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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.176 OF 2012
WITH
CIVIL APPLICATION NO.41 OF 2014
WITH
CIVIL APPLICATION (ST) NO.13231 OF 2017**

1. Mr. Rajesh Madhukar Pandit
 2. Mr. Nagsen (Nishikant) Murlidhar Pagare
 3. Mr. Jagbir Nirmal Singh ... Petitioners
- Versus
1. The Nashik Municipal Corporation
 2. Commissioner, Nashik Municipal Corporation
 3. Maharashtra Pollution Control Board
 4. Government of India
 5. State of Maharashtra
 6. Maharashtra Industrial Development Corporation
 7. M/s. Indiabulls Realtech Limited
 8. Maharashtra State Power Generation
Co. Limited ... Respondents

Mr. Pravartak S. Pathak for the Petitioners and for the Applicant in CAIST/13231/2017.

Mr. M.L. Patil for the Respondent Nos.1 and 2.

Mr. Ratnesh Dubey I/by Ms. Rutuja Ambekar for the Respondent No.3.

Mr. N.R. Prajapati for the Respondent No.4 – UOI.

Mr. A.B. Vagyani, Government Pleader a/w Mr. P.G. Sawant, AGP for the Respondent No.5 – State.

Ms. Shyamali Gadre I/by M/s. Little & Co. for the Respondent No.6.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD : 1st NOVEMBER 2018

DATE ON WHICH JUDGMENT IS PRONOUNCED : 18th DECEMBER 2018

JUDGMENT (PER A.S. OKA, J.):-

OVERVIEW

1 As per the administrative order dated 26th October 2016 passed by Hon'ble the Chief Justice, this PIL has been specially assigned to a Bench presided over by one of us (A.S. Oka, J.). This petition was substantially heard in November 2017, but was adjourned for various reasons including the reason of pendency of a writ Petition challenging acquisition of land for setting up a Sewage Treatment Plant. Lastly it was heard on 1st November 2018.

2 This Public Interest Litigation concerns pollution of river Godavari. River Godavari is the second longest river in India after the river Ganges. It is popularly known as “Dakshin Ganga” (Ganges of south). River Godavari is one of the main sources of water supply to the city of Nashik. The orders passed from time to time in this PIL will show that considering large scale pollution of the river due to various reasons, several steps are required to be taken for rejuvenation of the river and for preventing pollution of the said river.

3 Apart from the doctrine of public trust and Article 51A(g) of the Constitution of India, even in ancient times, the importance of rivers was well recognised. This fact is noted by the Apex Court in the case of *Association for Environment Protection Vs. State of Kerala and Ors.*¹ in paragraph 1 which reads thus:

“Leave granted. Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different

¹ (2013) 7 SCC 226

countries are full of stories of man's zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc. because it is believed that they belong to all living creatures.”
(emphasis added)

4 The petitioners are citizens of India who are residents of Nashik. The substantive relief claimed in this PIL is to issue a direction to the respondents to clean the polluted Godavari river. Godavari is India's second longest river after the Ganges. Its source is in Triambakeshwar near Nashik. It flows for approximately 1,465 kilometres draining the states of Maharashtra, Telangana, Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Odisha, Karnataka and Puducherry and emptying into Bay of Bengal through its extensive network of tributaries. Measuring up to 312,812 sq km, it forms one of the largest river basins in the Indian subcontinent, with only the Ganges and Indus rivers having a larger drainage basin. In terms of the length, catchment area and discharge, the Godavari river is stated to be the largest in peninsular India. The river has been revered in Hindu scriptures . There are 350 or more major or minimum dams and barrages constructed in the Godavari river basin. It has many tributaries such as Kadva, Shivana, Purna, Kadam,Pranahita, Indravati, Taliperu, Sabari,Nasardi, Darna, Pravara, Manjra etc.

5 What Pandit Jawaharlal Nehru once said about Ganges equally applies to Godavari. He said thus:

“The Ganga, especially, is the river of India, beloved of her people, round which are intertwined her memories, her hopes and fears, her songs of triumph, her victories

and her defeats. She has been a symbol of India's age-long culture and civilization, ever changing, ever flowing,.....”

6 In this petition, mainly a grievance is made about the pollution of the river in and around the city of Nashik and the failure of all concerned authorities to maintain the river clean. The orders passed from time to time will show that there is hardly any dispute between the parties that the river has been considerably polluted. The reports and photographs on record show the extent of pollution. There are several holy places located on the banks of the river in or around Nashik. The major factors which have led to pollution have been set out in paragraph 6 of the order dated 7th March 2014 in this PIL by which Rule was issued and interim directions were issued. Paragraph 6 reads thus :-

“6. There is no dispute between the parties that the river water has been polluted to a great extent. There are various factors which have led to the extensive water pollution. On the bank of the river, there are many holy places like Someshwar Temple, Navsha Ganapati Temple, etc. There are well-known religious places like Laxman Kund, Ram Kund etc. Lacs of devotees visit the said places and ghats on river Godavari in or around Nashik. Many of them do “asthi visarjan” (immersion of ashes) in the river. Many of them undertake mass bathing. Obsequious ceremonies such as “dashkriya vidhi” are being performed. There are two industrial areas at Nashik known as 'Satpur' and 'Ambad'. It is alleged that there is no CETP constructed for the treatment of the industrial waste generated in the MIDC areas. The river is being used for industrial as well as domestic waste disposal. Beyond the limits of Nashik City, on a large scale, there are agricultural activities carried out on both the sides of the river. Moreover, the City of Nashik is ever growing. There are large number of industries which are set up in or around Nashik. There has been population explosion at Nashik. Apart from these several factors which are the causes for pollution, even the

activities of common people have made adverse impact on the eco-system of the river.”

7 Judicial notice will have to be taken of the additional causes. As stated earlier, there are several holy places of religion in and around the city of Nashik on the banks of Godavari. Barring few exceptions, the places of religion near Godavari are littered with garbage. As the places of religion are frequented by large number of devotees, various articles and waste are being indiscriminately discharged in Godavari. Sufficient number of toilets are not available around the places of religion having latest technology. There are instances of people answering nature's call on the banks of the river. Vehicles are being taken on the river bed and washed in the bed. Though the State has imposed ban on use of plastic articles of various categories, still people throw plastic articles and plastic bags containing garbage and other material. After “Kumbhamela” of 2015, which is a major religious event which takes place after every 12 years, substantial quantity of water was required to be released from up-stream dams for cleaning the dirt in the river.

8 Apart from the detailed order dated 7th March 2014, various interim orders have been passed from time to time. The interim orders will show that the State Government as per the directions of this Court has set up a Committee headed by the Divisional Commissioner, Nashik which is monitoring the implementation of the orders passed by this Court from time to time. Moreover, under the interim orders, the CSIR - National Environmental Engineering Research Institute (for short “NEERI”) was appointed as an expert authority which has submitted various reports containing short term and long term measures. There are interim orders issued by this Court from time to time for directing

the implementation of the recommendations of NEERI. The implementation of the recommendations is being monitored by the said Committee which has a representative of NEERI as a member.

POINTS FOR CONSIDERATION

9 Before we deal with the submissions and the law on the subject, it will be necessary to note the points which broadly arise in this PIL :-

- (I) The first issue will be of steps required to be taken for rejuvenation of River Godavari;
- (II) The second issue is of taking various preventive measures such as preventing throwing of garbage, waste material, dried flowers used for pooja (known as “Nirmalya”) etc. into the river, carrying objectionable activities in the dry river bed or on or near the bank of the river. The issue is also of preventing illegal constructions, both temporary and permanent, on the river bed and surrounding areas of the river. The issue will be of preventing the pollution created by the religious ceremonies performed in the temples and holy places as well as on open spaces in and around Nashik due to indiscriminate throwing of articles into the river.;
- (III) The failure to set up adequate number of Sewage Treatment Plants (STPs) in the city of Nashik which will prevent discharge of untreated sewage water into the river;
- (IV) Preventing discharge of polluted water from the industries and especially the industries in Satpur and Ambad Industrial Estates set up by the Maharashtra Industrial Development Corporation (for short “MIDC”);

- (V) The failure of the authorities to take suitable measures for preventing pollution of the river during the major religious events such as Kumbha Mela which is held in Nashik after every 12 years; and
- (VI) The failure of the citizens to co-operate with the authorities for preventing pollution of the river and the failure of the citizens to perform their fundamental duty under clause (g) of Article 51A of the Constitution of India.

10 As far as the legal issues are concerned, the same revolve around the legal and constitutional obligations of the State Government and the Municipal Corporation of City of Nashik (for short “the said Municipal Corporation”). The said Municipal Corporation has been constituted under the provisions of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). It is also a planning authority within the meaning of the Maharashtra Regional and Town Planning Act, 1966 (for short “the said Act of 1966”). The citizens have fundamental right to live in pollution free atmosphere. The pollution can be of air, noise and water. Moreover, the doctrine of public trust is squarely applicable to the rivers inasmuch as the State is the owner of the river beds and the water flowing in the rivers. As held by us, precautionary principle will also apply in the present case. Under clause (g) of Article 51A of Constitution of India, it is the duty of every citizen to protect and improve environment including various lakes, rivers, etc. Moreover, the directive principles of State Policy enjoin the State to prevent pollution of the rivers. We are dealing with the legal aspects separately.

11 Apart from the core issues, several other issues have been dealt with such as the issue of permission granted to the seventh respondent M/s. Indiabulls by the State Government to lift water from river Godavari. The permission has been granted to the said respondent to lift the treated water released by the Sewage Treatment Plants (STPs) constructed by the said Corporation. Under the agreement with the State Government, the seventh respondent was given three options. The first one was of lifting water from the storage sump near the STPs. The second option was of taking water from existing storage Bandhara on the Godavari River and the third option was drawing water by constructing a storage Bandhara/barrage of Godavari River. It appears that the seventh respondent is lifting the water near the barrage constructed by the eighth respondent at Eklahare which is downstream. There is an order dated 11th September 2015 which deals with this controversy which notes that the water from STPs is being released into River Godavari which goes downstream and the same is lifted by the seventh respondent from the barrage constructed by the eighth respondent. The same order discusses the issue about water allocation made to eighth respondent – Maharashtra State Power Generation Company Limited. The issue concerning the seventh respondent has been dealt with by the aforesaid order dated 11th September 2015 by issuing certain directions on the basis of the agreement.

12 There are two interim orders which are material. The first is dated 7th March 2014 which extensively deals with the recommendations of NEERI. Paragraphs 18 to 42 of the said order are material which read thus :-

“18. The directions issued by this Court to the concerned Respondents will require continuous monitoring.

Therefore, we hereby constitute a Committee headed by the Divisional Commissioner of Nashik. The Divisional Commissioner shall be the Chairman of the Committee which shall consist of following members;

- (a) The Commissioner of Nashik Municipal Corporation;
- (b) The Collector of District Nashik;
- (c) A representative nominated by the Maharashtra Pollution Control Board;
- (d) An expert in the field appointed by the Divisional Commissioner after consulting the Petitioners and the Municipal Corporation;
- (e) A representative of NEERI nominated by NEERI.

19. The Divisional Commissioner of Nashik shall appoint any Revenue Officer in his office not below the rank of Deputy Collector to act as the Coordinator/Secretary of the Committee. The Divisional Commissioner shall complete the constitution of the Committee within a period of three weeks from today. The Divisional Commissioner shall be entitled to appoint SubCommittees for assisting the Committee.
20. We direct the Nashik Municipal Corporation to ensure that necessary secretarial and other staff is made available to the Committee on permanent basis as per the requisition issued by the Divisional Commissioner. The Nashik Municipal Corporation shall make arrangements for providing vehicles to the members of the Committee for site visits. Necessary stationary, computers, printers etc shall be made available by the Nashik Municipal Corporation to the said Committee.
21. The State Government shall create a separate Cell consisting of adequate number of Police Officers and the Police Personnel for maintaining law and order and for assisting the Civic Authorities and the Committee appointed by this Court for implementation of the orders passed by this Court.
22. The Commissioner of Police, Nashik, will appoint an officer not below the rank of a Deputy Commissioner of Police, who shall be the incharge of the Cell of the police force deployed for the protection of Godavari River, as above. For the time being, the minimum staff of atleast

one Inspector of Police, four Sub-Inspectors of Police and 30 Police Constables shall be made available. During the Kumbh Mela, obviously large number of police personnel will have to be deployed for which directions will be issued subsequently.

23. The Municipal Commissioner of City of Nashik shall ensure that the amounts as demanded by NEERI are paid from time to time. The NEERI shall submit the bills directly to the Municipal Corporation. In case of difficulty, both the Nashik Municipal Corporation and the NEERI can apply to this Court for seeking necessary directions. NEERI shall submit final action plan by the end of July 2014.
24. As far as the constructions of STPs at Gangapur and Pimpalgaon Khamb are concerned, the acquisition needs to be completed as expeditiously as possible. As far as the land for the STPs at Pimpalgaon is concerned, the Notification under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 has been already issued. The acquisition shall be taken to the logical end as expeditiously as possible and in any event within a period of six weeks from today.
25. As regards the acquisition of the land for STPs at Gangapur is concerned, the Petition filed by Nashik Municipal Corporation before the Apex Court for challenging the order of this Court has been disposed of. Even in the said case, the State Government shall complete acquisition proceedings end within a period of six months from today.
26. To facilitate the completion of acquisition of the lands at Pimpalgaon and Gangapur, the Nashik Municipal Corporation shall ensure that as and when called upon to do so, necessary amount towards compensation is deposited with the Collector and/or concerned Revenue Authorities.
27. We have already adverted to the report of NEERI dated 5th July 2013 which records the recommendations for immediate action. We direct the Nashik Municipal Corporation, MIDC and Maharashtra Pollution Control

Board (MPCB) to scrupulously comply with the said recommendations and implement the same within a period of two months from today, if not implemented till today.

28. We may note that the action plan for control of water pollution of River Godavari is under consideration of the State Government. The State Government shall take appropriate decision on the draft action plan within a period of three months from today. While taking appropriate decision, the State Government shall consider the recommendations made by NEERI in its reports which are on record of this Petition.
29. The State Government shall take a decision on the proposal dated 20th February 2013 in the form of letter bearing No.480/13 submitted by the Nashik Municipal Corporation for approval of staff for the purpose of creating a separate and dedicated Godavari Conservation Department within a period of two months from today.
30. The order dated 20th August 2013 passed by this Court records that in case of 10 defaulting industries in Satpur and Ambad, action has been taken by the Maharashtra Pollution Control Board. The Maharashtra Pollution Control Board shall continue action against defaulting industries and submit a status report to this Court within a period of three months from today.
31. We direct the MIDC to ensure that CETP is set up in Satpur and Ambad Industrial Areas as expeditiously as possible. We make it clear that even if the user industries are not willing to bear the cost of CETP, the MIDC shall take steps on its own for setting up CETP. The Action Taken Report shall be filed by the MIDC within a period of three months from today on the aspect of setting up CETP.
32. The Nashik Municipal Corporation shall prepare and implement a comprehensive awareness programme for citizens to ensure that the citizens perform their fundamental duty as stated in the earlier part of this order. We direct that the Nashik Municipal Corporation

to take help of NGOs as well as Schools and Colleges in the City for implementing the public awareness programme. The Nashik Municipal Corporation with the assistance of the Law Colleges and the District Legal Services Authority shall organize seminars/street shows as a part of awareness campaign.

33. We direct that the Nashik Municipal Corporation to display boards of sufficient size at strategic locations calling upon the members of the public not to throw garbage or any material whatsoever in the river. The boards shall contain an appeal to the public at large to perform their duty to maintain the River Godavari free of pollution.
34. The Nashik Municipal Corporation shall make available the facility of sufficient number of permanent artificial ponds for immersion of ashes and other organic material during the course of traditional obsequies. We are conscious of the fact that the use of artificial ponds for this purpose cannot be made compulsory, but nevertheless the Nashik Municipal Corporation shall create the facility within two months and shall give wide publicity to the fact that the said facility is available. Boards shall be erected at strategic locations around the River Godavari informing the members of the public that the facility of artificial ponds is available. The boards shall contain a fervent appeal to use the artificial ponds.
35. Similarly, at the time of immersion of Ganesh idols during the Ganesh Festival and at the time of immersion of Durga idols during the Navratri Festival, artificial ponds shall be temporarily created. Advance publicity shall be given as regards the availability of the ponds and an appeal should be made to the members of the public to make use of the said ponds. As in case of several other Cities, centres shall be established by the Nashik Municipal Corporation at various places in the City for receiving idols from the devotees for the purposes of immersion. Thereafter, all the idols can be immersed by the Nashik Municipal Corporation in such a manner that no pollution is caused due to immersion of the idols.

39. The Committee appointed under this order shall examine the action taken by all the concerned Authorities as regards the implementation of the recommendations in the first two reports of NEERI and the directions contained in this order. The Committee shall submit a report to this Court on or before 5th May 2014.
40. As regards the Kumbh Mela in the year 2015, we are informed across the bar that the State Government has sanctioned funds for carrying out work of various categories. The State Government will have to take into consideration the report submitted by NEERI containing various recommendations. We direct the Collector to file an affidavit for bringing on record the decision taken by the State Government in the light of the third report of NEERI. The said affidavit shall be filed before 30th June 2014.
41. The Committee appointed by this Court shall submit periodical reports to this Court after every two months as regards implementation of the directions issued by this Court as well as implementation of the recommendations of the NEERI. The first report shall be filed as directed above on or before the 5th May 2014.
42. We make it clear that the directions issued by this Court from time to time which are not inconsistent with these directions shall continue to hold the field.”

13 The order dated 19th December 2014 contains certain additional directions which mainly deal with the Kumbh Mela which was scheduled to be held in the year 2015. The clauses (vii) to (xiv) of the operative part of the said order are relevant which read thus :-

- (vii) We accept the statements made in the affidavit dated 7th November, 2014 filed by Shri Bhimrao Abhiman Shinde, the Deputy Collector (Land Acquisition) No.2, Nashik as regards the outer limit for completing the acquisition of the lands for setting up STPs at Gangapur and Pimpalgaon-Khamb. The State Government shall endeavour to hand over the possession of both the lands needed for both STPs to

the Nashik Municipal Corporation as expeditiously as possible and in any event on or before 15th February, 2015. The Nashik Municipal Corporation shall file an affidavit by the end of February, 2015 setting out the possible outer limit within which construction of STPs will be completed and the same will be made functional. The Committee appointed by this Court shall monitor the construction and commissioning of STPs at Gangapur and Pimpalgaon-Khamb;

- (viii) The State Government shall consider of amending the Bombay Police Act and Defacement Act providing for stringent punishments/penalties for various violations;
- (ix) The Committee appointed by this Court shall consider the issue of erecting barricades for preventing entries of the vehicles near the Godavari river and shall issue appropriate directions to the Nashik Municipal Corporation;
- (x) The Nashik Municipal Corporation shall ensure that during the Simhastha Kumbh Mela arrangements are made around the river Godavari for providing large receptacles at various places for the collection of garbage. Arrangements shall be made for lifting of garbage from the receptacles at frequent intervals. Similarly, adequate number of additional large size Kalash shall be made available for collection of organic material like Nirmalya;
- (xi) During Kumbh Mela, the Nashik Municipal Corporation shall display banners, flexes and boards in different parts of the City and near different entry points of the City informing pilgrims and visitors that they are under an obligation to take steps to keep the Godavari clean and free of pollution for maintaining its sanctity . The boards shall contain an appeal not to throw garbage and organic material in the river. The boards will also record that efforts are being made to reduce pollution of river Godavari and to rejuvenate the same under the orders of this Court. An appeal shall be made to all concerned to co-operate for keeping river Godavari free of pollution.

The Appeal shall incorporate that stringent action shall be taken against those who violate laws. Such boards shall be in Marathi as well as Hindi languages;

- (xii) We direct the third Respondent to take prompt steps for filing complaints under Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 for violations of the provisions of the said Act in relation to river Godavari. The action taken report in the form of an affidavit shall be filed before the end of February 2015;
- (xiii) The Committee constituted under the orders of this Court shall set up a grievance redressal mechanism to enable the citizens to bring to the notice of the Committee the violations of law in relation to the river Godavari and the breaches of the orders of this Court. However no citizen will have right of hearing before the Committee and the Committee is not expected to pass a reasoned order on each complaint. The Committee shall take appropriate steps within a period of one month. The details of the redressal mechanism shall be made available on the website of the Nashik Municipal Corporation;
- (xiv) We direct the Nashik Municipal Corporation to upload on its website all the NEERI reports as well as copies of relevant orders of this Court as well as Marathi translation of the said orders.”

LEGAL POSITION

FUNDAMENTAL RIGHTS UNDER ARTICLE 21, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES OF CITIZENS

14 The legal position will have to be considered first. The State Government, the said Municipal Corporation, the Maharashtra Industrial Development Corporation (for short “MIDC”) and the Maharashtra Pollution Control Board are parties to the petition. The said entities are undisputedly “State” within the meaning of Article 12 of the Constitution of India. Firstly, let us advert to the Constitutional

provisions. Scope of Article 21 of the Constitution of India has been considerably expanded by the Apex Court. Right to live in a clean and pollution free environment has been held to be a part of Article 21. Moreover, right to have clean drinking water is also a fundamental right which is guaranteed by Article 21. This is in the context of the fact that the water in River Godavari is a source of water supply to the said Corporation area and nearby villages. The right to live a dignified and meaningful life is also an essential part of the bundle of rights guaranteed by Article 21. If the rivers are polluted and pollution is created in and around the rivers, the fundamental right of living a dignified and meaningful life of the citizens is defeated. The fundamental right to live in a pollution free atmosphere is also violated.

15 Article 48A of the Constitution of India is a Directive Principle of State Policy forming a part of Part – IV of the Constitution of India. It enjoins the State to protect and improve the environment. Article 48A reads thus :-

“48A. Protection and improvement of environment and safeguarding of forests and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

16 The Directive Principles are fundamental in the governance of the country. This Article will have to be read with clause (g) of Article 51A of the Constitution of India which is one of the fundamental duties of citizens. Clause (g) of Article 51A reads thus :

“51A – Fundamental duties – It shall be the duty of every citizen of India -

(a)

.....

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to

have compassion for living creatures;”
(emphasis added)

Thus, it can be said that for protecting fundamental rights of the citizens under Article 21, the State is duty bound to take all steps to prevent pollution of rivers and to take steps for cleaning and rejuvenation of the rivers. It is the obligation of the State to maintain rivers clean and free from pollution. The citizens owe a duty to protect and improve environment including rivers.

DOCTRINE OF PUBLIC TRUST AND PRECAUTIONARY PRINCIPLE

17 The issue of applicability of the doctrine of public trust in India is no longer *res integra*. In the case of *M.C. Mehta Vs. Kamal Nath*², the law has been laid down by the Apex Court in paragraphs 23, 24, 25, 34 and 35 which read thus :-

“23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled *An ecological perspective on property: A call for judicial protection of the public's interest in environmentally critical resources* published in *Harvard Environmental Law Review*, Vol. 12 1988, p. 311 is in the following words:

“Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the

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(1997) 1 SCC 388

environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

‘Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.’

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

‘We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that “we choose death”.’

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this

malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions.”

24. **The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine.** Under the Roman law these resources were either owned by no one (*res nullius*) or by every one in common (*res communis*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “*Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*”, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and

English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — ‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

25. 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.”

- “34. Our legal system — based on English common law — includes the public trust doctrine as part of its

jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. **The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”**

(emphasis added)

The Apex Court held that the Public Trust Doctrine is applicable to India.

18 In the case of *Fomento Resorts and Hotels Limited and Anr. Vs. Minguel Martins and Ors.*³, the Apex Court dealt with the

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(2009) 3 SCC 571

same issue in paragraphs 53 to 55 as well as 65 which read thus :-

“53. **The public trust 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. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, “The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention” (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. **The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain.** Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people’s rights and the people’s long-term

interest in that property or resource, including down slope lands, waters and resources.

65. **We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.”**

(emphasis added)

19 In the case of the Association for *Environment Protection and State of Kerala*⁴, in paragraph 4, the Apex Court had held thus :-

- “4. The courts in different jurisdictions have, time and again, invoked the public trust doctrine for giving judicial protection to environment, ecology and natural resources. **This Court also recognised the importance of the public trust doctrine and applied the same in several cases for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people.”**

(emphasis added)

20 Finally in the case of *Nature Lovers Movement Vs. State of Kerala and Ors.*⁵ in paragraph 2, the Apex Court observed thus :-

- “2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society’s respect for plants,

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(2013) 7 SCC 226

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(2009) 5 SCC 373

trees, earth, sky, air, water and every form of life. The main motto of social life is to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.”

21 The last judgment which is relevant which deals with precautionary principle is in the case of *Vellore Citizens' Welfare Forum Vs. Union of India and Ors.*⁶. Paragraphs 9, 10, 13, 14 and 15 are material which read thus :-

9. It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 per cent of the country's export. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.

10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable Development” is the answer. In the international sphere, “Sustainable Development” as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called “Our Common Future”. The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as “Brundtland Report”. In 1991 the World Conservation Union, United Nations Environment

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(1996) 5 SCC 647

Programme and Worldwide Fund for Nature, jointly came out with a document called “Caring for the Earth” which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. 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 the Brundtland Report means “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. We have no hesitation in holding that “Sustainable Development” as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

13. **The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land.** Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal

purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. *Protection and improvement of environment and safeguarding of forests and wildlife.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. **In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays**

Principle are part of the environmental law of the country.

15. **Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law.** It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M. v. Shivakant Shukla* [(1976) 2 SCC 521 : AIR 1976 SC 1207] , *Jolly George Varghese case* [*Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470] and *Gramophone Co. case* [*Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667] .”
(emphasis added)

22 The principles which emerge from the aforesaid decisions are :-

- A] The doctrine of public trust is applicable in India;
- B] The said doctrine enjoins the State and its agencies and instrumentality of the State to protect natural resources such as water bodies, rivers, seashores, etc., for enjoyment of the general public;
- C] The State and its agencies as well as instrumentality of the State have duty to protect long established public rights over a short-term private gain;
- D] Aesthetic use and pristine glory of the natural resources, environment and Eco-systems of our country cannot be permitted to be eroded for private commercial or any

other use unless the Courts find it necessary, in good faith for the public good and in public interest to encroach upon the said resources;

E] In the case of Vellore Citizens' Welfare Forum (supra), the Apex Court has recognized precautionary principle which enjoins the State to take all possible steps to prevent pollution of natural resources like rivers, forests, lakes, etc.;

MANDATORY DUTIES OF STATUTORY AUTHORITIES

23 One of the objects of MIDC is to promote industrialization and to set up industries. In view of the aforesaid legal principles, it is the duty of MIDC to ensure that industries set up by it do not create pollution and violate the fundamental rights of the citizens under Article 21 of the Constitution of India. It is the contention of MIDC that it has given plots in the Satpur and Ambad Industrial Estates for setting up Common Effluent Treatment Plants (CETPs). If the industries do not set up CETPs, MIDC is under an obligation to do so. As far as the said Municipal Corporation is concerned, its obligatory duties have been laid down in section 63 of the said Act of 1949. Sub-section (2) of section 63 enjoins the said Municipal Corporation to perform duty of cleansing not only public streets but the places in the City. Under sub-section (3), it is the duty to collect, remove, treat and dispose of sewage, offensive matter and rubbish. Under sub-section (16), it is its duty to generally abate all nuisance. Under sub-section (21), it is the duty of the said Corporation to prevent and check the spread of dangerous diseases. Thus, its obligation is to ensure that river remains clean and water borne diseases do not spread. Under sub-section (4), the duty of the

said Corporation is to construct, maintain and clean drain and drainage work. Therefore, construction of STPs having adequate capacity to deal with and to treat the waste water before its release in the river is a mandatory obligation of the said Municipal Corporation under the said Act of 1949 apart from its obligations which are laid down under the Constitution.

RIGHTS UNDER ARTICLE 25 OF THE CONSTITUTION

24 The holy places in the city and banks of the river as well as river beds are frequented by large number devotees. There are various activities conducted in the river bed. This Court had an occasion to consider the said issue in connection with river Chandrabhaga which flows through the famous religious town of Pandharpur. This Court dealt with the right of pilgrims (known as “Warkaris”) to use the river bed for various religious activities. Various directions have been issued by this Court on the said issue in PIL No.8 of 2012 in the case of *Campaign against Manual Scavenging in Maharashtra Vs. The State of Maharashtra & Ors.* One of the orders which is of some relevance is the order dated 24th December 2014. By the said order, the specific direction was issued by this Court to the State to ensure that the river bed of Chandrabhaga should not be used for erection of any temporary pandals or other construction or shelters or for any prohibitory activity. Without touching the principles laid down in the said orders, the First Court, by a subsequent order, has permitted erection of temporary structures in River bed for few days in a year during major religious festivals. This Court directed the State to remove illegal constructions made in the river bed and on the banks of the river. Paragraph 9 of the said order

dated 24th December 2014 is material which reads thus :-

“9. In the order dated 3rd July, 2014, this Court has made extensive reference to Clause (g) of Article 51 A of the Constitution of India, which lays down fundamental duty of every citizen to protect and improve the natural environment including forests, lakes and rivers. This Court has noted that Clause (g) of Article 51 A of Constitution of India provides that every citizen should have compassion for living creatures and therefore, every citizen should have compassion for other citizens. Under Article 21 of the Constitution of India, every citizen has a fundamental right to have live in a pollution free atmosphere and a right to live in healthy conditions. As stated in earlier, the Varkaris have been regularly visiting Pandharpur very religiously in large numbers to offer their prayers to Vitthal and Rukmini. **It is obvious that the Varkaris will have to religiously implement the constitutional provisions especially the duty of every citizen to protect and improve the natural environment as also protect the rivers from pollution. The Varkaris have to respect the fundamental right available to the citizens of Pandharpur to live with dignity and in a pollution free atmosphere.** It is for this reason that this Court has already appointed the National Environmental Engineering Research Institute (NEERI) to advise on steps to be taken for preventing the pollution of river Chandrabhaga and for rejuvenation of river Chandrabhaga. In fact, a report dated 20th September, 2014 submitted by NEERI is already on record. It is, therefore, obvious that considering the constitutional mandate, the Varkaris will have to accept and abide by what is stated before this Court by “Shri Varkari Prabodhan Mahasamiti” and their office bearers. Therefore, we make it clear that apprehensions expressed by some of the Varkaris are completely uncalled for.”

(emphasis added)

25 A prayer was made for reconsideration of the said direction in the context of the rights of the devotees. The said prayer was dealt with by the order dated 5th March 2015 in the said PIL No.8 of 2012. Paragraphs 19 and 20 of the said order read thus :-

- “19. Apart from the prohibition under the said Rules relied upon by the learned counsel appearing as amicus curiae, it will be necessary to make a reference to various decisions of the Apex Court. In the case of *Bhagwan Dass Vs. U.P. and Others* [(1976)3 SCC 784], the Apex Court has held that rivers, river beds and minerals lying in river beds vest in the State. That is the principle laid down even under section 37 of Bombay Land Revenue Code, 1879 as well as section 20 of the Maharashtra Land Revenue Code, 1966.
20. In paragraph 1 of the decision of the Apex Court in the case of *Association of Environment Protection and State of Kerala and Others* [(2013)7 SCC 226], it is observed thus :
- “Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man’s zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc., because it is believed that they belong to all living creatures”.

In the context of the argument based on alleged tradition to carry on activities on the river bed, what is noted by the Apex Court is significant. Our sages and saints always preached and also taught people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells etc. because it is believed that they belong to all living creatures. We fail to understand as to how practice of erecting structures in the river bed can become essential part of religion when our sages have taught us to worship rivers. The Apex Court relied upon the “doctrine of the public trust” under the Roman law and held that the rivers, lakes, air, sea, water etc are the public properties which are covered by the said doctrine.”

Paragraphs 24 and 25 of the said order read thus :-

“24. There are submissions made by learned counsel representing the organisations of Warkari based on Article 25 of the Constitution of India. The scope of Article 25 has been repeatedly interpreted by the Apex Court right from its leading judgment in Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay [(1962)SUPP SCR 496] The said judgment holds that the protection of Article 25 and 26 extends to rituals and observances, ceremonies and modes of worship which are integral parts of religion. Thus, unless such ceremonies are found to be an integral part of religion, the protection under Article 25 cannot be extended. The learned amicus curiae has relied upon the decision of the Commissioner of Police and Others Vs. Acharya Jagdishwarandanda Avadhuta and Anr. [(2014)12 SCC 770]. In paragraph 9 of the said decision, the Apex Court observed thus :

“9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc. of the given religion. What is meant by 'an essential part or practices of a religion' is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and

alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution. No body can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non- essential part or practices.”

The test laid down by the Apex Court to determine whether a practice or part thereof is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away that part of practice could result in a fundamental change of the character of that religion, then such part could be treated as an essential or integral part.

25. What is sought to be contended across the bar is that holding of of Bhajans, Kirtans and Gajar on the river bed is an essential part or practice of the religion. The order of this Court does not prevent Warkari/pilgrims from organising Kirtan, Bhajan and Gajar. The order of this Court holds that the said activities cannot be carried out on the river bed. Thus, by no stretch of imagination, it can be said that act of imposing ban on erecting temporary structures on the river bed will amount to the change in the character of the religion or its beliefs. The test laid down by the Apex Court is whether a practice is an essential part of religion. The fundamental right under Article 25 is available in case of essential or integral part of religion. Therefore, by no stretch of imagination, Article 25 can be invoked by the Warkari/organisations for using the river bed. Even assuming that Article 25 is applicable to such activities, the right under Article 25 is not unqualified. We have already held that any such activity on the river bed will further pollute the river Chandrabhagha thereby creating health hazards to the citizens. While interpreting the scope and purport of the fundamental rights guaranteed by Article 25 of the Constitution, the fundamental duty envisaged by

the clause (g) of Article 51A will have to be taken into consideration. Therefore, looking at the issue in all possible angles, it is impossible to accept that the prohibition on activities on the river bed will amount to infringing the fundamental right under Article 25 of the Constitution of India. Moreover, the practice of illegally erecting structures in the river bed cannot be protected by invoking Article 25.”

(emphasis added)

26 The law laid down in the aforesaid Order will squarely apply to river Godavari as well. Therefore, there is no right vesting under Article 25 of the Constitution of India to use the river bed of Godavari for erecting temporary or permanent structures for religious purposes.

27 It is in the light of the aforesaid legal position that the prayers made in the petition and the submissions made across the bar will have to be considered.

SUBMISSIONS

28 The learned counsel appearing for the petitioners has prayed for continuation of the interim directions as final directions. He has relied upon several decisions including the decisions referred to above as well as the Judgment and order dated 2nd November 2016 by the Division Bench of Uttarakhand High Court in Writ Petition (PIL) No.140 of 2015 (Lalit Miglani Vs. State of Uttarakhand and Ors.). He has taken us through various decisions and interim orders passed by this Court from time to time.

29 He invited our attention to the River Regulation Policy contained in the Government Resolution dated 13th July 2009 which imposed several restrictions of setting up of industries near the rivers. He also pointed out that there is another resolution of 15th July 2000

issued by the Ministry of Environment of the State Government issued in exercise of powers under section 5 of the Environment (Protection) Act, 1986 and Rule 4(5) of the Environment (Protection) Rules, 1986. He pointed out that the said Government Resolutions contained directions for preventing pollution of the rivers by the industries. On the basis of the Government Resolution dated 15th July 2000, the Ministry of Environment issued further directions. The learned counsel appearing for the petitioners pointed out that unfortunately the Government Resolutions dated 15th July 2000 as well as 13th July 2009 have been scrapped by the State Cabinet and a circular to that effect has been issued by the Ministry of Environment of Government of Maharashtra on 3rd February 2015. He submitted that there is a need to have a policy and in absence of such policy, the rivers in the State will remain unprotected. He also invited our attention to various reports submitted by the Committee headed by the Divisional Commissioner as well as the reports of NEERI.

30 The learned counsel appearing for the said Corporation pointed out the steps taken for implementation of the directions issued by this Court. He also pointed out that the progress made in setting up of two STPs. He pointed out that as far as STP to be set up at Gangapur is concerned, the acquisition has been completed and the Municipal Corporation is in possession of the acquired land. He pointed out that after the judgment and order dated 6th July 2018 in Writ Petition No.1122 of 2017, as regards the land required for setting up STP at Pimpalgaon Khamb, a notification under section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the said Act of 2013”) has been published on 31st October 2018. He submitted that appropriate directions be issued to the State

Government to complete the acquisition in a time bound manner.

31 The learned Government Pleader also addressed the Court on the implementation of the interim directions issued by this Court from time to time. The learned counsel appearing for the MIDC also addressed the Court on the implementation of the directions.

CONSIDERATION OF SUBMISSIONS

32 There cannot be any dispute that there is an urgent need to take all possible steps to make river Godavari free of all kinds of pollution. With that object, various interim directions have been issued from time to time. Under the interim order dated 7th March 2014, a Committee headed by the Divisional Commissioner, Nashik (for short “the Committee”) was ordered to be constituted. The Committee has been constituted as per the said order and further directions have been issued to the said Committee by this Court from time to time. The Committee is holding regular meetings for monitoring the implementation of the directions issued by this Court as also for taking steps for implementation of the directions issued by this Court. The object of establishing the Committee is to ensure that the Revenue Department of the State Government, the said Municipal Corporation, the Police, the Pollution Control Board and the NEERI other agencies act together in one direction. As pointed out earlier, NEERI has been appointed as an expert agency which has submitted several reports containing its recommendations. It is the duty of the Committee headed by the Divisional Commissioner to take all possible steps for implementation of the recommendations of NEERI. The Committee headed by the Divisional Commissioner will have be empowered to direct NEERI to submit further reports and further recommendations. The State Government and the said Corporation

will have to place necessary funds at the disposal of the Committee for its day today functioning and for payment to NEERI and other expert agencies appointed by the Committee. As the Committee headed by the Divisional Commissioner is looking after and monitoring the implementation of the interim orders issued by this Court, the same Committee will have to perform the duty of implementing final directions issued by this Court under this Judgment and Order as most of the interim directions will have to be continued as final directions. Needless to add that the Committee headed by the Divisional Commissioner shall be entitled to issue requisitions to various authorities and officers with a view to ensure that the directions issued by this Court are complied with. Needless to add that the said directions will have to be issued within four corners of the law for ensuring the performance of statutory duties of various officers. We propose to clarify that if any party or any officer or any organisation has any grievance about the steps taken by the Committee or directions issued by the said Committee, the same will have to be made by way of filing civil application in the disposed of PIL and not by way of separate proceedings in this Court or before Civil Court. It will be the duty of the Committee headed by the Divisional Commissioner to ensure that all the recommendations in various reports already submitted by NEERI and which will be submitted by NEERI in future are implemented in its true letter and spirit.

33 We propose to issue directions to the State Government to complete the acquisition of the land at Pimpalgaon Khamb reserved for setting up STP. Due to technical errors committed by the State Officers, the acquisition proceedings were required to be set aside. The District Collector will have to monitor the process of

acquisition and ensure that there is no illegality committed in the process of acquisition. Acquisition will have to be completed within a period of one year from today and the Municipal Corporation will have to be placed in possession to that part of the reserved land which is not placed in possession of the Municipal Corporation so far.

34 Apart from six STPs which are stated to be functioning, the proposed STPs at Gangapur and Pimpalgaon Khamb will play a crucial role in reducing the pollution of the river. We make it clear that construction of both the STPs will have to be given utmost priority by the said Municipal Corporation and STPs will have to be made functional within the time bound schedule fixed by the Committee. Unless both the STPs become functional all efforts made to reduce pollution of the river will be insufficient.

35 Now, we propose to deal with the other directions which are required to be issued. There are various reports of NEERI on record. The action plan laid down by NEERI in its various reports should be the road map for all activities dealing with the cleaning and rejuvenation of River Godavari. Under the interim orders of this Court, Godavari River Protection Police Force has been constituted which is headed by an officer of the level of Deputy Commissioner. The Commissioner of Police, Nashik will have to ensure that adequate number of police personnel and officers are part of the said force as per the requisitions which may be issued by the Committee headed by the Divisional Commissioner from time to time. The said Committee will have to take a review of the number of police officers and police personnel which are required to be a part of the said protection force. Whenever there are major religious festivals, additional police personnel and officers will have to be made a part

of the protection force. The Committee shall take a decision on number of police personnel and officers who should be part of the protection force. The Committee will submit the recommendations to the Commissioner of Police, Nashik within a period of three months from today who shall ensure that police personnel and officers are deployed to be a part of the protection force as per the recommendations of the said Committee. Whenever on account of exigencies of religious festivals, additional police force is required, the Committed headed by the Divisional Commissioner will send necessary requisition to the Commissioner of Police who will be under an obligation to provide requisite force. Without help of the said protection force, the orders of this Court cannot be implemented. A proposal was submitted by the Nashik Municipal Corporation on 20th February 2013 for grant of approval for creating additional posts for the purposes of establishing a separate and dedicated Godavari Conservation Department. If the said proposal is not yet decided, the State Government will have to grant necessary permission to create posts within a period of two months from today. The Municipal Corporation will have to ensure that all the posts are filled in so that Godavari Conservation Department starts functioning.

36 The affidavits on record and the reports on record will show that one of the reasons for pollution of the river is failure of large number of citizens to perform their fundamental duty under clause (g) of Article 51A. It is because of this reason that directions will have to be issued for preventing the citizens from polluting River Godavari. In fact, apart from various factors such as failure of the Government agencies and the said Corporation to take measures, the pollution could not be prevented due to failure on the part of some of

the citizens in performing their fundamental duty under clause (g) of Article 51A of the Constitution of India of taking all possible steps for preserving and protecting the environment. Therefore, the interim directions containing various measures will have to continue as final directions. The holding of awareness campaign to sensitize the citizens about their fundamental duty under Article 51A(g) is of great deal of importance. The awareness campaign is necessary in schools and colleges. The campaign may be by organizing events, by showing films, by holding road shows etc. The said Corporation should take lead. Help of the District Legal Services Authorities and its Para Legal Volunteers can be taken. We propose to direct the Committee to develop its own website. The website can be used for various purposes such as uploading the minutes of meeting, for receiving complaints, for reporting the action taken on the complaints, etc. The website will become a platform for all the activities concerning preventing the pollution of the river and its rejuvenation.

37 The said Corporation and the State Government will have to take steps for demolition of illegal structures constructed on the river bed and around the river bed. Moreover, they will have to take steps to prevent such illegal constructions, whether temporary or permanent. The grievance redress mechanism set up under this Judgment will be available for submitting complaints regarding such illegal constructions. The Committee on the receipt of the complaints shall forward the same to the concerned authorities or officers. The said Corporation has been directed to make artificial ponds near the river for immersion of Ganapati and other idols. Moreover, permanent artificial pond must be created for the immersion of ashes so that an option will be available to the citizens. Large receptacles

or “Kalash” will have to be provided at strategic locations for the collection of “Nirmalya”. It necessary to inform the members of public about the availability of the said facilities and to appeal to them to use the same.

**IMPLEMENTATION OF THE PROVISIONS OF THE WATER
(PREVENTION AND CONTROL OF POLLUTION) ACT, 1974**

38 Various directions have been issued to enforce the penal provisions of the said Act of 1974. Certain coercive measures are necessary for protecting the river. Section 2(e) contains a wide definition of of pollution which reads thus:

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

Section 17 lays down the duties of the State Pollution Control Board which read thus:

“17. Functions of State Board -

- (1) Subject to the provisions of this Act, the functions of a State Board shall be -
 - (a) **to plan a comprehensive programme for the prevention, control or abatement of pollution of**

- streams** and wells in the State and to secure the execution thereof;
- (b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
 - (c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
 - (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
 - (e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;
 - (f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;
 - (g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;
 - (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
 - (i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
 - (j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of

- the year the minimum degree of dilution;
- (k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;
 - (l) **to make, vary or revoke any order-**
 - (i) **for the prevention, control or abatement of discharges of waste into streams** or wells;
 - (ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;
 - (m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
 - (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well; (o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.
- (2) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.”
(emphasis added)

Under clause (j) of section 2, “stream” includes a river. Thus, the Maharashtra Pollution Board is under an obligation to perform its statutory duty concerning rivers apart from preparing a comprehensive plan for prevention or abatement of pollution. Under clause 1(i) of section 17, it has power to issue orders for preventing

discharge of waste into rivers. Under section 45A, failure to comply with the orders is made an offence. Interim directions have been issued for setting criminal law in motion by following the procedure under Section 49.

39 Before we part with the judgment, we must record here that the role played by NEERI has to be appreciated. We hope and trust that NEERI will continue to play an important role in the entire exercise of rejuvenation of the river and for preventing pollution. We must record our appreciation for the work done by the Committee headed by the Divisional Commissioner. The extent of good work done by the Committee can be seen from very elaborate report submitted to this Court.

40 For the reasons which we have recorded in the judgment and various interim orders passed from time to time, we dispose of the petition by passing following order :-

ORDER

- (i) The Committee set up by the State Government under the Chairmanship of the Divisional Commissioner under the interim order dated 7th March 2014 will continue to function. The Committee shall hold regular meetings at least once in three months. The Committee shall coordinate the activities of various departments of the State Government, the said Corporation, NEERI, the Maharashtra Pollution Control Board and MIDC and shall ensure that all these entities take all possible steps for implementation of the directions issued by this Court and for performing their statutory and constitutional obligations. The Committee shall be responsible for

ensuring the compliance with the directions issued by this Court and for taking all possible steps to reduce and prevent pollution of Godavari. The Committee shall be responsible for ensuring implementation of the action plans suggested by NEERI. The Committee will be entitled to seek further opinion of NEERI or any other expert agency;

- (ii) The State Government shall make available sufficient funds to the Committee headed by the Divisional Commissioner for its day today functioning. The said Municipal Corporation shall pay fees/charges to NEERI and other expert agencies which may be engaged by the Committee. The said Municipal Corporation shall provide necessary infrastructure to the Committee. The direction contained in Paragraph 20 of the said order shall continue which reads thus :-

“We direct the Nashik Municipal Corporation to ensure that necessary secretarial and other staff is made available to the Committee on permanent basis as per the requisition issued by the Divisional Commissioner. The Nashik Municipal Corporation shall make arrangements for providing vehicles to the members of the Committee for site visits. Necessary stationary, computers, printers etc shall be made available by the Nashik Municipal Corporation to the said Committee.”

- (iii) The Committee shall be entitled to call any persons or representatives of any Authority or expert agency as special invitees/ permanent invitees to attend its meetings;

- (iv) As directed under the interim order, a Grievance Redress Mechanism shall be set up and maintained by the Committee headed by the Divisional Commissioner. A provision shall be made to enable the citizens to lodge complaints about the incidents of pollution of Godavari or encroachments as well as illegal constructions on the bed of the river or on the banks of the river by various modes such as by e-mail, by uploading the complaint on dedicated website along with the photographs or via whats app messages or in writing in traditional form. The Committee shall ensure that the complaints are looked into and attention of the concerned authorities is immediately invited to take necessary steps for redressal of grievances. A record of the said complaints shall be maintained. The action taken report shall be uploaded on the dedicated website within a period of three weeks from the date on which the complaint is received. Even the anonymous complaints shall be dealt with. It will be the responsibility of the Committee headed by the Divisional Commissioner to ensure that the Grievance Redress Mechanism works efficiently. Wide publicity shall be regularly given by the Committee to the availability of such mechanism by various methods including in print and other media;
- (v) The Committee shall have its own website. The State Government shall provide necessary funds for that purpose. The website shall be used inter alia for (a) uploading complaints and suggestions of the citizens

along with photographs, if any, and (b) for uploading the action taken reports on the complaints and suggestions. The website shall contain all the details of the Committee, its contact details, office address, the names of its members etc. The reports of NEERI and other expert agencies, the minutes of the meetings of Committee and copies of action taken reports submitted to this Court shall be made available on the website. The website can be used to publish articles of citizens on environment related aspects of river Godavari as well as copies of the relevant international treaties, convention concerning environment and rivers in particular. The copies of the interim orders, a copy of this Judgment, copies of relevant Judgments and orders of the Apex Court concerning pollution of rivers shall be made available on the website. The website can become a platform for disseminating all the information regarding prevention of pollution of the river;

- (vi) The State Government shall consider of formulating a River Regulation Policy in place of the Policy which has been cancelled. Appropriate decision shall be taken within a period of four months from today;
- (vii) Interim directions issued under paragraphs 21 and 22 of the interim order dated 7th March 2014 directing the State Government to constitute Godavari Protection Police Squad will continue as final direction. The Commissioner of Police, Nashik shall be under an obligation to provide adequate police force as per the

requisitions of the Committee headed by the Divisional Commissioner. The Committee shall take review of the number of Police Officers/constables required for the squad and submit necessary requisition to the Police Commissioner of Nashik within three months from today which shall be immediately acted upon. During the major religious functions and festivals in holy places around the river Godavari in Nashik, additional police force shall be deployed as may be requisitioned by the Committee headed by the Divisional Commissioner;

- (viii) The State Government shall ensure that the acquisition of lands at Pimpalgaon – Khamb is completed and the said Corporation is placed in possession of the entire acquired land within one year from today. The District Collector is directed to monitor the acquisition proceedings. The Nashik Municipal Corporation shall ensure that the work of setting up of STPs at Gangapur and Pimpalgaon – Khamb is completed as expeditiously as possible and in any event within the time prescribed by the Committee headed by the Divisional Commissioner which will monitor the setting up of the STPs ;
- (ix) Before commencement of major religious festivals, the Committee headed by the Divisional Commissioner will hold periodical meetings. Within one month from today, a meeting of the Committee shall be convened to consider the directions issued in this Judgment;

- (x) The State Government shall take a decision on the proposal dated 20th February 2013 in the form of letter bearing No.480/13 submitted by the Nashik Municipal Corporation for approval of creation of staff for the purpose of creating a separate and dedicated Godavari Conservation Department within a period of two months from today, if not taken till today. The said Corporation shall make necessary appointments on the establishment of the said Department;
- (xi) The Nashik Municipal Corporation shall prepare and implement a comprehensive awareness programme for citizens to ensure that the citizens perform their fundamental duty as stated in the earlier part of this order. The programmes shall be also conducted in schools and colleges. We direct that the Nashik Municipal Corporation to take help of NGOs as well as Schools and Colleges in the City for implementing the public awareness programme. The Nashik Municipal Corporation may take assistance of the Law Colleges and the District Legal Services Authority to organize seminars/street shows as a part of awareness campaign;
- (xii) We direct that the Nashik Municipal Corporation to display boards of sufficient size at strategic locations calling upon the members of the public not to throw garbage or any material whatsoever in the river. The boards shall contain an appeal to the public at large to perform their duty to maintain the River Godavari free of pollution;

- (xiii) The Nashik Municipal Corporation shall make available the facility of sufficient number of permanent artificial ponds for immersion of ashes and other organic material during the course of traditional obsequies. We are conscious of the fact that the use of artificial ponds for this purpose cannot be made compulsory, but nevertheless the Nashik Municipal Corporation shall give wide publicity to the fact that the said facility is available and appeal to the citizens to use the same. Boards shall be erected at strategic locations around the River Godavari informing the members of the public that the facility of artificial ponds is available. The boards shall contain a fervent appeal to use the artificial ponds;
- (xiv) Similarly, at the time of immersion of Ganesh idols during the Ganesh Festival and at the time of immersion of Durga idols during the Navratri Festival, artificial ponds shall be temporarily created. Advance publicity shall be given as regards the availability of the ponds and an appeal should be made to the members of the public to make maximum use of the said ponds. As in case of several other Cities, centres shall be established by the Nashik Municipal Corporation at various places in the City for receiving idols from the devotees for the purposes of immersion. Thereafter, all the idols can be immersed by the Nashik Municipal Corporation in such a manner that no pollution is caused due to immersion of the idols;

- (xv) The Committee appointed by this Court shall consider the issue of erecting barricades for preventing entries of the vehicles near the Godavari river and shall issue appropriate directions to the Nashik Municipal Corporation;
- (xvi) The Nashik Municipal Corporation shall ensure that arrangements are made around the river Godavari for providing large receptacles at various places for the collection of garbage. Arrangements shall be made for lifting of garbage from the receptacles at frequent intervals. Similarly, adequate number of additional large size Kalash shall be made available for collection of organic material like Nirmalya. All materials so collected shall be disposed in a safe and environment friendly manner;
- (xvii) During Kumbh Mela and other major religious festivals, the Nashik Municipal Corporation shall display banners, flexes and boards in different parts of the City and near different entry points of the City informing pilgrims and visitors that they are under an obligation to take steps to keep the Godavari clean and free of pollution for maintaining its sanctity. The boards shall contain an appeal not to throw garbage and organic material in the river. The boards will also record that efforts are being made to reduce pollution of river Godavari and to rejuvenate the same under the orders of this Court. An appeal shall be made to all concerned to co-operate for keeping river Godavari free of pollution. The Appeal

shall incorporate that stringent action shall be taken against those who violate laws. Such boards shall be in Marathi as well as Hindi languages. Such display boards shall be always displayed throughout the year at strategic locations in the city near the river and near holy places;

- (xviii) We direct the third respondent to take prompt steps for filing complaints under section 49 of the Water (Prevention and Control of Pollution) Act, 1974 for the offences under the said Act in relation to river Godavari and to exercise powers of issuing directions under section 17(1)(l)(i) of the said Act from time to time;
- (xix) MIDC shall comply with interim directions regarding establishing CETPs in its industrial estates in Ambad and Satpur and shall take stringent action against erring industries;
- (xx) All interim directions which are not inconsistent with this judgment and order shall continue to operate with all force as final directions;
- (xxi) If any person is aggrieved by the decisions or directions or actions of the Committee, the same can be challenged only by filing a civil application in this PIL and not by way of a separate proceedings;
- (xxii) The Committee headed by the Divisional Commissioner shall submit reports to this Court about the steps taken

in the first week of January and June of every calendar year. First such report shall be submitted on or before 10th June 2019;

(xxiii) This petition should be ideally placed before the same Bench or a Bench of which one of us are parties for monitoring compliance with the directions. Necessary directions be sought by the Registrar (Judicial-I) from the Hon'ble the Chief Justice;

(xxiv) Rule is made absolute on above terms;

(xxv) Pending civil applications do not survive and the same are disposed of accordingly;

(xxvi) All concerned to act upon an authenticated copy of this Judgment and Order.

(A.K. MENON, J)

(A.S. OKA, J)