no asbestos factory within their territory.

8. State of Tamil Nadu in its affidavit has averred that only 13 factories which are handling Asbestos have been brought under the purview of Factories Act, 1948 out of which 3 factories are not working for the past 5 years and in the remaining 10 factories "Membrane Filter Test" is regularly being conducted and the asbestos fibre is found to be within the permissible limits. The workmen of these factories are covered under the Workmen Compensation Act/Employees State Insurance Scheme/Group Insurance of Insurance Company. Thus, their interests are well protected. State of Bihar in its affidavit has stated that presently there is no industrial unit involved in manufacturing asbestos in the State. The use of asbestos product in the State is limited and is not to an extent that the secondary user of asbestos is likely to suffer from Mesothelioma fatalities attributed to asbestos. On the contrary, it also appears from the records that there are 22 cases of asbestosis in Gujarat and three cases of Mesothelioma in Andhra Pradesh. Out of these, persons suffering from Asbestosis or other diseases in Gujarat have not been given any compensation and their cases are pending, while the three persons suffering from Mesothelioma in Andhra Pradesh have been paid the compensation. Thus, it is a matter which essentially has to invite the attention of the Court.

9. From the above narrated factual matrix, giving rise to this Public Interest Litigation, it is clear that first, the Court has to examine whether any statutory, fundamental or other right of any person is being violated and an activity which is prohibited under law is being carried out i.e. production and manufacture of asbestos and allied products? If so, whether the Government is actively permitting such illegal activity? Second, whether in any case this Court can, in law, direct the banning of this activity, if not, what directions can be issued by the Court?

10. From the contents of the Writ Petition filed before this Court, it is clear that there is no law enacted so far which requires banning of any activity in regard to asbestos at the stage of mining, manufacture or production.

Of course, there can be no doubt that uncontrolled utilization of asbestos, in any form, can be hazardous to human health. The reply affidavits filed by different States as well as Union of India clearly bring out that such activity, wherever is being carried out, is in accordance with specified parameters and under due supervision. The Writ Petition filed does not provide any data or detailed facts in relation to such uncontrolled or unauthorized activity of manufacture of asbestos being carried out in any State. Merely stating that a few hundred workers were subjected to medical examination and were found to be affected by inhalation of asbestos particles may not be sufficient for this Court to accept it as a general proposition that there is hazardous use of asbestos all over the country, particularly, in view of the fact that such activity is being carried out at the mining or industrial level in different parts of the country. This Court had the occasion to examine this matter at great length in the case of Consumer Education and Research Centre (*supra*) wherein it issued certain directions. Once that judgment had been pronounced, there is hardly any occasion for the Petitioner to institute this Writ Petition as an independent proceeding. The Petitioner has made no effort to collect any information/data from various States as to whether the directions issued by the Court in that matter are being strictly implemented or not at all. On the contrary, it is the stand of the States as well as Union of India that the directions issued by this Court are being strictly adhered to. The parameters and norms have been specified and the industries using such raw materials are being constantly watched, in relation to all the functions of the factory, specially keeping in view the environment and health status of the workers and nearby residents. Even subsequent to the filing of the present petition, the Petitioner has not put in any effort to seriously rebut the averments made in various affidavits filed by the States.

11. In *Jayjit Ganguly v. Union of India*, CWP No. 412 of 2002 decided on 15th December 2004], a Division Bench of the Calcutta High Court also noticed that there is no dispute that asbestos fibre is hazardous to health and continuous exposure to certain types of such fibre can also prove to be fatal as it does not dissolve and the same is so thin that it can be inhaled and deposited in lungs. While noticing these facts, the Court referred to the judgment of this Court in the

case of Consumer Education and Research Centre (supra) and the report of the Committee appointed by the Union of India to conduct study of asbestos fibre products. Relying upon the Committee's report, the Court noticed that there was no data available to demonstrate as to what is the ratio of death directly attributable to asbestos fibre in relation to the products made available to the consumers in India. The Court, while dismissing the Writ Petition held as under:

During the course of hearing we came to learn that in 2001 yet another Committee was constituted by the Union of India through the Ministry of Environment for the purpose of devising the method of clearance for new or expansion of asbestos based products and to evolve a policy strategy to deal with use of asbestos. We are told that the suggestions given by the said Committee have implemented by providing stringent emission norms in terms of the Environment Protection Act, 1986 and work zone standards under the Factories Act, 1948. Therefore, it appears to us that the said committee too was involved with the matters pertaining to mining and manufacture of asbestos fibre and had no occasion to deal with the hazards of user of products manufactured from asbestos fibre. In such situation, we do not think that it would be appropriate for us to issue any direction as has been prayed for in the instant writ petition for we are unable to weigh the advantages of having asbestos based products and not having the same, in the absence of appropriate data therefore. One thing, however, is clear that a large number of small scale industries which are normally labour incentive industries are depending on asbestos as their raw material for manufacture of their end product.

12. Once the matter has been dealt with and pronounced upon by this Court by giving a detailed judgment containing directions, we see no reason for filing the present petition. However, since the Petition has been pending for a considerable time before this Court, we will prefer to discuss the merits thereof. As already noticed, there is no law banning the use of asbestos in various manufacturing processes despite its adverse effects on human health. It is not for this Court to legislate and ban an activity under relevant laws. Every factory using or manufacturing asbestos, obtains a licence under the Factories Act as well as permission from the competent authorities including permission under the Environmental Laws. Once all the laws in force have been complied with and directions of this Court as contained in the case of Consumer Education and Research Centre (supra) are carried out in their true spirit, we see no reason as to why this Court, in exercise of its extraordinary jurisdiction under Article 32 of the Constitution, should ban such an activity when admittedly large number of families are dependent upon such processes. What has to be ensured is that proper precautions are taken. The Court had already made ILO guidelines as one of the safety measures to be complied with by the industries and it is expected of each State Government and the Union Government to ensure safe and controlled use of asbestos. What is required is better supervision and regulatory control rather than banning of the activity. Lack of specific data as well as vague averments in the Writ Petition amongst others are the grounds on which we

should decline to pass the mandamus prayed for. The affidavits filed by the official Respondents, including Respondent No. 37, specifically point out 'safe and controlled' use of asbestos in manufacturing processes. The prayer with regard to constitution of a committee comprising of specific persons is, again, not a matter that falls within the realm of jurisdiction of this Court. It is for the expert bodies in the concerned Ministries which should regulate proper measures in this regard to ensure proper utilization of asbestos and raw materials in relation to various manufacturing activities, if they are being carried on in accordance with law and without endangering the life of the people.

13. It has been averred in one of the affidavits filed by the Petitioner itself that the Government had introduced the White Asbestos (Ban on Use and Import) Bill, 2009 (hereinafter referred to as, 'the Bill'), which is pending in the Upper House. Thus, there could be no doubt that it is a matter which squarely falls in the domain of the legislature and the legislature in its wisdom has taken steps in the direction of enacting necessary law. Issuance of any direction or formulation of any further policy by this Court will obviously be a futile exercise. There could hardly be any justification for banning, completely or partially, of the activity of manufacturing of asbestos and allied products in face of the above admitted position.

14. In the matter relating to secondary exposure of workers to asbestos, though the grounds have been taken in the Writ Petition without any factual basis, again in the Rejoinder filed to the counter affidavit of Respondent No. 37, this issue has been raised by the Petitioner in detail. In the earlier judgment of this Court in the case of Consumer Education and Research Centre (supra), hazards arising out of primary use of asbestos were primarily dealt with, but certainly secondary exposure also needs to be examined by the Court. In that judgment, the Court had noticed that it would, thus, be clear that diseases occurred wherever the exposure to the toxic or carcinogenic agent occurs, regardless of the country, type of industry, job title, job assignment or location of exposure. The diseases will follow the trail of the exposure and extend the chain of the carcinogenic risk beyond the work place. In that judgment, the Court had also directed that a review by the Union and the States shall be made after every ten years and also as and when the ILO gives directions in this behalf consistent with its recommendations or conventions. Admittedly, 15 years has expired since the issuance of the directions by this Court. The ILO also made certain specific directions vide its resolution of 2006 adopted in the 95th session of the International Labour Conference. It introduced a ban on all mining, manufacture, recycling and use of all forms of asbestos. As already noticed, serious doubts have been raised as to whether 'controlled use' can be effectively implemented even with regard to secondary exposure. These are circumstances which fully require the concerned quarters/authorities in the Government of India as well as the State Governments to examine/review the matter in accordance with law, objectively, to achieve the greater health care of the poor strata of the country who are directly or indirectly engaged in mining or manufacturing activities of

asbestos and/or allied products.

15. As already noticed above, the Government has already presented the Bill in Rajya Sabha. The statement of objects and reasons of this Bill specifically notices that the white asbestos is highly carcinogenic and it has been so reported by the World Health Organisation. In India, it is imported without any restriction while even its domestic use is not preferred by the exporting countries. Canada and Russia are the biggest exporters of white asbestos. In 2007, Canada exported 95% of the white asbestos, it mined out of which 43% was shipped to India. In view of these facts, there is an urgent need for a total ban on the import and use of white asbestos and promote the use of alternative materials. The Bill is yet to be passed but it is clearly demonstrated that the Government is required to take effective steps to prevent hazardous impact of use of asbestos.

16. In light of the above discussion, we do not see any reason to grant any of the prayers made in the Writ Petition except to the extent that we would issue the following directions while disposing of the Writ Petition:

a. Ministry of Labour in the Union of India and Department of Industries and Labour in all the State Government shall ensure that the directions contained in the judgment of this Court in the case of Consumer Education and Research Centre (supra) are strictly adhered to;

b. In terms of the above judgment of this Court as well as reasons stated in this judgment, we hereby direct the Union of India and the States to review safeguards in relation to primary as well as secondary exposure to asbestos keeping in mind the information supplied by the respective States in furtherance to the earlier judgment as well as the fresh resolution passed by the ILO. Upon such review, further directions, consistent with law, shall be issued within a period of six months from the date of passing of this order;

c. Further we direct that if Union of India considers it proper and in public interest, after consulting the States where there are large number of asbestos industries in existence, it should constitute a regulatory body to exercise proper control and supervision over manufacturing of asbestos activities while ensuring due regard to the aspect of health care of the workmen involved in such activity. It may even constitute a Committee of such experts as it may deem appropriate to effectively prevent and control its hazardous effects on the health of the workmen; d. The concerned authorities under the provisions of Environment (Protection) Act, 1986 should ensure that all the appropriate and protective steps to meet the specified standards are taken by the industry before or at the time of issuance of environmental clearance.

17. However, we find that it is imperative for the Court to issue the above directions in order to strike a balance between the health hazards caused by this activity on the one hand and ground reality that a large number of families, all over the country, are dependent for their livelihood on this activity, on the other. We certainly are not entering into the arena of legislature and are passing above

directions in furtherance to the law laid down by this Court which, in terms of Article 141 of the Constitution, is binding on all concerned and to ensure effective and timely implementation of the provisions of the Environment (Protection) Act. These directions must be read and construed in comity with the proposed legislation and are in no way detrimental to the same.

18. Before parting with this file we have to deal with one of the main objections raised by the Respondents, as noticed above, particularly, Respondent No. 37 that the present petition is a result of business rivalry and has been filed by the Petitioner at the behest of other industries and the entire Writ Petition lacks bona fide and is complete abuse of process of law. The Petitioner NGO claims to be a registered body under the Societies Registration Act and non-profit organization, inter alia, working for protection of the environment and other public welfare activities. It also aims at protecting various interests of the common man particularly those who have no means and/or access for redressal of their grievances. It is concerned about the health hazards to workmen resulting from manufacture and use of asbestos and, thus, it prays for complete ban on such activity. As already noticed, this petition was defended by different Respondents i.e. the State Government, Union of India and Association of Asbestos Cement Product Manufacturers. In light of this objection and the material placed on record, a Bench of this Court passed the following Order on 13th August, 2010:

Kalyaneshwari has filed this writ petition seeking imposition of ban and payment of compensation to the industrial workers working in the manufacture, import and use of asbestos. This petition was filed as far back on 5th May, 2004. In the case of B.K. Sharma v. Union of India the Gujarat High Court vide order dated 9th December, 2004, has made the following observation:

36. As far as preliminary objections raised against the maintainability of the petitions are concerned, we could have thrown out the first petition, being Special Civil Application No. 14460 of 2004 but for the other two petitions on the same subject matter. Normally, multiple petitions under Public Interest Litigation, on the same subject matter are not entertained. However, the first petition does not seem to have been filed bonafide or for real and genuine public cause and it does not inspire our confidence to treat it as Public Interest Litigation in real sense. The resolution dated 15th July, 2004 was produced at the belated stage. The relationship between some of the office-bearers and members of the Board of Trustees with the personnel of Electro Steel Castings Limited is difficult to be overlooked. It, therefore, leads us to believe that the first petition is a sponsored petition. In Ashok Kumar Pandey v. State Of West Bengal and Ors. (supra), the Hon'ble Supreme Court, in no uncertain terms, has observed that "when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out." Since there is business rivalry between the said ESCL and the Respondent No. 5 and since the said ESCL is in the habit of sponsoring such petitions, we do not concur with the view of the present Petitioners that there is a real and genuine public

interest involved in the litigation. It is difficult to believe that they have approached this Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration, as observed by the Hon'ble Supreme Court in that case.

The above observation of the High Court indicates the relationship between the NG Os and the Steel Company, whose name is quoted hereinabove. Shri Colin Gonsalves, learned senior counsel appearing on behalf of the Petitioner herein all throughout these proceedings till today, fairly states that he has looked into the matter and it would not be possible for him to appear on behalf of the Petitioner in this matter any further. He further states that Advocate-on-record has also addressed a letter stating that she would not like to represent Kalyaneshwari (NGO). In the circumstances, the Registry is directed to issue notice to the Petitioner informing them of the next date of hearing. The matter is made returnable on 27th August, 2010. In the meantime, we would like to know from the Central Government as to whether Petitioner-NGO is on the list of NG Os maintained by the Union of India and whether the Petitioner-NGO is funded by the Central Government? We request Mr. H.P. Raval, learned Additional Solicitor General to assist us as amicus in the matter. The Advocate-on-Record is given discharge. We appreciate the stand taken by Shri Colin Gonsalves in taking a fair stand in the case.

The Advocate-on-Record is given discharge. We appreciate the stand taken by Shri Colin Gonsalves in taking a fair stand in the case."

19. After passing of that order the Petitioner NGO was further directed to file an affidavit explaining its conduct highlighted by Gujarat High Court in the case of B.K. Sharma (*supra*). In furtherance to the direction of this Court dated 27th August, 2010, B.K. Sharma, claiming to be working as Secretary of the Petitioner, filed a detailed affidavit. In this affidavit, besides reiterating some of the averments made in the Writ Petition, it has been specifically averred that 'on the advice of the High Court all the three Writ Petitions were withdrawn so as to make proper representation to the Central Government to consider the objections in the petition.' Specific dispute has also been raised and it is denied that one member of the Society, namely, Shanti Swaroop has worked with the Steel Company ESCL and that only consultancy services were provided by him on part time basis and comparison of his services is sought to be made with that of lawyers and Chartered Accounts working for the company. In the affidavit filed by the Petitioner in furtherance to the order of this Court dated 27th August, 2010, it is stated that B.K. Sharma was neither working as Advisor/ Consultant of ESCL between November-December 2003 to March-April 2004 nor was he looking after the marketing activity of ESCL in Madhya Pradesh. It is stated that during this period he was working in Rajasthan on an important project. First, it is nowhere denied that B.K. Sharma had no connection of any kind with ESCL at any point of time; second, even in the affidavit, necessary particulars have not

been given of the company or the project for which he was working in Rajasthan. Still attempt has been made to put the blame on the Gujarat High Court by stating that the Court had not appreciated the facts correctly. Other NG Os had also filed some writ petitions and as such the petition by the Petitioner was bona fide. It is also averred, 'it is pertinent to mention that neither the Court nor the Respondent felt the need for substantiating the allegations with evidence, which is contrary to the settled proposition of law that a person making an allegation needs to prove it'.

20. Three writ petitions had been filed in the Gujarat High Court, including one by B.K. Sharma acting on behalf of the Petitioner NGO, which was Petitioner No. 2, in that Writ Petition, seeking direction against the authorities to take appropriate preventive steps and measures against the Respondent No. 5 M/s. Saw Pipes Ltd. in proceeding further with the construction activities of Respondent No. 5's project comprising Blast Furnace and Ductile Iron/Cast Iron pipe, fittings casting manufacturing plant and foundry near Mundra, Kutch with further prayer that they be stopped from carrying on any activity and that the factory constructed should be demolished. These petitions were heard at great length by a Bench of Gujarat High Court. Ultimately, the Court recorded its findings in paragraphs 7.2, 36 & 37 of the judgment. In these findings, the Court noticed that earlier a PIL had been filed in the Madras High Court, allegedly sponsored by ESCL, against a company manufacturing the same articles. Later on that company had been taken over by ESCL and the present petition is also filed as a result of business rivalry. The Court, prima facie, recorded the finding that there is close association of B.K. Sharma with the rival company of ESCL and one Shanti Swaroop was also appointed as consultant for the NGO, who was earlier associated with ESCL. The Court finally recorded the conclusion that the petition was mala fide and was a result of collusion between the steel company and the NGO.

21. Another aspect on which the High Court recorded its adverse finding against the Petitioner is that the Petitioner had submitted some official documents, including noting on Government files, which were not published documents and to which the Petitioner had no access. Despite directions of the Court, the Petitioner had failed to disclose the source of possession of those documents. The matter did not end there as, when the true copies of the said noting/ documents were produced before the Court by the Department, it came to light that certain paragraphs/portions of the notings etc. had been omitted in the documents filed by the Petitioner and certified as true copies. From the record before us, it is clear that B.K. Sharma as well as Shanti Swarup had professional commitments in one form or the other either on permanent or temporary basis with ESCL. It has been stated in the affidavit filed by B.K. Sharma that three writ petitions were withdrawn on the advice of the Gujarat High Court which is hardly true.

The Court had only granted liberty, while dismissing the writ petitions as

withdrawn, to approach the Central Government. The Central Government had again declined to accept the representations made by the Petitioners resulting in filing of writ petitions for the second time which culminated in the final judgment by the Gujarat High Court in the case of B.K. Sharma (supra).

Above was the conduct of the Petitioner before the Gujarat High Court and we hardly find any improvement in its behaviour before this Court in the present litigation. Even before this Court, a judgment which has attained finality on all factual matrix and even otherwise, is attempted to be brushed aside by making irresponsible statements, inter alia, that the Gujarat High Court had failed to apply its mind. The judgment of the Gujarat High Court dismissing all the three writ petitions was challenged before this Court by way of filing Special Leave Petitions which came to be dismissed vide order dated 28th January, 2005. Thus, the judgment of the Gujarat High Court for all intent and purposes attained finality and we do not think that legality or correctness of the judgment can now be questioned in these proceedings. It is of no use and help to the Petitioners now to claim that no proof was produced before that Court to establish the allegations that the petition was filed at the behest of ESCL. They were writ Petitioners and the Court, after hearing the parties at length and perusing the record, has recorded the above findings which, in any case, do not suffer from any infirmity, much less, illegality so as to be disregarded by this Court. We are constrained to say that the findings recorded by the Gujarat High Court reflect the picture of the Petitioner which certainly invites judicial chastisement and appropriate orders.

22. During the hearing of this Writ Petition, the Court had called upon the learned Addl. Solicitor General to find out from the concerned Ministries whether the Petitioner NGO was a registered NGO and whether it was granted any financial assistance or grant-in-aid. However, vide letter dated 26th August, 2010, copy of which has been placed on record by the learned Addl. Solicitor General, it has been informed that the Petitioner NGO is not recognized by any Ministry and no financial assistance has been sanctioned to it.

23. Another aspect, which has still not been clarified by the Petitioner, is how the present petition came to be filed in face of the judgment of this Court in the case of Consumer Education and Research Centre (supra) and, in fact, what was the need to file it. It cannot be ignored that valuable time of this Court is consumed in dealing with such public interest litigations which are filed without proper study and data and merely on some reference to very few workmen working in an industry and without projecting any requirement at the national level demanding the attention of this Court in treating it as a national problem. The Kerala State Human Rights Commission vide order dated 31st January, 2009 has also dealt with the same problem which does not even find a mention in the present petition and which the Petitioner is expected to know as it claims to be working for the common man in this behalf. Every litigant, who approaches the Court, owes a duty to approach the Court with clean hands and disclose

complete facts. A petition which lacks bona fide and is intended to settle business rivalry or is aimed at taking over of a company or augmenting the business of another interested company at the cost of closing business of other units in the garb of PIL would be nothing but abuse of the process of law.

24. Presumably, and as contended, the direct impact of banning of activities of mining/ manufacturing relating to asbestos shall result in increase in demand of cast iron/ductile iron production as they are some of the suitable substitutes for asbestos. It is not in dispute that ESCL is one of the largest manufacturer of iron and allied products in India and there was a professional and/or other connections between ESCL and B.K. Sharma on the one hand and B.K. Sharma and Shanti Swarup on the other who, admittedly at present, is involved with the activities of NGO for a considerable time. Thus, it would be a reasonable conclusion to draw that the Writ Petition has been hardly filed in public interest but is a private interest litigation to give rise to business opportunities in a particular field.

25. In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, this Court took a cautious approach while entertaining public interest litigations and held that public interest litigation is a weapon, which has to be used with great care and circumspection. The judiciary has to be extremely careful to see that no ugly private malice, vested interest and/or seeking publicity lurks behind the beautiful veil of public interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. In the case of *Rajiv Ranjan Singh 'Lalan' and Another Vs. Union of India (UOI) and Others*, this Court reiterated the principle and even held that howsoever genuine a case brought before a Court by a public interest litigant may be, the Court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt; no trust can be placed by the Court on a mala fide applicant in a public interest litigation. The Courts, while exercising jurisdiction and deciding a public interest litigation, has to take great care, primarily, for the reason that wide jurisdiction should not become a source of abuse of process of law by disgruntled litigant. Such careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose true facts and approach the Court with clean hands. Thus, it is imperative that the petitions, which are bona fide and in public interest alone, be entertained in this category. Abuse of process of law is essentially opposed to any public interest. One, who abuses the process of law, cannot be said to serve any public interest, much less, a larger public interest. In the name of the poor let the rich litigant not achieve their end of becoming richer by instituting such set of petitions to ban such activities. Besides the fact that the present petition lacks bona fides, it is also obvious that the Petitioner though had prayed for complete ban on all mining and manufacturing activities but had hardly made any study or prepared statistical data in that regard. It only made reference to

certain studies in foreign countries. The Petitioner, claiming to be an organization involved in the good of the common man, ought to have taken greater pains to state essential facts supported by documents in relation to Indian environment.

26. The document referred to as Ex.P9 in paragraph 36 of the Writ Petition is probably the only document which allegedly records the conditions of a few workmen in India and contains the names of a few doctors and workers. This document is neither signed by anybody nor does it give address of any workman or the industry/factory where such workman is working. It is expected of the Petitioner to have made proper efforts in collection of such material before it moved this Court to treat this problem at the national level and had spent its judicial time. All the States in the country have been issued notices of this petition and they have denied the allegations. It was incumbent upon the Petitioner thus to at least substantiate the averments in the petition by some cogent and documentary evidence actually related to the working conditions of the workmen in various factories in different States. In our view, the Petitioner has miserably failed to discharge this onus.

27. The conduct of the Petitioner before the Gujarat High Court appears to be contemptuous and certainly is an abuse of the process of the court in terms of the finding recorded by that Court which has attained finality. That petition was instituted at the behest of ESCL, while the present petition also does not demonstrate that intention of the Petitioner is to achieve public interest. This Court in *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, has clearly stated that public interest litigation should be bona fide for public good and nor merely a cloak for attaining private ends. The Court clearly enunciated the principle that previous record of public service of the litigant can also be examined by the Court. To enable the Court to strike a balance between two conflicting interests, it is important that public mischief is prevented. It appears to have been moved again at the behest of the same company and in any case, to ultimately cause material and business gains to that or such other companies. Thus, the present petition lacks bona fide, is an abuse of the process of the Court and has been filed as a proxy litigation for the purpose of achieving private interest. This Court cannot permit such practice to prevail and it needs to be deterred at the very threshold.

28. In view of the preceding discussion in detail and its analysis, we perceive no merit in this petition, as far as prayer of the Petitioner for banning of mining and manufacturing activities in asbestos or its allied products is concerned. While rejecting that prayer, we dispose of this petition with the above directions.

29. Keeping in view the conduct of the Petitioner, particularly, B.K. Sharma, we hereby issue notice to him as well as the Petitioner to show cause why proceedings under the Contempt of Courts Act, 1971 be not initiated against them and/or in addition/ alternative, why exemplary cost be not imposed upon them. Further, we also call upon the Petitioner to show cause why the Registrar, Government of NCT, Delhi be not directed to take action against them in

accordance with law.

IA No. 9 of 2010 in WP (C) No. 260 of 2004

We find no reason to implead the applicant as a party Respondent in the present petition at this stage. The IA for impleadment is dismissed.