

PETITIONER:

M.C. MEHTA

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 12/01/1988

BENCH:

VENKATARAMIAH, E.S. (J)

SINGH, K.N. (J)

CITATION:

1988 AIR 1115 1988 SCR (2) 530

1988 SCC (1) 471 JT 1988 (1) 69

JUDGMENT:

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M.C. Mehta v. Union of India & others, [1987] 4 S.C.C. 463 and Pride of Derby and Derbyshire Angling Association v. British Celanese Limited, [1953] Chancery 149. ORIGINAL JURISDICTION: Writ Petition No. 3727 of 1985. (Under Article 32 of the Constitution of India.) Petitioner-in-person .

B. Datta, Additional Solicitor General, R.K. Jain, Vinod Bobde, R.N. Trivedi, K.N. Bhat, Tapash Ray, B.R.L. Iyenger R.P. Singh, R.P. Kapur, Ravinder Narain, S. Sukumaran, C.B. Singh, S.K. Dhingra, P.K. Jain, D.N. Goburdhan, Arvind Kumar, Ms. Laxmi Arvind, Vineet Kumar, Deepak K. Thakur, T.V. S. N. Chari, Ms. Vrinda Grover, Badri Nath, Rakesh Khanna, Mukul Mudgal, A.K. Ghose, M.M. Gangadeb, Probir Mirtra, Sushil Kumar Jain, Saryakant, Pappy T. Mathews, Mrs, Mamta Kachhawaha, Mrs. Shobha Dikshit, G.S. Misra, S.R. Srivastava, Parijat Sinha, R. Mohan, Ms. .Bina Gupta, Ranjit Kumar, Krishna Kumar, R.C. Verma, Arun Minocha, Sri Narain, E.C. Agrawala, S.R. Setia, H.K. Puri, T.S. Rana, Pramod Swarup, Ashok Grover, S. Markandeya, Swarup. Ms, Lalita Kohli, K.C. Dua, Rajbirbal, R.A. Gupta and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J.

By our judgment dated September 22, 1987 in M.C. Mehta v. Union of India & others, [1987] 4 S.C.C. 463, we issued certain directions with regard to the industries in which the business of tanning was being carried on at Jajmau near Kanpur on the banks of the river Ganga. On that occasion we directed that the case in respect of the municipal bodies and the industries which were responsible for the pollution of the water in the river Ganga would be taken up for consideration on the next date of hearing. Accordingly, we took up for consideration first the case against the municipal bodies. Since it was found that Kanpur was one of the biggest cities on the banks of the river Ganga, we took up for consideration the case in respect of the Kanpur Nagar Mahapalika.

The Kanpur Nagar Mahapalika is established under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as 'the Adhiniyam'). Sub-section (3) of section

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1 of the Adhiniyam, which is to be found in its 1st Chapter, provides that the 1st Chapter of the Adhiniyam shall come into operation at once and the remaining provisions in relation to a city shall come into operation from such date as the State Government may by notification in the official Gazette appoint in that behalf and different dates may be appointed for different provisions. In exercise of the powers conferred by the said sub-section and in continuation of a notification dated September 28, 1959 bringing into operation sections 579 and 580 of the Adhiniyam, the Governor of Uttar Pradesh was pleased to issue a notification dated January 18, 1960 appointing the 1st day of February, 1960 as the date on which the remaining provisions of the Adhiniyam and the three Schedules, appended thereto, would come into operation in relation to the cities of Kanpur, Allahabad, Varanasi, Agra and Lucknow, as constituted under section 3 of the Adhiniyam. The duties and powers of the Mahapalika and Mahapalika authorities are set out in Chapter V of the Adhiniyam. Clauses (iii), (vii) and (viii) of section 114 of the Adhiniyam, which incorporates the obligatory duties of the Mahapalika, read as follows:

"114. Obligatory duties of the Mahapalika-It shall be incumbent on the Mahapalika to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely,-

..... (iii) the collection and removal of sewage, offensive matter and rubbish and treatment and disposal thereof including establishing and maintaining farm or factory;

..... (vii) the management and maintenance of all Mahapalika waterworks and the construction or acquisition of new works necessary for a sufficient supply of water for public and private purposes;

(viii) guarding from pollution water used for human consumption and preventing polluted water from being so used;

....." 536

Sections 251, 388, 396, 297, 398, 405, and 407 of the Adhiniyam read as follows:

"251. Provision of means for disposal of sewage- The Mukhya Nagar Adhikari may, for the purpose of receiving, treating, storing, disinfecting, distributing or otherwise disposing of sewage, construct any work within or without the City or purchase or take on lease any land, building, engine, material or apparatus either within or without the City or enter into any arrangement with any person for any period not exceeding twenty years for the removal or disposal of sewage within or without the City.

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388. Provision may be made by Mukhya Nagar Adhikari for collection, etc., of excrementitious and polluted matter-(1) The Mukhya Nagar Adhikari may give public notice of his intention to provide, in such portion of the City as he may specify, for the collection, removal and disposal by Mahapalika agency, of all excrementitious and polluted matter from privies, urinals, and cess- pools, and thereupon it shall be the duty of the Mukhya Nagar Adhikari to take measures for the daily collection, removal and disposal of such matter from all premises situated in such portion of the City.

(2) In any such portion as is mentioned in sub-section (1) and in any premises, wherever situated, in which there is a water-closet or privy connected with a mahapalika drain, it shall not be lawful, except with the written permission of the Mukhya Nagar Adhikari, for any person who is not employed by or on behalf of the Mukhya Nagar Adhikari to discharge any of the duties of scavengers.

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396. Removal of carcasses of dead animals-(I) It shall be the duty of the Mukhya Nagar Adhikari to provide for the removal of the carcasses of all animals dying within the City.

(2) The occupier of any premises in or upon which

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any animal shall die or in or upon which the carcass of any animal shall be found, and the person having the charge of any animal which dies in the street or in any open place shall, within three hours after the death of such animal or, if the death occurs at night within three hours after sunrise, report the death of such animal at the nearest office of the Mahapalika Health Department.

(3) For every carcass removed by mahapalika agency, whether from any private premises or from public street or place, a fee for the removal of such amount as shall be fixed by the Mukhya Nagar Adhikari shall be paid by the owner of the animal, or, if the owner is

not known. by the occupier of the premises in or upon which, or by the person in whose charge, the said animal died.

397. Prohibition of cultivation, use of manure, irrigation injurious to health-If the Director of Medical and Health Services or the Civil Surgeon or the Nagar Swasthya Adhikari certifies that the cultivation of any description of crops or the use of any kind of manure or the irrigation of land in any specified manner- (a) in a place within the limits of a City is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or

(b) in a place within or beyond the limits of a City is likely to contaminate the water-supply of such City or otherwise render it unfit for drinking purpose,

the Mukhya Nagar Adhikari may by public notice prohibit the cultivation of such crop, the use of such manure or the use of the method of irrigation so reported to be injurious, or impose such conditions with respect thereto as may prevent the injury or contamination:

Provided that when, on any land in respect of which such notice is issued, the act prohibited has been practised in the ordinary course of husbandry for the five successive years next preceding the date of prohibition, compensation shall be paid from the Mahapalika Fund to all persons interested therein for damage caused to them by such prohibition.

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398. Power to require owners to clear away noxious vegetation-The Mukhya Nagar Adhikari may, by notice. require the owner or occupier of any land to clear away and remove any vegetation or undergrowth which may be injurious to health or offensive to the neighbourhood.

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405. Power to require removal of nuisance arising from tanks, etc.- The Mukhya Nagar Adhikari may by notice require the owner or occupier of any land or building to cleanse, repair, cover, fill up or drain off a private well, tank, reservoir. pool, depression or excavation therein which may appear to the Mukhiya Nagar Adhikari to be injurious to health or offensive to the neighbourhood:

Provided that the owner or occupier may require the Mukhya Nagar Adhikari to acquire at the expense of the Mahapalika or otherwise provide, any land or rights in land necessary for the purpose of effecting drainage ordered under this section

407. Any place may at any time be inspected for purpose of preventing spread of dangerous disease-The Mukhya Nagar Adhikari may at any time, by day or day night, without notice or after giving such notice of his intention as shall in the circumstances,

appear to him to be reasonable, inspect any place in which any dangerous disease is reputed or suspected to exist, and take such mea

asures as he shall think fit to prevent the spread of the said disease beyond such place. "

The above provisions deal with the specific duties of the Nagar Mahapalika or the Mukhya Nagar . Adhikari appointed under the Adhiniyam with regard to the disposal of sewage and protection of the environment in or around the City to which the Adhiniyam applies. There are almost similar provisions in sections 7, 189, 19 1 and other provisions of the Uttar Pradesh Municipalities Act, 1916 which applies to the smaller municipal bodies. The Uttar Pradesh Water Supply and Sewerage Act, 1975 imposes statutory duties on the authorities mentioned therein regarding the provision of water supply to the cities and towns and construction of sewerage systems in them. The perusal of these provisions in the laws governing the local bodies shows that the

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Nagar Mahapalikas and the Minicipal Boards are primarily responsible for the maintenance of cleanliness in the areas under their jurisdiction and the protection of their environment. We have, in the judgment delivered by us on September 22, 1987, briefly referred to the Water (Prevention and Control of Pollution) Act, 1974 (Act No. 6 of 1974) (hereinafter referred to as 'the Water Act') in which provisions have been made for the establishment of the Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. In the Water Act the expressions 'pollution', 'sewage effluent', 'sewer', 'stream', and 'trade effluent' are defined as follows:

"2 Definitions-In this Act, unless the

context otherwise requires-

..... (e) 'pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or treade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of acquatic organisms;

..... (g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

..... (j) 'stream' includes-

(i) river;

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(ii) water course (whether flowing or

for the time being dry);

(iii) inland water (whether natural or artificial);

(iv) sub-terranean waters;

(v) sea or tidal waters to such extent or, as the case may be, to such

point as the State may, by

notification in the official

Gazette, specify in this behalf;

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage . " Section 3 and 4 of the Water Act provide for the constitution of the Central Board and State Boards respectively. A State Board has been constituted under section 4 of the Water Act in the State of Uttar Pradesh. Section 16 of the Water Act sets out the functions of the Central Board and section 17 of the Water Act lays down the functions of the State Board. The functions of the Central Board are primarily advisory and supervisory in character. The Central Board is also required to advise the Central Government on any matter concerning the prevention and control of water pollution and to co-ordinate the activities of the State Boards. The Central Board is also required to provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution. The functions of the State Board are more comprehensive. In addition to advising the State Government on any matter concerning the prevention, control or abatement of water pollution, the State Board is required among other things (i) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof, (ii) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof; (iii) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution; (iv) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents; (v) to review plans, specifications or other data relating to plants set up for the treatment of

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water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by the Water Act; (vi) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution; and (vii) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents. The State Board has been given certain executive powers to implement the provisions of the Water Act. Sections 20, 21 and 23 of the Water Act confer power on the State Board to obtain information necessary for the implementation of the provisions of the Water Act, to take samples of effluents and to analyse them and to follow the procedure prescribed in connection therewith and the power of entry and inspection for the purpose of enforcing the provisions of the Water Act. Section 24 of the Water Act prohibits the use of stream or well for disposal of polluting matters etc. contrary to the provisions incorporated in that section. Section 32 of the Water Act confers the power on the State Board to take certain emergency measures in case of pollution of stream or well. Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal of any matter therein or of any likely disposal of any matter therein, or otherwise, the Board may under section 33 of the Water Act make an application to a court not inferior to that of a Presidency Magistrate or a Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing. The Environment (Protection) Act, 1986, which has also been referred to in our earlier judgment, also contains certain provisions relating to the control, prevention and abatement of pollution of water and one significant provision in that Act is what is contained in section 17 thereof, which provides that where an offence under that Act is committed by any Department of Government, the Head of that Department shall be deemed to be guilty of the offence and is liable to be punished.

It is unfortunate that although Parliament and the State Legislature have enacted the aforesaid laws imposing duties on the Central and State Boards and the municipalities for prevention and control of 542

pollution of water, many of those provisions have just remained on paper without any adequate action being taken pursuant thereto. After the above petition was filed and notice was sent to the Uttar Pradesh State Board constituted under the Water Act, an affidavit has been filed before this Court by Dr.- G.N. Misra, Scientific officer of the U.P. Pollution Control Board setting out the information which the Board was able to collect regarding the measures taken by the several local bodies and also by the U.P. Pollution Control Board in order to prevent the pollution of the water flowing in the river Ganga. A copy of the report relating to the inspection made at Kanpur on 23.11.87/24.11.87 by Shri Tanzar Ullah Khan, Assistant Environmental Engineer and Shri A.K. Tiwari, Junior Engineer enclosed to- the counter- affidavit as Exhibit K-5 reads thus:

"The inspection made on 23.11.87/24.1.87 alongwith Sri A.K. Tiwari, Junior Engineer. Following are the facts observed at the time of inspection.

1. Kanpur town is situated on the southern bank of river Ganges.
2. The present population of the town is approximately 20 lacs.
3. The city is covered with piped water supply.
4. The city has developed between river Ganges on the north side and river Pandu on the south side. G.T. Road divides the city into two halves.

In the north side most of the area is covered by sewerage system and the sullage/sewage is discharged without treatment into river Ganges through 17 nalas including sewerage by-pass channel at Jajmau.

In the south side there is no sewerage system and the sewage/sullage are discharged without treatment into river Pandu through 5 nalas. River Pandu joins river Ganges near Fatehpur(Sketch enclosed).

5. The Kanpur Nagar mahapalika has not yet submitted any proposal of sewage treatment works to the Board.

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6. Mr. Ikramur Rahman, A.E. Nagar Mahapalika told the Kanpur town is covered under Ganga Action Plan and following are the proposals-

(A) U. P. Jal Nigam

(1) Re-modelling of sewage pumping station at Jajmau and improvement to sewage farm.

(2) Nala Tapping.

(3) Sewage Treatment Plant.

(B) Kanpur Jal Sansthan

(1) Cleaning of Trunk and main sewers.

(C) Integrated Environmental and sanitary Engineer project is being executed under the Dutch Assistance in Jajmau Area.

(1) Crash Programme (is to remove deficiencies in the existing sanitary facilities) (2) Laying of Industrial sewer.

(3) U.A.S.B. Sewage Treatment Plant.

Sd/ Sd/

A.K.TIWARI (TANZAR ULLAH KHAN)

J.E. ASSTT. ENVIRONMENTAL

ENGINEER."

Appendix A/1 to 'An Action Plan for Prevention of Pollution of the Ganga' gives the following particulars relating to the quantity of sewerage generated in the City of Kanpur which is discharged into the river Ganga and other relevant matters:

KANPUR

Population Estimated water Estimated sewage Treatment in 1981 supply in 1981 generated (70% of the water

supply to the city

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..... 16.39 lacks 392.14 million 274.50 million Nil litres a day litres a day

..... It is thus seen that 274.50 million litres a day of sewage water is being discharged into the river Ganga from the city of Kanpur, which is the highest in the State of Uttar Pradesh and next only to the city of Calcutta which discharges 580. 17 million litres a day of sewage water into the river Ganga. Para 4 of the affidavit filed by Shri Jai Shanker Tewari, Executive engineer of Kanpur Nagar Mahapalika reads thus:

"4. That the pollution in river Ganga from Kanpur is occurring because of following reasons: (i) About 16 nalas collecting sullage water, sewage, textile waste, power plant waste and tannery effluents used to be discharged without any treatment into the river. However some Nalas have been trapped now.

(ii) The dairies located in the city have a cattle population of about 80.000. The dung, fodder waste and other refuse from this cattle population is quantitatively more than the sullage from the city of human population of over 20 lakhs. All this finds its way into the sewerage system and the nalas in the rainy season. It has also totally choked many branches of sewers and trunk sewers resulting in the overflow of the system.

(iii) The night soil collected from the unsewered areas of the city and thrown into the nalas.

(iv) There are more than 80 tanneries in Jajmau whose effluent used to be directly discharged into the river.

(v) The total water supply in Kanpur is about 55 million gallons per day. After use major part of it goes down the drains, nalas and sewers; sewage is taken to Jajmau sewage pumping station and a part of it is being supplied to sewage farms after diluting it with raw Ganges water and the remaining part is discharged into the river. (vi) Dhobi Ghats.

(vii) Defecation by economically weaker sections."

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The affidavit further states that the U.P. Jal Nigam, the U.P. Water Pollution Control Board, the National Environmental Engineering Research Institute, the Central Leather Research Institute, the Kanpur Nagar Mahapalika, the Kanpur Development Authority and the Kanpur Jal Sansthan have started taking action to minimise the pollution of the river Ganga. It is also stated therein that the financial assistance is being provided by the Central Ganga Authority through Ganga Project Directorate, State Government, the World Bank, the Dutch Government etc. for implementing the said measures. The said affidavit gives information about the several works undertaken at Kanpur for minimising the pollution of the river Ganga. It also states that Rs.493.63 lacs had been spent on those works between the years 1985 and 1987 and that the total allocation of funds by the Central Ganga Authority for Kanpur is Rs.3694.94 lacs and that upto the end of the current financial year it is proposed to spend Rs.785.58 lacs (1985 to 1987-88) towards various schemes to be completed under Ganga Action Plan. The affidavit points out that in Kanpur City sewer cleaning has never been done systematically and in a planned way except that some sewers were cleaned by the U.P. Jal Nigam around 1970. The main reasons for mal-functioning and choking of the city sewerage, according to the affidavit, are (i) throwing or discharging of solids, clothes, plastics, metals etc. into the sewerage system; (ii) throwing of cow dung from dairies which are located in every part of the city which consists of about 80,000 cattle; (iii) laying of under-sized sewers specially in labour colonies; (iv) throwing of solid wastes and malba from construction of buildings into sewers through manholes; (v) non-availability of mechanical equipment for sewer cleaning works; and (vi) shortage of funds for proper maintenance. It is asserted that the discharge of untreated effluents into the river Ganga will be stopped upto 80% by March, 1988. Shri M.C. Mehta, the petitioner herein, drew our attention to the Progress Report of the Ganges Action Plan (July 1986-January 1987) prepared by the Industrial Toxicology Research Centre, Council of Scientific & Industrial Research. At page 20 of the said report the details of the analysis of the Ganga water samples collected during August, 1986 to January, 1987 from Uttar Pradesh region are furnished. That report shows that the pollution of the water in the river Ganga is of the highest degree at Kanpur. The Ganga water samples taken at Kanpur show that the water in the river Ganga at Kanpur consisted of 29.200 units (mg/ml) of iron in the month of August, 1986 when the ISI limit for river water is 0.3 and 0.900 (mg/ml) of manganese whereas the WHO limit of manganese for drinking water is

0.05. The Progress Report for the period February 1987-June. 1987 of Microlevel Intensive Monitoring of Ganga under Ganga Action Plan describes the samples of the water taken from the river Ganga at Kanpur thus:

"B.O.D. (Bio oxygen Demand) values are found to be higher than prescribed values of I.S.I. C.O.D. (Chemical oxygen Demand) values are also found to be higher. These values clearly indicate that river water is not fit for drinking, fishing and bathing purposes.

Table II further shows that Total Coliform and Fecal Coliform bacteria are always found very high. This is due to disposal of large quantity of untreated municipal waste into river Ganga. These high values of bacteria indicate that water is not fit for drinking, bathing and fishing purpose. To improve quality of water in Ganga, all nullahs should be trapped immediately and raw water should be treated conventionally at water works and disinfected by chlorination " (underlining by us)

In the concluding part of the said Progress Report it is stated thus:

"The Ganga is grossly polluted at Kanpur. All nullahs are discharging the polluted waste water into river Ganga. But Jajmau by pass channel, Sismau, Muir Mill, Golf Club and Gupta Ghat nullah are discharging huge quantities of polluted waste water, To improve the water quality of Ganga all major nullahs should be diverted and treated. Combined treatment should be provided for Jajmau tanneries. Effluent treatment plants should be installed by all major polluting industries." It is needless to say that in the tropical developing countries a large amount of misery, sickness and death due to infectious diseases arises out of water supplies. In Lall's Commentaries on Water and Air Pollution Laws (2nd Edition) at pages 331 and 333 it is observed thus: "In the tropics, we cannot safely take such a limited

view. Such Water-borne diseases as malaria, schistosomiasis, guinea worm and yellow fever are either terrible scourges of, or threats to, many tropical populations. The hazards from bad water are thus much greater. Poverty is much more serious for many tropical areas; in the rural areas-where most people live-and around the edges of the cities, which are the fastest-growing communities. most people cannot afford a conventionally good water supply at present, and the choice in the short run may be between doing nothing and providing somewhat improved supply. If an ideal water system is not possible, there are options as to what needs should be met by the partial improvements. To make the right decisions we need again the broad picture of water-related diseases. So, because of these two tropical characteristics-warmth and poverty-a wider view than in temperate lands is necessary.(p.331) Water-borne diseases-The classical water- borne diseases are due to highly infective organisms where only rather few are needed to infect someone, relative to the levels of pollution that readily occur.

The two chief ones have a high mortality if untreated and are diseases which a community is very anxious to escape: Typhoid and cholera. Both are relatively fragile organisms whose sole reservoir is man. These two diseases occur most dramatically as the 'common source out-break where a community water supply gets contaminated by faeces from a person suffering from, or carrying, one of the infections. Many people drink the water and a number of these fall ill from the infection at about the same time.

Typhoid is the most cosmopolitan of the classical water-borne infections. In man it produces a severe high fever with generated systemic, more than intestinal, symptoms. The bacteria are ingested and very few are sufficient to infect. The typhoid patient is usually too ill to go out polluting the water and is not infective prior to falling sick. However, a small proportion of those who recover clinically continue to pass typhoid bacteria in their faeces for

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months or years; these carriers are the source of water borne infections. Gallstones predispose to the carrier state as the bacteria persist in the inflamed gall bladder. In the tropics, lesions of *Schistosoma haematobium* in the bladder also act as a nidus of infection, producing urinary typhoid carriers, whilst rectal schistosomiasis combined with typhoid leads to a persistent severe fever lasting many months. Typhoid bacteria survive well in water but do not multiply there.

Cholera is in some ways similar to typhoid, but its causative bacteria are more fragile and the clinical course is extremely dramatic. In classical cholera the onset of diarrhoea is sudden and its volume immense so that the untreated victim has a high probability of dying from dehydration within 24 hours or little more. Several other infections are water borne but are less important than typhoid and cholera. Leptospirosis, due to a spirochaete, has its reservoir in wild rodents which pollute the water. *Leptospira* can penetrate the skin as well as being ingested. They produce jaundice and fever, called 'Weil's disease', which is severe but not common. 'The amount of suffering which the members of the public are likely to undergo by using highly polluted water can be easily gathered from the above extract.

In the book entitled 'Water Pollution and disposal of Waste Water on Land' (1983) by U.N. Mahida. I.S.E. (Retd) the problem of water pollution, the benefits of control of pollution and the urgency of the problem have been dealt with. At pages 1, 2, 4 and 5 of the said book it is observed thus:

"As long as the human population was small and communities were scattered over large areas of land, the disposal of human wastes created no problems. People could defecate in areas surrounding villages and other habitations and leave it to nature to dispose of the waste by assimilation in the surrounding land and air. But as communities became more concentrated and villages and towns grew, such a mode of disposal by natural agencies came to be replaced by organised disposal, though again through 549

the agency of natural land and soil columns. The collection of human excreta and its disposal in earthen trenches was resorted to by many towns and adopted the basket privy system.

The introduction of a system of water-borne sewage created new problems in the disposal of human wastes, as now along with the earlier problem of getting rid of solid wastes, i.e., human excreta, the problem of the disposal of the water employed for the removal of human wastes had also to be faced. This was the origin of the problem of sewage disposal. At first, the natural instinct was to channelize the sewage-the soiled water-to natural streams and rivers. For a time this mode of disposal was even considered quite efficacious. Such methods did not create difficulties as sewage discharges were small as compared to the stream flow. But with the increased discharge of progressively large quantities of sewage, polluted streams became a serious menace to public health.

NATURE OF THE PROBLEM

The introduction of modern water carriage systems transferred the sewage disposal from the streets and the surroundings of townships to neighbouring streams and rivers. This was the beginning of the problem of water pollution. It is ironic that man, from the earliest times, has tended to dispose of his wastes in the very streams and rivers from which most of his drinking water is drawn. Until quite recently this was not much of a problem, but with rapid urbanisation and industrialisation, the problem of the pollution of natural waters is reaching alarming proportions. The most disturbing feature of this mode of disposal is that those who cause water pollution are seldom the people who suffer from it. Cities and industries discharge their untreated or only partially treated sewage and industrial waste waters into neighbouring streams and thereby remove waste matter from their own neighbourhood. But in doing so, they create intense pollution in streams and rivers and expose the downstream riparian population to dangerously unhygienic conditions. In addition to the with-

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drawal of water for downstream towns and cities, in many developing countries, numerous villages and riparian agricultural population generally rely on streams and rivers for drinking water for themselves and their cattle, for cooking, bathing, washing and numerous other uses. It is thus riparian population that specially needs protection from the growing menace of water pollution. (pages 1 and 2)

..... BENEFITS OF CONTROL

The benefits which result from the prevention of water pollution include a general improvement in the standard of health of the population, the possibility of restoring stream waters to their original beneficial state and rendering them fit as sources of water supply, and the maintenance of clean and healthy surroundings which would then offer attractive recreational facilities. Such measures would also restore fish and other aquatic life.

Apart from its menace to health, polluted water considerably reduces the water resources of a nation. Since the total amount of a country's utilisable water remains essentially the same and the demand for water is always increasing, schemes for the prevention of water pollution should, wherever possible, make the best use of treated waste waters either in industry or agriculture. Very often such processes may also result in other benefits in addition to mere reuse. The application of effluents on agricultural land supplies not only much needed water to growing crops but also manurial ingredients; the recovery of commercially valuable ingredients during the treatment of industrial waste waters often yields by-products which may to some extent offset the cost of treatment

If appropriate financial credits could be calculated in respect of these and other incidental benefits, it would be apparent that measures for the prevention of pollution are not unduly costly and are within the reach of all nations, advanced or developing. It is fortunate that people are becoming more receptive to the idea of sharing the financial burden for lessening pollution. It is now recognised in most

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countries that it is the responsibility of industries to treat their trade wastes in such a way that they do not deteriorate the quality of the receiving waters, which otherwise would make the utilisation of such polluted waters very difficult or costly for downstream settlers. URGENCY OF THE PROBLEM

The crucial question is not whether developing countries can afford such measures for the control of water pollution but it is whether they can afford to neglect them. The importance of the latter is emphasised by the fact that in the absence of adequate measures for the prevention or control of water pollution, a nation would eventually be confronted with far more onerous burdens to secure wholesome and adequate supplies of water for different purposes. If developing countries embark on suitable pollution prevention policies during the initial stages of their industrialisation, they can avoid the costly mistakes committed in the past by many developed countries. It is, however, unfortunate that the importance of controlling pollution is generally not realised until considerable damage has already been done; (Pages 3 and 4)"

In common law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river. In *Pride of Derby and Derbyshire Angling Association v. British Celanese Ltd.*, [1953] Chancery 149 the second defendant, the Derby Corporation admitted that it had polluted the plaintiff's fishery in the River Derwent by discharging into it insufficiently treated sewage, but claimed that by the Derby Corporation Act, 1901 it was under a duty to provide a sewerage system, and that the system which had accordingly been provided had become inadequate solely from the increase in the population of Derby. The Court of Appeal held that it was not inevitable that the work constructed under the Act of 1901 should cause a nuisance, and that in any case the Act on its true construction did not authorise the commission of a

nuisance. The petitioner in the case before us is no doubt not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be dis-

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puted. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case we are of the view that the Petitioner is entitled to move this Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act. We have already set out the relevant provisions of the statute which impose those duties on the authorities concerned. On account of their failure to obey the statutory duties for several years the water in the river Ganga at Kanpur has become so much polluted that it can no longer be used by the people either for drinking or for bathing. The Nagar Mahapalika of Kanpur has to bear the major responsibility for the pollution of the river near Kanpur city.

It is no doubt true that the construction of certain works has been undertaken under the Ganga Action Plan at Kanpur in order to improve the sewerage system and to prevent pollution of the water in the river Ganga. But as we see from the affidavit filed on behalf of the authorities concerned in this case the works are going on at a snail's pace. We find from the affidavits filed on behalf of the Kanpur Nagar Mahapalika that certain target dates have been fixed for the completion of the works already undertaken. We expect the authorities concerned to complete those works within the target dates mentioned in the counter-affidavit and not to delay the completion of the works beyond those dates. It is, however, noticed that the Kanpur Nagar Mahapalika has not yet submitted its proposals for sewage treatment works to the State Board constituted under the Water Act. The Kanpur Nagar Mahapalika should submit its proposals to the State Board within six months from today. It is seen that there is a large number of dairies in Kanpur in which there are about 80,000 cattle. The Kanpur Nagar Mahapalika should take action under the provisions of the Adhinyam or the relevant bye-laws made thereunder to prevent the pollution of the water in the river Ganga on account of the waste accumulated at the dairies. The Kanpur Nagar Mahapalika may either direct the dairies to be shifted to a place outside the city so that the waste accumulated at the dairies does not ultimately reach the river Ganga or in the alternative it may arrange for the removal of such waste by employing motor vehicles to transport such waste from the existing dairies in which even

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the owners of the dairies cannot claim any compensation. The Kanpur Nagar Mahapalika should immediately take action to prevent the collection of manure at private manure pits inside the city.

The Kanpur Nagar Mahapalika should take immediate steps to increase the size of the sewers in the labour colonies so that the sewage may be carried smoothly through the sewerage system. Wherever sewerage line is not yet constructed steps should be taken to lay it.

Immediate action should also be taken by the Kanpur Nagar Mahapalika to construct sufficient number of public latrines and urinals for the use of the poor people in order to prevent defecation by them on open land. The proposal to levy any charge for making use of such latrines and urinals shall be dropped as that would be a reason for the poor people not using the public latrines and urinals. The cost of maintenance of cleanliness of those latrines and urinals has to be borne by the Kanpur Nagar Mahapalika. It is submitted before us that whenever the Board constituted under the Water Act initiates any proceedings to prosecute industrialists or other persons who pollute the water in the river Ganga, the persons accused of the offences immediately institute petitions under section 482 of the Code of Criminal Procedure 1973 in the High Court and obtain stay orders thus frustrating the attempt of the Board to enforce the provisions of the Water Act. They have not placed before us the facts of any particular case. We are, however, of the view that since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such an order of stay is made in any extra-ordinary case the High Courts should dispose of the case within a short period, say about two months, from the date of the institution of such case. We request the High Courts to take up for hearing all the cases where such orders have been issued under sections 482 of the Code of Criminal Procedure, 1973 staying prosecutions under the Water Act within two months. The counsel for the Board constituted under the Water Act shall furnish a list of such cases to the Registrar of the concerned High Court for appropriate action being taken thereon. One other aspect to which our attention has been drawn is the practice of throwing corpses and semi-burnt corpses into the river Ganga. This practice should be immediately brought to an end. The co-operation of the people and police should be sought in enforcing

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this restriction. Steps shall be taken by the Kanpur Nagar Mahapalika and the Police authorities to ensure that dead bodies or half burnt bodies are not thrown into the river Ganga.

Whenever applications for licences to establish new industries are made in future, such applications shall be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. immediate action should be taken against the existing industries if they are found responsible for pollution of water.

Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the Constitution [vide Clause (g) of Article 51A of the Constitution] we are of the view that it is the duty of the Central Government to direct all

the educational institutions throughout India to teach atleast for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, L) rivers and wild life in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India. In order to rouse amongst the people the consciousness of cleanliness of environment the Government of India and the Governments 1. Of the States and of the Union Territories may consider the desirability of organising 'Keep the city clean' week (Nagar Nirmalikaarana Saptaha), 'Keep the town clean week (Pura Nirmalikaarana saptaha) and 'Keep the village clean week (Grama Nirmalikaarna Saptaha) in every city, town and village throughout India at least once a year. During that week the entire city, town or village should be kept as far as possible clean, tidy and free from pollution of land, water and air. The organisation of the week should be entrusted to the Nagar Mahapalikas, Municipal Corporations, Town Municipalities, Village Panchayats or such other local authorities having jurisdiction over the area in question. If the authorities decide to organise such a week it may not be celebrated in the same week throughout India but may be staggered depending upon the convenience of the particular city, town

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or village. During that week all the citizens including the members of the executive, members of Parliament and the State Legislatures, members of the judiciary may be requested to co-operate with the local authorities and to take part in the celebrations by rendering free personal service. This would surely create a national awareness of the problems faced by the people by the appalling all-round deterioration of the environment which we are witnessing today. We request the Ministry of Environment of the Government of India to give a serious consideration to the above suggestion.

What we have stated above applies mutatis mutandis to all other Mahapalikas and Municipalities which have jurisdiction over the areas through which the river Ganga flows. Copies of this judgment shall be sent to all such Nagar Mahapalikas and Municipalities. The case against the Nagar Mahapalikas and Municipalities in the state of Uttar Pradesh shall stand adjourned by six months. Within that time all the Nagar Mahapalikas and Municipalities in the State of Uttar Pradesh through whose areas the river Ganga flows shall file affidavits in this Court explaining the various steps they have taken for the prevention of pollution of the water in the river Ganga in the light of the above judgment. The case as against the several industries in the State of Uttar Pradesh which are located on the banks of the river Ganga will be taken up for hearing on the 9th of February, 1988.

S . L. Petition disposed of.

