
(1998) 07 KAR CK 0106
In the Karnataka High Court
Case No : Writ Petition No. 17078 of 1997

Obayya Pujary and Others

APPELLANT

Vs

The Member Secretary, Karnataka State Pollution Control
Board, Bangalore and Others

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 31 A
Constitution of India, 1950 — Article 19 (1) (g), 21, 32, 48A, 51-A (g)
Karnataka Minor Mineral Concession Rules, 1994 — Rule 6 (2)

Citation : AIR 1999 Kar 157 : (1999) 3 KarLJ 651

Hon'ble Judges : R.P. Sethi, C.J.;V. Gopala Gowda, J

Bench : Division Bench

Advocate : Sri S. Ananda Shetty, for the Appellant; Sri A.V.S. Reddy, Additional Government Advocate, Sri G.N. Sangolli, Sri K.C. Adiga, Sri K.G. Raghavan, Sri K.K. Swamy, Sri K.N. Chandrashekar, Sri B.L. Acharya, Sri T.V.A. Murthy, Sri K. Giridhar, Sri J.S. Patil, Sri A. Manjunath, Sri P.S. Malipatil, Sri K.B. Shivakumar, L.M. Chidanandayya, Sri I.B. Biradar, Sri Suman Hedge and Sri M.N.S. Murthy, for the Respondent

Judgement

R.P. Sethi, C.J.—The air we breathe, is a mixture of nitrogen and oxygen with minor constituents like carbon dioxide and trap gases. Pollutants are substances which are not normally present in the air. Pollutants in the form of dust, smoke, industrial and automobile exhaust, gaseous and particulate matters, though not normally expected to be present, yet are found in the air. Nature and amount of such pollutants varies from place to place depending upon population, vehicular density and location of industrial units etc. Lungs are the major organs affected by the air pollution. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Organic matters including dust can cause the allergic reactions producing allergic alveolitis. Inorganic dust may get deposited in the lungs and produce fibrosis. Exposure to dust may lower the lung defences and clearing mechanism, resulting in infections particularly

tuberculosis. Such occupational exposures may also lead to causing lung cancer as well. Such hazardous effects on health are likely to be caused on account of the air pollution which is caused due to stone crushing. By stone crushing a lot of thick dust is generated polluting the environment, visible dust contains particles more than 500 (sic) in diameter which settle down in the nose and pharynx. Similar particles of 5-10 (sic) size remains suspended in air and are inhaled deeper. Such particles are deposited in the tracheobronchial tree and lung perenchyma which is likely to reduce fibrosis.

2. The above effects of air pollution caused due to stone crushing were noticed by high power committee appointed by the Environment Department, Government of Haryana. The report of the Committee was based on the investigations conducted by Dr. S.K. Jindal, Additional Professor and Head of Department of Pulmonary Medicine and Dr. Kartar Singh, Additional Professor and Head of the Department of Gastroenterology, Postgraduate Institute of Medical Education and Research, Chandigarh. The committee had investigated the health problems due to pollution caused by stone crushers scattered in various parts of Haryana. They examined the health status of 397 subjects working at the sites as well as the residents of the nearby areas and several stone crushers. They found significantly high prevalence of respiratory (46.60%) and gastrointestinal (30.20%) problems.

3. In the backdrop of what has been noticed hereinabove, we are called upon to decide the effect of unplanned stone crushing being carried out in the State of Karnataka, upon the health of the people of the State. In the absence of any positive response from the State Government we also propose to indicate the safeguards for the health and safety of the people while protecting the interests of the persons involved in the trade of stone crushing. It is regrettable that despite our insistence and observations made from time to time during the pendency of the proceedings, the State Government has not taken any positive step in the direction and rather adopted a callous attitude towards the issue involved.

4. In their writ petition, the petitioners had prayed for quashing of the consent No.102/KSPCB/APC/IND/DK/DEO-5/ALO-2/97/227 by which the Karnataka State Pollution Control Board (hereinafter called the "Board") was alleged to have conducted the proceedings culminating in the issuance of the consent order for carrying on the stone crushing operation by the 3rd respondent in Sy. No. 96/1 of Mantradi Village, Karkala Taluk, The petitioners who are agriculturists have alleged that with the carrying on of the proposed stone crushing business their crops would be adversely affected and that their health and the health of others in the area would be exposed to diseases on account of the pollution caused by the stone crushers. They apprehend that with the commissioning of the stone crushing unit, the water and air in the area would be polluted. The respondent-Authorities are alleged to have casually dealt with the case as they had earlier refused to give consent on 20-1-1997 but for reasons best known to them

agreed to give the consent again within months without there being any change in the circumstances.

5. Noticing the judgment of Punjab and Haryana High Court in *Ishwar Singh Vs. State of Haryana and others*, , we by our order dated 13-11-1997 decided to treat the petition as a petition in public interest for the people of the State of Karnataka as the issues raised were held by us to be of public importance requiring adjudication keeping in view the health and safety of the citizens. The State of Karnataka was directed to be impleaded as a party respondent 4 with a direction to all the respondents to show cause as to why relief in terms of the directions in *Ishwar Singh's* case, *supra*, be not granted in this case also. The learned Additional Government Advocate was directed to take notice on behalf of the respondent-State with a direction that he shall furnish the list of stone crushers located in the State of Karnataka. He was also directed to intimate the law prevalent and the procedure followed for the grant of licences to stone crushers and to intimate the measures taken by the State for safeguarding the health of the citizens and atmosphere in the locality. The State was further directed to intimate whether consequent upon the judgment of the Supreme Court in *M.C. Mehta Vs. Union of India (UOI) and Others*, , they had taken any steps by formulating rules regarding the licensing and operation of stone crushers. The owners of the stone crushers were directed to be intimated by the State about the pendency of the writ petition. It was further observed that such intimation shall be deemed to be sufficient notice to all the stone crushers who shall be at liberty to either become a party or file objections or address arguments in that matter. Pending adjudication of the issues raised in public interest, the respondent-Authorities were restrained from issuing any permission or consent or licence for starting a new stone crusher in the State. On 8-12-1997 a statement of information was filed on behalf of the State with a prayer for grant of one week's further time to submit further information. As Court directions dated 13-11-1997 regarding service of notice upon the stone crushers were complied with, a number of owners of the stone crushers filed applications for being impleaded as party respondents which were allowed and their statement of objections brought on record. On 16-3-1998 all I.As. filed for impleadment were allowed. It was however observed that no further I.A. shall be entertained but any person who felt interested in the case was given the liberty to address arguments for the purpose of properly adjudicating the pleas involved in this writ petition.

6. In the statement of information filed by the State in pursuance of the Court direction dated 13-11-1997, it was stated that there were 666 jelly crushing units in the State registered in the Industrial Department, the details of which was furnished in Annexure-R1. The District-wise statement of jelly crushing units was furnished in Annexures-R2 to R21. The aforesaid jelly crushing units include both mechanically operated as well as manual including units like stone cutting as well as stone polishing. Regarding procedure followed for grant of licence for the stone crusher it was submitted that the Industries Department insisted for no

objection certificate from the Pollution Control Board and quarrying licence issued by the Department of Mines and Geology at the time of issuing provisional registration certificate. The Commerce and Industries Department is empowered to issue quarrying licence under the Karnataka Minor Minerals Concession Rules, 1994. While issuing such licence/lease, the Department follows the procedure laid down under Rule 6(2) of the Karnataka Minor Minerals Concession Rules, 1994, where safety measures are stated to have been provided which are required to be followed before issuing such licence/lease. The Pollution Control Board issues "no objection certificate" on fulfilment of statutory requirements regarding pollution control. The stone crushing units in Karnataka are admitted to be scattered throughout the State and are not concentrated in or nearby city area or thickly populated areas. It is claimed that such units have not been permitted near human inhabitation and all precautions are taken to protect the interests of the public from noise and dust pollution. It is specifically stated that the Department of Commerce and Industries has intimated all the stone crushers in the State about the pendency of the writ petition in terms of the Court direction.

7. In its objections, the State Pollution Control Board have submitted that the procedure for grant of no objection certificate as adopted by the Board is claimed to be sufficiently effective and continuously followed. The person desirous of getting a licence is obliged to file an application in the prescribed form with all technical details pertaining to the manufacturing process along with proposed measures with respect to water pollution control and air pollution control. Details regarding solid waste disposal, hazardous waste handling, storage of hazardous chemicals upon the type and nature of industry is also required to be furnished. Copies of the licences issued by the Department of Commerce and Industry, Revenue Department, Mines and Geology Department, etc., have to be submitted for getting environmental clearance. The application also includes the details of the process, pollution control measures and project report along with the requisite technical details. Such application is verified by the field officer who is required to assess the feasibility and suitability of the proposed industry after a spot inspection. Necessary data is collected of the surrounding areas, nearest village, the details of the nearest stream, valley, historical monuments, highways, ecological or other sensitive areas like religious and historical places, scenic areas, hill, beach, health resorts, etc., is collected, The Board has prescribed certain guidelines for protecting the forest land and preventing the conversion of the said forest areas into non-forest areas. After the receipt of all the information from the Regional Office and after further scrutinising the applications independently, and considering all the aspects of the matter, the Head Office of the Board takes a decision with regard to issue of the consent in accordance with law. The Central Pollution Control Board is also stated to have prescribed the standards under Environmental Protection Act for the purposes of safeguarding the environment. The aforesaid standards are claimed to be strictly followed by the State Pollution Control Board. The Board has also placed on

record the copy of the guidelines for setting up new industries in the State of Karnataka. Air Pollution Control measures for stone crushers as approved by the Board in its meeting on 22-10-1990 provide:--

1. The minimum distance from highways and habitats, temples, schools and rivers should be 2 Kms.
2. The Jaw Crusher, the chuts and conveyor system of crushed stone to be covered with suitable semi-circular M.S. Sheet/Zinc sheets, etc.
3. The rotary screen to be completely closed leaving space at bottom for collection of the sieved jelly.
4. The conveyor belts, chuts especially carrying smallest particles should be covered with semi-circular M.S. Sheets and heaps shall be located in appropriate sheds wherever possible with all possible arrangements to prevent escape of dust during loading and unloading operation.
5. Suitable exhaust and venting system of adequate capacity to be provided to guide the dust emanating from the crushers into the stack.
6. The suspended particulate matter as measured from a distance of 3 metres from any source of dust emission such as crusher, disintegrator, rotary screen etc., shall not exceed 600 micrograms/M3.
7. Suitable water sprinkling system in wet crushing should be provided to further reduce the dust.
8. Minimum 5 rows of tall growing leafy trees should be planted around the crusher plant area to minimise dust and improve aesthetic appearance.
9. Suitable safety measures shall be provided to protect works from the ill-effect of dust pollution.
10. Noise level as measured from the periphery of the industry should not exceed 75 dba.

The Board decided to issue directions for closing the industry u/s 31A of Air (Prevention and Control of Pollution) Act, 1981 (as amended in 1987) with directions to K.E.B. and B.W.S.S.B. authorities to cut off supply of electricity and water respectively and marking copies of directions to other concerned authorities. It was further decided to issue closure order as per the draft proceedings placed before the Board.

Item No. 78.4: Air Pollution Control Measures by Stone Crushers -- Regarding.

The Board approved the recommendations of the Technical Advisory Committee in respect of air pollution control measures in stone crushers to the effect that:--

(a) the guidelines could be applicable to all new crushers to be set up after 1st January, 1991;

(b) and from January 1991 to June 1991, each case should be brought before the Technical Advisory Committee and decision taken on individual merit;

(c) and to issue circular, so that the entrepreneurs who would like to put up such units are adequately informed before they venture setting up the same.

8. A number of units carrying on business of stone crushers and their associations have been impleaded as party respondents in the case. All such persons have tried to justify the grant of licences and permissions in their favour by the appropriate authority. It is submitted that the units which are carrying on the business of stone crushing have been carrying on their activities strictly in accordance with the terms and conditions prescribed by the licensing authority on the basis of the no objection certificates issued by the Pollution Control Board. They have contended that their business was not in any way causing pollution which could warrant action by the authorities or the Court. It is submitted that as they were carrying on the business in accordance with the permission granted, no direction can be issued particularly when there was no complaint against them either by the public or by the concerned authority. One of the associations of the quarry owners have submitted that the topography, situation and the terrain of the lands in Karnataka particularly in coastal districts of Mangalore and Udupi being entirely different from those in State of Punjab and Haryana, no directions based upon Ishwar Singh's case, supra, be issued against them. The topography in the aforesaid areas is stated to be mainly made up of hillocks as distinguishable from the topography of Punjab and Haryana which is made of plains. The stone crushers are claimed to be located mostly in hillocks, far away from the areas inhabited by the villagers. Such crushing units are not concentrated in any single place and are scattered. It is submitted that in almost all cases there would be only one single closest point, that too many crushers having capacity of producing not more than 3 lorry loads per day. Even in remaining cases not more than 3 crushers are situated in one single place. In most cases the larger area surrounding the quarry is stated to be not used for agricultural or any other connected purpose. In most of the cases the lands around the crushing unit are either under the purview of the Revenue Department or the Forest Department. The practice in the Districts of Mangalore and Udupi is to establish crushing units adjacent to quarries which are established in revenue land by taking the same on lease from the concerned Panchayat. Many of the impleaded respondents submit that they were carrying on tiny stone crushing industries which were not causing any pollution menace.

9. All the impleaded respondents have submitted their individual statement of objections to justify the carrying on of the stone crushing business claimed to be in accordance with the provisions of law. They have further submitted that any adverse order or direction would prejudice their business being carried on from several years. As we have opted not to issue directions with respect to individual cases, the details of their individual statement of objections are not made part of these proceedings. We have decided to consider the general position of the

alleged pollution caused on account of the stone crushing business and to suggest, provide and direct appropriate measures, if needed, for curbing or putting an end to such a hazard.

10. The right to "life" is the most fundamental right as enshrined in Article 21 of the Constitution of India. Such right includes all attributes of the life. In *Kharak Singh Vs. The State of U.P. and Others*, , the Supreme Court acknowledged that the term "life" meant something more than mere animal existence. The inhibition against its deprivation extended to all those limbs and faculties by which the life is enjoyed. It equally prohibited the mutilation of the body by the amputation of an arm or leg, of putting out of an eye, or the destruction of any other organ by the body through which the soul communicates with the outer world. It postulates to be free from restrictions on the enjoyment of a decent, respectable and healthy life. Right of life under Article 21 is a right of a person to be free from restrictions or encroachment, whether imposed directly or indirectly brought about by calculated measures. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , it was held that it is a fundamental right of everybody to live with dignity. Such right would include all those rights which ensure a person's life meaningful, complete and worth living. Right to life would also include right to live in peace, to sleep in peace, enjoy health free from pollution. In AIR 1991 420 (SC) , the Apex Court held that enjoyment of pollution free atmosphere was included in the right to life under Article 21. The Court observed:--

"Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be determined to the quality of life".

However, such a right is not an absolute right and is obviously subject to reasonable restrictions. It is also controlled and regulated by needs of the society. It has to be kept in mind that rapid growth of the economy and the industrialisation is also the need of the mankind and attribute of and requirement of the decent, respectful and dignified life. While protecting the environment the industrial development cannot be completely ignored. In *M.C. Mehta's case*, supra, it was observed:--

"We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area".

11. The Supreme Court in *Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others*, , had observed:--

"Consciousness for environmental protection is of recent origin. The United

Nations Conference on World Environment held in Stockholm in June 1972 and the follow-up action thereafter is spreading the awareness. Over thousands of years men had been successfully exploiting the ecological system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon Nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have now come to be realised. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with, so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. We had commended earlier to the State of Uttar Pradesh as also to the Union of India that afforestation activity may be carried out in the whole valley and the hills. We have been told that such activity has been undertaken. We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way, there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation".

12. Again in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Supreme Court had held:--

"Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity, industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oasis he is also leaving behind deserts in the place of oasis. In the last century, a great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves over much on account of our human victories over nature. For each of such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different unforeseen effects which only too often cancel the first". Ecologists are of the opinion that the most important ecological and social problem is the widespread disappearance all over the world of certain species of living organisms, Biologists forecast the extinction

of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half of the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by this Court. Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whether a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution. Directive principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country" and Article 51-A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures." When the Court is called upon to give effect to the directive principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions".

13. After referring to the report of the Expert Committee, as noticed in the preface of this judgment, a Division Bench of the Punjab and Haryana High Court in Ishwar Singh's case, supra, declared:--

"While dealing with the rights of the citizen, we cannot ignore the report of the Project entitled Health Effects of Environment Pollution due to Stone Crushers in Haryana State at Annexure-P3. The Committee consisting of eminent scientists

have opined that due to stone crushing a lot of thick dust is generated polluting the environment. Visible dust contained particles more than 50 (sic) in diameter, which settle down in the nose and pharynx. Smaller particles of 5-10 (sic) size remain suspended in air and are inhaled deeper which are deposited in tracheobronchial tree and lung parenchyma and may induce fibrosis. They have further opined that such a process causes lung function impairment debility which may also reactive the old tubercular foci in the lungs. The committee have noted the problems faced in the populated area and concluded that lungs are the major organs affected by the air pollution because of the direct contact of the respiratory tract with outside atmosphere. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Exposure to many of the occupational and environmental pollutants can precipitate and/or aggravate asthma. Organic matter/dusts can also cause other allergic reactions producing allergic alveolities. Inorganic dusts may get deposited in the lungs and produce fibrosis. This produces respiratory disability and decreased work efficiency. While anthracnose is common in coal miners, silicosis occurs in those exposed to the silica dust namely the workers involved in mining, pottery work and sand blasting. Exposure to dust may lower the lung defences and clearing mechanism, resulting in infections particularly tuberculosis. Some such occupational exposures may cause lung cancer as well".

14. The Supreme Court in *M.C. Mehta and another Vs. Union of India and others*, , has ruled that enterprise which has engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the industrial unit and residing in the surrounding areas owes an absolute obligation to the community to ensure that no harm results to any one on account of such hazardous or inherently dangerous nature of the activity. A person engaged in such industrial activity is under an obligation to conduct his commercial activities with the highest standards of safety. If the enterprise is permitted to carry on any hazardous or inherently dangerous activity for profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads. In case of loss on account of such activity the enterprise is even liable to indemnify and compensate the sufferer. No person, therefore, can claim to have a right of carrying on any commercial activity which admittedly affects the health of others. The State, under these circumstances is under a constitutional obligation to provide safeguards for protecting the life and health of the citizens. There is no absolute right vesting in any citizen to carry on commercial activities of trade or ovation without limitation. The experts on the subject are of the opinion that the theory which governs our environmental laws, is what may be called a "Policing Society Theory" envisaging the Legislature and the administration would perform their task acting as vigilant policemen entrusted to detect crimes by bringing the culprits to the Court. Failure on the part of the Executive or the Legislature to

perform their constitutional obligation would cast a duty upon the judiciary to react and come to the rescue of the people by providing remedial measures, issuance of appropriate direction protecting the environment for the safety of life, the health and property of the citizens.

15. It is not disputed that in the State of Karnataka, about 666 industries are involved in the business of crushing of the stones and allied matters. It is also not disputed that mushrooming of such industries is on the rise which is not effectively controlled by the State Executive. Such industries are scattered all over and not located within specified places. The pollution caused on account of the crushing of the stones can also not be disputed. Emission of dust, smoke and gases from such industrial units is acknowledged. The consequential effects of the dust, smoke and gases emitted from the conduct of the business are surely to affect the lungs and other major organs of the people involved in the business and living in the surrounding areas. Besides human beings, the animals and the vegetation including crops are likely to be affected unless protected. It is, therefore, the duty of the respondent-State to take measures and effective steps for regulating the conduct of the business as has been done in many other States. The respondent-Pollution Control Board has no doubt, submitted that it has already taken measures by providing guidelines for setting up new industries in the State of Karnataka but it has been stated on behalf of the petitioners that the aforesaid guidelines are observed more in breach than in compliance and that there is no machinery provided to check and insist the observance of the guidelines. According to the guidelines, no stone crusher can be located within a distance of 2 kms. from highways, habitats, temples, schools and rivers but in fact, the industries conducting stone crushing business are located just on the main highways, near the habitats, temples, schools and rivers. It is contended that the Jaw Crusher, and chuts and conveyor system of the crushed stones is not covered anywhere. The rotary screens are not completely closed leaving space at the bottom for collection of sieved jelly. Conveyor belts are also stated to have not been covered. No suitable exhaust and venting system is provided. There is no provision of water sprinkling in wet crushing for reduction of dust. No trees are planted around the crushing plant for the purpose of minimising the dust and improving aesthetic appearance/compliance. No provision is reported to have been made for controlling the noise caused by carrying on the stone crushing business. The guidelines have been made partially applicable as is evident from the decision of the Board incorporated in Item No. 78.4. The inaction of the State and lapses of the Board to take effective measures has cast a duty upon us to issue appropriate directions for protecting the life of the people and ecology of the area.

16. The objection of the units already carrying on the business of stone crushing that as they were granted valid licences and permissions by the concerned authorities, no direction could be issued to them cannot be accepted in view of the likely disastrous effects of the business being carried on by them. Grant of licences or permissions in favour of such units have not conferred upon them any

absolute right which could not be regulated even by Court directions. However, keeping in view the facts that the aforesaid units were granted licences and they were carrying on their business without any objections by the concerned authorities, the Court has to issue directions by protecting and safeguarding their interests. As earlier noted, the personal considerations or the interests of enterprises already engaged in the stone crushing business have to give way and bow before the paramount considerations and larger interests of the society. In view of what we have noted hereinabove we do not agree with the submissions of such units that their business was not causing pollution requiring action by this Court. We also do not agree that the topography, situation and the terrain of the lands in coastal districts of Mangalore and Udupi do not require the issuance of any direction as allegedly the units carrying on business in the coastal area were not causing any pollution. The emission of the dust and dangerous particles out of the business carried on by such units is not in any way minimised on account of alleged topography stated to be made up of hillocks. The location of some of the units allegedly being far away from the areas inhabited by the population would not prevent us from issuing appropriate directions in the larger interests of the society, of course, by protecting interests of such of the stone crushers who have claimed to be not causing any pollution. The location of existing units being on the lands owned by the Revenue Department or the Forest Department cannot in any way be a circumstance preventing us from issuing appropriate directions. Such a circumstance, on the other hand, would facilitate the issuance of the directions as it would not adversely affect the interests of those who were involved in the business of stone crushing and their units were located on the lands owned either by the Revenue Department or by the Forest Department. We do not agree that issuance of appropriate directions in the case would in any way adversely affect their proclaimed fundamental right of carrying on business under Article 19 of the Constitution of India.

17. Right to freedom as enshrined in Article 19 of the Constitution though fundamental, is not an absolute right and is always subject to reasonable restrictions which may be imposed in the larger interests of the society. Freedom of profession, trade and business as contemplated by clause (1)(g) of Article 19 of the Constitution is always subject to the limits as may be imposed by the State in the interest of public welfare. The Supreme Court in various judgments held that there were certain activities which were inherently pernicious that no body could be considered to have a fundamental right to carry them on as trade or business. The Supreme Court in *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, , has held that though a citizen has a right to carry on any business of his choice, there is no right to carry on any business inherently dangerous to the society. No citizen has a fundamental right to carry on business wherever he chooses and such a right can be subjected to reasonable restriction in the interests of general public. The Supreme Court in *State of Maharashtra v H.N. Rao*, held that the reasonable restriction imposed has to be adjudged in the light of the nature of the right,

danger or injury which may be inherent in the unbridled exercise of the right and the necessity of protection against danger which may result to the public by the exercise of the right. It further held:

"In adjudging the reasonableness of restrictions imposed upon the holding or disposal of a carcass which is noxious, maintenance of public health is the paramount consideration. Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated in the Act, being enacted solely in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Article 19(1)(f) and (g) and the interests of a citizen in the exercise of his right to acquire, hold or dispose of his property to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity". .

18. Keeping in view the facts and circumstances of the case, the position of law, the interests of the society and of those who are carrying on or intend to carry on the business connected with the crushing of stones, we deem it appropriate to dispose of this writ petition filed in public interest by issuance of the following directions to the respondent-authorities:--

(1) That the State shall immediately formulate a policy regulating the carrying on of the business related to the crushing of stones by prescribing reasonable conditions including guidelines and licences and their periodical renewals.

(2) Pending formulation of the policy by the State, it is directed that no person or group of persons shall be granted further permission or "No Objection Certificates" for carrying on the aforesaid business.

(3) That the State Government shall identify "safer zones" to be certified by the Karnataka State Pollution Control Board within a period of six months from today and take steps for shifting of all existing stone crusher units in the State into those safer zones within a period of one year from today.

(4) That the two safer zones shall not be located within a radius of 50 kms.

(5) Such safer zones shall not be located within the limits of:--

(a) Two kms, from the national highways, habitats, temples, schools and rivers.

(b) One and a half kms. from the State Highway. (c) Five hundred metres from the link roads.

(d) Eight kms. from the boundary of Municipal Corporations.

(e) Four kms. from the District Headquarters.

(f) Two kms. from the boundary limits of a Taluk H.Q.

(g) One km. from a inhabited village or any land recorded as forest in Government records or any private land which is shown as cultivable in the revenue reco. is.

(6) Each stone crusher unit shall be located in a minimum area of one acre owned by the stone crusher, State or the Panchayat.

(7) Each unit shall abide by the pollution control measures as approved by the Board in its meeting held on 22-10-1990 and the decision of the Board in Item No. 78.4 or such other safeguards as may be prescribed by the Board.

(8) All stone crushers shall be granted licences initially for a period of one year to be renewed every year on payment of such licence fee as may be prescribed.

(9) The licensing authority shall be the Deputy Commissioner of each District who shall issue and regulate licences only after obtaining No Objection Certificate from the concerned departments including the Pollution Control Board, the Forest and the Revenue Departments.

(10) The licensing authority shall be under a legal obligation to inspect or get the inspection done of each stone crusher at least once a year.

(11) That all stone crushing units located at present locations shall be deemed to have been directed to be closed after a period of one year, unless their units fall in the declared "safer zones" and shall not be permitted to carry on their business of stone crushing on any ground or pretext whatsoever.

(12) That the respondent-State shall submit the proposals of safer zones in the Registry of this Court on or before 31-12-1998.

(13) That out of the fee prescribed for the issuance of licence, a fund shall be created to be controlled and managed by the State Government which shall provide financial assistance including financial benefits for the protection of life, health, safety and education of the workmen employed in such stone crusher units including their dependants.

(14) That the citizens of the area are authorised to prefer their claims for grant of compensation; for those persons who are proved to have suffered due to pollution caused by stone crushers owned and managed by private respondents. Claims for such compensation may be entertained within two months after such a right is notified to the inhabitants of the area. Such claims, if preferred shall be considered and disposed of within three months and if any of the respondent-stone crushers is found to be responsible for making compensation, the same shall be paid by him within a period of two months thereafter, failing which his licence for carrying on stone crusher business shall be cancelled. It is expected that while issuing the notification inviting the claims for compensation, the respondent-State shall appoint an authority for entertainment and adjudication of such claims for compensation. It would be appreciated if the person having judicial background is appointed as such authority.

(15) The State Government and the Pollution Control Board are directed to submit their compliance report in the Registry of this Court on or before 31-12-1998.

19. Copies of this judgment shall be furnished by the Registry to the learned Counsel appearing for the respondent-State and the Board within a period of one week for their taking up appropriate action and submission of compliance report within the periods and time specified.