

(1995) 11 SC CK 0052

In the Supreme Court Of India

Case No : Writ Petition (C) No. 327 of 1990

Vineet Kumar Mathur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Citation : (1996) 1 CLT 56 : (1995) 8 JT 27 : (1996) 1 SCALE 504 : (1996) 4 SCALE 21 : (1995) 6 SCALE 241 : (1996) 1 SCC 119 : (1995) 4 SCR 806 Supp : (1996) 1 UJ 164

Hon'ble Judges : G. T. Nanavati, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : V.R. Reddy, Additional Solicitor General, Kapil Sibal, D.A. Dave, M.C. Bhandare, A.B. Rohtagi, V.C. Mahajan, P.H. Parekh, Niti Dikshit, Pradeep Misra, K.K. Mohan, Ashok K. Srivastava, Mr. Narain, Sandeep Narain, Yashwant Mathur, N. Singh, Anil Katiyar, Arun K. Sharma, Sushil K. Jain, Shakeel Ahmed, Safia Khan, Vinay Garg, A. Minocha, Shakil Ahmad Syed, S. K. Misra, R.B. Misra, Raju Ramachandran, A.K. Sil, Lalita Kaushik, R.P. Singh and Kailash Vasdev, for the Appellant;

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reddy, J.—A letter written by Sri Vineet Kumar Mathur pointing out the pollution caused in the river Gomti and its causes was treated as a writ petition by this Court and orders passed from time to time. Mohan Meakins Breweries is said to be one of the industries polluting the river. It is not necessary to refer to the various orders passed in this matter from time to time. It would be sufficient to refer to the order made on January 15, 1993 which reads as under:

The following order will apply to: (1) M/s. Mohan Meakins, Daliganj, Lucknow; (2) M/s. Oudh Sugar Mill, Hargaon, Sitapur; (3) M/s. Bajaj Hindustan Ltd., Gola Gorakhnath, Kheri (Sugar Unit-Distillery); (4) M/s. Sharda Sugar Mill, Palia Lakhimpur Kheri (New Name - Bajaj Hindustan Ltd., Unit Palia Lakhimpur Kheri); (5) M/s. Balaji Vegetable Product, Sitapur; (6) M/s. Kissan Cooperative Sugar

Mill, Majhola, Pilibhit; (7) M/s. U.P. State Sugar Corpn., Mohali, Sitapur; (8) M/s. HAL Lucknow; (9) M/s. Lucknow Producers Milk Union, Lucknow Industries.

The officers of the State Pollution Board will visit the above industries establishments and make a fresh inspection of the effluent treatment plants installed in the said establishments and of their working. If there are any applications made by these industries for consent of the Board, they will be disposed of after inspection and within three weeks from today. If after inspection, it is found that the treatment plants are deficient in any respect or the deficiency pointed out earlier still continues, the Board will give reasonable time for the industries to cure the deficiencies. However, the time so given should not extend beyond 21st March, 1993.

The officers of the Pollution Board will visit the industrial establishments concerned after the expiry of the time given to them to cure the deficiencies, and, make their report to this Court before 7th April, 1993.

If the industries in question do not obtain the consent of the State Pollution Board for running their units, before 31st March, 1993, the industries will stop functioning after 31st March, 1993.

As regards the Municipal Boards of Pilibhit, Barabanki, Sitapur, Sultanpur, Jaunpur, Lakhimpur Kheri, they are directed to instal the effluent treatment plant on or before 30th April, 1993 and obtain a certificate from the State Pollution Board that the plant installed is upto the standard and its working is satisfactory. The Chief Officers and the Presiding Officers of the concerned Municipalities are required to file their affidavits on or before 30th April, 1993 that they have complied with the above directions.

Mr. R.B. Misra Appears for the State Government. The State Government is directed to let the Court know what steps they have taken to release the funds to the Jal Nigam for installation of the sewerage treatment plant at Lucknow. The affidavit to be filed on or before 30th April, 1993.

As regards the industries, the matter shall come up for hearing on 7th April, 1993. As regards the municipalities, it would come up for hearing on 3rd May, 1993.

2. Inasmuch as Mohan Meakins did not remove the deficiencies in its effluent treatment plant by 21st March, 1993, no consent was granted to it by the Pollution Control Board. It stopped functioning from 1st April, 1993 onwards. The letter dated March 31, 1993 Addressed to Mohan Meakins by the Uttar Pradesh Pollution Control Board (at Pages 422-425 of the record) states that in the circumstances stated therein, consent cannot be granted to Mohan Meakins under the Water (Control of Pollution) Act, 1974 (for short, the "Water Act").

3. On April 2, 1993, Mohan Meakins addressed a letter to the Pollution Control Board (P.C.B.) stating that they have since complied with the order of this Court and, therefore, the consent may now be granted to them under the Water Act.

Before we refer to the orders passed on this application, we may refer to some other developments which have taken place in the meanwhile.

4. On April 6, 1993, the P.C.B. filed an affidavit in this Court stating, inter alia, that the consent has been refused to Mohan Meakins for failing to remove the deficiencies in effluent treatment plant.

5. On 6th and 7th April, 1993, Mohan Meakins filed two affidavits in this Court. In the first affidavit, Mohan Meakins stated that the sudden shut down of the plant is likely to result in not only emission of poisonous gases but is also likely to damage the machinery and the plant beyond repair on account of the solidification of the spent wash and that with a view to avoid the said untoward consequences, it is felt necessary to run the plant intermittently for a period not exceeding two days in all between 7th and 11th of April, 1993. By such running, it was submitted, the company does not mean to nor should it be understood to have violated the order of this Court dated January 15, 1993. In the other affidavit filed by Mohan Meakins, it stated that inasmuch as they have since rectified the deficiencies in the effluent treatment plant and have brought it upto the desired level, the order dated January 15, 1993 may be extended till December 31, 1993, which is the date specified in the Government of India Notification dated February 12, 1992.

6. On April 15, 1993, this Court passed an order (at Page 520 of the record) holding that running of the plant between 7th and 11th of April, 1993 by Mohan Meakins prima facie amounts to violation of this Court's order dated January 15, 1993. Accordingly, notices were issued to the Managing Director of Mohan Meakins, Brig. Kapil Mohan and to the Chief Executive Officer, Sri Yogesh Kumar, to show cause why they should not be proceeded against for contempt of this Court.

7. Now, coming back to the application made by the P.C.B. on April 2, 1993 to grant consent, the P.C.B. granted the consent on April 21, 1993. This fact was, however, not brought to the notice of this Court immediately either by P.C.B. or by Mohan Meakins. Though an affidavit was filed by Sri Yogesh Kumar on April 27, 1993 in response to the contempt notice issued to him on April 15, 1993, this fact was not disclosed. Similarly, the Managing Director, Brig. Kapil Mohan also did not disclose this fact in his affidavit filed in reply to the contempt notice. On May 3, 1993, the P.C.B. also filed an affidavit slating that working of the factory for two days by Mohan Meakins is not justified but even here the P.C.B. did not disclose the fact that the consent has since been granted to Mohan Meakins on April 21, 1993. It, however, appears that during the course of arguments, this fact was brought to the notice, of this Court. Thereupon, Sri P.H. Parekh, Advocate, who was appointed by this Court as Amicus Curiae in this matter addressed a letter, on May 8, 1993, to the learned Advocate for Mohan Meakins to confirm whether the plant/factory of Mohan Meakins has started working since April 23, 1993 and if so, on what basis. Sri Parekh sent a reminder on May 14, 1993. There was no reply from Mohan Meakins to either of these letters.

8. On October 8, 1993, this Court passed the following order in view of the failure of Mohan Meakins to respond to the letter from Sri Parekh:

Inspite of the letter written by the learned Counsel for petitioner on May 8, 1993 requesting the learned advocate for the 2nd respondent to send him copies of all the applications for consent, appeals together with the annexures and copies of the orders, passed either by the U.P. Pollution Control Board or by the Appellate Authorities under which the respondent Industry has been working since 23rd April, 1993, no documents have been supplied to him till date. Mr. (sic) learned Counsel for the 2nd respondent states that they were under the impression that the petitioner must be in possession of the said documents. The reply is most unsatisfactory and distressing as well. We adjourn the matter to 5th November, 1993. The 2nd respondent to supply the documents in question on affidavit. The respondent No. 2 to pay the cost of adjournment which is fixed at Rs. 10,000 as a condition precedent. The matter will be before this Bench as part-heard.

9. In compliance with the above order, an affidavit was filed on October 24, 1993 on behalf of Mohan Meakins (at page 595 of the record) disclosing that on the basis of their letter dated April 2, 1993, the P.C.B. has granted consent on April 21, 1993 and that while granting the said consent the P.C.B. was fully aware of the order of this Court dated April 15, 1993 (issuing contempt notices to the Managing Director and Chief Executive Officer of Mohan Meakins). It was disclosed further that on the basis of the said consent their plant had started functioning with effect from April 23, 1993.

10. In the light of the facts disclosed in the affidavit filed on behalf of Mohan Meakins, this Court issued a notice to Sri Darshan Singh, Member-Secretary, Uttar Pradesh Pollution Control Board to show cause why he should not be punished for contempt of this Court for granting consent in violation of the orders of this Court dated January 15, 1993. Counsel for the State of Uttar Pradesh was also directed to produce the entire Government record relating to the said matter alongwith an affidavit detailing the circumstances in which the Government had issued the order dated April 20, 1993 (referred to in the 'consent' order) to Sri Darshan Singh. On May 13, 1994, Sri Darshan Singh filed an affidavit in response to the contempt notice issued to him. In his affidavit, he referred to (1) Government of India Notification dated February 12, 1992 adding Sub-rules (6) and (7) in Rule 3 of Environment (Protection) Rules, 1986 and to Sub-rule (6) in particular; (2) to Section 18 of the Water Act which empowered the Central Government to give directions to the P.C.B.; (3) to the order of this Court dated January 15, 1993 and (4) to the closure of Mohan Meakins on and with effect from April, 1, 1993 in compliance with this Court's order dated January 15, 1993 and then stated that he had put up a note to the Chairman for granting consent to Mohan Meakins in view of the Uttar Pradesh Government order dated April 20, 1993, mentioning at the same time that the consent so granted shall be subject to the orders of this Court. He stated that "the Chairman, U.P. Pollution Control Board/Secretary (Environment), Government of U.P. directed the deponent not to

raise any objections in granting consent to M/s. Mohan Meakins in view of G.O. dated 20.4.1993 since this unit has been established before 16.5.1991 and requested time till 31.12.1993 to achieve the standard". He submitted that in view of the said direction, he had to and did issue the 'consent'. He also referred to Section 27(2) of the Water Act which empowered the Board to review its order refusing consent.

11. On July 20, 1994, an affidavit was filed on behalf of the State Government (sworn-to by Sri S.N. Shukla, Special Secretary, Environment) affirming the direction given by the Uttar Pradesh Government to the Pollution Control Board but stating at the same time that they were general instructions and were not meant for a particular industry. It was further stated in this affidavit that any such general instructions were not supposed to be relied upon by the P.C.B. to Act in contravention of this Court's order.

12. In view of the affidavit of Sri Darshan Singh and the affidavit of the Government of Uttar Pradesh aforesaid, this Court directed, on May 4, 1995, notice to Sri Pradeep Kumar, the then Chairman of the Uttar Pradesh Pollution Control Board-cum-Secretary (Environment) to show cause as to why he should not be punished for contempt of this Court. Sri Pradeep Kumar filed an affidavit in response to the said notice stating that inasmuch as Mohan Meakins was a unit established before May 16, 1991 and had installed effluent treatment plant and also because the B.O.D. level, was only marginally higher than the prescribed norms, "it was considered appropriate to review the matter in the light of the provisions of Section 27(2) of the Water (Prevention and Control of Pollution) Act, 1974", Particularly in view of the orders issued by the Government of Uttar Pradesh on April 20, 1993. Paragraphs 11, 12 and 13 of his affidavit are relevant and may be extracted:

11. That in aforesaid circumstances the Member-Secretary of the Board had moved a proposal for reviewing the orders of the Board regarding refusal of the consent on 21.4.1993. It has been suggested by Member-Secretary that consent may be given to the industry subject to the condition that the unit will treat the effluents to the extent possible in FTP and also subject to the orders of the Hon'ble Supreme Court in W.P. No. 327/90 Vineet Kumar Mathur v. Union of India and Ors.

12. That the proposal of the Member-Secretary was approved by the deponent and it was directed not to raise any objections as per the provisions of the G.O. dated 20.4.93. But such approval of the deponent for reviewing consent docs not mean that M/s. Mohan Meakins was allowed to operate its industrial plant alter 31.3.93 in defiance of the order dated 15.1. 1993 passed by this Hon'ble Court.

13. That in the consent letter, it has been made clear that the same is issued subject to the orders passed by this Hon'ble Court. True English translation of letter dated 21.4.1993 issued to M/s. Mohan Meakins is being filed herewith and marked as Annexure IV to this affidavit.

Since this Court was not satisfied with the explanation so offered, a notice was issued on August 25, 1995 calling upon Sri Pradeep Kumar to answer the charge of contempt in response to which Sri Pradeep Kumar filed an affidavit on October 12, 1995. In this affidavit, he tendered his unconditional apology for violating the orders of this Court and prayed that in the circumstances stated therein his unconditional apology may be accepted. In this affidavit, he stated that after the closure of several industries on or with effect from April, 1, 1993, they made a representation to the Government of Uttar Pradesh referring, inter alia, to the Government of India Notification dated February 12, 1992 (referred to supra) whereupon he consulted the Law Department of Uttar Pradesh and on the basis of its legal opinion and after considering the matter at the highest level in the Government (including the Advisor to H.E. the Governor) he put up a proposal to issue appropriate orders to P.C.B. that the industry established before May 16, 1981 may not be refused consent and that such industries may be given time till December 31, 1993 for achieving the prescribed level of efficiency in their effluent treatment plants. Accordingly, the Government issued orders on April 20, 1993 following which Shri Darshan Singh, Member-Secretary, Uttar Pradesh Pollution Control Board put up a proposal for granting consent, which he approved stating that no objection be raised for granting consent to Mohan Meakins. In his note, he made it clear that any such consent shall be subject to the orders of this Court. Shri Pradeep Kumar admitted that it was a lapse on his part, as a Chairman of the Pollution Control Board, in not ensuring that this Court is informed of the said consent immediately and in not obtaining appropriate orders in that behalf. He further stated that he is a senior member of the I.A.S. cadre, that in his entire career he has never violated the orders of the Court and that in the circumstances, stated in the affidavit, he may be pardoned. He assured that he would never give any occasion for similar complaint.

13. When the matter came up on October 14, 1995, we heard the matter fully insofar as Sri Pradeep Kumar and Sri Darshan Singh are concerned. Insofar as the contempt notice related to Mohan Meakins is concerned, it transpired during the course of hearing that the notice issued to the Managing Director and the Chief Executive Officer pertained only to their running the factory/plant on two days between 7th and 11th of April, 1993 and not to their obtaining consent on April 21, 1993 and running their plant contrary to the orders of this Court. Accordingly, we issued a fresh notice to the officers of the Mohan Meakins to show cause why they should not be punished for violating the orders of this Court dated January 15, 1993 by obtaining consent from the P.C.B. on April 21, 1993 in violation of the orders of this Court. Notice was made returnable within four weeks, during which time the said contemnors were entitled to file a counter to the said notice. For this reason, we are delinking the contempt notice insofar as it pertains to Mohan Meakins which will be dealt with and disposed of later, though we have concluded the arguments with respect to the notice already issued to them. We think it appropriate that orders are passed with respect to Mohan Meakins after hearing them in response to the fresh notice issued on

October 13, 1995. These orders are, therefore, confined to Sri Pradeep Kumar and Sri Darshan Singh only.

14. Sri Pradeep Kumar was the Chairman and Sri Darshan Singh was the Member-Secretary of the Uttar Pradesh Pollution Control Board at the relevant time.

15. We are of the opinion that the consent granted by Pollution Control Board to Mohan Meakins on April 21, 1993 is clearly in contravention of this Court's order dated January 15, 1993. The order of this Court had expressly directed that the reasonable time to be given to the various industries for removal of deficiencies in their effluent treatment plants shall not be beyond March 21, 1993. The inspection by the P.C.B., the removal of deficiencies et al were all to be completed by March 21, 1993. All those industries which did not remove the deficiencies within the said date and did not obtain the consent of P.C.B. by March 31, 1993 were to close down. Mohan Meakins were indeed refused consent by P.C.B. on March 31, 1993 and it was close on and with effect from April, 1, 1993. Yet a consent was granted on April 21, 1993 by the Pollution Control Board whereunder it has been allowed to operate its plant and factory with the condition that it should remove the deficiencies on or before December 31, 1993. It may be noticed that the amendment of Environment Rules effected by the Central Government by Notification dated February 12, 1992 was long prior to this Court's order dated January 15, 1993. Though the said amendment provided for granting time for removal of deficiencies till December 31, 1993 in case of industries established before May 16, 1981, this Court had yet ordered that it should be done on or before March 21, 1993. In such a situation, it was not open to the Pollution Control Board to grant consent on April 21, 1993 asking Mohan Meakins to remove the deficiencies by December 31, 1993. It must be remembered that both the Uttar Pradesh Pollution Control Board and Mohan Meakins were parties to the order dated January 15, 1993. We are, therefore, of the clear opinion that the said grant of consent to Mohan Meakins was in clear contravention of the order dated January 15, 1993.

16. So far as the addition of the words, "this consent order is subject to the orders passed by the Hon'ble Supreme Court of India in W.P. 327 of 1990 Vineet Kumar Mathur v. Union of India" are concerned, we think that it was a clever ploy by the person(s) issuing the consent. Firstly, the order of this Court dated January 15, 1993 precluded grant of any consent subsequent to March 31, 1993. Secondly, there was no point in saying that the said consent was "subject to the orders passed by the Hon'ble Supreme Court" when the consent being granted was itself in plain contravention of the order of this Court. It really the Pollution Control Board meant what it now says, the least - and probably the only course open to it - it could have done was to apply to this Court for permission to issue a 'consent' for the reasons stated by it. It did nothing of the sort. It went ahead and issued a consent with the said misleading words allowing the industry to operate contrary to the orders of this Court. Yet another fact to be noticed in this

behalf is the variance between the ground stated in Mohan Meakins application (for consent) dated April 2, 1993 and the terms subject to which it was granted consent by P.C.B. In their application dated April 2, 1993, it may be recalled, Mohan Meakins stated that inasmuch as they have complied with the prescribed norms they should be granted consent whereas the consent actually granted contemplates Mohan Meakins achieving the prescribed norms by December 31, 1993. The consent letter does not also say that Mohan Meakins will be entitled to act upon the said consent only after obtaining the orders of this Court therefore. In the absence of any such stipulation, the addition of the said words in the consent order had no meaning and were evidently meant to be used as a cover in future if and when someone complained of violation of the order of this Court. In this view of the matter, both the Member-Secretary, Sri Darshan Singh and the Chairman of the Pollution Control Board, Sri Pradeep Kumar must be held to be guilty of violation of the order of this Court dated January 15, 1993. Question then arises, whether the unconditional apology tendered by them should be accepted, or not?

17. Sri Pradeep Kumar has filed two affidavits to which reference has already been made. In the earlier affidavit, an attempt was made to show that there was no violation in view of the facts stated therein by the second affidavit, he has accepted that there was a lapse on his part. Of course, even in this second affidavit, he has tried to explain that his orders were passed upon the note put up by Sri Darshan Singh, Member-Secretary, the legal opinion tendered by the Law Secretary and the decision taken by his superiors including the Advisor to H.E. the Governor. At the time of arguments, however, Sri Kapil Sibal, learned Counsel for Sri Pradeep Kumar, made no attempt to justify his conduct. Sri Sibal plainly admitted that what has been done was in clear violation of the orders of this Court dated January 15, 1993. Sri Sibal submitted that in view of the unblemished record of the officer and in view of the circumstances stated in his second affidavit and his assurance that he will never allow any such situation to arise in future, the unconditional apology tendered by him may be accepted. Counsel submitted that Sri Pradeep Kumar is truly repenting his lapse and the unconditional apology by him is born of genuine contriteness.

18. Sri Darshan Singh has filed only one affidavit. While tendering an unconditional and unqualified apology, Sri Darshan Singh has stated that in view of the amendment of Environment Rules on February 12, 1992, and the power of review inhering in the Pollution Control Board by virtue of Section 27(2) of the Water Act, he put up a note for grant of consent on the basis of the application made by Mohan Meakins on April 2, 1993. The relevant paras in his affidavit are Paras 13 to 17 which read thus:

13. That the deponent on 21.4.92 keeping in view the orders passed by this Hon'ble Court, G.O. dt. 20.4.43 and provisions of the Act and Rules submitted a proposal for grant of consent to M/s. Mohan Meakins before the Chairman of the Board wherein it was specifically mentioned that this consent will be subject to

orders passed by this Hon'ble Court in this case.

14. That the Chairman, U.P. Pollution Control Board/Secretary, Environment, Government of U.P. directed the deponent not to raise any objection in granting consent to M/s. Mohan Meakins in view of CO. dt. 20.4.93 since this unit has been established before 10.5.1981 and requested time till 31.12.1993 to achieve the standard.

15. That in view of these directions the deponent granted consent to M/s. Mohan Meakins vide order dated 21.4.93. But it has been specifically mentioned in this order that this consent is being granted subject to the orders of this Hon'ble Court passed in the abovementioned case. Since the unit has already been closed in pursuance of order dt. 15.1.93 passed by this Hon'ble Court w.e.f. 1.4.93, the same ought not to have been operated without seeking permission of this Hon'ble Court because consent was granted subject to order dated 15.1.93. Merely because application seeking consent has been disposed of by the Board does not mean that permission to operate the industry was granted by the deponent.

16. That in case the U.P. Pollution Control Board did not dispose of the application of any industries seeking consent within 4 months as per Sub-section 7 of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 it will be deemed to be granted unconditionally.

17. That in the light of the abovementioned facts and circumstances, it is most respectfully submitted before this Hon'ble Court that the deponent had never intended to permit the industry to operate their plant and while issuing consent order the deponent has specifically mentioned therein that this order is subject to orders passed by this Hon'ble Court in the above noted writ petition. As there is a specific condition in the above noted order, the industry without ensuring compliance of such condition cannot operate its industrial plant as the same was already lying closed down pursuant to order dated 15.1.93 of this Hon'ble Court.

19. An extract of the note put up by Sri Darshan Singh as also the order passed thereon by Sri Pradeep Kumar are placed before us. The relevant portion of the note reads as under:

Wherefore under provisions of Section 18 read with Section 27(2) Clause B of the Water Act, 1974, pursuant to above mentioned Govt. Order dt. 20.4.93 read with letter dt. 2.4.93 of M/s. Mohan Meakins, Lucknow regarding water consent, after reviewing the water consent: refusal of the industry u/s 25 of the Water Act, 1974 in exercise of the power conferred under Clause B of Sub-section (2) of Section 27 proposal to grant the water consent by the State Board to the industry for the year 1993 is submitted for approval, While granting the water consent in said consent order alongwith other various conditions this specific condition has been proposed to be imposed essentially that as the industry have installed E.T.P. hence the industry shall discharge its trade effluent only after treatment of the same in accordance with prescribed standard. It is also

proposed to mention specifically in consent order that said consent order shall be subject to order/directions issued by the Hon'ble Supreme Court in W.P. No. 327/90 Vineet Kumar Mathur v. Union of India.

Accordingly after issuing the consent order to the industry, it is proposed that these facts be placed before Hon'ble Supreme Court, Copy of Order dt. 15.4.93 passed by Hon'ble Supreme Court is enclosed herewith.

Submitted for perusal.

sd/- Illegible 21.4.93

(Darshan Singh) Member Secretary U.P. Pollution Control Board, Lucknow

To Chairman

Instead of the condition stated in part A it is proposed that this condition be imposed that the industry will discharge its trade effluent after treating it to whatever extent it is competent to do so and continue to treat the effluent regularly and will ensure to achieve the standard by 31.12.93.

sd/- Illegible 21.4.93 Member Secretary

By Chairman

This industry has been established prior to 16.5.81 and it has requested for time till 31.12.93 to achieve the standard. Pursuant to Government Order dated 20.4.93 no objections should be raised for grant of consent. However, while granting consent, this condition be imposed that the unit shall not make any wilful default in operation of its E.T.P. and will discharge its effluent after treating the same to bring down the E.O.P. to the extent for which its E.T.P. is capable to achieve.

sd/- Illegible 21.4.93

(Pradeep Kumar) Chairman U.P. Pollution Control Board Lucknow

Member Secretary/C-V sd/- Illegible

20. It is significant to note that Para 3 of this note does refer to the order of this Court dated January 15, 1993 and to the refusal of consent by P.C.B. to Mohan Meakins on March 31, 1993 yet it says that in view of the instructions issued by the Uttar Pradesh Government on April, 20, 1993, the order dated March 31, 1993 refusing consent is liable to be reviewed u/s 27 of the Water Act. It singularly fails to point out that the refusal of consent on March 31, 1993 was pursuant to and in terms of the Court's order dated January 15, 1993 and cannot, therefore, be reviewed without reference to this Court. It is equally significant to notice that Sri Pradeep Kumar too does not refer to this aspect in his endorsement. As a matter of fact, his endorsement does not even say specifically that consent be granted subject to the orders of this Court. It looks as if for both of them, the orders of the Uttar Pradesh Government issued on

April 20, 1993 were sacrosanct and superseded the orders of this Court as well. It is a matter of regret that even responsible and senior officers of the government have acted in this manner. It is clear enough that the officials were anxious to somehow make out a case for enabling the Mohan Meakins to operate its plant and machinery regardless of the orders of this Court. We may also incidentally notice the unusual speed with which the matter was processed. The Uttar Pradesh Government's orders, general in nature, are dated April 20, 1993. On the very next day, Sri Darshan Singh put up the note, which was approved by Sri Pradeep Kumar on the same day and the 'consent' also issued on the same day.

21. Sri V.R. Reddy, learned Additional Solicitor General, appearing for Sri Darshan Singh reiterated the reasons and circumstances in which the Member-Secretary had put up the said note. He submitted that the Member-Secretary was bound by the direction given by the Chairman and that he had no option but to issue the consent pursuant to the orders of the Chairman. Learned Counsel affirmed the unconditional apology tendered by Sri Darshan Singh and pleaded for its acceptance as a true expression of contriteness on his part.

22. Taking into consideration all the facts and circumstances aforesaid, we hold that Sri Pradeep Kumar and Sri Darshan Singh are both guilty of violation of this Court's order dated January 15, 1993. In view of the explanation put forward by them and the several circumstances stated by them, however, we are inclined to accept their unconditional apology. At the same time, we administer a severe warning to both the officers that repetition of any such violation shall be viewed seriously. A copy of this Order shall form part of the service record of both the officers.

23. The contempt petition is ordered accordingly.

24. As stated hereinabove, insofar as the contempt proceedings against Brig. Kapil Mohan and Sri Yogesh Kumar, Managing Director and Chief Executive Officer respectively, of Mohan Meakins are concerned, orders will be passed later after hearing them on the fresh notice issued on October 12, 1995.