

ROLE OF JUDICIARY IN ENVIRONMENT PROTECTION

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Abstract

The judiciary has been playing an effective role for protection of environment since many years. But, there are also primary, statutory and fundamental rights and duties of each and every citizen to protect the environment because healthy environment is an essential and integral part of healthy life of not only human beings but also of animals and flora and fauna. It will be no wrong if we say that there are legal rights and duties of each and every citizen to protect and preserve the healthy environment. If we talk in the present scenario, the people are aware regarding this. They are approaching in the courts or in tribunals for protecting the environment. In this regard, the name of Shri M.C. Mehta has been very famous and his name comes in frontline. Shri M.C. Mehta is an advocate in the Supreme Court has filed a large number of cases of public interest in the form of Public Interest Litigations (PIL) in the Supreme Court, High Court and in other courts for protection of environment. The courts have given great regard to him in this context.

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Meaning of Environment and Pollution

The environment is a system which is consisting of natural and artificial elements or factors and these are interrelated to each other. These elements/factors affect the environment by way of life of the society, including natural, social and cultural forms time to time and place to place. There are many things which are made by man which makes up the environment.

(i) According to Goudie, “Environment is the representative of physical components of earth, wherein man is the important factor influencing his environment”.

(ii) According to P. Gisbert, “Environment is anything immediately surrounding an object and exerting a direct influence on it”.

The word “pollution” is derived from the Latin word “Polluere” which means to contaminate any feature of environment or to spoil or defile”. Pollution means an undesirable change in physical, chemical, or biological characteristics of environment air, water, soil and land that has potential to adversely affect human life, the lives of desirable species, natural resources, industrial processes and cultural assets.

Role of Judiciary in Environment Protection

For environment protection, Indian judiciary has been playing an important and effective role and also taking strong action against the people and the institutions/states/industries/factories/companies and others those are degrading

environment or creating environmental pollution in the country. Every person/citizen has fundamental right to live a healthy life in his/her whole life. The right to life and quality life means to live in the environment pollution free and to get the healthy water and air because these are basic elements/ingredients of the healthy life. The National Green Tribunal is also playing an important role in the protection of environment. There, the judiciary of India has decided many cases regarding the maintaining of sustainable environment, development of life and protection of environment. Some cases are briefly discussed as below:

In *M.C. Mehta v. Union of India*¹, a public interest petition was filed for seeking directions from the Supreme Court to the government for exhibition of slides in cinema halls containing information and messages on environment free of cost, spread of relative valuable information relating to environment in national and regional languages through Television and Radio in regular and short- term programmes and for making environment a compulsory subject in schools and colleges. The Supreme Court accepted this petition in principle and issued directions to that effect holding that keeping the citizens informed is an obligation of the government. There is necessity of environmental awareness in Public.

¹ AIR 1992 SC 382

In *M.C. Mehta v. Union of India*², the Supreme Court held that to protect health of present generation and future generation and to protect and improve the environment, the Non-CNG buses were phased out and ordered for the use of CNG buses. The court held that CNG buses should be used for protection of Health of generation and protection and improvement of environment.

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu*³, the Supreme Court held that where total prohibition against establishment of industries in an area is in force, the state government cannot grant exemption to a specified industry located within or attempting to locate itself within such area. Neither can the state direct the State Pollution Control board to prescribe conditions for grant of No Objection Certificate.

In *Goa Foundation v. State of Goa*⁴, the grant of lease of land belonging to forest area to be used for setting up beneficiation plant which involves dust and water pollution and consequent destruction of adjoining forest and subsequently affecting the environment and ecology of the area and right to life, was declared void by the court.

In *Bihar State Pollution Control Board v. Hhiranand Stone Works*⁵, the court held that if the central government has issued certain directions and notified certain industries as hazardous and

² AIR 2002 SC 1696

³ (2001) 2 SCC 62

⁴ AIR 2001 Bombay 318

⁵ AIR 2005 Patna 62

stone crushers have not been included then the Board would not be forbidden from exercising its power under provisions of Air Act or Water Act.

In *Ajay Constructions v. Kakateeya Nagar Cooperative Housing Society Ltd*⁶, it has been held that there is an absolute liability on the part of those who are engaged in construction work, particularly of multi-storeyed structures, not to commit nuisance by letting out effluents from their drainage system.

In *Mathew Lukose v. Kerala State Pollution Control Board*⁷, the Travancore Electro Chemicals Industries was running its business in the state. It was manufacturing calcium carbide and acetylene black in large quantities. The board alleged that the industry is violating the norms/ standards prescribed by it and industry is causing air pollution and polluting the atmosphere of the residents of Chingavanam and also causing pulmonary diseases and ailments. The board also alleged that the industry has small/ little control emissions as the chimneys of units operating spewed carbon dioxide and Sulphur dioxide into air. The Supreme Court, holding the sweep of Article 21 as right to healthy environment, granted three months to industry to attain the norms prescribed by the Board. The Board also directed to close down the industry if it fails to meet these norms.

⁶ AIR 1991 AP 294

⁷ (1990) 2 Kerala L.T 686

In *Krishna Gopal v. State of Uttar Pradesh*⁸, it has been held that the manufacturing of medicines by installing a boiler in a residential area which causes emission of smoke is detrimental to the physical comfort and health of the public at large. In such a case removal of factory ordered by the SDM was valid. The medicines were dangerous to the life and health of general public after any leakage from a storage tank, cylinder or any other point during its production, the health and welfare of the workers and public at large living in surrounding areas may be put to risk. Accordingly, the Food and Fertilizer Industries were imposed stringent conditions to carry on such production so that it may eventually be prevented.

Delhi Stone-Crushing Case, In *M.C. Mehta v. Union of India*⁹, the problem of air pollution was raised again by M.C. Mehta before the court as the Supreme Court, in the case of *M.C. Mehta v. Union of India*, (1992) Supp 2 SCC 85-86: (1992) 3 SCC 256-257, ordered the Haryana authorities to allot alternate sites in a new crushing Zone located at a suitable place from capital. The Haryana authorities complied with the order of the Supreme Court and relocated the place to these quarries from Delhi. In *Ishwar Singh v. State of Haryana*¹⁰, a petition in the nature of public interest litigation was filed in the Punjab and Haryana High Court for shifting the stone crushing industries in view of preventing

⁸ 1986 Criminal Law Journal 11

⁹ 1996(1) SCALE 29 (SP)

¹⁰ AIR 1996 P&H 30

health hazards. The court, following the decision of the Supreme Court in case *M.C. Mehta v. Union of India*¹¹, directed the Haryana state government for closure and shifting of industries in identified zones.

Gases Leakage Case

In *M.C. Mehta v. Union of India*¹², the Supreme Court held that since chlorine gas is dangerous to the life and health of general public after any leakage from a storage tank, cylinder or any other point during its production, the health and welfare of the workers and public at large living in surrounding areas may be put to risk. Accordingly, the food and Fertilizer Industries were imposed stringent conditions to carry on such production so that such an eventuality may be prevented. In *M.C. Mehta v. Union of India*¹³ case, the Supreme Court in a case of leakage of Oleum gas from Caustic Chlorine plant affecting several persons due to air pollution directed the management to resume production on compliance of specific stringent conditions. It is pertinent to mention that this was a Public Interest Litigation and the court held that but for this case there would have been no improvement in the design, structure and quality of the machinery and equipment in the Caustic Chlorine Plant nor would any proper and adequate safety devices and instruments have been installed nor would there have been any pressure on the management to observe

¹¹ 1996 (1) SCALE 29 (SP)

¹² AIR 1987 SC 965

¹³ AIR 1987 SC 965

safety standards and procedures. In token appreciation of the work done by the petitioner, the Supreme Court directed the respondent to pay Rs 10,000 by way of costs to the petitioner.

Conclusion

At last, we can say that the judiciary of India has been playing an important role in protection and improvement of environment since many decades. The role of judiciary is very appreciable in this context.