M.C. MEHTA

*v.*

UNION OF INDIA AND ORS.

OCTOBER 11, 1996

[KULDIP SINGH, N.P. SINGH AND S. SAGHIR AHMED, JJ.]

*Environmental Law:*

*Environment Protection Act, 1986 :*

*Prevention of environment and control of pollution—Badkal Lake and Surajkund tourist spots—Directions of this Court by its order dated 10.5.1996 to maintain green belts around these areas and restrict construction work explained—Further directions given.*

*"Precautionary principle" - Discussed.*

*Constitution of India, 1950 :*

*Articles 14, 21, 27, 48A and 51A—Duty of State to protect and improve the environment—Explained—"Precautionary principle"—Discussed.*

*Vellore Citizens Welfare Forum* **v.** *Union of India & Ors.*, **JT (1996) 7 S.C. 375;** *Rural Litigation and Entitlement Kendra, Dehradoon* **v.** *State of Uttar Pradesh*, **[1987] 1 SCR 641 and** *M.C. Mehta* **v.** *Union of India*, **[1987] 4 SCC 463, referred to.**

CIVIL APPELLATE JURISDICTION : Interlocutory Application, 29.

IN

Writ Petition (C) No. 4677 of 1985.

(Under Article 32 of the Constitution of India.)

Petitioner-in-person and Ms. Seema Mirdha, Arun Jaitly, Swaraj Kaushal, H.N. Salve, Anil B. Diwan, Gopal Subramanian, N.N. Goswami, S.B. Sanyal, Ms. Shirla Sethi, D.N. Goburdhan, Ms. Geeta Luthra, M/s. Saharaya & Co., R.K. Maheshwari, R.S. Suri, Ms. Hemantika Wahi, S.

A Sukumaran, R. Karanjawala, Ravindra Narain, Sumeet Kachwaha, Punit Singh, Bimal Ray, Ramji Srinivasan, J. B. Dadachandji, T.C. Sharma, Ms. Sushma Suri, Ranjan Mukherjee, Ramesh Babu, M.R. for the appearing parties.

The following Order of the Court was delivered:

B

This Court by the order dated May 10, 1996 in I.A. 29 [W.P.(C) No. 4677/85] dealt with the question whether - to preserve environment and control pollution - mining operations should be stopped within the radius of 5 kms. from the tourist resorts of Badkhal lake and Surajkund in the C State of Haryana. The Court gave five directions in the said order. Direction 4 is in the following terms :

> "We further direct that no construction of any type shall be permitted now onwards within 5 km radius of the Badkhal Lake and Surajkund. All open areas shall be converted into green belts."

D

The Haryana Pollution Control Board (the Board) has notified the ambient Air quality Standards by the notification dated April 11, 1994. The notification fixes limiting standards of pollution in respect of sensitive areas, industrial areas and residential areas. The standards for sensitive areas are E stringent than the standards prescribed for industrial and residential areas. The Board has recommended that the area of 5 kms. around the periphery of a centre of tourism be notified as "sensitive area". With a view to control pollution and save environment in the vicinity of Badkhal and Surajkund, the above quoted direction was issued.

F The Municipal Corporation Faridabad, Haryana Urban Development Authority and builders having interest in the area have approached this Court for modification/clarification of the above quoted direction. It is contended by learned counsel appearing for the parties that in the said area of 5 kms. buildings are under construction, plots have been al- G lotted/sold under various Development-schemes and the plot-holders have even started construction. According to the learned counsel vested rights of several persons are likely to be adversely affected causing huge financial loss to them.

Although the direction specifically says "no construction..... now H onwards....." and as such the areas which are already under construction

would obviously be excluded from the direction but in order to allay the apprehensions of the property-owners in the area, we are of the view that it is necessary to clarify the above direction.

Mr. Kapil Sibal, appearing for the Municipal Corporation Faridabad has taken lot of pains in having the area surveyed and plans prepared with a view to find out as to how best the direction of this Court regarding development of 200 mts. green belt at one km. radius all around the boundaries of the two lakes can be implemented. Mr. Sibal and Mr. Harish Salve have placed on record two plans showing the proposed green belts around Badkhal lake and Surajkund. The Plan in respect of Badkhal is marked Ex. A. Along with the Plan the detail of the Khasra Nos. on which the green belt is to be developed, has been given which is marked as Ex. A/1. Similarly, the plan regarding Surajkund is marked as Ex. B and the detail of the khasra Nos. is marked as Ex. B/1. It is agreed by all the parties that the green belt as proposed in Ex. A and Ex. B shall be developed in the two areas.

This Court by the order dated September 13, 1996 in I.A. 18 [W.P. (C) No. 4677/85] has directed the Central Government to constitute an authority (The Authority) under Section 3(3) of the Environment (Protection) Act, 1986. The said authority shall have the jurisdiction over the National Capital Region as defined under the National Capital Region Planing Act, 1955. It is thus obvious that the area of Badkhal and Surajkund, with which we are concerned, comes within the jurisdiction of the said authority.

Mr. Shanti Bhushan, learned Senior Advocate, appearing for some of the builders has vehemently contended that banning construction within one km. radius from Badkhal and Surajkund is arbitrary. According to him it is not based on technical reasons. He has referred to the directions issued by the Government of India under the Environment Protection Act and has contended that the construction can at the most be banned within 200 to 500 metres as was done by the Government of India in the coastal areas. He has also contended that restriction on construction only in the areas surrounding Surajkund and Badkhal lakes is hit by Article 14 of the Constitution of India as it is not being extended to other lakes in the country. We do not agree with Mr. Shanti Bhushan. The functioning of eco-systems and the status of environment cannot be the same in the

A country. Preventive measures have to be taken keeping in view the carrying capacity of the eco-systems operating in the environmental surroundings under consideration. Badkhal and Surajkund Lakes are popular tourist resorts almost next door to the capital city of Delhi. We have on record the Inspection Report in respect of these lakes by the National Environ-
B mental Engineering Research Institute (NEERI) dated April 20, 1996 indicating the surroundings, geological features, land use and soil types and archaeological significance of the areas surrounding the lakes. According to the report Surajkund lake impounds water from rain and natural springs. Badkhal lake is an impoundment formed due to the construction of an earthern dam. The catchment areas of these lakes are shown in a figure
C attached with the report. The land use and soil types as explained in the report show that the Badkhal lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in
D turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the acquifers which are the source of ground water. The hydrology of the area may also be disturbed.

The two expert opinions on the record - by the Central Pollution Control Board and by the NEERI - leave no doubt on our mind that the
E large scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended greenbelt at one KM radius all around the two lakes. Annexures A and B, however, show that the area within the greenbelt is much lesser than one KM radius as suggested by the NEERI.

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This Court in *Vellore Citizens Welfare Forum* v. *Union of India & Ors.*, JT (1996) 7 S.C. 375 elaborately discussed the concept of "sustainable development" which has been accepted as part of the law of the land. It would be useful to quote the relevant part:

G

> "The traditional concept that development and ecology are opposed to each other, is no longer acceptable. "Sustainable Development" is the answer. In the International sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972..... During the two
H decades from Stockholm to Rio "Sustainable Development" has

come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- systems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs"..... 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....

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..... 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*, AIR 1976 SC 1207, *Jolly George Varghese's* case AIR (1980) SC 470 and *Gramophone Company's* case AIR (1984) SC 667."

This Court in *Rural Litigation and Entitlement Kendra, Dehradoon* v. *State of Uttar Pradesh*, [1987] 1 SCR 641, held as under:

A "The consequence of this order made by us would be that the lessee of limestone quarries would be thrown out of business. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them, to their cattle, homes and agriculture and undue affectation of air, water and environment."

B

In *M.C. Mehta* v. *Union of India*, [1987] 4 SCC 463 this Court held as under:

C "The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exit, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public.

D

Life, public health and ecology have priority over unemployment and loss of revenue problem".

"The Precautionary Principle" has been accepted as a part of the law E of the land. Articles 21. 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. "The Precautionary Principle" makes it mandatory for the F State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

G In clarification of direction 4 quoted above, we order and direct as under :

1. No construction of any type shall be permitted, now onwards, within the green belt area as shown in Ex. A and Ex. B. The environment and ecology of this area shall be protected and preserved by all concerned. H A very small area may be permitted, if it is of utmost necessity, for

recreational and tourism purposes. The said permission shall be granted with the prior approval of "The authority", the Central Pollution Control Board and the Haryana Pollution Control Board. A

2. No construction of any type shall be permitted, now onwards, in the areas outside the green belt (as shown in Ex. A and Ex. B) upto one km. radius of the Badkhal lake and Surajkund (one kilometer to be measured from the respective lakes). This direction shall, however, not apply to the plots already sold/allotted prior to May 10, 1996 in the developed areas. If any unallotted plots in the said areas are still available, those may be sold with the prior approval of 'the authority'. Any person owning land in the area may construct a residential house for his personal use and benefit. The construction on the said plots, however, can only be permitted upto two and a half storeys (ground, first floor and second half floor) subject to the Building Bye-laws/Rules operating in the area. The residents of the villages, if any, within this area may extend/reconstruct their houses for personal use but the said construction shall not be permitted beyond two and half storeys subject to building Bye- laws/Rules. Any building/house/commercial premises already under construction on the basis of the sanctioned plan, prior to May 10, 1996 shall not be affected by this direction. B C D

3. All constructions which are permitted under directions 1 and 2 above shall have the clearance of "The Authority", the Central Pollution Control Board and the Haryana Pollution Control Board before 'occupation certificates' are issued in respect of these buildings by the authorities concerned. E

4. All development schemes, and the plans for all types of constructions relating to all types of buildings in the area from one km. to 5 km radius of the Badkhal lake and Surajkund (excluding Delhi areas) shall have prior approval of the Central Pollution Control Board and the Haryana Pollution Control Board. F

R.P. Petition disposed of. G