

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 112 of 2015

Mahendra SinghPetitioner

versus

State of Uttarakhand and others Respondents

Mr. A.K. Sharma, Advocate for the petitioner.

Mr. S.S. Chauhan, Deputy Advocate General for the State.

Mr. Anurag Bisaria, Advocate for respondent no.3.

**Coram: Hon'ble Rajiv Sharma, J.
Hon'ble Lok Pal Singh, J.**

Hon. Rajiv Sharma, J. (Oral)

The petitioner has highlighted discharge of industrial effluents by the respondent no.4 in the playground of the college. The letting of untreated chemical/industrial waste/effluent has degraded the underground water. It has also caused air pollution. The hazardous waste has been dumped in the play fields without treatment.

2. The respondent no.3 issued notice to the respondent no. 4 from time to time. The respondent no.3 has also directed the concerned authorities to disconnect the power supply of the respondent no.4. The Industry was also ordered to be closed by the respondent no.3. Thereafter, respondent no.4 submitted an application. Respondent no.3 has issued NOC to the respondent no.4. According to respondent no.3, the plant is being run in accordance with the provisions of Environmental Law.

3. The Court's attention has been drawn to the photographs placed on record. It shows tremendous damage caused to the environment and ecology of the area. The students play in the playgrounds. How the District Administration could permit this to happen is beyond our comprehension. The effluent water is spread over in the larger area in the playground as well as in the adjoining areas. Every citizen living around the factory has a fundamental right to have a pollution free environment. Every citizen has a fundamental right to have potable water under Article 21 of the Constitution of India.

4. It is not, the respondent no.4 alone, which is letting off effluents in the water bodies and in the open land, the other industries are also letting off their chemical wastes/effluents without treatment in the areas. It is further affecting the quality of the underground water.

5. It is submitted at the bar that the colour of the water coming from the hand-pumps is brownish in colour loaded with chemicals. This water is consumed by children, parents and cattle. The underground water is also used for irrigation purposes. Once the crop is irrigated by this kind of untreated water, it makes the vegetable/crops poisonous prone to cancer. The State Authorities are absolutely remiss in discharge of their statutory duties. The State functionaries should ensure that not a drop of untreated effluent is discharged by the industries in every industrial area. The focus should be on the sustainable development. The industrialization cannot be at the cost of degradation of the environment and ecology.

6. Respondent no.4 though served, yet there is no representation on its behalf. The counter affidavit on behalf of respondent No.4 has been filed and perused. The respondent no. 4 is playing hide and seek with the authorities by operating the Unit slyly.

7. The owner of the respondent No.4 was to prove that it has taken all precautionary measures and has not polluted the area. The respondent No.4 has failed to discharge this burden. Accordingly, it is a fit case where respondent no.4 is liable to pay exemplary damages to the inhabitants of the area for causing large scale air pollution and water pollution under 'polluter pays' principle.

8. There is sufficient material on record to establish that the health of the inhabitants of the area has been put to a great peril. The damages are to be paid by the respondent no.4 for improving the water quality and air quality of the area including hand-pumps. The S.D.M. concerned shall make out all efforts to restore the quality of the underground water.

9. The officers/officials of respondent No.3 have also miserably failed to enforce the provisions of the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 resulting in large scale industrial disasters in the area.

10. The Officers/Officials of the respondent no.3 shall be personally responsible, in case, there is any letting off industrial effluent discharge or dumping of industrial waste in the open area without treatment.

11. It is also intriguing to note that respondent no.3 has not initiated any criminal proceedings provided under the relevant sections against the respondent no.4. There cannot be a violation of the norms laid down under the various environmental laws without the connivance and collusion of the authorities responsible for the enforcement. Mere issuance of notices from time to time under Section 33 of the Water (Prevention and Control of Pollution) Act of 1974 is not sufficient compliance. Every violator should be brought to justice forthwith.

12. The Parliament has enacted the Act called “The Environment (Protection) Act, 1986” (hereinafter referred to as “the Act”). The Central Government is authorized by Publication in the official gazette to make Rules in respect of any of the matters referred in Section 3 of the Act. Section 3 of the Act empowers the Central Government to take measures to protect and improve environment. Section 6 of the Act empowers to frame the rules to regulate environmental pollution. Section 7 lays down specifically that no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environment pollutant in excess of such standards as may be prescribed. The persons handling hazardous substances are required to comply with procedural safeguards under Section 8 of the Act. As per Section 15 of the Act, if the person fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, is punishable with imprisonment for a term which may extend to five years or with fine which may

extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure of contravention. The offences by companies are dealt with under Section 16 of the Act. It is shocking that the respondent No.3 has not taken any action against respondent No.4 either under Section 15 or under Section 16 of the Act for the reasons best known to it.

13. We have dealt with the larger issues raised in this writ petition of Air Pollution and Water Pollution. The respondent No.3 has also not taken sufficient measures to check the noise pollution either emanating from the factories or by way of indiscriminate use of loudspeakers/amplifiers even by religious bodies, may be by Temples, Mosques and Gurudwaras. The Central Government has framed the Noise Pollution (Regulations and Control) Rules, 2000. According to Rule 3, the ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the schedule annexed to these Rules. The State Government is required to categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of the implementation of noise standards for different areas. It is the prime responsibility of the State Government under Rule 3 (3) to take effective measures for abatement of noise including noise emanating from vehicular movements; blowing of horns, bursting of sound emitting fire crackers, use of loudspeakers or public address systems and sound producing instruments and to ensure that the existing noise levels do not exceed the

ambient air quality standards specified under these Rules. According to Rule 4, the noise level in any area/zone shall not exceed 10dB(A) above the ambient noise standards specified in the schedule. The authority shall be responsible for the enforcement of noise pollution. The “authority” is defined under Rule 2(c). Rule 5 being important is reproduced as under :-

“5. RESTRICTIONS ON THE USE OF LOUD SPEAKERS/PUBLIC ADDRESS SYSTEM AND SHOULD PRODUCING INSTRUMENTS.-

- (1) *A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.*
- (2) *A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency.*
- (3) *Notwithstanding anything contained in sub-rule (2), the State Government may subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or [public address systems and the like during night hours] (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year] [The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative.]*
- (4) *The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.*
- (5) *The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB(A) the ambient noise standards specified for the area in which it is used.]*

5A. RESTRICTIONS ON THE USE OF HORNS, SOUND EMITTING CONSTRUCTION EQUIPMENTS AND BURSTING OF FIRE CRACKERS.-

- (1) *No horn shall be used in silence zones or during night time in residential areas except during a public emergency.*
- (2) *Sound emitting fire crackers shall not be burst in silence zone or during night time.*
- (3) *Sound emitting construction equipments shall not be used or operated during night time in residential areas and silence zones."*

14. According to plain reading of Rule 5, a loudspeaker or a public address system cannot be used except after obtaining written permission from the authority. The loudspeaker or any sound producing instrument or a musical instrument or a sound amplifier can not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, Banquet halls etc. The State Government may subject to such terms and conditions as are necessary to reduce the noise pollution, permit use of loudspeakers or public address systems and like during night hours between 10.00 p.m. to 12.00 midnight on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year. The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used can not exceed 10dB(A) above the ambient noise standards.

15. The State Government has not enforced the provisions of Rules 3, 4 and 5 effectively. The loudspeakers keep on blaring even beyond 12.00 midnight. The loudspeaker cannot be permitted to be used without the written permission from the authority even by the Temples, Mosques and Gurudwaras. It is only for limited period of festival and special occasions that for 15 days, the permission can be granted to use the loudspeakers

and public address system between 10.00 p.m. to 12.00 midnight. The indiscriminate use of loudspeaker or amplifier or musical instrument causes annoyance, disturbance and discomfort. It disturbs the sleeping pattern of the patients. The study of the students is also adversely affected.

16. Their Lordships of the Hon'ble Supreme Court in **1996(3) SCC 212** in the case of have held **Indian Council for Enviro-Legal Action and others vs. Union of India and others** have held that the principle laid down by Hon. Supreme Court in *Oleum Gas Leak* case regarding strict and absolute liability of such unit to compensate to persons adversely affected are binding. The respondents were found to be responsible for such extensive damages. Their Lordships have held as under :-

“58. In Oleum Gas Leak Case, a Constitution Bench discussed this question at length and held thus:

We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a

position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profits, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Ryland v. Fletcher [supra].

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

60. *The majority judgment delivered by M.N. Venkatachaliah, J. [on behalf of himself and two other learned Judges] has not expressed any opinion on this issue. We on our part find it difficult to say, with great respect to the learned*

Chief Justice, that the law declared in *Oleum Gas Leak Case* is obiter. It does not appear to be unnecessary for the purpose of that case. Having declared the law, the Constitution Bench directed the parties and other organisations to institute actions on the basis of the law so declared. Be that as it may, we are of the considered opinion that even if it is assumed [for the sake of argument] that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2(a), Sections 3 and 5 clothe the central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. We find that similar directions have been made in a recent decision of this Court in *Indian Council for Enviro-Legal Action and Ors.* [supra]. That was also a writ petition filed under Article 32 of the Constitution. Following is the direction: It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharge of their effluents into Nakkavagu. They were responsible

to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers.

It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

62. The House of Lords, however, added a rider to the above statement, viz., that the user by the defendant should be a "non-natural" user to attract the rule. In other words, if the user by the defendant is a natural user of the land, he would not be liable for damages. Thus, the twin tests - apart from the proof of damage to the plaintiff by the act/negligence of the defendants - which must be satisfied to attract this rule as "forcibility" and "non-natural" user of the land.

65. On a consideration of the two lines of thought [one adopted by the English Courts and the other by the Australian High Court], 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. We are convinced that the law stated by this Court in *Oleum Gas Leak Case* is by far the more appropriate one - apart from the fact that it is binding upon us. [We have disagreed with the view that the law stated in the said decision is obiter.] According to this rule, 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. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not." The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise [carrying on the hazardous or inherently dangerous activity] alone has the resource to discover and guard against hazards

or dangers - and not the person affected and the practical difficulty [on the part of the affected person] in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

66. *Once the law in Oleum Gas Leak Case is held to be the law applicable, it follows, in the light of our findings recorded hereinbefore, that Respondents Nos. 4 to 8 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 the sludge and other pollutants lying in the affected area [by affected area, we mean the area of about 350 ha. indicated in the sketch at Page 178 of NEERI Report] and also to defray the cost of the remedial measures required to restore the soil and the underground water sources. Sections 3 and 4 of Environment [Protection] Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case.”*

17. Their Lordships of the Hon’ble Supreme Court in **1996(5) SCC 647** in the case of **Vellore Citizens’ welfare Forum vs. Union of India and others** have held that while the industries are vital for country’s development, but having regard to pollution caused by them, principle of sustainable development has to be adopted as a balancing concept. Their Lordships have also explained “The Precautionary Principle” and “the Polluter Pays Principle”. Their Lordships have held as under :-

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, J.T. (1996) 2 196. The Court observed, "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 "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 polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged 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. Article 47 48A and 51A(g) of the Constitutional 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 from medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

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

51A(g). To protect and improve the natural environment including forests, lakes, rivers and wild life, 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. 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 later part of this judgment.

14. In view of the above mentioned 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.

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law. To support we may refer to Justice H.R. Khanna's opinion in *Addl. Distt. Magistrate Jabalpur v. Shivakant Shukla* MANU/SC/0062/1976 : 1976CriLJ945, Jolly George Varghese's case.

20. Rule 3(1), 3(2), and 5(1) of the Environment (Protection) Rules 1986 (the Rules) are as under :

3. Standards for emission or discharge of environmental pollutants. - (1) For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in (Schedule I to IV).

3.(2) Notwithstanding anything contained in Sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in (Schedule I to IV) in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons, therefore, in writing.

5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas - (1) The Central

Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas :

- (i) Standards for quality of environment in its various aspect laid down for an area.*
- (ii) The maximum allowable limits of concentration of various environment pollutants (including noise) for an area.*
- (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.*
- (iv) The topographic and climatic features of an area.*
- (v) The biological diversity of the area which, in the opinion of the Central Government, needs to be preserved.*
- (vi) Environmentally compatible land use.*
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.*
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified, as such under the Wild Life (Protection) Act, 1972, or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.*
- (ix) Proximity to human settlements.*
- (x) Any other factors as may be considered by the Central Government to be relevant to the protection of the environment in an area.”*

18. Their Lordships of the Hon’ble Supreme Court in **AIR 2005 SC 3136** in the case of **Forum, Prevention of Envn. & Sound Pollution vs. Union of India and another** have held that right to life includes freedom from noise pollution. Their Lordships have further held that polluter cannot take shelter under Article 19(1)(a) of the Constitution of India. Their Lordships have further held that freedom of speech and expression is not absolute

right. Their Lordships have also laid down that awareness should be created in childhood against use of fire crackers. Their Lordships have also laid down that the noise level at the boundary of the public place where loudspeaker or public address system or any other noise source is being used shall not exceed 10dB(A) above the ambient noise standards for the area of 75 dB(A) whichever is lower. No person is permitted to beat a drum or tom-tom or blow a trumpet or beat or sound any instruments or use any sound amplifier at night (between 10 p.m. and 6 a.m.) except in public emergencies. The peripheral noise level of privately owned sound system shall not exceed by more than 5dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place. The horn cannot be blown/used at night between 10 p.m. to 06 a.m. in residential area except in exceptional circumstances.

“9. Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of person to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree

and the surrounding circumstances including the place and the time.

10. *Those who make noise often take shelter behind Article 19(1)A pleading freedom of speech and right to expression.*

Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge into aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19 cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Suman Chand Aggarwal alias Bhagatji v. Govt. of NCT of Delhi and Ors. MANU/DE/0654/2001 : , AIR2001Delhi455 (D.B.) and P.A. Jacob v. Superintendent of Police, Kottayam MANU/KE/0001/1993 : , AIR1993Ker1. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith.”

19. Their Lordships of the Hon’ble Supreme Court in **2015(7) SCC 779** in the case of **Anirudh Kumar Vs. Municipal Corporation of Delhi and others**, have held that noise generated up to unpleasant or obnoxious levels

violates the right of the people to a peaceful, comfortable and pollution free life guaranteed by Article 21 of the Constitution of India. Their Lordships have held as under:-

42. *On examining the regularisation certificate issued by MCD, it is clear that the regularisation certificate is for running of a pathological lab whereas the conditions mentioned therein are directed towards running of a nursing home. Therefore, there is a lot of inconsistency within the regularisation certificate itself and due to the same, the regularisation certificate cannot be accepted by us as it is impermissible not only in law but also because the same was granted without seeking permission from the High Court during the pendency of the earlier Writ Petition No. 8808 of 2004 filed by the appellant.*

43. *In view of the aforesaid reasons, we have to hold that the grant of the regularisation certificate with the alleged retrospective effect to run the nursing home in favour of the respondent owners w.e.f. 11-7-2006 cannot be accepted by us and the same is liable to be quashed.*

44. *With regard to the environmental impact due to the running of the pathological lab in the building concerned, we first examine Clause 15.5 of the MPD 2021, which clearly states that any trade or activity involving any kind of obnoxious, hazardous, inflammable activities, non-compatible activities and polluting substance or process shall not be permitted. It is worthwhile to extract the definition of “process” which in the absence of a definition under the Environment Protection Laws, we are required to borrow it from Oxford Dictionary:*

“A systematic series of mechanised or chemical operation that are performed in order to produce something.”

45. *It is also necessary to extract the definition of “hazardous substance” under Section 2(e) of the Environment (Protection) Act, 1986 which word occurred in Clause 15.5 of the MPD 2021.*

“2. (e) ‘hazardous substance’ means any substance or preparation which, by reason of its chemical or physicochemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, microorganism, property or the environment;”

46. *As per the report of DPCC, it is clear that chemical substances emitted from the pathological lab will be obnoxious, non-compatible, polluting and therefore, the*

same are not permissible under Clause 15.5 of the MPD 2021. Further, when the respondent owners started the Diagnostic Centre, they employed about more than 50 people and installed 25 air conditioners, two diesel generator sets of 25 kVA and 40 kVA each in the setback area, along with kerosene tanks, gas cylinders and electric panels. Around 300 patients visit the Centre per day and more than 100 cars are parked in the vicinity. All these factors lead to air pollution which is in contravention of the Air (Prevention and Control of Pollution) Act, 1981. At present, 80 employees are working and around 300 patients visit the pathological lab every day and vehicles are parked in and around the surrounding area which is also creating a parking problem to the residents of the area. The nuisance created by all these factors not only leads to air pollution but also noise pollution to a great extent.

47. In this regard, it is necessary for us to examine the decision of this Court in Noise Pollution (5), *In re*¹⁴ at paras 11, 103 and 104 wherein it was held that noise generated up to unpleasant or obnoxious levels violates the rights of the people to a peaceful, comfortable and pollution-free life guaranteed by Article 21 of the Constitution of India. The said paragraphs are quoted hereunder: (SCC pp. 746 & 762)

“11. Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge into aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. ...

* * *

Air (Prevention and Control of Pollution) Act, 1981

103. Noise was included in the definition of air pollutant in Air (Prevention and Control of Pollution) Act

in 1987. Thus, the provisions of [the Air Act] became applicable in respect of noise pollution, also.

Environment (Protection) Act, 1986

104. Although there is no specific provision to deal with noise pollution, the Act confers powers on the Government of India to take measures to deal with various types of pollution including noise pollution.”


Further, it was held in this case that noise was included in the definition of “air pollutant” in the Air (Prevention and Control of Pollution) Act, 1981 and therefore, the provisions of the said Act became applicable in respect of the noise pollution also. It was also held that although there is no specific provision to deal with noise pollution, the Environment (Protection) Act, 1986 confers powers on the Government of India to take measures to deal with various types of pollution including noise pollution.

48. Further, on examining the evidence on record, particularly the photographs depicting the area in and around the building, it is clear that large diesel generator sets have been erected by the respondent owners in the setback area which is an illegal structure in the residential premises and is in contravention of the building bye-laws and zonal regulations of MCD.

49*. The running of this large pathological lab has led to emission of hazardous substances and in that process human beings, plants, micro organisms, and other living creatures are being exposed to harmful physicochemical properties. Not only this, they also create pollution which contaminates water on account of the discharge of chemical properties used in the process of running the pathological lab, causing nuisance and harm to public health and safety of the residents of the area. This fact is certified by DPCC in its report dated 4-8-2008. The usage of such generator sets has led to the damage of the building and cracks have been found in the building structure. The explanation sought to be given by the respondent owners is that the aforesaid generator sets were installed in the setback area as the appellant has not permitted to install the same on the terrace of the building. The objection of the appellant installing the same in the terrace is that he has purchased the said area and the appellant is living on the second floor and therefore, if the generator sets are installed on the terrace, it would be completely impossible for him to live on the second floor of the premises due to the sound and air pollution caused by the generator sets. It would not only affect the appellant and his family but also the other neighbouring residents of the locality.

50. It is an undisputed fact that consent was not obtained by the respondent owners from DPCC under Section 25 of the Water (Prevention and Control of Pollution) Act which states that no person shall, without the previous consent of DPCC, establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or land. It is mandatory under the said provision to first obtain consent from DPCC and admittedly such consent has neither been obtained by the respondent owners nor granted by Respondent 5, DPCC, nor has the same been placed before the learned Single Judge or the Division Bench or this Court. The running of the pathological lab for which the generator sets and other heavy equipments have been installed not only create sound pollution and air pollution but also the same is in contravention of the Water, Air and the Environment Protection Acts referred to supra. Therefore, in view of the relevant provisions of law referred to supra, the facts of the case and the evidence on record, we have to hold that the running of the pathological lab by the respondent owners in the building concerned is in violation of law.

51. In this aspect of the matter, we refer to the legal principles laid down by this Court in *M.C. Mehta v. Union of India*¹⁵, the relevant paragraph from the said case is extracted hereunder: (SCC pp. 423-24, para 56)

“56. On 18-5-1995, Justice R.C. Lahoti (as the former Chief Justice of India then was) in *ANZ Grindlays Bank v. MCD*¹⁶ echoed similar words and referred to decision of this Court, observing that the word ‘environment’ is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the ⁸⁰³ duty of the State but also the duty of every citizen to maintain hygienic environment. There is constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. Dealing with the municipal laws providing for power of demolition, it was observed that while interpreting municipal legislation framed in public interest, a strict constitutional approach must be adopted. A perusal of the master plan shows that the public purpose behind it is based on historic facts guided by expert opinion.”

52. Even though the High Court issued notice in the writ petition to examine the case insofar as Clauses 3 and 7 of the regularisation certificate are concerned, the learned Senior Counsel appearing on behalf of the

respondent owners contended that the High Court has examined this aspect and did not find any contravention of the aforesaid conditions or any illegality committed by the respondent owners, therefore, this Court is required to examine only with regard to the aforesaid clauses. This contention cannot be accepted by this Court particularly in view of the fact that there is blatant violation of the provisions of the building bye-laws of MCD in using the building for the purpose other than the purpose for which it is constructed and further running the pathological lab or the nursing home is impermissible in the building concerned under the Master Plan 2001 or MPD 2021 and also under the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

53. *The running of the pathological lab by the respondent owners creates air and sound pollution rampantly on account of which the public residents' health and peace is adversely affected. Therefore, public interest is affected and there is violation of rule of law. Hence, we have examined this appeal on all aspects of the matter and on merits. This position of law is well settled in a catena of decisions of this Court."*

20. Accordingly, the writ petition is disposed of with the following mandatory directions:-

- a. The respondent no.3 is directed to inspect each and every industry situate in the State of Uttarakhand to ensure that the industrial effluent/waste is treated properly before hazardous substances are also disposed of as per law. All the parameters laid down under various notifications issued under the Environment (Protection) Act, 1986 must be scrupulously followed, monitored and adhered to. The industries which do not conform to norms shall be ordered to be closed down.
- b. Respondent no.3 shall visit and inspect each and every E.T.P., S.T.P. and C.T.P. to ensure that not even a drop of chemical/industrial waste material is discharged into the water and in the open causing water and air pollution. It is made clear by abundant

precaution that as and when the inspection is carried out by the Environment Engineers of respondent no.3, he would be accompanied by the S.D.M of the concerned area and for this purpose the Secretary, Revenue shall also issue separate instructions to the S.D.Ms.

- c. The respondent No.4 is liable to pay special/exemplary damages amounting to Rs.5.00 Crores for restoration of the environment and ecology of the area. Respondent no.4 is directed to deposit a sum of Rs. 5.00 Crores with the District Magistrate, Haridwar within a period of four weeks from today. The District Magistrate, Haridwar/SDM concerned shall utilize this amount for the restoration of the water quality and to install the water purifiers in the concerned area after visiting the spot.
- d. The respondent No.4 shall not run the factory without obtaining permanent NOC from the Uttarakhand Pollution Control Board.
- e. The Secretary of the respondent No.3-Board is directed to initiate disciplinary proceedings against officers/officials in whose tenure the large scale untreated industrial effluent was discharged in the play ground and in the adjoining fields, within a period of three months from today, even if, the employees have retired.
- f. All the representatives of the Panchayat Raj Institutions like Pradhan, Up Pradhan, Members of Panchayats, Zila Parishad and Panchayat Samities are directed to inform the respondent no.3 about the environment issues in their respective areas. These matters shall be taken up seriously by the respondent no.3.

- g. Respondent no.1 is directed to circulate the copy of this judgment to all the Panchayats through their Pradhans to make the villagers aware of their rights.
- h. It shall be the responsibility of the Secretary, State of Uttarakhand, Pollution Control Board to ensure that each and every E.T.P., S.T.P. and C.T.P. functions 24 hours x 7 days throughout the State of Uttarakhand. The Court will not hesitate to put the Secretary under suspension, if degradation of the environment and ecology in any area is reported to the Court.
- i. The State Government is directed to ensure that no loudspeaker or public address system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that the noise level shall not exceed more than 5dB(A) peripheral noise level.
- j. The State Government is directed to ensure that the loudspeaker, public address system, musical instrument and sound amplifier are not played during night time except in auditoria, conference rooms, community halls, banquet halls as per norms laid down under the Noise Pollution (Regulation and Control) Rules, 2000.
- k. The State Government is directed to ensure that loud speakers or public address systems are not used except between 10.00 p.m. to 12.00 midnight during any cultural or religious festive occasion of a limited duration not exceeding 15 days in all during a calendar year, that too, the noise level shall not exceed 10dB(A) above the ambient noise standards for the area. The peripheral noise level of a privately

owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5dB(A). The authority concerned shall keep on visiting and monitoring at the public places, private places, auditoriums, conference rooms, community halls, banquet halls, temples, mosques and Gurudwaras to ensure due compliance of the Rules.

1. We direct all the Senior Superintendents of Police/Superintendents of Police to ensure that no horn shall be used in silence zone or during the night time between 10.00 p.m. to 06.00 a.m. in residential areas except during public emergency. No sound emitting construction equipments shall be used or operated during the night time between 10.00 p.m. to 06.00 a.m. in residential areas or silence zone.
- m. The pressure horns are banned through the State of Uttarakhand.
- n. The violators of the Rules be penalized under the Rule 6 of the Noise Pollution (Regulation and Control) Rules, 2000.
- o. All the Senior Superintendents of Police/Superintendents of Police and Circle Officers are directed to ensure that motorcycles throughout the State of Uttarakhand are duly fitted with silencers to avoid noise pollution and menace.

(Lok Pal Singh, J.)

19.06.2018

(Rajiv Sharma, J.)

