Siromani Mittasala

vs

President, Brindavanam Colony

Andhra High Court

10 October, 2001

Citations: 2002 (1) ALD 136, 2002 (2) ALT 356

Bench: S Sinha, V Rao

JUDGMENT

V.V.S. Rao, J.

INTRODUCTION

1. The Chairman of Paryavarana Parirakshana Parishad, Kavali addressed letter to the Hon'ble the Chief Justice of High Court of A.P. on 16.8.2000. It was stated therein that the said Parishad filed W.P. No. 929 of 1999 before this Court, that though an order was passed therein to establish Sewage Treatment Plant (STP) to Brindavan Colony, Kavali, the same was not done and that nearly 27,000 people are using drinking water from Papireddy tank which is being polluted. The same was treated as Writ Petition and notice was-ordered to all concerned.

2. The General Secretary of citizens welfare committee, Kavali addressed another letter to this Court complaining that there is no drainage/sewerage system maintained by municipality and that the whole sewage is being let out into Papireddy tank which is situated in south-west corner of Kavali. The whole Papireddy tank is silted and it is full of drainage water. This is also causing loss to the ayacutdars as they are not able to draw water for irrigation purposes. On northern side of Kavali town there is irrigation channel, known as Pantekaluva supplying water to the fields on the northwest corner of the town. The said canal gets supply from Pennar reservoir situated at Sangam. As Kavali municipality failed to provide drainage system properly, citizens of Kavali town are being put to great hardship. This is resulting in epidemics such as malaria and viral fever besides turning the town into mosquito breading center. Both the water resources i.e., Papireddy tank and pantakaluva are highly contaminated and bad odour emanates therefrom. The representationist therefore prayed this Court to issue appropriate directions. The said letter was also treated as Writ Petition duly ordering notices.

PLEADINGS IN COUNTERS

3. In W.P. No. 16619 of 2000 the Commissioner of Kavali Municipality and the President of Brindavanam Housing Colony have filed separate counters. The Municipal Commissioner has stated that Director of Town Planning approved layout being L.P.No.42 of 1997 for developing housing colony in an extent of Acs.12.66 in S. Nos. 1929/P, 1930 and 1931/P

known as Brindavan housing colony. The lay out does not provide for construction of drainage system. The municipality has not given any permission to the society allowing them to let out; drain water into Papireddy tank. It is also stated that Mandadi tank is an irrigation tank and the flood water from the said tank flows through feeder channel ultimately reaching Papireddy tank. If the drainage water is allowed to enter the tank water gets polluted. As per the plan/sketch of drainage system submitted by the President of Brindavan Colony drainage water flows into drainage canal on the eastern side of Q.N.T.Road. In accordance with orders in W.P.No.929 of 1999 directing the municipality to see that potable water in the area is not polluted, the Municipal Commissioner addressed a letter to the President of the Colony on 18.2.2000 to construct STP as per the report of the environmental engineer submitted to the High Court. So far the colony has not constructed STP. The Government through Public Health Engineering Department is undertaking protected water supply scheme for Kavali town in Jammalapalem, 6 Kms away from Kavali town. The construction of filter beds, pump house, storage tank and pipelines are already completed. The scheme is likely to be inaugurated by April, 2001 and water supply will be provided to the public of Kavali town. The residents of Brindavan Housing Colony shall have to construct STP as suggested by environmental engineer, A.P. Pollution Control Board.

4. In the counter-affidavit filed by the Chairman of first respondent Colony all allegations are denied. It is submitted that respondent No. 1 is only an association registered under the Societies Registration Act for the purpose of collective bargaining and welfare of the members of the society. Individual members of the association made respective applications for building construction permissions and were duly approved by Kavali municipality for construction of houses in the plots allotted to them. The respondent-Colony collected some amount to let the sewage and drain water into underground pipeline leading to the place where the municipality had made a provision for draining out. Further, the municipality is also collecting huge amounts as property tax and it is under obligation to arrange for disposal of sewage. The petitioner on an earlier occasion made representation of a similar kind which was taken up as W.P.No. 929 of 1999. The High Court passed orders on 27.1.1999 directing the second Kavali municipality to take up necessary remedial steps. Taking advantage of the indulgence shown by High Court the petitioner again approached the High Court. The order of this Court in W.P.No.929 of 1999 dt-27.1.1999 operates as res judicata and deserves to be rejected as being hit by the principles of constructive res judicata. The representation is misconceived one and filed with mala fide intention. Further, the municipality pursuant to the directions of this Court in W.P.No.929 of 1999 dt.27.1.1999 making arrangements for checking the pollution of the tank and also making provisions for laying underground drainage and hence the Writ Petition be dismissed.

A RESUME OF ADMITTED FACTS

5. Kavali is a Grade-11 Municipality constituted under A.P. Municipalities Act, 1965. It has a population of about 27,000. The drinking water needs of the town are basically met from Papireddy Tank which is supplied by Pennar Reservoir. There is also ayacut in an extent of 139 acres under the said tank. The Government has undertaken protected water supply at Jammalapalem which is at a distance of 6 Kms from Kavali. Kavali Municipality statedly is facing financial crunch and it appears that it is not able to pay its salaries. For this reason, the Government itself has undertaken the construction of protected water supply scheme.

6. Kavali Municipality Town Map shows that the land in S.Nos.1929, 1930 and 1931 is situated at South-eastern side of Papireddy Tank which is in S. No.1920. The Map produced

before us by the Commissioner of Municipality is drawn to a scale of 8 inches = 1 mile. Going by this, Western boundary of S.Nos-1929 and 1930 is at a distance of less than half K.M. and the Eastern boundary of S. No. 1931 is less than a distance of 3/4th K.M. from the South boundary of Papireddy tank. This aspect of the matter is important. The Director of Town Planning approved a lay out LP 42/97 for developing housing colony in the land admeasuring Acs.12.66 comprising in S.Nos-1929 (part), 1930 and 1931. This colony is Brindavan Colony.

7. The residents formed an association known as Bridavan Colony Welfare Association and are represented by its President in these proceedings. Even as per the averments of the President they do have an underground drainage system. The association appears to have collected some amount to let the sewage, sullage and drainage water from all the houses into a underground pipeline which leads to a place where the municipality I had made a provision for draining out. The Map produced before us shows that in S. Nos. 1875 and 1876 the Municipality has a treatment works. It is not clear whether the treatment works are of sewage treatment or drinking water treatment. Be that as it may, there cannot be any doubt that Brindavan Colony has no STP. The drainage, sullage and sewage water ultimately flows into Papireddy tank. Kavali Municipality says that they have no funds to construct a STP. Indeed, the learned Standing Counsel for the Municipality has made halfhearted attempt to show that there is no statutory obligation on the Municipality to construct STP. On the other hand, the Association says that they are paying huge amount as property tax and therefore it is the duty of the Municipality to provide drainage/sewage treatment.

COMMON LAW AND STATUTE LAW

8. At the out set, it is necessary to notice the duties, functions and powers of a local authority, which is entrusted with the town planning and health of people. It is also necessary to dilate on the 'collectivist jurisprudence of municipal administration, which made inroads into a common law doctrine of ownership. This jurisprudence visualises that the common needs of common man like water, sanitation, health, good air and surroundings must be entrusted to an elected body so that a discipline is instilled in the enjoyment of rights of ownership. The water and land in the municipal area is entrusted to municipal body though the paramount ownership vests in the Sovereign by reason of the doctrine of eminent domain. The two great resources of planet Earth land and water sand vested in the municipal administration for the purpose of maintenance at a level so that the well being of the constituents (people) of the municipality is guaranteed. This public duty flows from common law doctrine of public trust, which is now part of Indian Environmental Law. The Supreme Court in M.C. MEHTA v. KAMAL NATH, , held as under:

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make, them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority: Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general

public, second, the property may not be sold, even for a fair cash equivalent, and third the property must be maintained for particular types of uses.

9. The common law principles as to drainage water and sewage water are too well settled in the field of easements as well as torts. Drainage (water drainage, flood drainage, irrigation drainage etc.) is also subject matter of they Easements Act. An injunction can be claimed against a person who diverts drainage water accumulated in his land onto others' land. Section 7 of the Indian Easements Act, 1882 ('the Easements Act' for brevity) states that easements are restrictions of one or other of the exclusive right of every owner of immovable property to enjoy and dispose of the same and/or, the right of every owner of immovable property to enjoy without disturbance by another the natural advantages arising from its situation, illustration (a) to Section 7 states that exclusive right of every owner of land in a town to build on such land subject, to any municipal law for the time being in fore. Illustration (e) to Section 7 mentions the right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person. Illustrations (h), (i) and (j) read as under:

(h) The right of every owner of land that the water of every natural stream which passes by through or over his land, in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural streak flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating land and for the purposes of any manufactory situate thereon: Provided that he does not thereby cause material injury to other like owners.

Explanation :--A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course,

10. The rights in relation to drainage water are different the rights vis-a-vis storage water in river or sea or 'surface water resources' like tank. There is no common law right to discharge sewage water into any surface water resources or sea. (See FOSTER v. URBAN DISTRICT COUNCIL OF WARBLINGTON, (1906) 1 KB 668). Similarly there is no prescriptive right to make public nuisance, which cause prejudice to the people. (See VENKATAPPA v. LOUIS,). In

VENKATAPPA'S case (supra) this Court has held that any prior existence of nuisance does not relieve the offender from a charge of public nuisance. The pollution arising from sewage water into a surface water resources is species of pollution especially in connection with municipal administration.

11. Adverting to these common law principles in AJAY CONSTRUCTIONS v. KAKATEEYA NAGAR CO-OP.HOUSING SOCIETY, , this Court held:

....that no one can be permitted to pollute the atmosphere of air by letting out offensive material from his premises and that when environmental pollution reach intolerable proportion resulting in health hazards to the residents of the area, the Municipality and the urban authorities shall have to step in and take necessary action by taking civil or criminal action, as the case may be.....If the very action of letting out the effluent and the sullage from the septic tanks and soakage pits is illegal and is contrary to the permit conditions imposed for the construction of the flats, then we fail to see what could be the purpose of inviting an expert opinion in the matter for implementation to alleviate the sufferings of the public at large.....The decided case law on the subject clearly points to the fact that no one can be permitted to pollute the atmosphere of an area by letting out offensive material from his premises. We have readied the conclusion that the permission granted by the Municipality, vide its order dated-28.12.1988, impugned in the writ petition, is thoroughly unjust and illegal and is, therefore, quashed as such.

THE PROVISIONS OF A.P. MUNICIPALITIES ACT

12. We have only indicated a few well-settled principles to emphasise that municipal body is constituted only for the purpose of running civic services and they cannot feign ignorance. Various provisions like Sections 35, 36,37,38 of the Andhra Pradesh Municipalites Act, 1965 ('the Municipalities Act' for brevity) and the provisions in Part-V (Public Health, Safety and Convenience) thereunder, leave no room for any doubt that it is also the duty of the municipality to see that civil amenities are provided to all the constituents of the municipality.

13. Part-V deals with Public Health, Safety and Convenience. There are seven Chapters in part-V of the Municipalities Act. Chapter-1 deals with water supply lighting and drainage. Chapter-V deals with nuisance. We may refer to some relevant provisions in these two chapters. Under Section 138 of the Municipalities Act, subject to availability of funds at its disposal the municipality has to provide sufficient supply of water fit for use of inhabitants. All public watercourses and springs, all public reservoirs, tanks, cisterns fountains, wells, and other water-works shall vest in the municipal council (Section 133). No construction can be made and no structure can be built no street or railway line constructed on the water mains without permission of the Council (Section 137). Section 233 gives power to the Commissioner to require owner to fill in remove, repair, protect any tank, pond, well, hole, stream, dam, bank or other place which appears to be dangerous. Section 237 empowers the municipal health officer to take necessary action where pools, ditches, tanks, wells, ponds, bogs, swamps, quarry-holes, drains, cell-pools, pits, water-courses cause. In case a private water source (Section 239) is being used for drinking purposes the municipal health officer can direct the owner of such water resource to prefect the same from pollution from surface drainage.

14. A cursory look at these provisions shows that the municipality has ample power to take such steps, which would enable them to discharge its function to supply water fit for use of inhabitants. With the above background we may now extract certain provisions, which were referred to above.

138. Council to provide water for use :--The council shall so far as the funds at its disposal may admit, provide a sufficient supply of water fit for the use of inhabitants.

147. Maintenance of system of drainage by council:--The council shall, so far as the funds at its disposal may permit, provide and maintain a sufficient system of public drains.

148. Owners of buildings to pay for clearance of sullage from their buildings by connecting their house-drains with public drains :--(1) For the discharge of drainage from private 'premises by connecting house-drains with municipal drains payment shall be made under any one of the basis mentioned in Sub-section (2) which the council may, by resolution, specify, at such times, and on such conditions as may be laid down in the bye-laws made by the council and shall be recoverable in the same manner as the property tax.

(2) The basis referred to in Sub-section (1) shall be the following:

(a) a monthly rent at such rate for each building as may be laid down in the bye-laws:

(b) such percentage of the capital value of the building as may be laid down in the bye-laws;

(c) the number of taps allowed, irrespective of the quantity of water consumed.

15. A conspectus of various rules is as follows. The municipality is entrusted with the duty of supplying water fit or use of inhabitants. The water for drinking and other purposes can be from a public water courses, reservoir tanks etc., which vest in the municipality or from private wells which are privately owned. In either situation it is the duty of the municipality to supply water without any pollution, like letting out untreated sewage, sullage. It is especially the duty of the local authority to abate such nuisance, the underlining intent in all these provisions is proper sanitation aimed at achieving public health and ensuing safety of human life.

16. We may also passingly make a reference that Section 65 of the Municipalities Act which enables the Government with the consent of the Council to undertake on its behalf the construction of water supply, drainage or other works. This provision, in our view, is in accordance with the Constitution Scheme that it is the ultimate sovereign that has to ensure clean sustainable environment to every citizen.

We may even refer to Part IX-A of the Constitution of India which was introduced by the Constitution (Seventy-fourth Amendment) Act, 1992. Article 243W read with Schedule XII (entries 5, 6 and 12) makes it abundantly clear that the Municipal authorities are duty bound under the Constitution of India to supply water fit for human consumption to its citizens. It is needless to point out that healthy water and healthy air are two prime indispensable requisites to sustain life.

ENVIRONMENTAL LAW AND JUDICIAL REVIEW

17. In a case of this nature, this Court must bear in mind the provisions of Articles 48A and 51 A(g) of the Constitution of India. Both these Articles oblige every citizen and State to protect and improve the nature and environment, including forests, lakes, rivers and wild life. It is no longer res integra that right to pure drinking water is fundamental right under Article 21 of, the Constitution. (STATE OF KARNATAKA v. STATE OF A.P., NARMADA

BACHAO ANDOLAN v. UNION OF INDIA,). These principles are well-settled and before examining the case on hand, in the light of these principles, we may also briefly indicate the scope of judicial review in such matters.

JUDICIAL REVIEW IN ENVIRONMENTAL MATTERS

18. The High Court has no appellate jurisdiction over the decisions taken by the Government or Statutory Boards under various enactments dealing with environment like Municipal Laws, Panchayat Laws, Air Act, Environment Protection Act and Water Act. The Court has power of judicial review to scrutinise all the decisions of the pubic authorities including the matters relating to pollution control and environment protection. Hence, the same parameters of judicial review would equally apply to environmental litigation.

19. Judicial review is subject to, among others, broadly to two limitations. First, non-justiciable issues cannot be scrutinised. Secondly, serious disputed questions of fact or the nature of controversy compel the Court to accept decision maker's choice based on facts. It is well settled that when taking a decision an administrator depends on the evaluation of facts and applies laws to the facts. Therefore, the decision maker's choice and findings recorded on facts shall be treated as final unless it is grossly perverse and irrational. Irrationality is again accepted to be 'Wednusbery unreasonableness' is part of Indian law.

20. Every decision perceived to be unreasonable cannot be brought into the field of Wednusbery unreasonableness. In PUHLHOFER v. HILLINGDON LONDON BOROUGH COUNCIL, 1986 AC 484, the House of Lords observed as under.

Where the existence or non-existence of fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the Court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely.

21. In India rule of law is abiding faith in Constitutional governance and judicial review as guaranteed remedy to a citizen in distress, gave rise to new vistas in environmental litigation. In SHRI SACHIDANAND PANDEY v. STATE OF WEST BENGAL, AIR 1987 SC 1109, the Supreme Court observed:

When the Court is called upon to give effect to the doctrine of Directive Principles and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least the Court may do so is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations,

22. In M.C.MEHTA v. UNION OF INDIA, , [Ganga Pollution case] monitoring approach was adopted by the Supreme Court and the apex Court tailored its directions by issuing various orders to meet the changing circumstances.

PUBLIC LAW VIS-A-VIS ENVIORNEMNTAL LAW

23. Urban problems like sanitation, solid waste management, public places (parks and pavements), town planning raised serious questions of public law. After examining the questions brought before them in FORWARD CONSTRUCTION COMPANY v. PRABAT MANDAL, , SHRI SACHIDANAND PANDEY (supra), and PRATIBHA COOPERATIVE HOUSING SOCIETY LTD. v. STATE OF MAHARASHTRA, , the Supreme Court

allowed developmental activities, taking a broader view of the matter brought before it.

24. A Division Bench of Bombay High Court in BOMBAY ENVIRONMENTAL ACTION GROUP v. STATE OF MAHARASHTRA, , observed as under:

Environmental issues are relevant and deserves serious consideration But the needs of the environment require to be balanced with the needs of the community at large and the needs of a developing country. If one finds, as in the case, that all possible environmental safeguards have been taken, the check and control by way of judicial review should then come to an end. Once an elaborate and extensive exercise by all concerned including the environmentalists, the State and the Central authorities and expert-bodies is undertaken and effected and its end result judicially considered and reviewed, the matter thereafter should in all fairness stand concluded. Endless arguments, endless review and endless litigation in a matter such as this can carry one to no end and may as well turn counter productive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further.

25. The principle laid down is to the effect that once elaborate and extensive exercise by all the concerned State and Central authorities expert bodies etc. is undertaken the Court's review of the decision should be limited. The said view was affirmed by the Supreme Court in DAHANU TALUKA ENVIRONMENT PROTECTION GROUP v. B.S.E.S., , when it observed as under:

It is sufficient to observe that it is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation social and ecological balances, avoidance of deforestation and maintenance purity of the atmosphere and water free from pollution on the other in the light the various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strive a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.

26. In VINCENT v. UNION OF INDIA, AIR 1987 SC 990, the Supreme Court was dealing with a Writ Petition under Article 32 of the Constitution of India in which a direction was sought to ban import, manufacture, sale and distribution of certain drugs. The Supreme Court observed as under:

Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far reaching implications of the total ban of certain medicines for which the petitioner has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such

matters. 'There is perhaps force in the contention of the petitioner that the Hathi Committee too was not one which could be considered as an authoritative body competent to reach definite conclusions. No adverse opinion can, therefore, be framed against the Central Government for not acting up to its recommendations.

27. The above view was reiterated in SHIVARAO SHANTARAM WAGLE v. UNION OF INDIA, , which is a case dealing with the question of release of imported Irish butter.

28. In M.C. MEHTA v. UNION OF INDIA, (1997) 2 SCC 353, (Taj Mahal case) the petitioner complained that Taj Mahal is suffering decay due to large number of industries like foundries, chemical industries, Madhura Refinery etc., and sought appropriate directions to the authorities to take immediate steps to stop air pollution in Taj Trapezium. After considering the various reports, the Supreme Court went on issuing directions and also ordered relocation of large number of industries. Finally, the Supreme Court permitted those industries subject to availing gas connections from Gas Authority of India Limited. The Court also gave various directions and observed as under:

The Taj, apart from being a cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. This Court has monitored this petition for over three years with the sole object of preserving and protecting the Taj from deterioration and damage due to atmospheric and environmental pollution. It cannot be disputed that the use of coke/coal by the industries emits pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystem have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of ecosystems,

CASE LAW ON ECOLOGY, LAKES AND WATERBODIES

29. In India cases dealing with pollution of lakes and other water bodies are a few. All the cases concerned with developmental activities in the vicinity of the lakes. In none of the cases, the Courts have prohibited the developmental activities totally, though, developmental activities within a reasonable vicinity/distance were totally prohibited, having regard to the catchment area or the hydrology.

30. In PUBLIC v. STATE OF WEST BENGALS, , a PIL case was filed in regard to maintenance of wetlands in the Eastern fringe of the city of Calcutta. The petitioner challenged the reclamation of wetlands for economic activity. Quoting extensively from authoritative textbooks on the use of wetlands, Justice U.C.Banerjee (as he then was) observed:

Wetland acts as a benefactor to the society and there cannot be any manner of doubt in regard thereto and as such encroachment thereof would be detrimental to the society which the Law Courts cannot permit. This benefit to the society cannot be weighed on mathematical nicety so as to take note of the requirement of the society - what is required today may not be a relevant consideration in the immediate future, therefore, it cannot really be assessed to what amount of nature's bounty is required for the proper maintenance of environmental equilibrium. It cannot be measured in terms of requirement and as such, the Court of Law

cannot, in fact, decry the opinion of the environmentalist in that direction. Law Courts exists for the benefit of the society - Law Courts exists for the purpose of giving redress to the society when called for and it must rise above all levels so that justice is meted out and the society thrives thereunder.

31. The Calcutta High Court also restrained the State from granting any further permission to any person from changing use of land from agriculture to residential or commercial in the area. However, the Court gave liberty to the State to seek necessary clarification if they are desirous of having World Trade Centre or Public Exhibition Centre in a limited area.

32. In AJAY SINGH RAWAT v. UNION OF INDIA, , (Nainital Lake Case) a member of Nainital Bachao Samiti approached the Supreme Court under Article 32 of the Constitution seeking directions as would prevent further pollution of already suffocating Nainital. It was inter alia contended that Nainital lake is polluted because of both inorganic and organic causes. The nearby mines of manganese, lead, salts, copper, cobalt and zink make the lake toxic for life forms. The discharge of waste water also pollutes the lake. But the most potent source of pollution is human faeces from leaking sewers. Throwing of plastic bags and dumping of other materials added to the lakes pollution. The Supreme Court requested the District Judge Nainital to appoint an advocate commissioner to examine the construction activity and other factors causing pollution. Accordingly a report was submitted. After considering the report as well as recommendations of the Commissioner, the Supreme Court directed the following steps to be taken urgently.

(c) Sewage water has to be prevented at any cost from entering the lake.

(d) So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent siltation of the lake.

(e) Care has been taken to see that horse dung does not reach the lake. If for this purpose the horse-stand has to be shifted somewhere, the same would be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.

33. In M.C. MEHTA v. UNION OF INDIA, , (Badkhal and Surajkund Lake case) the Supreme Court considered the question of sustainable development in the vicinity of the lakes. An environmental activist lawyer filed a writ petition under Article 32 of the Constitution seeking a direction to Haryana pollution Control Board to control the pollution caused by stone crushers, mine operators so as to preserve environment within a radius of 5 Kms from the tourist resorts of Badkhal lake and Surajkund lake. Initially the Supreme Court directed Haryana Board to inspect and ascertain the impact of mining on the ecologically sensitive area of Badkhal and Surajkund lakes. A team of Board comprising scientists inspected the area and submitted a report. The Committee recommended to prepare environmental management plan and also to stop mining activities within the radius of 5 Kms from Badkhal and Surajkund tourist places, Placing reliance on the report, the Supreme Court observed as under :

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 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 green belt at one km radius alt around the two lakes. Annexures A and B,

however, show that the area within the green belt is much lesser than one km radius as suggested by the NEERI.

34. On the above premise the Supreme Court inter alia directed that there shall be no mining activity within 2 Knis radius on the tourist of Badkhal and Surajkund lakes and that no construction of any type shall be permitted within 2 kms radius and that all open areas shall be converted into green belts, In M.C.MEHTA v. UNION OF INDIA, , the earlier judgment was clarified by the Supreme Court observing:

The functioning of ecosystems and status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. ..... 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 turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.

35. In VELLORE CITIZENS' WELFARE FORUM v. UNTQN OF INDIA, , the Supreme Court accepted the concept of

'sustainable development' as part of Indian Environmental Law. It was observed:

The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' 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 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 ecosystems. 'Sustainable Development' as defined by Brundtland Report means 'Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.'

FINDINGS AND CONCLUSIONS

36. We have noticed the admitted facts. Brindavan Colony has not denied the allegation that they are letting out untreated sewage into municipal underground pipeline. There is no averment that any permission was obtained by them nor is there any averment by the Municipality that they are charging payment for the same. This in our opinion violates provisions of Sections 148 of the Act, which makes mandatory to make payment to municipal council for discharging of drainage from private premises by connecting house drains to municipal drains. The action on the part of the municipality in allowing the drainage water to flow into Papireddy tank even violates provisions in Chapter 5 of Part V of the Municipalities Act. As noticed above it shall be the duty of the municipality to supply water fit for human consumption. In this context we may refer to Water (Prevention and Control of Pollution) Act, 1974 ('Water Act' for brevity) as well as the Environment (Protection) Rules, 1986 ('the environment Rules' for brevity) made under Sections 6 and 25 of the Environment (Protection) Act, 1986 ('the Environment Act' for brevity).

37. As per Section 2(g) of the Water Act sewage effluent means effluent from any sewerage system or sewage disposal works and includes sullage from open drains. Any contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage into water whether directly or indirectly to create nuisance or render water harmful or injurious to public health or safety is defined as pollution for the purpose of the Water Act. Section 24 of the Water Act prohibits use of stream or well for disposal of polluting matter. Section 25(1)(b) of the Water Act prohibits any person including municipality to bring into use any new or altered outlet for the discharge of sewage without the consent of the Pollution Control Board. Therefore, even for municipalities, the Water Act applies and they should adhere to the provisions of the Water Act, Air Act, Environment Protection Act as well as Municipalities Act.

38. Under Sub-rule (3-A) of Rule 3 of the Environment Rules every person including the municipalities has to adhere to standards as specified in Schedule VI. The said sub-rule reads as under:

3(3-A): (i) Notwithstanding anything contained in Sub-rules (1) and (2), on and from the 1st day of January, 1994, emission or discharge of environment pollutants from the industries, operations or processes other than those industries, operations or processes for which standards have been specified in Schedule I shall not exceed the relevant parameters and standards specified in Schedule VI.

Provided that the State Boards may specify more stringent standards for the relevant parameters with respect to specific industry or locations after recording reasons therefore in writing.

(ii) The State Board shall while enforcing the standards specified Schedule VI follow the guidelines specified in Annexures I and II in the Schedule.

39. No material has not been placed before us to show as to what the standards of drainage and sewage water that admittedly flow in Papireddy tank and other irrigating channels. If the standards are beyond the values prescribed in Schedule VI read with Rule 3(3-A) it would attract penal consequences. This Court in W.P.No.929 of 1999 has already directed Kavali municipality to take remedial measures to see that potable healthy water not mixed with any other pollutants is supplied. An explanation is given that after completion of the protected water supply scheme at Jammalapem, Kavali will be supplied with water from that scheme. That itself cannot be sufficient to dispel any fears in the minds of the citizens of the Kavali Town. Therefore, we need to give certain directions in the matter.

40. Before doing so, we may observe that though the question of res judicata is raised by the President of Brindavan Colony no serious attempt has been made to argue the point. Therefore, we refrain to adjudicate the issue. Even otherwise, as held by the Supreme Court in RURAL LITIGATION ENTITLEMENT KENDRA v. STATE OF UP, , in a case involving environmental issue the principles of res judicata do not apply.

41. Yet another aspect of the matter is that the Commissioner in the counter affidavit stated that being a Second Grade Municipality it is facing financial crunch, that it is unable to pay salaries to its staff from April 2000 onwards and therefore it is not in a position to take up protective water supply scheme. This attitude on the part of the Municipality cannot be appreciated. An elected municipal body, which is not able to discharge its functions, has no

right to exercise powers under the Municipalities Act. Indeed under Section 62 of the Municipalities Act, the Government has power to dissolve Municipal Council and reconstitute the Municipality within six months thereafter if in the opinion of the Government the Municipality makes default in performing the duties imposed on it by or under the Act or any other law for the time being in force.

42. Every citizen has right and is entitled to pollution free air and water under Article 21 of the Constitution of India. No Municipality and no person can deprive the citizen of such basic human right by reason of its activity or inaction. It would be common knowledge that pollution of drinking water with sewage and sullage is dangerous to health and more dangerous to the health of the children as well. No Municipality has a right to allow sewage water into drinking surface water resources and no such Municipality can be heard that they have no funds. This Court is aware of Constitutional Limitations of its power of judicial review. But, as observed by the Supreme Court in STATE OF H.P. v. UMED RAM, , when executive lethargy is

complained, the least the Court can do it the exhort the executive to wake up and wake up urgently, for the people who are responsible for the very existence of municipal body will not be there if the municipal body fails to perform the minimum. In RATLAM MUNICIPALITY v. VARDHICHAND, , the Supreme Court held:

A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems - not pompous and attractive, but in working condition and sufficient to meet the needs of the people - cannot be evaded if the municipality is to Justify its existence. A bare study of the statutory provisions makes this position clear,

43. In regard to submission of financial crunch and paucity of funds, we can do no better than extracting inimitable resounding legal prose of great Judge - Justice Krishna Iyer, in RATLAM MUNCIPALTTY, as under:

The Statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under Section 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis.....Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

44. Lastly, we may also refer to a latest judgment of the Supreme Court in D.K.JOSHI v. CHIEF SECRETARY, STATE OF U.P., . The case was filed under Article 32 of the Constitution of India as public interest litigation alleging that supply of drinking water in Agra city is being contaminated with pollutants and causing health problems, consumption. The Supreme Court called for status reports from the Government of Uttar Pradesh and based on reports, went on giving various directions pursuant to which the State Government took definite steps. However, the Court found that the steps taken by Agra Municipality are by no

stretch of imagination adequate. The Court appointed a monitoring committee to be headed by the Commissioner of Agra Division, a representative of the Pollution Control Board, Chief Medical Officer, Agra and others. The Committee was directed it meet once in every two months and prepare places to steps to be taken and State Government was directed to take appropriate action as per law. These directions were given "with a hope that the, monitoring committee will try its best to achieve maximum results in matter of giving unpolluted water to the citizens of Agra." We see mailer on reason for not adopting the same approach in these cases.

45. We accordingly dispose of these two Writ Petitions with the following observations and directions:

(a) The State Government shall constitute a Committee with (i) Chief Engineer, Public Health as Chairman; (ii) Chief Engineer, Irrigation Department, (iii) Director of Medical & Health or Director of Health Services; (iv) Director of Institute of Preventive Medicine; (v) Joint Chief Environmental Engineer, A.P. Pollution Control Board; (vi) Director of Municipal Adminstration and (vii) District Collector, Nellore immediately to prepare necessary plans and steps and monitor supply of safe drinking water to residents of Kavali;

(b) We direct the Director of Municipalities and Kavali Municipality to take immediate necessary steps to prevent the flow of both treated and untreated sewage into Papireddy tank and other surface water resources like tanks, kuntas, guntas, guntas whether or not they are being used for drinking purposes.:

(c) We direct the Kavali Municipality to initiate action immediately against all those people who are letting out sewage and drainage onto public roads and public places and public lands;

(d) We direct the Government of A.P. to issue necessary directions to all the municipalities and municipal corporations to initiate necessary steps for construction of adequate Sewage Treatment Plants as per the designs suggested by the Government of Andhra Pradesh immediately to prevent pollution of drinking water resources and to ensure supply of clean and healthy drinking water to all citizens which is fundamental right under Article 21 of the Constitution of India.

(e) There shall be no order as to costs.