

Bittu Sehgal and anr. Vs. Union of India (Uoi) and ors.

LegalCrystal Citation : legalcrystal.com/674154

Court : Supreme Court of India

Decided On : Oct-31-1996

Reported in : (2001)9SCC181

Judge : Kuldeep Singh and; S. Saghir Ahmad, JJ.

Acts : Constitution Of India - Article 32;Environment (Protection) Act, 1986 - Sections 3(1), 3(2)(v), 3(3)

Appeal No. : Writ Petition (C) No. 231 of 1994

Appellant : Bittu Sehgal and anr.

Respondent : Union of India (Uoi) and ors.

Judgement :

Kuldeep Singh and; S. Saghir Ahmad, JJ.

1. In this petition — in public interest — under Article 32 of the Constitution of India, various directions have been sought from this Court pertaining to Dahanu Taluka, State of Maharashtra, which has been declared by the Central Government as an ecologically-fragile area by the notification dated 20-6-1991.

2. It is stated in the petition that Dahanu is a rich area in agricultural economy and is a source of supply of fodder, grass, rice, cereals, milk, poultry and fish to the people living in the region. It is known as “food bowl” of the region producing 37 thousand tons of chikoos per month, 1825 tons of guava, and 21.9 lakhs of coconuts. The fish catch in the area is stated to be more than 3.7 lakh tons of crabs, pomfret and other fishes and 17 thousand tons of prawns. It is further stated that Dahanu is the last surviving “green zone” between Bombay and Surat. 49% of its total area is under forest cover. 47 thousand hectares of the taluka is reserved and protected forest, harbouring a rich variety of wildlife including some of the endangered species such as leopards, spotted deer, barking deer and mouse deer, etc. The creeks and sea inlets at Dahanu are the feeding grounds for various types of fishes. It is stated that the Government has itself earmarked the Dahanu region for prawn culture and fish-farming and for this reason it has already invested huge amount of money in a seed-farm at Bada Pokharah across the Dahanu creek. Approximately, 65 per cent of the Dahanu population consists of tribals who are engaged in cultivation of land and orchards.

3. As mentioned above, the Central Government in consultation with the Government of Maharashtra, considering the need for protecting the ecologically-fragile Dahanu Taluka and to ensure that the development activities are consistent with the

principles of environmental protection and conservation has declared Dahanu Taluka as an ecologically-fragile area by the notification dated 20-6-1991 and placed various restrictions including restrictions on the setting up of industries which have detrimental effect on the environment. It is not necessary for us to go into the details of the notification.

4. The Government of India in exercise of the powers under Section 3 (1) and sub-section 3(2)(v) of the Environment (Protection) Act, 1986 (the Act), issued notification dated 19-2-1991, declaring coastal stretches as Coastal Regulations Zone (CRZ) and has regulated the activities in the said Zone. The notification is self-contained and has been made operative by this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹.

5. Mr M.C. Mehta, learned counsel for the petitioner has also invited our attention to various paragraphs relating to the protection of oceans, all kinds of seas, from Agenda 21 adopted by the RIO Conference. He has also referred to the report by the Department of Ocean Development, Government of India, regarding the status of marine pollution in coastal offshore waters in India. According to Mr Mehta, the guidelines given in Agenda 21 and the report by the Department of Ocean Development have to be considered by the State Governments while protecting the area declared by the Government of India as ecologically-fragile areas.

6. This Court on 31-1-1995 passed the following order:

“We have heard learned counsel for the parties. Mr K.T.S. Tulsi, learned Additional Solicitor General appearing for the State of Maharashtra very fairly states that the master plan/regional plan required to be prepared in terms of notification dated 20-6-1991 is still in the process of preparation. Under the notification the master plan/regional plan was to be prepared within one year from the date of the notification and the same was to be got approved from the Ministry of Environment and Forests, Government of India. We direct the State of Maharashtra to complete the preparation of the master plan/regional plan within two months from today and submit the same for the approval of the Ministry of Environment and Forests. The plan shall indicate and demarcate all the green areas, orchards, tribal areas and other environmentally-sensitive areas as on 20-6-1991. The plan shall be filed in this Court by 8-5-1995. The State of Maharashtra shall file an affidavit indicating the green areas, orchards, tribal areas and other environmentally-sensitive areas as they existed on 20-6-1991. The State shall further indicate as to how many industries have been set up with the permission of the State Government from 20-6-1991 onwards till date. It should also be specifically stated as to whether any industries which are using chemicals or any other hazardous substance have been installed in that area. The State of Maharashtra shall also indicate any other construction other than industries which have been permitted in this area after 20-6-1991. The State of Maharashtra in consultation with the Maharashtra Pollution Control Board shall also indicate as to whether the industries in that area have set up the pollution control devices to the satisfaction of the Board/Department of Environment. Needless to say that the information is required only in relation to the area called ‘Dahanu Taluka’, District Thane, which is covered by the notification dated 20-6-1991 issued by the Ministry of Environment and Forests, Government of India.”

7. In the furtherance of the order quoted above, this Court passed a detailed order on 16-8-1995 which is as under:

“Pursuant to this Court's order dated 31-1-1995 and subsequent order dated 8-5-1995 we have heard learned counsel for the parties. By the Government notification dated 20-6-1991 issued by the Government of India under the Environment (Protection) Act, 1986 “Dahanu” in the State of Maharashtra has been declared as an ecologically-fragile area. Under the notification, the State of Maharashtra was required to prepare a master plan within one year of the notification and seek the approval of the Government of India. It is stated by Mr M.C. Bhandare, learned Senior Counsel appearing for the State of Maharashtra that pursuant to this Court's order dated 31-1-1995 the master plan was prepared and forwarded to the Government of India. Mr P.P. Malhotra, learned counsel appearing for the Government of India states that he would get in touch with the Government of India and find out as to whether necessary approval has been granted or not. It may be mentioned that Dahanu area is also covered by another notification dated 19-2-1991 issued by the Government of India under the Environment (Protection) Act, 1986. In the affidavit filed on behalf of the Maharashtra Pollution Control Board it is stated that after coming into force of the notification dated 20-6-1991 fifty out of three hundred and fifteen industries were set up. A list of chemical industries has also been annexed along with the affidavit filed on behalf of the Maharashtra Pollution Control Board.

We have no clear picture before us as to which of the industries are air-polluting and are discharging effluent. We have no material on record to show as to which of the industries have already set up pollution control mechanisms. We direct the Maharashtra Pollution Control Board through its Chairman and Member Secretary to give a detail of all the industries which are falling in the Dahanu area. It should be clearly stated as to which industries out of those industries are water-polluting and are air-polluting. It should also be specifically stated after inspecting each of the industries as to whether the polluting industries have installed the pollution control devices. This should be done within two months from today. We further direct the Maharashtra Pollution Control Board to issue individual notices to each of the industry in the Dahanu area directing the industry to set up the pollution control devices, if not already set up within a period of three months from the receipt of the notice. A public notice to this effect shall also be published in the two English dailies and two vernacular dailies on three consecutive days. The newspapers selected should have wide circulation in that area. The individual notices as well as the notices published in the newspaper should specifically state that they are being issued under the directions of this Court. We further direct the Secretary, Ministry of Environment, Government of India to have the necessary information required by this Court prepared from the Maharashtra Pollution Control Board. We are constrained to say that despite repeated orders passed by this Court the necessary information is not forthcoming. We make it clear that non-compliance with any part of this order shall attract the provisions of the Contempt of Courts Act.”

8. This Court on 18-1-1996 directed that no construction of any kind shall be permitted within 500 metre of high tide as required under the CRZ Notification issued by the Government of India dated 19-2-1991. It would be useful to re-produce the order in detail:

“Mr V.A. Bobde, Senior Advocate appearing for the Maharashtra State Pollution Control Board has filed affidavit dated 17-1-1996. The affidavit is taken on record.

Mr Ashok Grover appears for some of the balloon industries operating in the Dahanu area. We are not inclined to pass any order regarding balloon industries as at present.

This Court in the order dated 31-1-1995 directed the State of Maharashtra to complete the preparation of the master plan/regional plan (as directed by the Dahanu Notification dated 20-6-1991) within two months from the date of order and submit the same for the approval of the Ministry of Environment and Forests. This Court further indicated various safeguards to be provided in the said plan. Mr Malhotra, learned counsel appearing for the Union of India, has informed us that the proposed master plan was received by the Government of India on 3-5-1995, in modified form. The plan was sent back to the Government of Maharashtra on 28-9-1995 for further clarification. Neither the learned counsel for the Government of India nor the learned counsel for the State of Maharashtra are in a position to assist us any further as to what has finally happened to the master plan. We, therefore, direct the Secretary, Environment, Government of Maharashtra to be present in this Court in person on 6-2-1996 at 2 p.m. Meanwhile, we direct the State of Maharashtra through Secretary, Environment, Secretary, Industries, Director, Industries and all other officers concerned with the setting up of the industries in Dahanu area not to grant further permission/consent for setting up or operation of any industry in Dahanu area till further orders. We further direct that no construction of any type shall be permitted within 500 metres of high-tide areas required under the CRZ Notification issued by the Government of India dated 19-2-1991. It has been indicated in the affidavit of the Maharashtra Pollution Control Board that some of the industries have obtained consent, but they have not actually started functioning on the site. We direct that those industries shall not be permitted to operate till further orders. It is also mentioned in the affidavit of the Board that a number of industries are lying closed. We direct that none of those industries shall be permitted to start functioning until they have installed the pollution control devices to the satisfaction of the Pollution Control Board.

In para 3 of the Board's affidavit it is mentioned that there are 315 industries in Dahanu Taluk, who have been granted consent by the Pollution Control Board. It is further stated that majority of those industries are non-polluting in nature. In para 4, it is mentioned that there are 53 rubber balloon manufacturing units which are small-scale industries in Dahanu Taluk. There are nine stone crushers also in the area. We direct the Central Pollution Control Board to inspect the 315 units, the rubber balloon units and the stone crushers and submit a report to this Court indicating as to which of the industries are polluting and which are non-polluting. The industries which are hazardous and of noxious nature may be separately listed. The inspection shall be done by the Central Pollution Control Board with the assistance of the Maharashtra Pollution Control Board. Needless to say that the expenses of the Central Pollution Control Board inspection shall be met by the Government of Maharashtra. The Central Pollution Control Board shall submit its report within four weeks.

We further direct that no construction or tampering with of any type so far as the wetland/khajan area is concerned, shall be done till further orders. The Central Pollution Control Board shall also examine the working of the excavation of sand/mining operations specifically from the point of pollution control and ecology preservation.”

9. This Court by the order dated 6-2-1996, directed the Maharashtra Government through the Secretary, Environment, Government of Maharashtra, to comply with the two notifications dated 19-2-1991 and 20-6-1991. It was further directed that no action in violation of these notifications shall be taken by the State of Maharashtra. The order is re-produced hereunder:

“Pursuant to this Court's order, Mr Ashok Basak, Secretary, Environment, Government of Maharashtra along with Mr Vinod Bobde, learned counsel, is present in Court. It is stated by Mr Bobde that the Government of India did not send the plan back to the Maharashtra Government on 28-9-1995 and instead appointed a Committee to examine various aspects of the plan submitted by the State Government. Mr Bobde further states that the Committee is still functioning. According to Mr Basak, the State Government has finally submitted its plan to the Government of India and it is now for the Government of India to issue the necessary approval. We direct the Secretary, Ministry of Environment and Forests, Government of India to finalise the plan submitted by the Maharashtra Government expeditiously and file an affidavit in this Court reporting the action taken, by 1st week of March 1996.

Meanwhile, we direct the Maharashtra Government through the Secretary, Environment, Government of Maharashtra, to comply with the two notifications dated 19-1-1991 and 20-6-1991. No action in violation of these notifications shall be taken by the State of Maharashtra.

To come up on 22-2-1996 to consider the report of the Central Pollution Control Board. This case shall be listed again on 14-3-1996 to examine the affidavit of the Government of India.”

10. The Government of India in its affidavit filed in March 1996 has stated as under:

“It is respectfully submitted that after considering the report of the Committee and having examined the regional plan of Dahanu Taluka, the Government of India has approved the plan subject to certain conditions. This has been conveyed to the Government of Maharashtra vide Letter No. J-17011/22/95/IA.III dated 6-3-1996. (Copy enclosed for reference as Annexure I). The Government of Maharashtra has also been advised to submit a copy of the modified regional plan to the Hon'ble Supreme Court.”

11. Along with the affidavit, official memorandum dated 6-3-1996, conveying the approval of the Government of India was attached as Annexure I. Para 2 of the letter is an under:

“In this context, the undersigned is directed to say that the Ministry hereby approves the regional plan as submitted to this Ministry vide Letter No. TPS-1296/333/CR 70/95/UD-12 dated 3-5-1995 (the same was submitted to the Supreme Court on 8-5-1995) subject to the following conditions:

(i) Within Dahanu Taluka, the total area for location of permissible industries will be restricted to a maximum of 500 acres including the service industries and the land under existing industries. The siting of industries shall be in conformity with the guidelines as given in the Dahanu Notification and as proposed in the regional plan keeping in line with the guidelines as contained in the Coastal Regulation Zone Notification.

(ii) No change of existing land use should be permitted with respect to green areas, orchards, tribal areas and other environmentally-sensitive areas in the regional plan for Dahanu Taluka.

(iii) As per provisions contained in the Coastal Regulation Zone Notification issued by the Government of India, Ministry of Environment and Forests, areas of the Dahanu Taluka falling under Categories CRZ-I, CRZ-II and CRZ-III should be clearly demarcated and shown on the map and the development of Dahanu Taluka shall be governed by this. Low-tide line (LTL) and high-tide line (HTL) and also lands falling within 500 metres of the HTL and 50 metres of creeks are to be shown on the map. Estuarine zones may also be indicated on the map.

(iv) All green areas, forest areas, orchards and tribal lands should be indicated in the regional plan and shown on the map. (v) Sites for disposal of hazardous wastes from industries which come under the purview of the Hazardous Wastes (Management & Handling) Rules, 1989, notified by the Government of India will be identified on the map in the regional plan and will be as far as possible within the premises of the 500 acres. The areas identified for location of industries should be considered keeping in view the wind direction, land use, human settlements and restrictions as imposed in the Dahanu Notification. Hazardous waste may be disposed of in the identified areas after taking necessary precautionary measures.

(vi) In keeping with the basic requirements of the residents of the Dahanu Taluka for service industries such as grain mill for production of flour, manufacture of bakery products, sugarcane and fruit juice crushers, manufacture of milk and dairy products, manufacture of bidis, repairing of cycle, radio and TV sets and other such industries as listed in the regional plan and as also recommended by the Committee in its report, it may not be desirable to scatter these industries away from the habitation and may be allowed to be located as per the convenience of the residents.

(vii) The Government of Maharashtra shall constitute a Monitoring Committee to ensure the compliance with the conditions as mentioned above as well as in the Dahanu and CRZ Notifications, in which local representative and a representative from regional office of this Ministry at Bhopal may be included.”

12. This Court on 9-5-1996 passed the following order:

“Mr Bobde has taken us through the correspondence between the Maharashtra Government and the Union of India. The Union of India in its letter dated 6-3-1996 has granted the approval to the plans submitted by the Maharashtra Government regarding Dahanu area with a further direction that the Dahanu Taluka falling under Categories CRZ-I, CRZ-II and CRZ-III should be clearly demarcated and shown on the maps and the development of Dahanu Taluka should be governed by the low-tide line (LTL) and the high-tide line (HTL). It is further directed that estuarine zones may also be indicated on the map. The judgment of this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹ may also be kept in view. We are of the view that no further clarification from the Government of India is necessary. The requirement indicated by the Government of India can be followed and plans can be completed. The Maharashtra Government may complete the plans accordingly and issue the necessary notification.”

13. Finally, this Court on 24-9-1996 passed the following order:

“Mr M.C. Mehta, learned counsel for the petitioner has taken us through various orders passed by this Court. Under directions of this Court, the Central Pollution Control Board has placed on record list of different types of industries numbering

381, which are operating in Dahanu area of Maharashtra. Two notifications have been issued by the Government of India under the Environment Protection Act, 1986. Notification dated 19-2-1991 relates to the coastal area in general. Subsequently on 20-6-1991 the Government of India issued another notification relating to Dahanu area. In particular Dahanu area has been declared as ecologically-fragile area. The two notifications have been issued with a view to protect the ecology and control pollution in the said area. Learned counsel appearing for the State of Maharashtra states that the master plan in respect of Dahanu area in terms of Government of India notification dated 19-2-1991 has been prepared and notified. The master plan, so framed by the Maharashtra Government, has to be in conformity with the two notifications issued by the Government of India. We, therefore, request Dr P. Khanna, Director, NEERI to have the said master plan examined by a team of experts to verify and confirm that the master plan is in conformity with the above two notifications and is also otherwise environmentally viable. NEERI shall also give its own suggestion with a view to protect and preserve ecology in the Dahanu area. NEERI shall give its own opinion as to which type of industries should be permitted in the ecologically-fragile Dahanu area. If necessary, NEERI can send its team to have further inspection of the area in order to assist this Court. We would request Dr Khanna to have this exercise done within three weeks of the receipt of the copy of the order. Copy of this order be sent to Dr Khanna by tomorrow. The State of Maharashtra shall meet the expenses of NEERI.

This Court order dated 31-1-1995, 8-5-1995, 16-8-1995, 18-1-1996, 6-2-1996, 25-4-1996 and 9-5-1996 be also sent to NEERI. Learned counsel for the State of Maharashtra has handed over a copy of the master plan to Dr B.K. Handa, Senior Scientist, who is present in Court, having come to assist this Court in another matter.

NEERI team shall also examine the effect of the thermal plant operating in Dahanu area and give its recommendations for controlling the pollution which is likely being caused by the said thermal plant. The Central Pollution Control Board's report dated 1-3-1996 along with the list of industries shall also be sent to NEERI.”

14. Pursuant to the above quoted order NEERI placed on the record of this Court its report dated 19-10-1996. The report is a useful document which may be kept in view by the Bombay High Court while monitoring this case and also by the authority (to be constituted as directed in this order), while implementing the regional plan relating to Dahanu Taluka. The operative part of the report containing the conclusions and the recommendations is as under:

6.0 Conclusions and recommendations

6.1 The regional plan violates the MOEF notifications on Coastal Zone Regulations (dated 19-2-1991) and environmentally-sensitive Dahanu Taluka (dated 20-6-1991), and is also ecologically and environmentally unviable as the premises in planning are not based on natural resource endowment (supportive capacity) and environmental media quality (assimilative capacity).

The regional plan must have taken cognizance of the ecological fragility of the region, and should be based on the following guidelines.

The planning region should include all micro-watersheds in Dahanu Taluka and the 25 km buffer zone.

The regional plan should delineate:

- land use on 1:50,000 scale;
- ecologically harmonious economic activity, typology and levels of each activity;
- activity zoning;
- technological and policy interventions to facilitate implementation of the regional plan;
- implementation and monitoring mechanisms.

The Regional plan should aim at:

- maximising equitable quality of life levels;
- minimising ecological loading (natural resource usage) in building regional economy;
- minimising environmental status degradation.

Such an exercise would require estimation of supportive capacity of resources in the region and assimilative capacity of environmental media to facilitate delineation of preferred scenario for sustainable socio-economic growth.

The regional plan should also provide operational directives for the preparation of master plans for each urban/semi-urban settlements in Dahanu area.

The satellite imageries of 1996 with six metre resolution should be reckoned as the existing land use for preparation of the regional plan.

6.2 The salient measures for protection and preservation of ecology are listed hereunder:

- Deployment of micro-watersheds as the basis for planning.
- Extensive mangrove plantation along the creeks and on wetlands.
- Protection and rejuvenation of wetlands.
- Protection of natural drainage channels.
- Ensuring free mixing of sea and creek waters.
- Land use in harmony with land capability.
- Sustainable forest management with focus on protection of forest ecological characteristics, sustainable yields of economically useful forest products and services, and sustenance of forest dependent human institutions.

- Limits to quantitative growth in keeping with the supportive capacity of natural resources, and assimilative capacity of environmental media.
- Control of wastewater discharges in the creeks and wetlands to protect nutrient recycling and breeding functions.
- Control of air pollutant emissions within the assimilative capacity of airshed(s) in the region.
- Preservation of indigenous culture, and ensuring socio-cultural security for tribal population.

6.3 The eco-sensitive nature of Dahanu Taluka and its 25 km buffer zone constrains the industrial typology to the list provided in Section 4 of this report. The criteria for selection of industries in this region should be:

- Use of local resource as industrial raw materials.
- Manufacturing of items that aid primary sector activity in the region.
- Focus on employment intensity and low-skill requirements.
- Non-polluting, non-chemical and non-hazardous. The number of units should be limited to the regenerative capacity of resource endowment. The location of industries should be restricted to the areas outside Dahanu Taluka and the 25 km buffer zone.
- Focus on primary and tertiary sectors of economy.
- The preferred economic activity is mariculture, silviculture, agriculture and horticulture. Ecotourism should also be promoted.

6.4 The location of BSES-TPP is on the wetlands and partly within the Coastal Regulations Zone (CRZ-I), thus violating Coastal Zone Regulations. The measures to be undertaken by BSES-TPP are delineated hereunder:

- BSES-TPP should shift, at the earliest, to the use of natural gas in place of coal. In the interim period, it should use only the washed coal.
- All obstructions to the free flow of sea water into the creek should be removed forthwith by the Bombay Suburban Electric Supply (BSES) —Thermal Power Plant (TPP).
- BSES-TPP should make arrangements for reuse of accumulated fly ash. Current practice of disposal of fly ash on wetlands should be stopped forthwith.
- The plantation around BSES should be predominantly of mangroves.
- BSES-TPP should instal Flue Gas Desulpherisation (FGDO) system forthwith in view of limited air-environment assimilative capacity as delineated in Section 4.1.

- The spare fields of electrostatic precipitators be made available at all times of operation.
- Restriction on ambient air-quality levels of SO₂, NO_x and SPM to 20, 30 and 100 ug/m³, respectively in Dahanu region to protect the orchards and plantations.
- BSES-TPP should ensure monitoring of hourly temperature of hot-water discharges; monthly variations in groundwater quality; weekly variations in creek water quality; and ambient air-quality levels and fugitive emissions from TPP every two days in a week at each station; and effective operation of pollution control and environmental monitoring instruments.
- The effect of gaseous emissions on productivity of horticulture plants, viz., chikoo and mango needs to be examined through a scientific study to devise an effective environmental management plan. The study should consider synergistic effects of gaseous and particulate pollutants, humidity and soil conditions.
- Expansion of BSES-TPP generating capacity should not be permitted in view of its ab initio wrong siting in the inter-tidal region of an ecologically-sensitive area.

6.5 Recommendations

Management of ecologically-fragile areas to achieve the overall aspirational goal of sustainable development warrants legal interventions based on the precautionary principle, conservation of natural resources, and environmental protection. There is thus an adequate reason to take recourse to Sections 3, 4 and 5 of the Environment (Protection) Act, 1986 for ensuring effective management of ecologically-fragile areas in the country.

In order to address the complex issues in planning and management of ecologically-fragile areas, it is prudent that the Central Government considers constituting an authority under the Environment (Protection) Act, 1986 and confers on this authority all the powers necessary to deal with the situation created in Dahanu region and other environmentally-sensitive regions in India. The authority should be headed by a retired Judge of the Supreme Court and may have other members — with expertise in the field of hydrology, oceanography, terrestrial and aquatic ecology, environmental engineering, developmental and environmental planning, and information technology.

An Authority for Management of Ecological Fragile Areas as per the composition delineated above, with mandate for coordination and implementation of all activities of planning, development, allocation, implementation, research and monitoring in ecologically-fragile areas needs to be established to operationalise the precautionary principle in sustainable development. The mandate of the authority needs to include the following:

- To identify ecologically-fragile regions and buffer zones in the country, and to delineate and implement appropriate regulations.
- To deploy ecological units as the basis for regional planning in ecologically-fragile areas.
- To delineate guidelines for regional planning in ecologically-fragile areas.

— To ensure preparation of medium and long-term regional and master plans, and their implementation through existing institutions.

— To examine, review and effect modifications in any project/plan/policy envisaged by the Government of India/State Government/Local-Self Government that has adverse bearing on ecological fragility of the region.

— Monitoring of ecology and environmental media quality for effecting corrective measures.

— Capacity building in existing institutions for management of ecologically-fragile regions.

— To ensure community participation in the management of natural resources and protection of ecology.”

15. This Court in *Vellore Citizens' Welfare Forum v. Union of India*² considered in detail the “sustainable development” to the extent which has been recognised under the international law and also its practicability under the environmental laws in India. This Court in the said judgment held that the “precautionary principle” and “the polluter pays” principle have been accepted as part of the law of the land. The relevant part of the judgment is as under: (SCC pp. 658-60, paras 11-14)

“11. Some of the salient principles of ‘Sustainable Development’, as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that ‘The Precautionary Principle’ and ‘The Polluter Pays Principle’ are essential features of ‘Sustainable Development’. The ‘Precautionary Principle’ — in the context of the municipal law — means:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The ‘onus of proof’ is on the actor or the developer/ industrialist to show that his action is environmentally benign.

12. ‘The Polluter Pays Principle’ has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*³. The Court observed: (SCC p. 246, para 65)

‘... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.’

The Court ruled that: (SCC p. 246, para 65)

‘... once the activity carried on is hazardous or inherently dangerous, the person

carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.'

Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damage to ecology.

13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

'47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A. (g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.'

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In the view of the abovementioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.”

16. We are of the view that continuous monitoring at the level of the State Government and also by some independent statutory authority is necessary to protect the ecologically-fragile Dahanu Taluka. The State Government is under an obligation to implement the town/original plan as approved by the Government of India subject to the conditions imposed in the official memorandum dated 6-3-1996, by the Government of India. We direct the State of Maharashtra to execute the said plan subject to the conditions and also the two notifications issued by the Government of India dated 19-2-1991 (CRZ Notification) and also the notification dated 20-6-1991 pertaining to Dahanu area. The State Government shall also take into consideration and implement all the recommendations of NEERI as re-produced by us in the earlier part of this order.

17. We direct the Central Government to constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and also confer on the said authority all the powers necessary to protect the ecologically-fragile Dahanu Taluka and to control pollution in the said area. The authority shall be headed by a retired Judge of the High Court and it may have other members with expertise in the field of hydrology, oceanography, terrestrial and aquatic ecology, environmental engineering, development and environmental planning and information technology, to be appointed by the Central Government. The Central Government shall confer on the said authority the power to issue directions under Section 5 and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986.

18. The Central Government shall constitute the authority before 20-12-1996. The authority so constituted by the Central Government shall consider and implement the “precautionary principle” and “the polluter pays” principle. The authority shall also consider and implement the recommendations of NEERI as quoted above. Needless to say that the authority shall ensure the implementation of the two notifications mentioned in the order above.

19. We are further of the view that it is not necessary for this Court to monitor this case any further. It can be better done by the High Court. We, therefore, transfer this petition to the High Court to be treated as a petition under Article 226 of the Constitution of India and to be dealt with in accordance with law. We request the Chief Justice of the Bombay High Court to constitute a “Green Bench” for the purpose of adjudicating the environmental matters filed in the Bombay High Court. On our suggestion, “Green Benches” are already functioning in Calcutta, Madhya Pradesh, Madras, Allahabad and Punjab High Courts. While monitoring this matter, the High Court shall deal with the hazardous and noxious industries operating in the Dahanu Taluka in accordance with law, keeping in view the town/regional plan, the Government of India notifications and the NEERI report. It will be open to the State Government to approach the High Court for any clarification, if necessary.

20. We place on record our appreciation for Mr M.C. Mehta, who has been assisting this Court as amicus curiae. We also appreciate the assistance rendered by Mr Vinod Bobde and Mr Vijay Panjwani, learned counsel for the Maharashtra State Pollution Control Board and the Central Pollution Control Board, respectively.

21. We direct the State of Maharashtra to pay a sum of Rs 50,000 (Rupees fifty thousand) to Mr Mehta towards his fees for conducting this case.

22. Registry to send paper-book and all the connected materials to the Bombay High Court.

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