

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 98 of 2021

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SUO MOTU

Versus

AHMEDABAD MUNICIPAL CORPORATION THROUGH THE MUNICIPAL
COMMISSIONER, AHMEDABAD & 3 other(s)

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Appearance:

MR HEMANG M SHAH, AMICUS CURIAE for the Applicant(s) No. 1
MR MIHIR JOSHI, SR.ADVOCATE with MR G.H.VIRK, MS SIMRANJIT
H.VIRK and MR PRASHANTH S.UNDURTI, ADVOCATES for the
Opponent(s) No. 1
MR PRASHANT DESAI, SR.ADVOCATE with MR RUTUL P DESAI,
ADVOCATE for the Opponent(s) No. 2
MR DEVANG VYAS, SR. ADVOCATE for the Opponent(s) No. 3
MR KAMAL B.TRIVEDI, ADVOCATE GENERAL with MS MANISHA
LAVKUMAR SHAH, GOVT. PLEADER with MR KH BAXI, AGP for the
Opponent(s) No. 4
MS KRUTI M SHAH, ADVOCATE for the Opponent(s) No. 5
MR CHINMAY M GANDHI, ADVOCATE for the Opponent(s) No. 6
MS RUMI M GANDHI, ADVOCATE for the Opponent(s) No. 6
MS NIKITA C GANDHI, ADVOCATE for the Opponent(s) No. 6
MR SANDEEP SINGHI, ADVOCATE for SINGHI & CO. for the Opponent(s)
No. 11,12,7,8
MS MEGHA JANI, ADVOCATE for the Opponent(s) No. 9
MR JITENDRA MALKAN with MS DEVANSHI P MALKAN, ADVOCATE for
the Opponent(s) No. 10
MR VATSAL M PARIKH, ADVOCATE for the Opponent(s) No. 10
MR N.D.NANAVATI, SR.ADVOCATE with MR MRUGEN K PUROHIT,
ADVOCATE for the Opponent(s) No. 13
TANAYA G SHAH(8430) for the Opponent(s) No. 14

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 11/02/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. The matter was taken up for further hearing. At the outset, Mr.Devang Vyas, the learned senior counsel appearing for the

Gujarat Pollution Control Board, requested us to look into the additional affidavit filed on behalf of the Board, duly affirmed by Ms.D.P.Shah, Senior Environment Engineer. The affidavit reads thus :

“2. It is submitted that on 09/02/2022 officials of the GPCB were on a visit to identify illegal industrial units in Ilaben Estate, Near R.V.Denim, Narol-Sarkhej Highway, Danilimda. During the said visit, the officials of GPCB observed that one unit namely M/s Bright Wash had started illegal washing activity without obtaining any CTE/CCA from the Board and as no ETP was provided by the unit, the wastewater generated there was directly discharged into the drainage line of the AMC.

3. It is most humbly submitted that while the officials of the GPCB were performing their statutory duty, the officials/ staff of one unit namely M/s Bright Wash obstructed and prevented the officials of the GPCB to perform their duty to the extent that they were abused, they were being locked inside the closed premises of the unit and they were being threatened to the extent that the officials of the GPCB had to call the police and once the police officials from the Danilimda Police Station arrived at the spot, the officials of the GPCB were rescued. The officials of the GPCB had immediately approached the concerned Police Station and registered the FIR.

4. It is submitted that, on 22/01/2022, the respondent herein had received one complaint with regard to the Storm

water outfall behind Riverside School, CDS Depot, Airport Road, Ahmedabad. Upon receipt of the same, the board immediately started the monitoring of the said location and found untreated Domestic wastewater being discharged directly into the River Sabarmati. During the said monitoring, sample was collected from the illegal storm wastewater discharge, which shows result of pH-6.27, Suspended solids-292 mg/lit and COD-652 mg/lit.

5. It is further submitted that based on observation during the said inspection, GPCB has issued the direction under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 to the Ahmedabad Municipal Corporation on 27/01/2022.

6. It is submitted that with reference to pollution in River Sabarmati at Hansol, due to discharge of untreated sewage, chemical waste and biomedical waste, an application came to filed by one resident of Hansol village Ahmedabad before the Hon'ble National Green Tribunal (NGT), New Delhi being O.A. No.399/2021. In the said matter, Hon'ble NGT vide order dated 24/01/2022 has ordered to constitute a joint committee with GPCB as the nodal agency for coordination and compliance of the same. The said matter before the NGT is next listed on 10.05.2022 for further consideration.

7. It is further submitted that the respondent herein has considered the proposal of Zero Liquid Discharge (ZLD) for domestic wastewater as submitted by M/s Anup Engineering Ltd and accordingly has granted CTE-

Amendment on 18/01/2022. Now, further this unit has applied for CCA amendment as per the CTE amendment which was granted. The CCA application is under consideration and the decision with regard to the same shall be taken at the earliest.

8. *It is most humbly submitted that the respondent herein has considered the proposal of Zero Liquid Discharge (ZLD) as submitted by M/s Arvind Ltd, Naroda and accordingly has granted CTE-Amendment on 18/01/2022. It is further submitted that the unit has made CCA application as per the CTE amendment granted and verification visit to that effect was carried out on 08/02/2022. The application is under consideration and the decision with regard to the same shall be taken at the earliest.*

9. *It is most humbly submitted that the respondent herein issued revocation order on 19/01/2022 to M/s Arvind Ltd (Div. of M/s Ankur Textile Ltd) to carry out only dry process. The unit was visited on 07/02/2022, during the said visit to the utter shock of the respondent herein, it was observed that unit has started wet process also. Looking to the said non-compliance, the Board is in the process of taking appropriate action in accordance with law and the same shall be taken at the Earliest.*

10. *It is submitted the Board has carried out regular monitoring of the STPs, and during the recent visits in the month of December 2021, to February 2022, it was*

observed that following STPs are engaged in partially bypassing the untreated sewage into River Sabarmati :

- 1) 106 MLD Old Pirana STP*
- 2) 182 MLD New Pirana STP [New 155 MLD STP*
- 3) 60 MLD STP, New Pirana*
- 4) 180 MLD STP, Pirana”*

2. What has been highlighted in the affidavit-in-reply of the Board referred to above is something very shocking and alarming. We take serious notice of the highhandedness exhibited on the part of M/s.Bright Wash. We take serious notice of the fact that the employees of M/s.Bright Wash obstructed and prevented the officials of the GPCB in performing their duties and functions. Ultimately, the police had to intervene and we are informed that an FIR has also been lodged and registered at the Danilimda Police Station. The copy of the FIR has also been annexed along with the reply.

3. We direct the GPCB to take stern action against M/s.Bright Wash in accordance with law. The GPCB shall, at the earliest, ask the Torrent Power to disconnect the power supply to M/s.Bright Wash. We also direct the Police Inspector of the Danilimda Police Station to undertake and complete the investigation of the FIR at the earliest, in accordance with law.

4. We have repeatedly stated in our orders passed over a period of time that if any individual or any politician or any other

person would come in the way of the officials of the AMC and GPCB, then strict action shall be taken against such individuals or persons in accordance with law.

5. Mr.Vyas thereafter brought to our notice that there are three vulnerable locations spotted by the GPCB along with the Members of the Joint Task Force in the form of three outlets releasing the untreated sewage directly into the Sabarmati river. The three locations are as under :

- (1) Storm Water Drainage behind the Riverside School, Near CSD Depot, Cantonment Airport Road, Sardarnagar, Ahmedabad.
- (2) Drain near Prachin Ranmukteshwar Mandir, Hansol, Ahmedabad.
- (3) Outfall near Ash Pond of M/s.Torrent Power, Motera, Ahmedabad.

6. In the aforesaid context, Mr.Hemang Shah, the learned Amicu, brought to our notice that the Joint Task Force collected the samples of the discharge from the above three locations on 1st December 2021 and 3rd December 2021 respectively, and in the Fifth Report filed by the Joint Task Force, the following has been highlighted :

“The samples collected from the above locations reveal that untreated wastewater with high concentration of COD, BOD, TSS, and FC is being directly discharged into River Sabarmati. The above three outfalls/drains needs to be

examined in detail and measures should be taken for prevention of such untreated discharge. It is to mention here that existence of outfalls other than identified as well as discharges through other storm water drains/natural drains are yet to be ascertained by AMC while completing the exercise of quantification.”

7. Mr.Shah thereafter brought to our notice that the following message was sent by Mr.Rohit Prajapati (one of the Members of the Joint Task Force and an Environmental Expert) to the AMC and the GPCB on 23rd January 2022 but, unfortunately, no heed has been paid or no concrete steps have been taken by the AMC and also the GPCB. The message reads thus :

“Dear JTF Member of AMC and GPCB,

Very Sad and Sorry to state that illegal, untreated, wastewater is Discharged at S No 305, at Hansol Storm Water Drain, straight into the Sabarmati River near Motera French well. The volume of pollutants have increased drastically, and the stench is unbearable, that is worsening the condition. The discharge is so high and so severe that the "dirty water" pond is overflowing into the Sabarmati River.

It is important to note that the Ran Mukteshwar outlet is supposedly closed and all of that wastewater seems to be now draining into the storm water at Hansol Motera French well point as described above. Since the Ranmukteshwar up

stream is dry, I strongly suspect that the discharge at Ranmukteshwar has been diverted through the storm water into the river Or how else would the discharge increase ?

Please do needful urgently !!!”

8. Once again on 2nd February 2022, the following message was sent by Mr.Prajapati to the AMC and the GPCB :

“Dear JTF Members of AMC and GPCB:

Refer ... Message Dated 23.01.2022.

The discharge adjacent to plot 352 (in Hansol), into the Sabarmati River has stopped but the huge debris mound continues to leach all its filth into the river.

Discharge through storm water drain located on plot 305 in Hansol 300 metres before the Motera frenchwells, has increased.

Please do needful.

Rohit Prajapati, 02.02.2022”

In lieu of the mentioned deficiencies, it is advised / recommended that all untreated and ill-treated discharge be discontinued into the Sabarmati River.

In-situ (scientific) treatment of drains carrying untreated and ill-treated sewage into Sabarmati River may be explored till the time arrangements for sewerage system and proper functioning of the STPs are ensured.

Rohit Prajapati

9. In the aforesaid context, the learned Amicus brought to our notice that the AMC has laid down a storm-water drain for the smooth disposal of the rain water that accumulates on the road or elsewhere during the rainy season. He pointed out that over a period of time, hundreds of buildings and residential societies have come up surrounding the areas in question, i.e. the three locations as above. The water floating from the said storm-water drain is untreated as it is not released through any of the STPs. He pointed out that the disposal from the three outlets referred to above is nothing but untreated sewage of all those residential societies who do not have any drain system. The learned Amicus brought to our notice that his personal visit at the site behind the Riverside School was terrible. The learned Amicus noticed that contaminated and foul smelling waste water is being released directly into the Sabarmati riverbed, which is running dry as the Narmada water is not being released into the Sabarmati river continuously. The learned Amicus further pointed out that this contaminated waste water, after flowing through the riverbed, gets accumulated near the French-well, which is supposed to draw drinking water from the underground water table. He brought to our notice that this site is situated before the Sabarmati Riverfront Phase-I begins and the same is

now covered under the Sabarmati Riverfront Phase-II. He pointed out that the accumulation of such contaminated and foul smelling waste water in and around the French-well is dangerous because this contaminated and foul smelling waste water gets percolated through the riverbed and gets mixed with the underground water table. This is going to contaminate the entire underground water table, which would ultimately make the underground water table unusable or potable for the public at large. He pointed out that during the summer the people of Ahmedabad use the underground water table for their needs.

10. Mr.Shah, the learned Amicus very vehemently submitted that all the three outlets, i.e. the storm water drain behind the Riverside School, Near CSD Depot, Cantonment Airport Road, Sardarnagar, outfall near the Ash Pond of M/s.Torrent Power, Motera and drain near Prachin Ranmukteshwar Temple, should be ordered to be sealed within a period of one week from today. His suggestion is that the sealing would create a backlash and thereby aid in identifying the residential societies/buildings/units releasing such contaminated waste water.

11. We direct the AMC to block/seal all the three outlets within a period of one week from today and start identifying all those societies/buildings/units releasing such contaminated sewage water directly into the Sabarmati river.

12. We also direct the AMC to undertake an extensive survey of all those residential societies/buildings/units in the area who do not have any valid drainage connection.

13. We would like to know from the AMC, what is to be done with all such residential societies/buildings/units who do not have any drainage connection.

14. We are disturbed to know that the samples collected from the three locations and tested reveal that the untreated waste water with high concentration of COD, BOD, TSS and FC is being directly discharged into the Sabarmati river. All the three outfalls/drains should have been examined at the earliest and measures should have been taken for prevention of such untreated discharge.

15. We wonder how many such outfalls must be there all over the place surrounding the Sabarmati river.

16. Mr.Shah, the learned Amicus brought to our notice an order passed by the National Green Tribunal, dated 14th October 2020, in the litigation between Vanshakti and another vs. Municipal Corporation of Greater Mumbai and others [Original Application No.197/2017 (WZ)]. To give a fair idea about the proceedings before the Tribunal, we quote paragraphs 1, 2, 3, 4, 5, 6 and 7 respectively as under :

“1. The Fundamental Right guaranteed under Article 21 of the Constitution of India provides that none shall be deprived of his life without due process of law but by supplying the polluted water for drinking purposes and

discharge of sewage and untreated water in open land or the river/water bodies are causing health hazard and it is indirectly depriving good health and life of the citizens residing there.

2. *The Article 39E, 47 and 48A of the Constitution of India cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. It was by reasoned of the lack of effort on the part of the enforcement agencies, notwithstanding adequate laws being in placed, there are air pollution, water pollution and noise pollution in the city. One of the basic principle underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable and the essential features of sustainable development are:- (i) the precautionary principle (ii) the 'polluter pays' principle and the authorities are duty bound to take necessary action on the point.*

3. *For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief.*

4. *It is argued that the applicants are aggrieved by the callous attitude of the respondent authorities in countering pollution in the coastal wetland, creeks and beaches in Mumbai as per the pollution laws. The reason of the excessive pollution in these areas is the discharge of untreated waste from the storm water drains (nallahs) directly into the sea and creeks. The applicants had*

suggested installation of nets in storm water drains to stop the solid waste from entering the creeks, water-bodies and the sea. However, not the respondents failed to pay any heed to the suggestions of the applicants but also in implementing the Maharashtra Non-biodegradable Garbage (Control) Act, 2006, Water (Prevention and Control of Pollution) Act, 1974, Coastal Regulation Zone Notification, 1991 and Wetlands (Conservation and Management) Rules, 2017. The extensive use and failure of proper collection of solid waste which includes plastic waste has resulted into choking of storm water drains (nallahs), creating unhygienic environment and causing terrestrial and marine pollution. As there is no adequate treatment of solid and water waste by the respondent authorities, it can be seen floating in the storm waste drains and eventually being discharged in the sea.

5. The solid waste mainly comprising of plastic carry bags, thermocol plates, Styrofoam cups, glass etc. finds its way into the mangroves through tidal action. Recycled/ coloured plastic bags contain certain chemicals which pollute the air and water when exposed to the natural elements like sunlight and rain. Presently, the plastic materials have no obstruction and no way of being collected separately. Further, it is the case of the applicants that the exposure of the plastic bags to sunlight releases dioxins that are scientifically known to cause cancer.

6. The saltwater lakes and beaches are also being seriously contaminated due to the careless disposal of solid

wastes. Almost all water bodies in Maharashtra are seriously threatened due to the careless disposal of waste.

7. The sewage water entering into the sea also poses grave threat to the creeks, wetlands and water bodies that is home to several threatened, migratory and endemic species of birds. The recent documentation of the birds in the Thane creek alone shows presence of more than 260 species of birds including threatened species under the IUCN list. The solid waste entering into the sea is further resulting in the loss of livelihood of the fishermen in the area, as there has been a severe depletion of marine life. Plastic bags find their way to the sea where it gets consumed by marine life, interferes with the free movement of marine life and causes threat to marine biodiversity. Due to this, several fisherman communities have also come together for the beach cleaning drives but this has not helped in improving the situation.”

17. The final directions issued by the Tribunal to the Municipal Corporation of the Greater Mumbai reads as under :

“38. The authorities are directed to strictly observe the guidelines issued from Principal Bench of this Tribunal from time to time in above Original Application. After summarizing and discussion as above we direct as follows:

i. Bioremediation and/or phytoremediation or any other remediation measures for treatment of sewage water if not taken by the Municipal Corporation, compensation at the

rate of Rs. 5 lakhs per month per drain is to be deposited with the CPCB by the Municipal Corporation. This, however, is not to be taken as an excuse to delay the installation of STP or not doing anything and discharging the untreated water into the water bodies.

ii. Where the operational deficiencies of the existing STPs has not been rectified and untreated is being discharged into the water bodies, the environmental compensation at the rate of Rs. 10 lakhs per month per STP be deposited to the CPCB. The CPCB is directed to examine all the STPs, CETPs within the Mumbai Municipal Corporation and calculate the amount of environmental compensation in accordance with law and to proceed to recover the amount and communicate this Tribunal within fortnight.

iii. With regard to the situation where works with regard to STP, sewerage network and its connectivity not yet started, the Mumbai Municipal Corporation has to pay an environmental compensation at the rate of Rs. 10 lakhs per month per STP, sewerage network and its connectivity after 31.12.2020 for the delay in setting up of the same. It will be open to the Municipal Corporation to recover the said amount from the erring officers/contractors.

iv. Guidelines issued in O.A. No. 426/2018 with regard to the Musi River and O.A. No. 829/2019 (supra) dealing with the coastal pollution, the directions issued from the Principal Bench of this Tribunal must be strictly complied with and in case of violation, the State PCB is directed to proceed in

accordance with law for realization of environmental compensation.

v. 100% treatment of sewage may be ensured as directed by the Principal Bench of this Tribunal vide order dated 28.08.2019 in O.A. No. 593/2017, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. and time line for completing all steps of action plans including completion of setting up STPs and their commissioning till 31st March, 2021, in terms of order dated 08.04.2019 and in case of default compensation laid down in the order of the Principal Bench of this Tribunal dated 22.08.2019 in the case of River Ganga i.e. Rs.10 lakhs per month per STP.

vi. The Chief Secretary of Maharashtra may set up appropriate monitoring mechanism at State Level specifying accountability of nodal authorities not below the Secretary level and ensuring appropriate adverse entries in the ACRs of erring officers. Monitoring at State level must take place on fortnightly basis and record of progress maintained. The Chief Secretary may have an accountable person attached in his office for this purpose.

vii. Remedial measures submitted by Divisional Forest Officer of Maharashtra PCB is accepted and Municipal Corporation of Greater Mumbai is directed to ensure the compliance and execution of the report submitted by the Joint Committee”

a. Municipal Corporation of Greater Mumbai should

ensure the mangrove area is kept to plastic free zone. It is recommended to install Trash Boom or Trash Trap for collection of floating plastic and other wastes & its disposal.

b. All sewage should be treated at the source and then release into Creek via streams. This will be taken up by Municipal Corporation of Greater Mumbai for implementation. It will be the responsibility of Municipal Corporation of Greater Mumbai to ensure proper functioning of treatment plants & release treated sewage water to the Creek.

c. Natural steams used as sewage canals should be stopped immediately and restoration should be carried out to recover the beauty of mangroves of Mumbai and adjoining Thane District.

d. Monitoring of the pollution level should be carried out as per the guideline laid down in the Environment (Protection) Act, 1986 by the Maharashtra Pollution Control Board.

viii. The report submitted by IIT Mumbai for MTHL project regarding pollution level is accepted. The respondent and the Municipal Corporation are directed strictly to comply and execute it and a time bound action plan be implemented. The technology which has been suggested by IIT Mumbai

should be implemented by Municipal Corporation of Greater Mumbai, Navi Mumbai Municipal Corporation on priority basis. For the protection of mangroves, the direction issued from the Bombay High Court in Writ Petition No. 87 of 2016 as mentioned above must be strictly followed. The provision as contained in the Wetland (Conservation and Management) Rules, 2017 must be complied with.

ix. Respondent no.1 is directed to implement the Maharashtra Nonbiodegradable Garbage (Control) Act, 2006 and to install nets in sewage storm water discharge drains to stop sewage solid waste from entering the sea along with the solid waste and to ensure that no untreated water being discharged into the sea level. Respondent no.1 is also directed to install mobile public toilets after identifying the areas close to beaches where open defecation is rampant.

x. The pipelines which are directly releasing domestic sewage in the water bodies, creeks and wet land without treatment must be removed or connected to the STP.

xi. The guidelines and directions issued as mentioned above must be complied with and the authorities-CPCB/MSPCB is directed to execute and comply the orders.

xii. The Registrar, Western Zonal Bench, Pune is directed to open a Miscellaneous Application file in which the compliance report submitted by the CPCB/MSPCB be attached and the progress report be monitored and placed at the interval of 3 months before this Tribunal.

xiii. According to the parameter laid down and calculation as mentioned above, the BMC is liable to pay environmental damage for discharge of untreated sewage water into the water bodies at the rate of Rs. 4.25 crores per month and arrears of Rs. 29.75 crores. The BMC is directed to pay the amount of Rs. 29.75 crores to the account of CPCB within 30 days from today and ensure to regularly pay Rs. 4.25 crores per month till the bio-remediation or phytoremediation measures are taken by the authorities concerned. If remediation or treatment of the water of sewage water is taken, it will be reduced at the rate of Rs. 5 lakhs per month per drain systematically. The State PCB is directed to calculate and do the needful according to law from time to time.

xiv. The amount so paid by the BMC as environmental compensation/environmental damage, be deposited in accordance with Section 7A(3) of the Public Liability Insurance Act, 1991 read with Section 24 of the NGT Act, 2010.

xv. The CPCB is directed to proceed in accordance with Section 7A of Public Liability Insurance Act, 1991 read with Section 24(1) of the NGT Act, 2010.

xvi. The BMC is further directed to ensure that there should not be any water logging during the rainy seasons and the sewage line or water connection which are discharging the water from the city must be regularly

monitored so that there should not be any blockage in the flow of the water.”

18. He also brought to our notice that the aforesaid order passed by the Tribunal has been challenged before the Supreme Court by way of Civil Appeal No.5036 of 2019. The Supreme Court has passed the following order dated 1st February 2022 :

“1. The proceedings before the National Green Tribunal1 arose out of a challenge to a Notification dated 13 October 2017, which was issued by the Ministry of Environment, Forest and Climate Change for providing for standards for effluent discharge. The notification was assailed on the ground that it diluted the standards prescribed by an earlier notification dated 24 November 2015.

2. The NGT constituted an Expert Committee on 21 December 2018 and stayed the Notification dated 13 October 2017 which had diluted the standards for effluent discharge. The Expert Committee submitted its report on 29 March 2019. Among other things the Expert Committee provided a window of seven years for compliance. Following upon the report, the NGT deliberated upon the matter and on 30 April 2019 accepted the report of the Expert Committee with certain modifications. The modifications were that (i) the standards recommended for mega and metropolitan cities would also apply to the rest of the country; and (ii) the standards would apply not only for new Sewage Treatment Plants, but for STPs which existed or were under

construction. The timeline of seven years which was suggested by the Expert Committee was disapproved. The case travelled to this Court against the order of the NGT dated 30 April 2019.

3. While issuing notice on 17 May 2019, the Municipal Corporation of Greater Mumbai was directed to follow the parameters which have been laid down by the Expert Committee in its report, in processing the tender and the directions of the MoEF & CC in this regard. The MCGM has a limited grievance in the appeal, namely, in regard to the disapproval of the seven years' time frame which was fixed by the Expert Committee for implementation of the norms. MCGM has stated that it is carrying out the Mumbai Sewage Disposal Project Stage-II including the upgradation of seven STPs at Worli, Bandra, Dharavi, Versova, Bhandup, Malad and Ghatkopar Waste Water Treatment Facilities.

4. At this stage, the issue is whether the interim direction of this Court has been complied with by MCGM.

5. Mr Dhruv Mehta, senior counsel has filed a written note of submissions indicating the steps which have been taken by MCGM.

6. The written note indicates that after the interim order of this Court dated 17 May 2019, it took almost four months for MCGM to issue tenders on 6 September 2019. The

tenders were cancelled in January 2020. Fresh tenders except for Dharavi STP were issued on 30 April 2020. Subsequently, in the first week of August 2020, all the six STP tenders were cancelled. On 31 August 2020, tenders for seven STPs including Dharavi were re-invited. The capacity of the Dharavi STP was increased. The present status of the tenders is stated to be that the bids for the technical and financial packets were opened and are again being scrutinized by a Peer Review Committee. The written note indicates that due to the delay in setting up the STPs, the cost has increased from Rs 10,000 crores to Rs 18,500 crores.

7. There seems to be a pattern which emerges from the material which has been placed before this Court of tenders being issued, cancelled and reissued, resulting in an unfortunate delay. This has happened both during the pendency of proceedings before the NGT on several occasions and has happened during the pendency of the appeals before this Court over the last two and a half years. The manner in which the MCGM has proceeded prima facie, indicates a disregard of the directions which were issued by this Court on 17 May 2019. The process of issuing, cancelling and reissuing tenders results in an enhancement of the project cost which is evident from what is stated before the Court. Equally, the delay has resulted in a situation where until date, no decision has been taken on the tenders which have been floated and there is absolutely no material before this Court to indicate that the work would be completed with the seriousness which it deserves.

Surely, the MCGM cannot leave the well-being and welfare of the residents of the city of Mumbai to the peril of its inaction and lethargy. In the proposed timelines which have been indicated before this Court in the written note, it is anticipated that the work for the completion of the STPs would be completed between 31 March 2025 and 31 May 2027. The timelines which have been indicated takes the completion date well beyond even the seven years which was envisaged in the report of the Expert Committee. MCGM has shown no commitment towards completing the project at an early date and seems to be oblivious to the hazards posed by untreated or inadequately treated waste. MCGM is entrusted with public revenues and we direct that the situation should be remedied at the earliest.

8. *Before we pass any further orders, we direct the Municipal Commissioner of the MCGM to convene a meeting immediately of all concerned authorities and to review (i) the status of the tenders; (ii) the steps which are being taken in pursuance of the Peer Review Committee; (iii) assess the timelines for a decision on the tenders and the award of contracts; (iv) specify enforceable time frames for the completion of work; and (v) assign specific responsibilities for the completion of the work. Unless a comprehensive affidavit is filed before this Court along the above lines after taking concrete decisions, the Court would be constrained to take recourse to its coercive processes or leave the MCGM to face the consequences of its inaction before the NGT.*

9. *The affidavit be filed within a period of two weeks from today indicating the decisions which have been taken, the timelines within which the work would be awarded and specifying the time schedule within which the completion shall be achieved.*

10. *List the appeal on 15 February 2022.*

11. *On the next date of listing, we direct the Municipal Commissioner of the MCGM to be present personally before this Court on the video conferencing platform, to answer the queries of the Court and be answerable to the directions that may be issued on that date.”*

19. We draw the attention of the AMC and GPCB to few provisions of the Water (Prevention and Control of Pollution) Act, 1974. Sections 24, 25, 26, 43 and 44 of the Act 1974 read thus :

“24. Prohibition on use of stream or well for disposal of polluting matter, etc.—(1) Subject to the provisions of this section,—

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any [stream or well or sewer or on land]; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under subsection (1), by reason only of having done or caused to be done any of the following acts, namely:—

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond

or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

25. Restrictions on new outlets and new discharges.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water

(Prevention and Control of Pollution) Amendment Act, 1988 (53 of 1988), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

[(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions

as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on

an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a

discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

26. *Provision regarding existing discharge of sewage or trade effluent.—Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a 1[stream or well or sewer or on land], the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section [shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette].*

43. *Penalty for contravention of provisions of section 24.—Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than [one year and six months] but which may extend to six years and with fine.*

44. *Penalty for contravention of section 25 or section 26.— Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than [one year and six months] but which may extend to six years and with fine.”*

20. We bring to the notice of the GPCB the provisions of Section 32 of the Act 1974, which reads thus :

“32. Emergency measures in case of pollution of stream or well.- (1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in 1[any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land] or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations as it may consider necessary for all or any of the following purposes, that is to say,

(a) removing that matter from the [stream or well or on land] and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or

prohibiting the person concerned from discharging any poisonous, noxious or polluting matter [into the stream or well or on land], or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operations.”

21. What has been pointed out by the GPCB in its affidavit-in-reply in para-10 referred to above is also something very alarming.

22. While Mr.Vyas, the learned senior counsel appearing for the GPCB, was making his submissions, we noticed that an officer of the GPCB was assisting Mr.Vyas. We inquired with Mr.Vyas as regards the officer who was assisting him. Mr.Vyas introduced the officer as Ms.D.P.Shah, Senior Environment Engineer and the deponent of the reply. We requested Ms.Shah to join the Video Conference platform so as to put few questions to her. Ms.Shah pointed out that the 4 STPs referred to in para-10 of the reply have been discharging huge quantity of sewage directly into the Sabarmati river, i.e. without treating the same in the STP. According to Ms.Shah, this is something very dangerous. She pointed out that the AMC has deposited the requisite amount by way of bank guarantee, etc. as levied by the GPCB sometime in December 2021, but till date, has not submitted any action plan.

23. We direct the AMC to submit its action plan to the GPCB as early as possible. We also direct the GPCB to take appropriate steps in the matter insofar as the by-pass/release of the untreated domestic sewage into the Sabarmati river is concerned. When this Court has not permitted all those industries who were releasing their trade effluent into the drainage line of the AMC, then the AMC itself cannot be an exception.

24. We must place on record our appreciation for the exercise and the efforts put in so far by the Joint Task Force, AMC and GPCB. However, this is just a beginning. We have a long long way to travel before we are able to achieve something. It is not possible to clean the Sabarmati river, however, our endeavour should be to protect the Sabarmati river from any further damage. The pollution of water bodies is a serious problem, the entire country is facing today and has become a major threat to the human existence. Water pollution control is clearly one of the most critical of those challenges which requires strong political will and a policy framework based on timely assessment and management of ecological risks in the setting of water pollution regulations. In one of our orders passed during the early days of the hearing of this Public Interest Litigation we had said that this should be a people's movement. It is for the State Government, AMC and GPCB to create such awareness. "The polluter pays" makes it clear that anyone who causes pollution has to pay to clean it up.

25. We are aware that a section of the society is quite displeased and annoyed with this Public Interest Litigation and the stern action which is being taken by the AMC and GPCB pursuant to the various directions issued by this Court over a period of time. However, such displeasure and annoyance on the part of a section of the society should not deter the State Government, the AMC as well as the GPCB from fulfilling their constitutional and statutory obligations. This annoyed and displeased section of the society should be made aware of their constitutional obligations as enshrined under Article 51A of the Constitution of India.

26. We have been saying from day one that the Act on which we are debating, i.e. the Act of 1949, is by now almost 73 years old. It came to be enacted at a time when there was hardly any issues relating to environment. To put it in other words, it came into force when there was a very little violation of the environment. Today, the population of the city of Ahmedabad alone is more than one crore. In 1949, the population of the city of Ahmedabad was hardly few lakhs. It is in such circumstances that most of the textile industries are in the heart of the city. It is true that the Ahmedabad city was once recognized as the Manchester of India, but this Manchester, over a period of time, has created huge problems relating to both, air pollution and water pollution.

27. We have been saying from day one that the Act ought not to be seen in isolation. The Constitution of India came after the Act brought Article 48A to declare that the State shall endeavour

to protect and improve the environment and to safeguard the forest and wild life of the country. The Constitution saw amendments in 1977. Article 51A in no uncertain terms declares and seeks protection and improvement of the natural environment including forests, lakes, rivers and wild life. This article talks in terms of scientific and reform and to strive towards excellence in all spheres of individual and collective activity.

28. In the aforesaid context, we may refer to a passage from a decision of the Andhra Pradesh High Court in the case of Dr.T.Patanjali Sastry, President, Environment Centre, Rajahmudry vs. Chairman, Andhra Pradesh Pollution Control Board, Hyderabad, and others, reported in 2001 SCC OnLine AP 647. We quote thus :

“Protection of lakes of national importance from pollution, ecology, encroachment, etc., should be the primary concern of the State. In the context of rapid globalization and the imminent threat it posed to environment, ecology vis-a-vis the rights of the citizens to have pollution free environment, the right to water, etc., recognized by the Apex Court under Article 21 of the Constitution of India, the duty of the Government to protect the lakes has assumed much more importance. It is now well settled principle of law that directive Principles of State Policy under Part IV of the Constitution are enforceable under Article 21 of the Constitution of India. Under Article 48-A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the

country. Article 49 of the Constitution casts an obligation on the State to protect every monument or place of object of artistic or historic interest declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal, export, as the case may be. At the same time, it shall be the fundamental duty of every citizen of India under Article 51-A(g) of the Constitution of India, to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

29. The Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. The provisions regarding the directive principles of the State policy and the fundamental duties explicitly enunciate the national commitment to protect and improve the environment. By Forty Second Amendment, Article 48A was added which declares “the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 51A(g) in a new chapter under the caption “Fundamental Duties”, imposes a similar responsibility on every citizen “to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”. The Forty Second Amendment also expanded the list of concurrent powers in the Constitution. The Amendment introduced a new entry “Population Control and Family Planning” while “Forests” and “Protection of Wild Animals and Birds” were shifted from the State List to the Concurrent List. These changes have given the Parliament new powers to legislate on the environmental matters. Article 253 of the

Constitution empowers the Parliament to make laws implementing India's international obligations as well as decisions made at the international conference, association or other body. The Parliament has used its power under Article 253 to enact the Prevention and Control of Pollution Act, 1981, and the Environment Protection Act, 1986. The broad language in Article 253 suggests that in the wake of the Stockholm Conference in 1972, the Parliament has used the power to legislate on all matters linked to the preservation of natural resources. The critical need for the environmental protection has been widely recognized by the Indian Courts.

30. The case of *M.C. Mehta vs. Union of India*, (1987) 4 SCC 463, should be usefully referred as a leading environmental case decided by the Supreme Court. This case is popularly known as “Ganga Pollution Case”. In the said case, on a petition filed by Shri M.C.Mehta, an activist, advocate and social worker, the Supreme Court, having noticed that 80% of the pollution in the river is caused by raw sewage discharged directly into the river, stopped running tanneries and releasing trade effluent into the river Ganga without subjecting the trade effluents to pre-treatment process by setting up primary treatment plants as approved by the State Board.

31. In *Virendra Gaur vs. State of Haryana*, (1995) 2 SCC 577, the Supreme Court has highlighted the importance of environment and placed it at the pedestal of Article 21 of the Constitution. In the said case, the Supreme Court held that Article 21 protects right to life with human dignity, encompasses

within its ambit, the protection and preservation of environmental ecological balance free from pollution of air and water, sanitation without which the life cannot be enjoyed. The Supreme Court further observed that any contra acts or actions would cause environmental pollution. The Supreme Court further observed that environmental, ecological, air, water, pollution etc. should be regarded as amounting to violation of Article 21. Thus, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy atmosphere. Thus, there is a constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.

32. The Supreme Court again, in *Consumer Education and Research Centre vs. Union of India*, (1995) 3 SCC 41, has observed that right to life under Article 21 does not connote mere animal existence or continued drudgery through life but it includes right to livelihood, better standard of life, hygienic conditions in work place and leisure. The hygienic conditions in work place and leisure are the fundamental rights of the citizens of India. The instant case *prima facie* appears to be a case of violation of Article 21 of the Constitution of India.

33. It is not fair to always criticize the State and its functionaries alone. To achieve the environmental goal will demand the acceptance of the responsibility by citizens and

communities and by the enterprises and institutions at every level, all sharing equitably in common efforts. The Supreme Court in M.C. Mehta's case has observed that individuals in all walks of life as well as organisations in many fields, by their values and the sum of their actions will shape the world environment of the future. The Supreme Court further observed that the local and national Governments will bear the greatest burden for large scale environmental policy and action within their jurisdictions.

34. The Supreme Court recently, in the Indian Council for Enviro-legal Action vs. Union of India, (1996) 5 SCC 281, called upon the NGOs and other citizens to protect the environment as it cannot be done by a single authority. The Supreme Court observed that "...With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are going singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment".

35. Almost 35 years back, this High Court, in the case of M/s.Abhilash Textile and others vs. The Rajkot Municipal Corporation, reported in AIR 1988 Gujarat 57, posed the following questions for its consideration :

“Is there any right to carry on business or trade in unregulated manner and cause nuisance to the public and also become a health hazard to the society at large ? If no, can the petitioners claim any right to be heard before they are asked to discontinue or prevent the nuisance ?

This, in substance, is the question which needs to be examined in this group of petitions.”

36. This High Court answered the aforesaid questions as under:

“2. The petitioners contended that they are carrying on the business for last about 20 to 25 years and the industry is providing employment to twenty to thirty thousand families; the proposed action as stated in the notice will have harsh consequences and the petitioners may have to close down their business. Having regard to the very harsh consequence it is submitted that before issuing the notice the respondent-Municipal Commissioner ought to have afforded an opportunity of being heard to the petitioners. Reliance is placed on the decision of the Supreme Court in the case of Maneka Gandhi v. Union of India and Another, AIR 1978 SC 597. The learned Counsel for the petitioners relied upon the following observations of the Supreme Court occurring in para 32 of the judgment :

“It is well established that even where there is no specific provision in a statute or rules made

thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.”

The learned Counsel for the petitioners submitted that the proposed action will have evil consequences inasmuch as the closing down of the factories will adversely affect the petitioners; they will have to close down their business and their right to carry on the business will be adversely affected. Similarly, very harsh consequences will follow and, therefore, the notice Annexure-A which has been issued without affording an opportunity of being heard should be held to be illegal and void.

3. *The aforesaid observation of the Supreme Court will be available to the petitioners only if the petitioners can show that they have a right to carry on the business even in the manner so as to cause nuisance, and if the carrying on of the business in the same manner is a health hazard to the public at large, they have unfettered and unregulated right to carry on this business. In the aforesaid paragraph of the judgment of the Supreme Court, the underlined part of the sentence "which affects the rights of that individual" is very important. Before the aforesaid principle laid down by the Supreme Court is made applicable, one has to establish his right to carry on business in the manner which is objected to by the respondent-Municipal Commissioner.*

4. In the aforesaid background, the relevant provisions of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the Act') may be examined. Section 2(40) defines 'nuisance'. It includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property. Thus the definition of nuisance is very wide and certainly the discharge of effluent by the factories on public road and in the public drainage system of the Corporation without the same being purified would be covered within the meaning of nuisance as defined in the Act. Section 376 of the Act occurs in Part II of Chapter XXII which deals with trade licence and other licences for keeping animals and certain articles. The relevant portion of sec. 376 reads as follows :

“376 (1) Except under and in conformity with the terms and condition of a licence granted by the Commissioner, no person shall -

(a) x x x x x

(b) x x x x x

(c) x x x x x

(d) carry on, or allow to be carried on, in or upon any premises -

(i) any of the trades or operations connected with any trade specified in the rules;

(ii) any trade or operation which in the opinion of the Commissioner is dangerous to life or health or property, or likely to create a nuisance either from its nature, or by reason of the manner in which or the conditions under which, the same is, or is proposed to be carried on;

(e) x x x x x

(2) A person shall be deemed to have known that a trade or operation is, in the opinion of the Commissioner, dangerous or likely to create a nuisance within the meaning of paragraph .(ii) of clause (d) of sub-sec. (1), after written notice to that effect, signed by the Commissioner, has been served on such person or affixed to the premises to which it relates.

(3) A person shall be deemed to carry on or to allow to be carried on a trade or operation within the meaning of clause (d) of sub-sec. (1) if he does any act in furtherance of such trade or is in any way engaged or concerned therein whether as principal, agent, clerk, master, servant, workman, handicrafts-man or otherwise.

(4) When any premises are used in the manner described in clause (c) or (d) of sub-sec. (i) it shall be presumed, until the contrary is proved, that the owner or occupier of such premises, or both the owner and occupier have permitted such use.”

Rest of the provisions of the section is not material for our purpose. The provisions of sub-sec. (1) aims at regulating the carrying on of business by any person. As provided in this part of the section, no person shall carry on any trade or operation which in the opinion of the Commissioner is dangerous to life or health or property or is likely to create a nuisance either from its nature, or by reason of the manner in which, or the conditions under which, the same is, or is proposed to be, carried on. Sub-section (2) creates a deeming fiction that whenever the Commissioner serves upon a person concerned a written notice that person shall be deemed to have known that the trade or operation is, in the opinion of the Commissioner, dangerous or likely to create nuisance as provided in the section. Similarly sub-sec. (3) also creates a deeming fiction to the effect that the person concerned shall be deemed to carry on or allow to be carried on a trade or operation within the meaning of clause (d) of sub-sec. (1) if he does any act in furtherance to such trade or is in any way engaged or concerned therein in any capacity either as principal agent, clerk, master, servant, workman, handicrafts-man or otherwise. Sub-section (4) is very important. It creates a statutory presumption to the effect that unless contrary is proved, the owner and occupier of such premises, or both of them have permitted such user of the premises.

5. *In the aforesaid statutory background the provisions of sec. 376-A under which the impugned notice has been issued by the respondent-Municipal Commissioner are*

required to be seen. Section 376-A reads as follows :

“376A- Where the Commissioner is of opinion that the use of any premises for any of the purposes specified in sub-sec. (1) of sec. 376 is dangerous to life, health or property or is causing a nuisance either from its nature or by reason of the manner in which or the conditions under which the use is made and such danger or nuisance should be immediately stopped, the Commissioner may, notwithstanding anything contained in sec. 376, require the owner or occupier of the premises to stop such danger or nuisance within such time specified in such requisition as the Commissioner considers reasonable and in the event of the failure of the owner or occupier to comply with such requisition, the Commissioner may himself or by an officer subordinate to him cause such use to be stopped.”

The language of the section is plain and unambiguous. The exercise of power conferred depends upon subjective satisfaction of the Commissioner. The impugned notice clearly indicates that the Commissioner has formed an opinion that from the premises of the petitioners concerned, dirty water is being discharged on public road and/or public drainage system without purifying the same and it is dangerous to health. It also indicates that on a particular day when the place was visited by the Commissioner the dirty water was being discharged and it did create nuisance. Therefore, the Commissioner has called upon the

petitioners to prevent, within seven days of the receipt of the notice, the discharge of dirty water on public road or in the public drainage system without purifying the same, failing which the user of the premises may have to be stopped.

6. *In the background of the aforesaid statutory provisions can it be said that the petitioners have a right to carry on the business so as to cause nuisance and be a health hazard to the public at large ? Article 19(l)(g) of the Constitution confers right upon every citizen to practice any profession or to carry on any occupation, trade or business. But this fundamental right is subject to reasonable restrictions which may be placed in the interest of the general public as provided for in sub-clause (6) of Art. 19 itself. No one has a right to carry on business so as to cause nuisance to the society. One cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society. The fundamental right to carry on trade or business is subject to reasonable restrictions and regulations that may be placed in the interest of the general public.*

7. *It may also be noted that by discharge of effluent water on public road and/or in the public drainage system the entire environment of the locality gets polluted. The provisions regarding fundamental duties of the citizens contained in Art. 51A(g) of the Constitution enjoins upon all the citizens to protect and improve the natural environment. By no stretch of imagination it can be said that the*

petitioners would be protecting the natural environment by discharging the effluent from the factory on public road and/or public drainage system. By the impugned notice the respondent-Municipal Commissioner has simply reminded the petitioners of their fundamental duty. The petitioners cannot assert their right, much less fundamental right, to carry on business without any regard to the fundamental duty. In a complex society in which we live today, no one can claim absolute freedom without incurring any obligation whatsoever for the general well-being. The Art. 51-A regarding fundamental duties of citizens has been inserted in the Constitution by Forty Second Amendment and it has come into force with effect from January 3, 1977. Even in absence of the provisions with regard to fundamental duty as enshrined in Art. 51-A of the Constitution, the Supreme Court has held that such restrictions placed on the fundamental right to carry on trade or business are in the interest of the general public and constitutionally valid and no citizen can claim absolute right to carry on business without complying with the restrictions placed in this behalf.

8. *Reference may be made to the decision of the Supreme Court in the case of T. B. Ibrahim v. The Regional Transport Authority, reported in AIR 1953 SC 79. In that case the petitioner claimed his right to have a bus-stand at a particular place which he was using for last many years. The Regional Transport Authority, for the convenience of the travelling public, resolved to alter the starting places and termini of all public vehicles and the existing bus-stand owned by the petitioner was ordered to be discontinued.*

This action of the Regional Transport Authority was challenged by the petitioner. In para 13 of the judgment the Supreme Court has observed as follows :

“There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. The restriction may have the effect of eliminating the use to which the stand has been put hitherto but the restriction cannot be regarded as being unreasonable if the authority imposing such restriction had the power to do so. Whether the abolition of the stand was conducive to public convenience or not is a matter entirely for the Transport Authority to judge, and it is not open to the Court to substitute its own opinion for the opinion of the Authority, which is in the best position having regard to its knowledge of local conditions to appraise the situation.”

9. *In the case of Cooverjee B. Bharucha v. Excise Commissioner, Ajmer and Others, reported in AIR 1954 SC 220, in para 7 of the judgment the Supreme Court has observed as follows :*

“The right of every citizen to pursue any lawful trade of business is obviously subject to such reasonable conditions as may be deemed by the governing

authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they engender, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them.”

10. *In the case of State of Maharashtra v. Himmatbhai Narbheram Rao and Others, AIR 1970 SC 1157 the question with regard to right to carry on business in carcass arose, and certain provisions of the Bombay Municipal Corporations Act (3 of 1888) (as amended by Act 14 of 1961) came up for consideration. In para 12 of the judgment it is inter alia observed that "under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Arts. 19(l)(f) and (g) and the interests of a citizen in the exercise of his right to acquire, hold or dispose of his property or to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity". It is further observed that the law which compels removal to the appointed place and disposal of the carcass under the supervision of the Corporation to which is entrusted the power and duty to take steps to*

maintain the public health cannot also be regarded as arbitrary or excessive merely because the enforcement of the law involves some pecuniary loss to the citizen.

11. *In the aforesaid background it may be recalled that sec. 63 of the Act makes it incumbent upon the Corporation to make reasonable and adequate provisions, by any means or measures which it is lawfully competent to it to use or to take for certain matters which inter alia include watering, scavenging and cleansing of all public streets and places in the city and the removal of all sweepings therefrom; the collection, removal, treatment and disposal of sewage, offensive matter, and cleansing of drains and drainage works;- "the regulation and abatement of offensive and dangerous trades or practices" {See Secs. 63(2), (3), (4) and (10) of the Act}. By issuing the impugned notice the respondent-Municipal Commissioner has acted within his power. He has tried to do something which is the obligatory duty of the Corporation. The Act empowers the Corporation to make reasonable and adequate provisions by any means or measures to regulate and abate offensive and dangerous trade or practice. Therefore, if the respondent-Municipal Commissioner has issued notice under the provisions of sec. 376-A so as to perform the obligatory functions of the Municipal Corporation as provided under sec. 63 of the Act, the same cannot be held to be in any way illegal or void. The petitioners have failed to show any right whatsoever to carry on the business without complying with the restrictions and regulations as contemplated under the provisions of Secs. 376 and 376-A of the Act.*

12. *By the impugned notice the respective owner or occupier of the premises has been told to abate the nuisance. A reasonable time has been given to each of the petitioners. Within the time mentioned in the notice if the owner or occupier of the premises does not abate the nuisance and does not prevent causing of nuisance, the health-hazard to the public cannot be allowed to continue. By issuing this notice no right whatsoever of the petitioners has been affected by the respondent-Municipal Commissioner. By the impugned notice all that the petitioners are told is that "regulate your business, do not cause nuisance, if you continue to cause nuisance the measures so as to prevent the nuisance will be taken". If the petitioners do not cause nuisance or they have prevented to cause nuisance within the period mentioned in the notice they need not fear. If they have not complied with the requisition made in the notice, the consequences may follow. In that situation the petitioners cannot claim any right to carry on business so as to cause nuisance to the public at large.*

13. *The contention that the petitioners are carrying on business for last about 20 to 30 years has also no merit. If the petitioners wish to carry on the business they may have to incur expenditure and they must provide for purification-plant before discharging the effluent water on public road or in the public drainage system. This is the minimum requirement for carrying on the business which they must comply with. If they have to incur expenditure for the*

purification plant the same be considered as part of the cost of the business. The petitioners cannot be allowed to reap profit at the cost of the public health. This is the mandate of the law. This is what the Commissioner has proposed to do by serving the impugned notice upon the petitioners.”

37. We sum up our directions for the present as under :

(1) The AMC shall block/seal all the three outlets referred to in the order and also start identifying all those residential societies/buildings/units releasing such contaminated sewage water directly into the Sabarmati river.

(2) The AMC shall undertake an extensive survey of all those residential societies/buildings/units in the area who do not have any valid drainage connection.

(3) The AMC shall, by the next date of hearing, place on record as to what it intends to do with all such residential societies/buildings/units who do not have any drainage connection.

(4) The AMC shall, by the next date of hearing, place before us some action plan by which it can avoid discharging some quantity of sewage directly into the Sabarmati river without treating it into the STP. We are talking about this in context with the 106 MLD Old Pirana STP, 182 MLD New Pirana STP, 60 MLD STP, New Pirana and 180 MLD STP, Pirana

(5) The AMC and GPCB shall intensify its drive of identifying the illegal industrial connections into the sewer.

(6) We direct the GPCB to impress upon the NEERI to expedite preparing its report as regards the 7 CETPs and furnish it within a period of two weeks from today. We also request the NEERI to expedite the process and file its report so that the GPCB can ask the 7 CETPs to start undertaking the necessary repairs.

38. Post this matter for further hearing on 25th February 2022.

(J. B. PARDIWALA, J.)

(VAIBHAVI D. NANAVATI, J.)

/MOINUDDIN