is for owner to complain if he finds the rateable value to be high. The principles for fixation of rateable value are well-known. Ordinarily, a rateable value will be arrived at after particulars had been given by the owners or occupiers under Rule 8 of the said Rules. On the receipt of the notice, it will be for the complainant to lead evidence and prove as to what should be correct rateable value. A hearing is contemplated by Rule 18 and if the assessee requires any classification with regard to the entry made in the assessment book, we see no reason as to why this classification would not, ordinarily, be given. Be that as it may, Rule 15(2) does not require the giving of any particulars in addition to what is stated therein. The aforesaid decisions of various Courts, therefore, can be of no assistance to the respondents."

39. We agree with and affirm the reasoning of the High Court and accordingly reject the contention.

40. For the above reasons, the appeals are allowed in part. Regarding the maintainability of the appeals, we hold disagreeing with the High Court, that the appeal filed by the tenants were maintainable provided the appeals are filed in accordance with and complying with the conditions prescribed in Secs. 406 and 407 of the Municipal Corporations Act, as explained hereinabove. Insofar as the meaning and effect of proviso (aa) to the definition of "Annual Letting Value" in Sec. 2(1A) is concerned, it shall be given effect to and followed as explained in this judgment.

41. No costs.

(SBS) *Appeals partly allowed.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. B. N. Kirpal, Chief Justice,
and the Hon'ble Mr. Justice H. L. Gokhale

PRAVINBHAI JASHBHAI PATEL & ANR. v. STATE OF GUJARAT & ORS.*

Constitution of India, 1950 — Arts. 21 & 226 — Citizens have a fundamental right to live in a pollution free environment — And the Court is under a duty to compel the statutory authorities to discharge the said duty to the citizens.

Water (Prevention & Control of Pollution) Act, 1974 (VI of 1974) — Air (Prevention & Control of Pollution) Act, 1981 (XIV of 1981) — Environment (Protection) Act, 1986 (XXIX of 1986) — Sec. 5 — Apathy and lethargy of Government, Governmental agencies, and the Gujarat Water Pollution Board pointed out — Also pointed out how the industries causing pollution neglected to fulfil the legal requirements for over 15 years — Directions given to the Government to discharge its obligations — Certain other recommendations made — There cannot be any sympathy to erring units and such units directed to be closed down pending fulfilment of legal obligations — Such closure not to be treated as closure under the Industrial Disputes Act.

Notwithstanding the fact that Resolution under Art. 252 (1) had been passed by the Gujarat Assembly, which had the effect of making the Water Act applicable to the State of Gujarat, no Resolution has been passed under Art. 252 (1), making the Amendment Act of 1988 applicable to the State of Gujarat. The result of this is that neither Sec. 33A,

*Decided on 5-8-1995. Special Civil Application No. 770 of 1995 for a writ of mandamus, prohibition etc. for prevention of water pollution in Kharicut Canal, Khari river.

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nor some other important amendments made in the parent Act have been extended to the State of Gujarat. (Para 9)

Nevertheless, even with regard to water pollution, because of the definition of the word "environment", Sec. 5 of the Environment (Protection) Act can be invoked whenever the occasion arises. (Para 10)

There is consensus amongst the parties that this is not a case where the problem cannot be solved. All that is lacking is the effort or will to do it. Neither the industry, which causes pollution, nor the Government nor the G.P.C.B., nor the G.I.D.C. have paid more than lip service to the Environmental laws. It is stated by all that if the primary and secondary treatment is given to the effluent and the same is, thereafter, mixed with the Municipal sewage before it is discharged into the river, then there will be no water pollution. This has so far not been done. (Para 52)

It will not be wrong to say that the continued violation of the law by the industrial units has become a habit and condoning it, by the Governmental authorities a practice. (Para 53)

Under the various pollution Acts, it is the State Government, which has been empowered by the Central Government to enforce the law. A law, when it is enacted, is either obeyed or complied with voluntarily or it has to be enforced. (Para 65)

In effect, however, the Government has failed to discharge its legal obligations of enforcing the law. (Para 66)

The continued inaction of the State in enforcing the law clearly emboldened the Industry to violate the same merrily and with impunity and without any fear of any action being taken. (Para 67)

Since 1980, till today, not a single unit or person has been convicted of having violated any of the pollution laws. (Para 68)

Under Sec. 5 of the Environment Act, the G.P.C.B. could and ought to have issued directions to the units which were causing pollution to abide by the law. No effective directions have been issued in this regard. Even disconnection of electricity and/or water, in order to discipline the industrial units, was not directed. (Para 75)

It is true that Sec. 5 uses the word 'may' but this only means that it is not necessary for the Government to issue directions even when they are not called for. The power contained in Sec. 5, keeping in view the scheme of the Act and the provisions of Art. 48A and Art. 51A(g) has to be regarded as being coupled with duty to act. When, as is evident from the Preamble itself, the Act has been enacted to provide for protection and improvement of environment, then it would become the duty of the Government to take appropriate action under the Act as and when the provisions of the Act or the Rules framed thereunder, are violated or not complied with. Whenever the need arises or the circumstances demand, the Government would be required to exercise its powers under Sec. 5. Under the law, the Government has, in a way, been made the custodian of seeing that the environment is not polluted. (Para 77)

The learned Advocate General is right in contending that order to close an industry is one of the powers contained in Sec. 5 and it is not in each and every case that the said power should be exercised. There can be no doubt that what is the type of order to be passed must necessarily depend on the facts and circumstances of each case. (Para 78)

Closure in Sec. 5 may mean temporary or permanent closure. Permanent closure should be ordered only if an industry is not, by any means which are known, capable of achieving the parameters. Where, however, parameters can be achieved by setting up the requisite

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units, then the direction which has to be issued under Sec. 5 of the Environment Act is of suspension of production and not of permanent closure. (Para 80)

Complaints have been made against the industries since 1978 that they were causing pollution. The Chief Minister and Ministers have held meetings, reports had been prepared and even as far back as in 1981, the Industry was required to contribute some money for setting up of common treatment plant. The Industry, in other words, was put to notice and at least since 1980 that it was causing serious water pollution. The industrial units, however, continued to defy the law and made no attempts to mend their ways. (Para 87)

The industrial units cannot make a grievance that they have not had sufficient time to comply with the provisions of law. (Para 89)

Industrialists' concern now in meeting with the pollution norms is only because they are threatened with closure. (Para 97)

While dismissing the writ petitions filed by the aggrieved industrial units, it was observed in the case of *M/s. Narula Dyeing & Ptg. Works v. The Union of India,* 1995(1) GLH 679 by R. K. Abichandani, J. that looking at the gravity of the situation, the Government could exercise its jurisdiction of ordering closure, without giving an opportunity of hearing, because of the specific powers conferred on it by Rule 4 (5). In this connection, the Court referred to the release of trade effluents into Kharicut Canal where those units were causing damage to the crops in the fields. The Court is in respectful agreement with the aforesaid reasoning and, the law on the point has been correctly laid down by the single Judge and we reaffirm the same. In appropriate cases, where the circumstances warrant, orders can be passed by the Government, ordering closure even without giving an opportunity to file objections to the direction so issued. In any case, in the present case, the requisite notice under Rule 4 was given on 10-3-1995 and no replies have been filed to the Governmental authority and the time provided for has expired. (Para 107)

Industrialisation and ecology can and should coexist. It only requires the will and the effort. The Industries cannot, in effect, contend that because we are unable to achieve the G.P.C.B. norms, therefore, do not enforce the law. (Para 120)

What is required is Industrialisation and ecology and not industrialisation at the expense of ecology or ecology at the expense of industrialisation. The power granted under Sec. 5 has to be exercised in order to see that pollution is controlled and the balance between industrialisation and ecology is maintained. Whether the directions which are issued should be that of closure or in the nature of prohibition or be regulatory in character, must depend on the facts of each case. With the object to be achieved being known, viz., preventing pollution and requiring the adherence to the G.P.C.B. parameters, it would be for the Government or the G.P.C.B. to decide what type of action to be taken against an erring unit. It would stand to reason that if, by a regulatory order, pollution can be controlled, then that is the first option to be exercised. If a prohibitory order is required for the purpose of controlling pollution, then that has to be issued. Possibly as a last resort, if the pollution norms are not met or there is a persistent default or the norms cannot be met, then there may be no option but to order closure. (Para 121)

It is difficult to appreciate the contention that the Court should grant more time to all for completion of the setting up of the secondary treatment plants or the C.E.T.P. by the Industry. The Court, would not be justified in allowing the industry to continue to pollute when it is not in a position to treat its effluent and meet the statutory pollution norms. Just as a human being, with a bad digestive system, may have to be given a medicine and be required to go on fast, similar is the position with the Chemical industrial units in these areas. As it is not in a position to effectively take care of its effluent, a temporary closure, akin to a man going on fast, may be necessary and may have to be taken as

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a strong medicine for seeing that the laws are obeyed and these industries do not continue to violate other people's fundamental rights merely for the sake of earning money for themselves. (Para 123)

Persons who suffer as a result of this pollution can justifiably contend that the fundamental right to live under Art. 21 of the Constitution is violated. (Para 125)

The Government as well as G.P.C.B. and G.I.D.C. have been negligent in discharge of their statutory duties and they have, by their inaction, connived or collaborated or abetted to the continued pollution by these 756 polluting units. The Government, in particular, has shown little or no concern to the environment's degradation in the State. It is guilty of total inaction in taking effective steps for protecting and/or improving the environment and thereby, the quality of life. (Para 130)

The individual units causing pollution have shown complete disregard to the statutory provisions. For them, the rule of law did not exist as they seemed to have some protection or assurance that no effective action will be taken against them. Their industrial progress and affluence has been at the cost of environment. (Para 130)

Under Sec. 5 of the Environment Act, different types of orders can be passed by the Government, depending on the facts and circumstances of each case and the orders which can be passed include the order of closure and/or disconnection of electricity and/or water. (Para 130)

Under Sec. 5 of the Environment Act, appropriate directions are to be issued by the State Government. Normally, a Court would not pass an order, directing the closure of any units. Where, however, there is a complete abdication of authority by the Government and the Court comes to the conclusion, like in the present case, that the Government has failed to discharge its statutory duty, and which failure has resulted in the violation of the fundamental right of the petitioners and lacs of other people, guaranteed under Art. 21 of the Constitution, then the Court is left with no option but to issue appropriate direction to the Government to pass the necessary orders under Sec. 5 of the Environment Act. Court would like to observe that non-enforcement of a good law will invariably lead to the arising of an ugly situation. The Environment Acts were passed by the Parliament because the need had arisen to give statutory protection to the environment because degradation of the same was adversely affecting the quality of life. Having seen that the Government and G.P.C.B. have shied away from taking effective steps under the Environment Act in protecting the environment or preventing its destruction in its desire to industrialise, it is necessary to issue directions which are required to be followed by the State Government and also to make suggestions or recommendations for the consideration of the Government. (Para 131)

M/s. Narula Dyeing & Printing Works v. Union of India (1), affirmed.
M. C. Mehta v. Union of India (2), Virender Gaur v. State of Haryana (3) and C.E.R.C. v. Union of India (4), relied on.

A. D. Padival, for the Petitioners.
Amit Panchal, A.G.P. for Respondent No. 1.
Haresh Trivedi, for Respondent No. 2.
S. N. Shelat, for Respondents Nos. 3 & 4.
Umesh Shukla, for Respondent No. 9.
Kaushal Thakar, for Respondents Nos. 17 to 25.
K. V. Shelat, for Respondents Nos. 24 to 53.

(1) 1995 (1) GLH 679
(2) AIR 1988 SC 1037
(3) 1995 (2) SCC 577
(4) AIR 1995 SC 922

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R. H. Mehta, for Respondent No. 26.
A. Y. Koji, for Respondent No. 27.
Shirish Joshi, for Respondent No. 30.
A. S. Kothari, for Respondents Nos. 34 and 74.
B. R. Gupta, for Respondent No. 36.
Tushar Mehta, for Respondent No. 55.
D. M. Ahuja, for Respondent No. 56.
K. S. Nanavati, for Respondents Nos. 11, 12, 16, 20, 29, 33, 41, 47 to 51, 59, 62, 73, 6, 19 and 76.
S. B. Vakil & A. S. Vakil, for Respondents Nos. 7, 10, 14, 15, 18, 21, 28, 35, 39, 45, 54, 65, 70 and 72.
Notice of Rule to Respondents Nos. 6, 8, 13, 19, 37, 38, 43, 52, 58, 61, 63, 64, 67, 68, 71, 76 and 77 served by affidavits. Respondents Nos. 5, 23, 33 and 45 refused to accept notice of rule. Hence, unserved.
Respondents Nos. 22, 31, 32, 40, 42, 46, 57, 60, 66, 69 and 75 unserved with remark that they are not situated at the addresses mentioned in the petition.
C. S. Upadhyay, for Respondent No. 53.
Tushar Mehta, for Respondents Nos. 37 and 38.
G. Ramaswami, for M/s. Mardia Chemicals.

B. N. KIRPAL, C. J. Large scale pollution of the Kharicut Canal and the areas at least in the immediate vicinity thereof by some of the industrial units, which are now within the Ahmedabad Municipal limits, and the inaction of the Government Authorities in taking any effective steps to control it has led to the filing of the present writ petition. As we shall presently see, it is as if a Chemical War has been launched by some industrial units, against Man and Nature.

2. The two petitioners are agriculturists having agricultural land in Kheda District. In this petition, which has also been termed as "a public interest litigation", it is alleged that the industries which have been set up in the industrial estates at Naroda, Vatva and Odhav in Ahmedabad are discharging their polluted effluents into Kharicut Canal which, in turn, leads to Khari river. It is further alleged that there are about 11 villages in Kheda District, whose only source of water for the purposes of agriculture is from Khari river. Due to the water pollution caused by the said industries, the water in the Khatri river is no longer suitable for agriculture. In addition thereto, the agricultural lands in these villages have lost their fertility and the water drawn from the wells was having reddish colour even when it is from the depth of about 300 ft.

3. It is further alleged that in these 11 villages, which are commonly known as "Kalambandi villages", there are about 8,000 acres of agricultural land wherein not only the agricultural operations are adversely affected by reason of the pollution of the Khari river, but even animals, like cattle, sheep, etc., are adversely affected due to consumption of the said polluted water. A specific allegation which has been made is that whereas before the industrial units had been set up in the said three industrial estates, the agriculturists were able to get yield of about 2 tons of agricultural produce per acre but after the pollution of the Khari river the present agricultural yield is hardly 0.50 ton per acre. Drinking water is also not readily available and even from the bore wells, the water which comes out is full of toxicants.

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Such polluted bore well water is common in villages like Bherai, Pinglaj, Navagam, Lali, etc.

4. It is further alleged that representations have been filed before the Gujarat Pollution Control Board (hereinafter referred to as "G.P.C.B.") since about 1978 and other authorities, but no action has so far been taken. The contention of the petitioners is that the provisions of the three Acts, dealing with Environment, have been infringed by the Industries, the three Acts being : The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "The Water Act"), The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "The Air Act") and the Environment (Protection) Act, 1986 (hereinafter referred to as "The Environment Act"). The main prayer in the writ petition is that action should be taken against the respondents, viz., the State of Gujarat, the Gujarat Pollution Control Board (G.P.C.B.), the Gujarat Industrial Development Corporation (G.I.D.C.), the Ahmedabad Municipal Corporation and the Gujarat Electricity Board for not taking steps to control and curb the water pollution of Khari river, which is resulting in the violation of the petitioners' fundamental rights under Art. 21 of the Constitution of India. Direction is also sought for taking steps to control the water and air pollution and there is also a claim made for payment of compensation due to the loss suffered due to air and water pollution. Another prayer is for directions to be issued for providing proper drainage/gutter facilities for letting out trade effluent/waste water after treating them in order to arrest the pollution of water.

5. Before dealing with the merits of the case, and the action taken by the Government, it is important to refer to and give background with regard to the legal provisions, including the parameters laid down by the G.P.C.B.

Legal History :

6. Pursuant to the proclamation adopted by the United Nations Conference on the Human Environment, which had taken place in June, 1972, in Stockholm, which was attended by the Indian Delegation, led by the then Prime Minister of India and realising the importance of the prevention and control of pollution of water, the Parliament passed The Water (Prevention and Control of Pollution) Act, 1974. This Act was also applicable to the States, which had passed a requisite Resolution under Art. 252(1) of the Constitution, including the State of Gujarat. The effect of this was that the matters with regard to the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water and for establishment of Pollution Control Boards were to be regulated in the said States by the aforesaid Water Act.

7. The Water Act was followed with the promulgation of the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

8. In 1988, the Water Act was sought to be amended with the passing of the Amendment Act 53 of 1988. The object of this amendment was to make some of the provisions of the Act more stringent and, in particular, Sec. 33A was incorporated in the Act, which *inter alia,* gave power to the Government to issue directions, ordering closure, prohibition or regulation of any industry, operation or process and direction regarding stoppage or regulation of supply of electricity, water, or any other service.

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9. Notwithstanding the fact that Resolution under Art. 252(1) had been passed by the Gujarat Assembly, which had the effect of making the Water Act applicable to the State of Gujarat, no Resolution has been passed under Art. 252(1), making the Amendment Act of 1988 applicable to the State of Gujarat. The result of this is that neither Sec. 33A, nor some other important amendments made in the parent Act have been extended to the State of Gujarat.

10. The Environment (Protection) Act, to a certain extent, overlaps the Water Act. The reason for this is that the word 'environment', as defined in Sec. 2(a) of the Environment (Protection) Act includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Under Sec. 23, the Central Government may, by Notification, delegate its powers under this Act to any Officer, or the State Government or other authority. It is not in dispute that under this provision, the power of the Central Government under this Act has been delegated to the State Government. One of the provisions contained in this Act is Sec. 5, which gives the Government power to issue directions. This provision, which is applicable in the State of Gujarat, is analogous to the aforesaid Sec. 33A of the Water Act, which, however, is not applicable here. Nevertheless, even with regard to water pollution, because of the definition of the word 'environment', Sec. 5 of the Environment (Protection) Act can be invoked whenever the occasion arises.

11. The admitted position is that the G.P.C.B., on the basis of the directions issued by the Central Government, have notified the permissible limits in respect of different parameters in relation to the discharge of the effluent. The water pollutants have been identified on the basis of the effects which they have. The norms which are laid down by the G.P.C.B. are more stringent than the permissible norms as per the Sewer's standards, the reason being that if the effluent of the industry, meeting the Sewer's standards, is mixed with the sewage, then these industrial effluents will get diluted which will result in acceptable effluent for the ultimate discharge. The parameters so laid down are as follows :-

Parameter	**Permissible as per Sewer's standard of AMC**	**Permissible as per GPCB norms**
Temperature	45C	45C
pH	6 to 8.5	6 to 8.5
Total suspended solids	300 mg/L	100 mg/L
Total dissolved solids	3500 mg/L	2100 mg/L
Sulphates	1000 mg/L	—
Chlorides	600 mg/L	—
Cyanide	2 mg/L	0.2 mg/L
Boron	60 mg/L	—
Copper	3 mg/L	3 mg/L
Oil & Grease	100 mg/L	10 mg/L
Precent Sodium	60 mg/L	—
Florides	—	1.5 mg/L
Amonical Nitrogen	—	50 mg/L
Total Chromiun	—	2 mg/L

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Hexavalent Chromium	—	0.1 mg/L
Lead	—	0.1 mg/L
Mercury	—	0.01 mg/L
Nickel	—	3 mg/L
Zinc	—	5 mg/L
BOD	500 mg/L	30 mg/L
COD	—	100/250 mg/L

12. What are the effects of the pollutants have been set out in the "Guidelines on Environmental Pollution Control" issued by the Gujarat Pollution Control Board in 1988. With regard to water pollutants, the effects of the same are as follows :—

	Water Pollutants	**Effects**
(i)	pH	Increase in salinity, adverse impact on plants and aquatic life.
(ii)	Suspended solids	Reduction in Oxygen in water, blockage of fish gill. Adverse effect on marine life increases turbidity, general silting of water ways.
(iii)	Oil & Grease	Reduction in Oxygen transfer in water, adverse effect in aquatic and marine life, general nuisance.
(iv)	Organics	Depletion of Oxygen and adverse effect on aquatic and marine life, causes septic conditions and odour nuisance, may cause direct toxicity.
(v)	Arsenic	Causes fatigue, loss of energy, neurological disturbances, adverse effect on kidney and lever, skin diseases.
(vi)	Cadmium	Gastro-intestinal type of poisoning, nausea, salivation, vomitting, diarrhoea, abdominal pain. Adverse effect on kidney, pancreas, thyroids and bones.
(vii)	Chromium	Adverse effect on skin and mucous membranes, ulcers, cancer of lungs.
(viii)	Cyanide	Highly toxic, rash, and itching on skin, loss of appetite, headache, weakness, nausea, dizziness, irritation of eyes and respiratory tract.
(ix)	Fluoride	Causes fluorosis, dental defects, adverse effect on bone. Damage to vegetation and plants.
(x)	Mercury	Minamata disease, adverse effect on brain, kidney, spleen, lever, bone and central nervous system. Loosening of teeth, dryness of throat, and mouth, psychic disturbances.
(xi)	Nickel	Causes 'Nickel Itch' on skin, carcinogenic.
(xii)	Phenolic compounds	Imparts bad taste to water, disturbs digestive system, loss of appetite, difficulty in swallowing, vomitting, excessive salivation, diarrhoea, mental disturbances, skin eruptions, dermititis.
(xiii)	Pesticides	Toxic to fish and marine life, adverse effect on central nervous system, lever, kidney, induce nausea, diarrhoea.

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(xiv)	Ammonical Nitrogen	and marine life.
(xv)	Dissolved solids	Increases salinity of soil.
(xvi)	Perent Sodium	Adverse effect on land.
(xvii)	Nitrates	Causes disease known as "Methemoglobinemia" generally known as "Blue Babies" disease.

13. Looking at the averments in the petition and the state of the water in the Kharicut Canal, which was produced in bottles brought to Court by the petitioners' Counsel and the obnoxious smell which it had, and treating this also as a public interest litigation, the approach of the Court was as follows :—

Firstly, find out about the extent of pollution;

Secondly, determine as to who were responsible for causing pollution ;

Thirdly, find out whether there is a remedy or treatment to the problem;
Fourthly, to see what has been the role of the Government to the problem so far;

Fifthly, to see what role has the industry played, till now, in its obligation to meet the G.P.C.B. parameters;

Sixthly, to consider the submissions of the parties; and

AND

Seventhly, what directions, if any, should be given on the basis of the facts emerging from above.

Extent of Pollution and who is causing it :

14. During the course of these proceedings, reports of three Committees were filed in Court. These reports are of Pandya Committee, Nema Committee and Bhanujan Committee.

(a) Pandya Committee report and the orders passed by the Court :

15. In order to ascertain the correct facts and treating the petition to be essentially in the nature of a public interest litigation, a Committee of three Advocates, headed by Mr. Mayur Pandya, a former Government Pleader, was constituted on 16th of February, 1995. This Committee was required to ascertain facts with regard to the extent of pollution in the industrial areas in the City of Ahmedabad in the Industrial Estates of Vatva, Odhav, Naroda and Narol. Though the effluent from Narol goes into Sabarmati river, and not into Kharicut Canal, but the industries in this area were included so as to cover all the major industries within the A.M.C. limits and which were allegedly causing pollution.

16. The first report of the Committee, dated 20th February, 1995, was received in Court. The Committee informed that most, if not all, units which had been set up in the aforesaid industrial areas were required to put up primary and/or secondary treatment plants and the permissions, if any, which had been granted by the G.P.C.B. required effluent disposal standards to be maintained by each individual unit.

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17. Second Interim Report of the Pandya Committee was filed on 21-3-1995, setting out therein, the extent of pollution which had been caused. This was followed by the Third Interim Report on 2nd May, 1995. Like the first two Reports, in this report also, it was stated that there was large scale pollution in the Kharicut Canal. Samples had been taken by the Committee even as late as 30th April, 1995 and it was observed that though pH value and some other parameters had improved, there had been very high consumption of lime, which had resulted in the rise in the value of suspended solids. With the increase in the total water use by the Industries and in order to bring down pH value, there had been increase of other pollutants as well. The Committee had carried out sample analysis in respect of 185 units and it revealed that 24 units were not found observing the pH parameters. The Committee also reported that despite the orders of the Court made on an earlier date, some of the units were having a direct outlet of untreated effluent into the Kharicut Canal. It might here be stated that the lower the pH value, or the same is below the prescribed standard, more is the Acidic nature of the effluent, while if the pH value goes beyond the prescribed standard, it becomes more Alkaline.

18. On 3rd of May, 1995, the Pandya Committee placed on record its Fourth Interim Report. This report was based on the survey conducted by the members of the Pandya Committee between 7-50 p.m. of 2nd May, 1995 and 2-30 a.m. of 3rd May, 1995. The said Committee, *inter alia* reported as follows :-

"1. The polluting effect of Industrial Effluents is noticed as depending upon quantity as well as quality of the Industrial Effluents.

2. Broadly stated, the Committee feels that it could be reasonably considered that greater the quantity of waste water discharge/discharge of industrial effluents of Industries engaged in the manufacture of dyes, and dyes intermediates and textile processing (Carbonising Units) and stainless steel rolling mills, greater could be the pollution potential of the concerned industry.

3. Mere carrying out of primary treatment of industrial effluents by units engaged in manufacture of product with a high degree of pollution potential - either quantitative or qualitatively - cannot result into effective or appreciable control of environmental pollution and could never result into the effluents even approximating to G.P.C.B. norms prescribed under law and despite such treatment the resultant environment hazards would continue.

4. Units engaged in the manufacture of products having a high degree of pollution potential in their untreated and undertreated effluents are units which would require in greater quantity water in its manufactural activities and the quantum of water consumption by such units could provide a rough and ready guide/inditia in determining pollution potential of the effluents of industrial undertaking.

5. Units engaged in manufacture of dyes and dyes intermediates, textile processing units (Carbonising), stainless steel rolling mills utilise water in high quantity and such units can be considered as having high degree of pollution potential requiring urgent attention.

6. In the manufacture of dyes and dyes intermediates, qualitatively pollution potential of industrial effluents is relatable to product manufactured some of which could be safely designated as highly pollution loaded.

7. Stainless steel sheet processing and textile units (with carbonisation) have qualitatively high pollution potential.

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8. Industries engaged in manufacture of dyes and dyes intermediates and textile processing (carbonisation), S. S. rolling mills where pollution potential of the industrial effluents is of the high order, need water in large quantities at different stages of its processing and they may not find G.I.D.C. water supply adequate or economical and this has possibly been the cause of their having private bores to their water supply need.

Such industrial units call for stricter scrutiny and compliance in so far as pollution standards are concerned."

19. The Committee further reported that the pollution potential depended upon the quality of industrial effluents. There were a number of units manufacturing dyes and dyes intermediates and there were textile process houses with carbonisation process and S. S. sheet rolling mills (pickling process), which were amongst the highly polluting units either on account of high acid discharge or high BOD and COD or high toxicants or suspended solids or TDS. It also gave a report with regard to the samples of effluent which it collected. Some of these bottles were produced in Court on 3rd May, 1995. The liquid which the said bottles contained was dark red in colour and had an obnoxious smell. It was reported by the Committee that the adverse impact of this effluent was on the people living on the affected area. The Committee met some of them, who showed the skin diseases which some of them had contacted and some photographs in this respect have also been placed on record.

20. The Committee recommended that action should be taken in relation to those units which produce highly toxicant substances such as C. Acid, H. Acid, K. Acid, Vinyl Sulfone, Napthalene based other intermediates, Pigments, viz. (a) CPC Blue (Alpha), and (b) CPC Green, and Phathalocynine Blue. (These are hereinafter referred to as "Specified Industries".) Apart from these, the units which are producing high toxicants are those which are textile processing units which use the process of carbonisation and stainless steel rolling mills.

21. After rule was issued on 6-2-1995, the industrial units which were alleged to be flouting the provisions of the aforesaid three Acts, which were stated by the Gujarat Pollution Control Board (G.P.C.B.) to be 756 in number, were also ordered to be impleaded as parties. Though a number of affidavits have been filed including those by such newly added parties, it is very significant to note that none of them controvert the aforesaid contents or findings contained in the four reports of the Pandya Committee or the allegations which have been made by the petitioners in the writ petition. In fact, the State of Gujarat has not filed detailed affidavit, denying the aforesaid allegations in the writ petition.

22. On receipt of the First Interim Report of the Pandya Committee, by order dated 21-2-1995, all the polluting units were put to notice that if they did not achieve the standards laid down by the G.P.C.B. on or before 20th of March, 1995, they shall be ordered to be automatically closed with effect from 21st March, 1995. It was observed by the Court that these standards were required to be maintained by the units at the time when they started functioning and if the said units were failing in maintaining the standards, then they had to blame themselves and no one else and that no further indulgence would be shown to them. It was also observed that

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these standards had been accepted by the units and they were bound to comply with the same.

23. It appears that on 10th March, 1995, notices were issued by the State of Gujarat to 756 industrial units in the three industrial estates of Naroda, Vatva and Odhav, as well as to the industrial units in Narol under Sec. 5 of the Environment Act. It was mentioned in these notices that if the said industrial units did not comply with the requirements regarding pollution, then as ordered by this Court on 21st of February, 1995, these units would be automatically shut down on 21st of March, 1995. On 21st March, 1995, when the case was taken up for hearing, Mr. Pandya placed on record the Second Interim Report. While staying the operation of the aforesaid notice dated 10th March, 1995, this Court adjourned the case to 23rd March, 1995.

24. On 23rd March, 1995, Counsels for the affected parties stated that they will give a scheme as to how the G.P.C.B. norms could be implemented and at their request, the case was adjourned to 27th of March, 1995. The order staying the operation of the notice dated 10th March, 1995, was extended.

25. After hearing on 27th and 28th March, 1995, a detailed order dated 28th/29th March, 1995, was passed. It was noticed that despite time having been granted, no tangible solution for the controlling of the pollution was forthcoming. Though a number of affidavits had been filed by the President of Vatva and Naroda Industrial Associations, as well as Odhav Chemical Industrial Association, in none of these affidavits was any of the facts mentioned in the Reports of Pandya Committee, in any way controverted. The Court also took into consideration the affidavits which had been filed on behalf of the Industries, containing the scheme and suggestion for controlling the pollution. It was stated in the said affidavits that primary treatment parameters relating to pH, Oil and Grease and temperature parameters will be met within 15 days, those about toxicants within another 15 days, and those about suspended solids within further 30 days. It was ordered that if the industries do not meet with these parameters within the aforesaid time frame, then the stay of operation of the notices dated 10th of March, 1995, would automatically come to an end. In order that there may be no technical objection and to give a further opportunity, the Court also issued notices under Order 1 Rule 8 of the Code of Civil Procedure to all the industries in the area of Vatva, Naroda and Odhav Phases I to IV as well as Narol and also to all the industries along the Kharicut Canal to show cause why directions should not be issued against them on the basis of the affidavits.

26. The Court further noted that learned Advocate Mr. K. S. Nanavati was to file within 5 days in the Court a list of industries which were members of the various Associations and which agreed to follow the suggestions mooted by the said Industrial Associations, as indicated in the affidavits. The Court noted that, along with the affidavit filed on behalf of the Associations, a Scheme had also been filed, which however, was not specific enough. The Court, however, took note of the promise that the primary treatment parameters will be met within 60 days and that a further and more detailed and comprehensive Scheme will be filed in this Court within four weeks from the date of the order, i.e., 29-3-1995. The Court issued

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directions that such a Scheme should be filed within the said time and in the meantime, all the Industrial units should meet with the parameters as laid down by the G.P.C.B. in respect of pH, Oil and Grease, Temperature, Toxicants and Suspended Solids within 60 days. Out of these, the parameters in respect of pH, Oil and Grease, and Temperature were to be met within 15 days. The Court further noted that if this is not done, the G.P.C.B. as well as the State of Gujarat would be duty bound to implement the order of the closure of such units. The Court further observed that these parameters are to be met as per the norms laid down by the G.P.C.B. and the G.I.D.C. at the outlet of each Industrial unit.

27. The Court also directed the Ahmedabad Municipal Corporation and the G.I.D.C. to take necessary action to ensure that in respect of road-side drains provided in the Chemical Zone in Phase-II and part of Phase-IV at Vatva, Odhav and Naroda, desilting operation shall be undertaken and lining-pitching of these drains shall also be made wherever required before 31st May, 1995 and for long term measures which are to be taken, and which will include providing for proper internal and external drainage, a comprehensive report should be submitted by the G.I.D.C. on the next date of hearing, i.e., 2nd May, 1995.

28. The Court ordered that with regard to those industrial units which are not represented before this Court in this case and who have not replied to the show cause notice issued on 10th March, 1995, the interim orders which were passed were vacated and the State of Gujarat will be at liberty, forthwith, to take appropriate action including the closure of the said units in accordance with law.

With regard to the industrial units whose names were included in the list to be supplied by learned Advocate Shri Nanavati and other Counsels, notice dated 10th March, 1995 was stayed. Direction was issued to the Counsels for the industries that along with the list, undertaking shall also be filed by all the industries mentioned in the list binding themselves to comply with the terms of the affidavit filed on behalf of the said Industrial Associations. The Court ordered that on the said list being supplied, they will be deemed to be parties to the petition. It was further understood that, if these Industries, who were deemed to be parties, did not meet with the pH, Oil and Grease, and Temperature parameters within 15 days, the stay shall automatically come to an end. The Court also noted the statement of the Counsel for the industries that there would be no direct duct into the Khari river by any of these industrial units. The Court further observed that the Pandya Committee may give a report on the next date of hearing on an examination to be conducted by it after three weeks to ascertain compliance.

29. After taking the Pandya Committee's Reports, and the arguments of the Counsels into consideration, by order dated 4th of May, 1995, it was directed that 24 units which had not met with the basic parameters of the primary treatment plant within the stipulated period of 30 days of the order dated 28th/29th March, 1995, should be ordered to be closed down forthwith. It was also observed that in order to contain pollution, the industries, specially the big ones, consuming more than 50,000 litres of water per day, and those industries which manufacture above-referred polluting acids, should have established secondary treatment plant before they went into production. The stay of notice dated 10th of March, 1995 with regard

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to such industries was to extend for a further period of one month and it was directed that thereafter the stay would stand automatically vacated and the Government would not only be at liberty but would be duty bound to execute and take further action pursuant thereto. The industries which manufacture polluting acids or which were to be regarded as specified industries manufacturing highly polluting products were ordered to be closed forthwith in case they did not have operative Secondary Treatment Plants, which met the necessary parameters of at least the inlet to the C.E.T.P. or the AMC norms.

30. In addition to the aforesaid, one of the units, viz., Mardia Chemicals, was also ordered to be closed because, notwithstanding the fact that it had a primary treatment plant and a secondary treatment plant, the same was not in operation when it had been visited by the Pandya Committee on the evening/night of 2nd/ 3rd May, 1995.

31. By the said order of 4th May, 1995, the Court also constituted another Committee, consisting of Mr. P. Nema of NEERI, as its Chairman, Mr. T. N. Ramprasad of Ahmedabad Municipal Corporation, Mr. K. D. Rathod, Enviromental Engineer of G.P.C.B. and Mr. P.P., Oza, Professor of Environmental Engineering in the L.D. Engineering College at Ahmedabad, and Mr. M. D. Pandya, or any other member of his Committe. This Committee, hereinafter referred to as "NEMA COMMITTEE", was to examine the representations of any of the industries which were adversely affected by the order of the Court and the Nema Committee was directed to carry out the examination of the effluents of all the industrial units at different points of time and to submit a report on the next date of hearing.

(b) Nema Committee Report :

32. When the case was taken up for hearing in June, 1995, a Report prepared by the Nema Committee on "Waste water discharge of Industrial Units", was submitted in Court. It was reported by the Committee that due to time constraint, detailed examination of all the industrial units could not be carried out. The Report, however, shows that despite time having been granted, large amounts of polluted effluents were being discharged. A number of industries were identified by name, which were not complying with the G.P.C.B. norms even with relation to the primary parameters. A detailed reference to the contents of the said Report, which is taken on record, is not necessary for the view which we are taking. It will, however, be pertinent to point out some of the observations which the Nema Committee has made, specially with regard to units consuming more than 50,000 litres of water per day and with regard to the performance of the effluent treatment plants.

33. The Nema Committee observed that textile processing houses and some large dyes and dyes intermediates and pharmaceutical units consume more than 50,000 litres of water per day and they discharge effluents having the pollution potential. It was noticed that there were 140 textile units at Narol and other Estates, which were invariably discharging more than 50,000 litres of water and they were required to have Secondary Effluent Treatment Plants. Neither they nor some of the very large units discharging 50,000 litres of effluent were found to have a functional secondary facility when the Committee had visited those units after 4th June, 1995.

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The Committee observed that there were some industries which should have put up secondary treatment units but did not even have Primary Effluent Treatment Plant (P.E.T.P.). There were 17 other industries consuming more than 50,000 litres of water which had P.E.T.P. but did not have S.E.T.P. (Secondary Effluent Treatment Plant). Two of the industries had completed the secondary unit but the same had not been commissioned. There were, however, about 13 industries which had commissioned the Secondary E.T.Ps. but were not functioning to yield effluents upto G.P.C.B. standards for want of proper management. The observations of the Nema Committee was that the results showed that inspite of the functional Secondary E.T.Ps., the COD values obtained were above the prescribed norms.

34. The other general comments of the NEMA Committee with regard to such industries were as follows :-

(a) These industries were ready to put up any type of plant "just for the sake of having to show in the possession of one without serious thought to its adequacy and ability to treat upto the G.P.C.B. norms".

(b) After the start of the present litigation, many units discharging pollutants "have been altogether stopped or drastically reduced as a temporary measure to escape the monitoring".

There is no guarantee that these units will not revert to original production targets "once the dust settles".

(c) One of the units Nidan Chemicals was observed to cart away the acidic effluent in a tanker for discharging at another place.

(d) Some of the very small industries, which were minimum polluting units were affected by the closure order "whereas very large and highly polluting units have merrily carried on, even after 4th June, 1995 without any treatment facility...."

35. The Nema Committee also made comments on the performance of the E.T.Ps. after taking effluent samples from 63 industries. Its observations with regard to the same were as follows :-

(a) In 12 out of 63 cases, the G.P.C.B. norms with regard to pH value were not maintained;

(b) Suspended solid values were not maintained in 32 cases due to improper design or mostly, due to unskilled operation of the primary plant. It observed that except in a few cases, the E.T.Ps. were invariably run by unskilled lower ranked personnel. "The orders appeared to be only to manipulate the quality of effluent at the time of sampling either by adding acid or alkali or even plain water instantaneously". One of the examples given in this connection was that of the unit of Jindal Synthetics which the Committee visited twice and each time it found some manipulation being carried out;

(c) In most of the Industries, inspite of the Secondary E.T.P., C.O.D. values of treated effluents were higher than the norms indicating the lack of will to operate the plant properly.

36. Though it was an accepted fact that the awareness of pollution control was relatively a recent phenomenon, the management which runs the production most efficiently, nevertheless deliberately neglects the pollution control measures. It was observed by the Nema Committee that "the situation will improve only when pollution control is considered and implemented as an integral part of production".

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37. Amongst the recommendations made by the Nema Committee, the most important was that :-

> "... No industry, however small, should be permitted to operate without operative treatment plant and quantity production should be based on the ETP capacity, particularly for zero discharge or no-flaw effluent concepts, and not simply on the basis of production plant capacity...."

(c) Bhanujan Committee Report :

38. During the pendency of the petition, the Gujarat Government appointed Shri K. V. Bhanujan, Additional Chief Secretary, Industries and Mines Department to prepare a comprehensive report about the pollution problem and to indicate a workable solution. A report dated 25th May, 1995 was submitted by Shri Bhanujan. As is evident from the Foreword, the special report has been prepared after referring to various publications from India and abroad and after consulting technical officers of G.P.C.B. and A.M.C. The report specifically states that the technical views expressed therein are based on these references and consultations. The report also makes reference to the representation of the industry and in particular, has referred to and relied upon a comprehensive scheme, which was prepared in April, 1995, by one Chokhavatia Associates at the instance of the industry.

39. The Bhanujan Committee Report deals with the problem of pollution and then sets out the earlier attempts which were made to contain it. It deals with topics like collection, treatment and disposal at Naroda, Odhav, and Vatva as well as monitoring and enforcement of the laws. The summary of the report, as contained in the report itself, is as follows :-

"1. The problem of Vatva, Odhav and Naroda in terms of pollution control has become complex due to diversity of product, process and wastes of a large number of chemical products.

2. Mixing the industrial effluents with municipal sewerage for treatment is practice and economical provided volume wise and quality wise it is feasible. Here it is not feasible due to the risk of possible corrosion of the carrying and treating system of municipal sewerage.

3. A good portion of the units are small scale which render it very difficult for them to put up individual treatment plants. However, their potential for employment generation is quite significant.

4. In view of the harm caused by the untreated effluents of these estates flowing to Kharicut Canal immediate measures are called for to solve this industrial-municipal-regional problem.

5. The Working Group appointed in 1988 suggested that the problem of these estates could be solved by mixing and treating the effluent in the common Waste Water Treatment Plant sought to be set up as a part of World Bank assisted NOVED Project. However, due to several changes in the World Bank Project, these suggestions remained inoperational.

6. Govt. accepted the report of the Group and decided to provide as grant-in-aid 10% of the cost for setting up CETP.

7. Both GIDC and AMC had agreed to carry out certain residual works pending at the time of merger of the estates with A.M.C. However, neither had committed itself to the task of treating the effluent.

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8. Several meetings at the level of the C.M. did take place where cost sharing arrangements were arrived at.
9. Govt. introduced a general policy aimed at helping clusters of small scale units going for CETP in April, 1995.
10. The Reports of NEERI and Tata Consultancy about some of the technological aspects of the problem of Naroda, Odhav, Vatva are awaited.
11. Pollution effects are not confined to administrative boundaries and so a compartmentalised approach is not correct.
12. The system should be effective, expeditious and economical and so combined treatment facilities afford such an opportunity to hundreds of smaller units.
13. The units should provide primary treatment before discharging their effluents to the collection system. Except TDS the rest of the pollutants are likely to come down to the norms in combined secondary treatment.
14. TDS dilution is feasible by mixing the treated effluent with Municipal sewerage. The relative volumes of these two would give scope for such mixing.
15. As far as conveyance and disposal are concerned, this can be done either by letting off to Municipal trunk sewers in a scattered manner or by carrying through a canal and mixing with the municipal sewerage before discharging into the river.
16. As a long term solution having a disposal channel right upto the sea or shifting of all units with high pollution to new locations near the sea could be considered.
17. National Financial Institutions and International agencies like A.D.B. would be willing to extend financial assistance for this project.
18. The three Associations have submitted their proposal for setting up separate treatment plants. The total cost may be of the order of Rs. 7.60 crores.
19. Accountability demands that those who are legally responsible for pollution control should build, own and maintain the system. Under the provisions of the Water Act industry is responsible for control of pollution.
20. In view of the past commitments both GIDC and AMC must contribute in putting up the system. This contribution may be Rs. 10 crores each. Except this resources required should be raised by way of equity and loan by the industry.
21. The project should be self-financing for servicing of the system and meeting operation and maintenance cost. Cost recovery on the basis of polluter pays may be arranged.
22. State Govt. should support the project by exemption from purchase tax, and by standing guarantee for the loan. Govt., AMC, GIDC and GPCB may help by lending technical personnel.
23. GPCB needs to be strengthened in a phased manner for better monitoring and enforcement standards.
24. The amendments made in Water Act, 1988 have not been adopted in Gujarat. This hampers effective enforcement. These amendments must be brought into force with immediate effect.
25. Govt. may take immediate action to issue notification in regard to designation of disposal sites for solid wastes.
26. Joint monitoring teams of Industry, GPCB, GIDC and AMC be formed for close monitoring within the estate. A Vigilance Cell of GPCB also may be formed for the three estates.
27. Eventually Industry and AMC should join hands for tertiary treatment and water reclamation.

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28. R & D facilities should be set up to prevent pollution at source by upgrading production facilities.
29. It is necessary to launch training courses for different functionaries.
30. The Association should get the project proposals updated; expeditious arrangements should be made for putting up the plants and related aspects.
31. Those who do not have primary treatment facilities should do so before 1-8-1995 and bigger units should put up their independent systems by 31-12-1995.
32. Government should set up a State Level High Powered Steering Group for master minding various activities.
33. The project should be implemented as per a realistic time schedule.
34. The whole operation should be viewed in a coordinated fashion, but each agency should perform certain specific functions.
35. If the industrial units commit themselves to the total programme and also comply with the other requirements, till the system takes off they may be allowed to function in the present manner."

Who is causing pollution :

40. In the absence of a dispute with regard to the polluted nature of the waters in the Kharicut Canal and the Khari river, one of the questions, which arises is as to which are the industries, which are responsible for the same. Here again, there is no difference of opinion amongst the parties. The polluting industries are indentified as :-

(1) Manufacturers of Dyes and Intermediates;

(2) Manufacturers of Pharmaceuticals;

(3) Specified industries which manufacture seven items, viz., C. Acids, H. Acids, K. Acids, Vinyl Sulfone, Napthalene based other intermediates; pigments - (a) CPC blue (alpha); and (b) CPC green; and Phathalocynine blue;

(4) Textile and Processing Houses.

(5) Steel Rolling Mills.

41. The problem with relation to pollution caused by textile and processing houses is different than the pollution which is caused by the other units. In other words, they fall into two different categories. As far as units other than textile processing and printing are concerned, it appears that, the bigger the unit, the more the pollution. All these industries or units are water intensive units. The extent of the pollution which is spread depends on the quantity of water used by them and the kind of product. The industries manufacturing the aforesaid 7 items like K. Acid, are, for the sake of convenience, called specified industries. The nature of their product is such that irrespective of the extent of their discharge, they are highly polluting industries. Units manufacturing other types of chemicals are also responsible for large scale pollution but the quality and quantity of pollution depends upon the quantity of the water used by them. The higher the quantity of water, the more the pollution. All units are required to give primary and secondary treatment to their effluents in an effort to bring it within the G.P.C.B. parameters.

42. The G.P.C.B. has notified various parameters, vide its Notification dated 10th September, 1991. This Notification was with regard to different types of

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industries. Item No. 27 of this Notification relates to the effluent disposal standards for Common Effluent Treatment Plants. This envisages (a) primary treatment inlet effulent quality for a C.E.T.P. and (b) treated effluent quality of Common Effluent Treatment Plant. Note -1 to this item states that the standards prescribed therein "apply to the small scale industries having discharge upto 25 k1/day". The implication of this clearly is that those units having a discharge of upto 25,000 litres per day could or should have primary treatment facility and, thereafter, that effluent satisfying the primary treatment parameters could then go into a common treatment plant. The reason for this seems to be that it is uneconomic for small units to have individual primary and secondary units. The bigger units, however, are thus expected to have secondary treatment plants of their own.

43. During the course of the hearing, particulars were filed on behalf of the parties, which *inter alia*, showed the expenses for the erection, installation and commissioning of the primary treatment plant. The same are as follow :-

	Using water less than			
	50,000 ltrs/day	**1 lac ltrs/day**	**2 lacs ltrs/day**	**4 lacs ltrs/day**
	Rs. (in lacs)	Rs. (in lacs)	Rs. (in lacs)	Rs. (in lacs)
Expenses	8.00	10.00	15.00	20.00
Area (land) (sq. mtrs.)	100	200-300	500	1,000
Recurring expenses	1,500 to 2,000 per day	2,000 to 4,000 per day	6,000 to 8,000 per day	14,000 to 16,000 per day

Similarly, the expenses for erection, installation and commissioning for the secondary treatment plant are as follows :-

	Using water less than			
	Upto 50,000 ltrs/day	**1 lac ltrs/day**	**2 lacs ltrs/day**	**4 lacs ltrs/day**
Additional expenses to be incurred over and above the expenses for primary treatment plant	Rs. 8.25 lacs	Rs. 15.75 lacs	Rs. 27.75 lacs	Rs. 46.5 lacs
Additional area over and above the area for primary treatment plant	200 sq. mtrs.	350 sq. mtrs.	600 sq. mtrs.	800 sq. mtrs.
Additional recurring expenses over and above the primary treatment plant	Rs. 500 per day	Rs. 1,500 per day	Rs. 2,500 per day	Rs. 3,800 per day

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44. From the aforesaid, it is evident that a fair amount of expense is involved in the treatment of the effluent in order to bring it within the G.P.C.B. parameters and in order to increase their profits, the industrial units have not thought it necessary to incur such capital and recurring expenditure.

45. As far as the textile printing and processing houses are concerned, they use very large quantities of water. It is accepted by all the Counsels that the main reason of the pollution caused by them is because of the process of carbonisation, which is used by some of the units. Apart from the pollution which is caused by carbonisation, the other parameter which is usually not achieved by them is with relation to suspended solids. It is not in dispute that with a little more effort and with a bit of self-discipline, the parameters with regard to the suspended solids can be achieved.

46. As far as carbonisation is concerned, it is a different story. The carbonised polyester fabrics are prepared by dissolving out cellulosic fibres from blends of polyester and cellulose. According to a book, called *"Carbonisation", by R. M. Mittal and S. S. Trivedi of Ahmedabad Textile Industry's Research Association, Ahmedabad,* it is stated that the outcome of carbonised fabrics has helped the industry in two ways -

> "... opportunity for cotton textile mills which are not permitted to weave 100 per cent polyester fabrics, to produce all polyester fabrics and eliminating the tedious operations involved during the processing of polyester/cellulosic blends. The process of carbonisation has many hazards and, therefore, it should be carried out systematically...."

Generally stated, fabric which is woven and has polyester and cotton in it, is treated with sulphuric acid, which has the effect of dissolving cotton, and the fabric which remains thereafter is 100% polyester though with a glaze. It is this effluent which contains acid and solid waste, which cause the pollution. It is not every textile unit which carries out carbonisation but, it was contended by Counsels on behalf of the industry, carbonisation is carried out by those units which produce cheap synthetic sarees. These sarees acquire a shine or a glaze and become soft after the fabric is carbonised.

47. It is not in dispute that the process of carbonisation can be segregated or separated. According to the Nema Committee Report, by careful planning of the carbonisation process, the use of chemicals for neutralisation is possible. According to the said report, all the process houses processing more than 5,000 metres of cloth per day, consume 50,000 litres of water per day and they are expected to have Secondary Effluent Treatment Plants for the purposes of complying with the prescribed standards.

48. Apart from water pollution, these industrial units are also having very large amounts of solid wastes. With regard to these solid wastes, the Hazardous Wastes (Management and Handling) Rules, 1989 have been framed under Secs. 6, 8 and 25 of the Environment Act. Authorisation has to be granted for handling of hazardous wastes. The categories of hazardous wastes have been set out in the schedule to the said Rules and it is not in dispute that the wastes produced by these industrial units have been so specified in the said schedule. Sample authorisation,

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which had been granted by the G.P.C.B. under the said Rules had been placed on record. The usual terms of the authorisation is that the hazardous waste has to be collected separately categorywise and stored in the factory premises and due care has to be taken that the waste is not released from the site into environment, causing surface water or ground water or soil pollution. It is further a term of grant of authorisation that the waste is not to be disposed on land or sold or transported without prior approval of the Board.

49. Having obtained such authorisations, according to the Counsel for the respondents, the industrial units have not complied with the same. The solid wastes produced by these units, which are hazardous in character, have been disposed of on land on vacant plots surrounding the various industrial units. The distribution is in a most haphazard manner and without any regard to any rule, bye-law or safety regulation. The solid wastes so dispersed has resulted in polluting the soil and has a tendency to spread in an uncontrolled manner with the onset of the rains.

Is there a solution to the problem ?

50. It is not in dispute that a number of industrial units have not achieved the aforesaid G.P.C.B. norms. According to the G.I.D.C. in these four areas of Vatva, Odhav, Naroda and Narol, the total number of industrial units are 6,122. Out of these, notices under Sec. 5 of the Environment Act were issued on 10th of March, 1995 to 756 units. Therefore, it is only about 15% of the industries which are playing havoc and causing large scale pollution. Most of the parameters laid down by the G.P.C.B. are not being met by them. This is evident from the Pandya Committee Report, Nema Committee Report and Bhanujan Report. That apart, in the annual report for the year 1994-95 of the Gujarat Pollution Control Board, the status of water quality of major rivers of Gujarat with respect to four parameters has been given, those parameters being pH, D.O., B.O.D., and C.O.D. There are 20 major rivers with respect to which figures are given for the aforesaid parameters. According to this report, the status of water of Khari river is the worst. The sample seems to have been taken at village Lali from the Khari River and the report shows that its pH value is 2.00, D.O. is 0.6 mg/L., B.O.D. is 416 mg/L and C.O.D. is 1,614 mg/L. Each and every of these parameters is worse than the samples taken from all the other rivers. In Bhanujan Report also, it has been stated in paragraph 1.7 as follows :-

> ".... The tackling of pollution problem, however, brook absolutely no delay. The discharge of untreated effluents from these places is contaminating not only the immediate surroundings but also the rural areas of nearby district. As a matter of fact, apart from pollution the urban surroundings, the polluted effluents flowing through Kharicut Canal have been damaging the aquifers right upto Matar Taluka and in the process degrading the fertile agricultural lands...."

51. Even the industrial units, in the various affidavits which they have filed in Court, have not denied the fact of large scale pollution. The petitioners have made specific averments in the writ petition with regard to the state of the land and to the contaminated water effluent in the Kharicut Canal and the Khari River and the deteriorated quality of the bore-well water in the 11 villages on the banks of the Khari river. Neither the State Government nor any other party has denied the said

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allegations. In fact, samples of the polluted water were regularly brought to the Court by the petitioners every day.

52. There is a consensus amongst the parties that this is not a case where the problem cannot be solved. All that is lacking is the effort or will to do it. Neither the Industry, which causes pollution, nor the Government nor the G.P.C.B. nor the G.I.D.C. have paid more than lip service to the Environmental laws. It is stated by all that if the primary and secondary treatment is given to the effluent and the same is, therefore, mixed with the Municipal sewage before it is discharged into the river, then there will be no water pollution. This has so far not been done.

53. It will not be wrong to say that the continued violation of the law by the industrial units has become a habit and condoning it, by the Governmental authorities, a practice.

54. At this juncture, it is important to see the roles which the Government and the industry has played till now in so far as effort towards controlling pollution is concerned :-

(d) Role of the Government :

55. The problem of water pollution being caused by the industries located in the G.I.D.C. Estates of Vatva, Odhav, Naroda and Narol is not of recent origin. From the documents placed on record, it appears that more than 15 years ago, attention of the G.P.C.B. and the State of Gujarat was drawn to such industries discharging their industrial effluents into Khari river. A departmental Note annexed to the letter dated 24th of June, 1981, written by the Executive Engineer of G.I.D.C. to the Deputy Secretary, Government of Gujarat, Health and Family Welfare Department, indicates that the resultant effluent from these industries was highly coloured, having high concentration of dissolved solids. It was also noticed that these industries disposed of their effluent without any treatment through G.I.D.C. open storm water drains into the Khari river.

56. Complaints were received from the farmers due to the disposal of coloured untreated waste water by the industries and the then Minister Shri Amarsinh Chaudhari (subsequently, the Chief Minister of the State and presently, the Leader of the Opposition in the State Assembly) had visited the site on 9th of July, 1980. It was decided by him that :-

(1) G.I.D.C. should immediately check up waste water from these industries and should prevent its discharge and the report to that effect should be made to the Government by the G.I.D.C.;

(2) G.I.D.C. should collect samples of waste water and after analysing the same, it should submit a report to the Government. The Pollution Control Board was also directed to collect the samples.

A report dated 19th July, 1980 was submitted to the Government by the Pollution Control Board, which showed high concentration of colour, suspended solids, T.D.S., C.O.D., etc.

57. The said Note also referred to the fact that most of the industries in the G.I.D.C. estates were small scale units, but did not have adequate finances to provide complete treatment plant nor did they have sufficient space to provide treatment

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units. Suggestion was made that G.I.D.C. should provide common collection and treatment facilities and it was noticed that :-

> "... due to the discharge of untreated waste water into the canal, the canal water is also not found suitable for irrigation purposes. The analysis report, in this connection, has been submitted by this Board to the Government on 19th July, 1980...."

It was also stated in this Note that a scheme for common collection and disposal system had been formulated in 1974 by the Public Health Engineering Department of the State Government and for implementing the scheme, a meeting had been arranged on 27th of April, 1981 for financial allocation and implementation. The Board had also approached the individual industries to provide common treatment for collection, treatment and disposal of waste water and had requested the industries to agree for contributing the proportional capital cost of the common project and the recurring maintenance cost of the common system. The response of the industries was, however, awaited by the Pollution Control Board.

58. Mr. Padival, learned Counsel for the petitioners, also referred to numerous representations having been made by the petitioners since 1978 but the same did not result in any effective measures being taken. In the year 1988, a writ petition, being Special Civil Application No. 7063 of 1988, and another writ petition, being Special Civil Application No. 598 of 1989, were also filed seeking intervention of the Court for the purposes of controlling the pollution, which also shows that the Government and the Industry were more than aware of the pollution which was being caused, till now in so far as effort towards controlling pollution is concerned.

59. A Working Group was set up by the Government of Gujarat in 1988 to suggest technical feasibility alternatives for the collection, treatment and disposal of effluents, finance for implementation, resource mobilisation, methodology of recovering the cost and other connected issues pertaining to these Estates. The aforesaid Working Group submitted its report, suggesting common collection, treatment and disposal and the Government of Gujarat passed a Resolution on 12th of September, 1989 and laid down that it would contribute 10% towards the cost of setting up the common effluent treatment plant. The task of preparing the project proposal was fastened on the State Government or the I.D.B.I. and for loan assistance, it was left to G.I.D.C. No follow up action in this regard has been taken so far except in Vapi.

60. An agreement dated 14th May, 1991 was entered into between G.I.D.C. and A.M.C., whereby the work of roads, street lights and drainage was to be completed.

61. Representation of the farmers who were affected by the pollution of the Kharicut Canal had a meeting on 6th January, 1992 with the then Chief Minister. At this meeting, it was reported that the G.I.D.C. was putting up a system in the Estate and the total project cost would be Rs. 8/- crores.

62. On 1st February, 1994, there was again a review meeting taken by the Chief Minister with the G.I.D.C., where it was, *inter alia,* reported that the progress of the work was held up due to the issue raised by the Industries' Association about the nature of the pipeline carrying the effluents.

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63. On 1-12-1994, there was a further meeting taken by the Chief Minister, where it was decided that the work of effluent collection in these Estates should be done by the G.I.D.C. on a cost-plus basis, the total cost being borne by the industries. It was also stipulated in this meeting that the reponsibility of treating the effluent would be entirely that of the industries.

64. On 18-4-1995, the present Government had passed a new Resolution with regard to the policy of setting up a common effluent treatment plant.

65. As already observed, under the various pollution Acts, it is the State Government, which has been empowered by the Central Government to enforce the law. A law, when it is enacted, is either obeyed or complied with voluntarily or it has to be enforced. In the present case, the Water Act was enacted in 1974 and the Legislative Assembly of Gujarat had passed the requisite resolution under Art. 252(1) of the Constitution. The Government, therefore, had accepted the enforcement of the Water Act. This was followed with the Air Act and the Environment Act under which, again, power has been given to the State Government to check pollution.

66. At least since 1980, if not earlier, complaints were being received by the State from the residents of the 11 villages in question with regard to the spreading of the pollution. The then Minister Shri Amarsinh Chaudhary had even visited the area in 1980, but no effective steps have been taken by the Government at any point of time. All that the Government has done, till the start of the present litigation, has been to have discussions, to set up Committees and to give assurances that the needful will be done. In effect, however, the Government has failed to discharge its legal obligations of enforcing the law.

67. Except in the case of 13 industrial units, against whom orders of closure were passed in 1994, no effective steps were taken by the Government, requiring the industrial units to implement the law. The alarming proportion to which the pollution has spread was within the knowledge of the Government. Still, no direction in writing was issued to the industry, requiring it to comply with the provisions of the law. The continued inaction of the State in enforcing the law clearly emboldened the industry to violate the same merrily and with impunity and without any fear of any action being taken.

68. It was represented that some notices were issued and steps were taken to launch prosecution. But the first such notice was issued only in 1992. This was nothing more than paying lip service to the enforcement of the law. Since 1980, till today, not a single unit or person has been convicted of having violated any of the pollution laws. In fact, not in a single case has the prosecution proceedings even have been completed.

69. The Advocate General may be correct in submitting that the order of closure should the last resort to be adopted by the State Government but in the situation, like the present, we do not find any regulatory directions having been issued by the Government, at any point of time, and seeing to it that the same are complied with. When an alarming situation, as of today, has come into existence, the order of temporary closure of the non-complying units is the least which could have been expected from the Government. It would not be wrong to state that the Government

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has continued to watch the systematic destruction of the countryside without it lifting its pen except for appointing Committees and receiving Reports. It is relevant to state at this stage that in spite of repeated requests from this Court, necessary statistics with regard to various aspects was not supplied by the State in time.

70. No explanation is forthcoming as to what action it took pursuant to the visit of Shri Amarsinh Chaudhary in 1980 to the area in question. What happened after a letter was written to the Industry in 1980 to contribute for the setting up of the treatment plant is also not made known. In 1988, a report of the Working Group was submitted, but why that Report was not implemented is also not explained. In 1992 and 1994, the then Chief Ministers of the State, as if by ritual, met the villagers and members of the Industry, but again, no action was taken and no explanation is forthcoming. And similar appears to be the approach of the present Government which set up another one-man Committee, called the "Bhanujan Committee", but it is not known when, if at all, it will start implementing the report of the said Committee.

71. The aforesaid continued inaction of the Government can lead to only one conclusion, viz., that it has abetted or collaborated with the Industry in the breaking of the law resulting in large scale pollution of water, air and land, which has adversely affected not only the vast multitude of people living in the villages along Kharicut but even the workers who are working in these industrial units are reported to be suffering from skin and other diseases.

72. The little regard which the State Government has had for protecting the environment is also evident from the fact that no action had been taken by it in seeing to the extension of Water Pollution Amendment Act of 1988, to the State of Gujarat. This amendment, made by the Parliament was intended to give more teeth to the Government to effectively implement the said Act and to take firm action against the polluting Industry. By not extending the said Amendment Act to the State of Gujarat, and its continued inaction in enforcing the existing law, the State Government has lent support to the submission that it has regarded the anti-pollution laws as hindrance to the industrialisation in the State. The figures given hereinafter clearly show that there has been a lot of misinformation in this regard. As already noticed, out of 6,122 industrial units in these four estates, the pollution is being spread by only 756 industrial units. Be that as it may, the State Government cannot be a party, active or passive, to the violation of the very law enacted by it thereby resulting in violation of the fundamental rights of thousands of other innocent citizens of the State.

73. As already noted, the G.P.C.B. is in charge of seeing to the implementation of the laws relating to environment. Till now, there is nothing to suggest that the Board has, in any way, been successful in discharging its duties under the said Act. In fact, there seems to be large scale inactivity on its part.

74. The Board has, from time to time, when applications have been made for granting permissions, issued the necessary permissions subject to certain conditions. Thereafter, there has not been any effective monitoring in order to see whether the said conditions imposed on the industrial units have been complied with or not. There are other industrial units, which have been set up, which have not even bothered

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to get the permission from the G.P.C.B. The third category of cases are those where the permissions granted had elapsed or the permission had been expressly rejected, like the case of Mardia. Notwithstanding this, the units have continued to function.

75. Under Sec. 5 of the Environment Act, the G.P.C.B. could and ought to have issued directions to the units which were causing pollution to abide by the law. No effective directions have been issued in this regard. Even disconnection of electricity and/or water, in order to discipline the industrial units, was not directed.

Submissions of the Government :

76. It was contended by the learned Advocate General that under Sec. 5 of the Environment Act, various options were open to the State. Ordering closure was only one of them. It was submitted that the Court should not give a general direction of closure only. However, where no primary treatment plant had been installed, then the closure may be ordered and when the Court had already given time in March, 1995 for setting up of the secondary primary plant, then more time can be given by the Court for completion of these plants.

Sec. 5 reads as follows :-

> "*5. Power to give directions* :- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.
>
> *Explanation.*-For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct -
>
> (a) the closure, prohibition or regulation of any industry, operation or process; or
>
> (b) stoppage or regulation of the supply of electricity or water or any other service."

It was submitted by the learned Advocate General that the provisions of this section are not mandatory and it is not imperative that the Government must pass an order under the said provision. The aforesaid submission was made because of the use of the word 'may' in Sec. 5. He further submitted that, in any case, order of closure is one of the directions which can be issued and it is for the State Government to decide, depending upon the facts, of each case as to what direction should be issued. In other words, under Sec. 5 the State Government can pass any type of order and the order of closure is not to be passed invariably.

77. It is true that Sec. 5 uses the word "may", but this only means that it is not necessary for the Government to issue directions even when they are not called for. The power contained in Sec. 5, keeping in view the scheme of the Act and the provisions of Art. 48A and Art. 51A(g) has to be regarded as being coupled with duty to act. When, as is evident from the Preamble itself, the Act has been enacted to provide for protection and improvement of environment, then it would become the duty of the Government to take appropriate action under the Act as and when the provisions of the Act, or the Rules framed thereunder, are violated or not complied with. Whenever the need arises or the circumstances demand, the Government would be required to exercise its powers under Sec. 5. Under the law, the Government has, in a way, been made the custodian of seeing that the environment is not polluted.

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78. Section 5 gives the Central Government powers to issue directions in writing. For the avoidance of any doubt, Explanation has been added, which specifically enables the Government to issue directions with regard to closure, prohibition or regulation of any industry, operation or process or to issue directions regarding stoppage or regulation of supply of electricity or water or any other service. The learned Advocate General is right in contending that order to close an industry is one of the powers contained in Sec. 5 and it is not in each and every case that the said power should be exercised. There can be no doubt that what is the type of order to be passed must necessarily depend on the facts and circumstances of each case.

79. If the object of the Act can be achieved and the environment protected by regulatory directions being issued, if such a need arises, then there is no reason as to why more strict directions, like closure, should be issued. Where, there has been a persistent default in complying with the provisions of the Act and where the industry continues to cause pollution and does not have the means or the desire to stop pollution, then order of closure and/or disconnection of electricity and/or water may become inevitable.

80. Closure in Sec. 5 may mean temporary or permanent closure. Permanent closure should be ordered only if an industry is not, by any means which are known, capable of achieving the parameters. Where, however, parameters can be achieved by setting up the requisite units, then the direction which has to be issued under Sec. 5 of the Environment Act is of suspension of production and not of permanent closure. The activities of an industrial unit other than manufacturing activities can go on but it should be restrained from manufacturing those items which cause pollution. It is possible that an industrial unit may be manufacturing certain chemicals or items which cause pollution and also manufactures other items which do not. In such a case, the prohibition has to be to the manufacture of those items which cause pollution, with the direction that production of those items can restart on the industrial unit acquiring an ability to see that its effluent does not pollute.

81. Where, as in majority of the cases, in the instant case, the industrial units do not have the means to achieve the parameters, then there can be no option but to order suspension of production till the requisite plants are set up.

(e) Role of the Industry and its Submissions :

82. From the facts narrated hereinabove, the only conclusion which we can arrive at is that there has been a persistent and consistent non-compliance with the various provisions of law by the industry.

83. It is represented that the industrial estates were established prior to the enactment of the Water Act, 1974 and there was no requirement to comply with any pollution norms. This may be so, but most of the industrial units in question have been established thereafter. In any case, with the enactment of the Water Act, in 1974, the provisions of law, viz., that of the Act and the Rules framed thereunder, had to be complied with. The units were required to obtain consent from the G.P.C.B. and were under an obligation to see that the effluent discharged by them does not, in any way, exceed the parameters notified by the G.P.C.B.

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84. As far as the environment laws and the G.P.C.B. norms are concerned, it is not provided therein as to what type of treatment should be given to the effluent by which plant or machinery or what method should be employed to treat the effluent. All that the law requires is that the effluent of the industrial units should be such that it is within the parameters laid down by the G.P.C.B. How this is to be achieved is for the industry to consider.

85. It is accepted by all that as of today, the parameters can be achieved by setting up primary treatment plant and secondary treatment plant. These plants may be set up by the units individually or there may be a collective effort. In the case of units using lesser amount of water, upto 25,000 litres per day the Notification of the G.P.C.B. itself contemplates or visualises a common effluent treatment plant being used after each unit has given a primary treatment to its effluent.

86. Having known about the requirements of the law, for the last nearly one and half decades, it appears that there is hardly any industrial unit which has complied with or adhered to the said norms. The Pandya Committee and the Nema Committee reports clearly indicate that either the units have no treatment plant at all or some have primary treatment plant, but not the secondary treatment plant, and in other cases even where primary treatment and secondary treatment plants exist the same have either not been operated at all or have not been properly operated. Furthermore, in neither of these industrial estates, any common treatment plant exists. This clearly shows that the industrial units have made little or no effort in trying to comply with the provisions of law.

87. Complaints have been made against the industries since 1978 that they were causing pollution. The Chief Minister and Ministers have held meetings, reports had been prepared and even as far back as in 1981, the industry was required to contribute some money for setting up of common treatment plant. The industry, in other word, was put to notice and at least since 1980 that it was causing serious water pollution. The industrial units, however, continued to defy the law and made no attempts to mend their ways.

88. It has been vehemently contended by all the Counsels for the industry that time should be given to them to set up the required treatment plants. It was contended that the industry has engaged M/s. Chokhavatia Associates as Industrial Consultants in respect of Vatva Industrial Estate and the industry will be in a position to see that common effluent treatment plant is set up. It was hinted during the early stages of the hearing of the case, that needful will be done by 31st December, 1995. It was vehemently urged that if closure of these polluting industries is ordered, it would result in large scale losses to the units as well as loss of employment and also loss to the exchequer. This would also lead to an adverse effect on the other industrial and trading units, it was submitted. It was lastly contended that at the highest, a regulatory order be passed under Sec. 5 of the Environment Act, but not the order of closure.

89. The industrial units cannot, in our opinion, make a grievance that they have not had sufficient time to comply with the provisions of law. As already indicated, since 1981, the Industry was informed that they were required to treat the effluents

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and bring it within G.P.C.B. norms. The representatives of the Industry seem to have participated with the Government Officers as well as the Minister and the Chief Minister in this regard, but as the Government did not appear to be taking any action, the Industry did not respond and continued to pollute. For example, in paragraph 2.3 of Bhanujan Committee report, reference is made to the follow up action which was required to be taken after the submission of the report of the Working Group in 1988. This Working Group had representatives of the Industrial Associations as its members and it suggested that a common collection, treatment and disposal system, was technically and economically feasible. Treatment of the effluent was required to be given but except in the case of Vapi, no follow up action was taken. It seems that whenever a crisis seems imminent, the Industry merely entered into some dialogues, but no concrete steps were taken by it to ensure that the effluents discharged by the units did not cause any pollution.

90. There was, at no point of time, any desire or effort to stop the pollution which was being generated by the industry. The track record of the industry is that despite a number of years having elapsed, little or no action has been taken by it in controlling pollution. No reliance can be placed on its submission that if some more time is granted, but the industry is allowed to continue to function and pollute, it would take appropriate steps to control pollution.

91. It will not be out of place to mention that the Court took up this case for hearing in February, 1995. Though, initially, 30 days' time was granted to meet with the required parameters of the G.P.C.B., nevertheless at the instance of the industry, and on their written undertakings being filed, time for meeting with the parameters was extended from time to time. The parameters which were meant to be met in stages, have not so far been met by all the industrial units, though the total period which was provided, as sought by them, has long expired.

92. The conduct of the industry has been such that some of the industrial units have not hesitated in trying to mislead the Court. Undertakings were given in March/April, 1995 to the effect that all the primary parameters except B.O.D., C.O.D., and T.D.S., will be met within a period of 60 days and, therefore, the Court should not pass any orders requiring the closure of any unit. This submission of the industry was acceded to by the Court. It is unfortunate that despite written undertakings, a large number of industrial units have not complied with the same.

93. It was also urged before the Court that some of the industrial units had permission from the G.P.C.B. and, therefore, closure should not be ordered but not a single instance has been brought to the notice of the Court, where the terms of the permission so granted have been complied with. One of the terms of the permission used to be that the G.P.C.B. norms would be adhered to by the industrial unit and, as already observed, this was observed in its breach.

94. Contemptuous disregard for the law by the industry is further evident from the fact that there are a large number of units which have either applied to the G.P.C.B. for its 'consent' as required by the law or where consent had been granted, the same had lapsed or the consent had been expressly refused. Notwithstanding this, the said units have continued to function and spread pollution.

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95. The effort to mislead the Court has not only been there on the part of the small units but even some of the bigger units have not hesitated in this connection. For example, one of the biggest manufacturers of dyes and dyes intermediate is M/s. Mardia Chemicals. It has a post-tax profit of Rs. 37.12 crores, on a gross turnover of Rs. 227.81 crores, as per its annual balance-sheet for the year 1994-'95. It is, however, interesting to note that the case of Mardia Chemicals before the Court was that it has a primary as well as secondary treatment plants. It has, however, been brought to the notice of the Court by the G.P.C.B. that the permission which was applied for on 6-2-1995, by Mardia Chemicals was refused by the G.P.C.B., vide its letter dated 19-5-1995. The reason for refusal was that the unit had no treatment facility which was effective. Furthermore, in the Fourth Report of the Pandya Committee, it was reported that on a personal visit by the members of the Committee to the Mardia Chemicals Unit, the Committee saw that there was a flexible pipe and portable pump connection, which was being used for transferring the trade effluent over the boundary wall of the unit to the space outside. A photograph showing the pump and the flexible pipe thrown over the compound wall had also been placed on the record. So much for the law — as far as Mardia was concerned.

96. Before concluding with the role of the Industry, it may be observed that, according to Pandya Committee, the G.P.C.B. and the Nema Committee, the industrial units in these estates which are causing pollution are now showing some concern. Efforts are being made for the purposes of setting up secondary plants. It is stated that there are about 34 units in Vatva, manufacturing dyes and dyes intermediates, having a discharge of over 50,000 litres or more per day. All the said units have made efforts for establishing the secondary treatment plants. On their behalf, Mr. Arun Jaitley and Dr. A. M. Singhvi have vehemently contended that those units which were not meeting the parameters had closed their industrial units but each one of them was in the process of putting up a secondary treatment plant. It was contended that these units were showing improvement and every effort was being made to meet the G.P.C.B. parameters. It was the case of these units that most of them had secondary treatment plants, except in the case of about 14 units and in their cases also, the treatment plants would be ready within three or four months and as such, time should be granted to these units to complete the erection, and that they should not be ordered to be closed down. Not only Mr. Arun Jaitley and Dr. A. M. Singhvi, but Mr. S. V. Raju, appearing for majority of the textile processing units and particularly those at Narol and Mr. K. S. Nanavati, appearing on behalf of some of the industrial units and particularly, the Chemical units in Vatva, had also submitted that by 31st of December, 1995, the industry would be in a position to meet with the G.P.C.B. parameters. They submitted that at least that much time be granted to them to put their house in order. Considering the fact that the hearing of this case commenced in February, 1995 by giving time to some of the industrial units and particularly those using less than 25,000 litres of water per day, till 31st of December, 1995 to meet with the G.P.C.B. parameters cannot be considered as being unreasonably short or long. We, however, feel that the time as set in Bhanujan Committee report and by Ms. Sekhon is unwarranted because pollution cannot be

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allowed to spead for too long period when it is causing immense misery and damage to the human beings and the livestock.

97. The industrial units knew about the requirements of the law. They must have been aware that there would be a very large volume of effluent as a result of the processes which were adopted by them. The industrial units were under obligation to meet with the G.P.C.B. parameters. This being so, it was expected, in fact, it was necessary, that before the industrial units which were going to generate polluted effluents commenced business, the manner of disposal of the effluent and solid wastes should have been taken care of. According to the G.P.C.B. no manufacturing activity could have been commenced without the primary treatment plant and the secondary treatment plant or the C.E.T.P., wherever necessary being set up. The 756 industrial units have been extremely irresponsible in not waiting or caring for the setting up of the effluent treatment plants and have merrily been manufacturing and polluting till now. Their concern now in meeting with the pollution norms is only because they are threatened with closure.

98. The Bhanujan Committee Report also sets out a schedule for different actions to be taken leading to the setting up of C.E.T.P. It, *inter alia,* requires all units to set up primary plants by 1st August, 1995, the bigger units to set their plants by 1st January, 1996 and the C.E.T.P. to be commissioned by 1st of February, 1997. It also identifies the roles to be played by the Government, Industry, A.M.C., G.I.D.C. and G.P.C.B. Dealing with the question as to what is to happen from now till the system takes off, it is observed in the Committee's report as follows :—

> "..... A vexing question is the arrangements that are possible during the period from now till the system takes off. Under the provisions of the Water Act, no relaxation is possible to any industry or group of industries under respective levels of treatment and disposal requirements. At the same time, closing these many industries till the project takes off would cause extreme hardship not only to the owners and workers of the unit but also to the ancillary units, suppliers, wholesellers and many others connected with these units. It would appear that some interim dispensation is unavoidable in the circumstances. If the industry commit themselves to the total programme of controlling pollution in a time bound manner and also they establish the preliminary treatment plant (if not done already) and control the parameters of pH, suspended solids, oils and grease and such substances within acceptable levels, then the continuation of the present practice deserve consideration...."

According to Bhanujan Committee Report, the C.E.T.P. should be set up by 1-1-1997, whereas in her affidavit, Ms. S. Sekhon, Secretary then holding charge of Environment, Government of Gujarat, has said that there is a near crisis situation which has arisen but it will take about 3 years to set up the treatment plants.

99. In setting out the time schedule in the Project of controlling pollution, Bhanujan Committee Report has relied upon a scheme, which had been prepared by one Chokhavatia Associates, Ahmedabad, at the behest of the Vatva Industrial Association, which was submitted to Shri Bhanujan. The Chokhavatia report, however, with regard to some crucial matters, is not based on any factual or scientific data. For example, it is, *inter alia,* stated in this report that for preparing the scheme for collection, conveyance, treatment and disposal of the effluent, the quality and quantity survey is essential. After stating that the flow in the Kharicut Canal was

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measured by installing flow meters, in Chokhavatia Report it is stated that it was not possible to measure the total flow of Vatva Industrial Estate by this method. Furthermore, when setting out the effluent characteristics, no figures are given with regard to two of the most important items, viz., pH and D.O.D. The scheme which has been evolved by Chokhavatia also mentions five limitations, which have to be taken into account for the successful implementation of the Master Plan. These limitations are as follows :—

"1. All the industries shall have only one outlet. The outlet from the industry shall be at 0.4 mt. above their finished ground level.

2. The industry will discharge the effluent having neutral pH ranging between 6.5 to 8.5 with suspended solids at any given time not more than 300 mg/lit. This suspended solids concentration will be applicable only when the common effluent treatment facility is in existence. Till that time the industries will have to discharge the effluent with suspended solids as per G.P.C.B. norms.

The industry should not discharge any effluent with oil and grease more than 10 mg/lit. And the toxicants and heavy metals shall be within the G.P.C.B. norms.

3. The industry will have to give confirmation for their maximum effluent volume and their present production capacity. This has to be confirmed along with their Government records which will enable the Association to finalize the proper distribution of their financial share.

4. All the industries shall have to provide a V-notch in their outlet before the effluent is let out from their factory premises and an agency in charge of the Master Plan scheme shall monitor the same.

5. If the scheme has to be executed, then the member industries will have to contribute their share with a proper time bound programme."

100. Looking at the manner in which the industrial units have acted so far, it is difficult to expect that they will comply with the aforesaid requirements. The Chokhavatia Report envisages the treated effluent of the Vatva Estate from the C.E.T.P. to be mixed with the treated effluent of the Pirana Sewage Treatment Plant. The Chokhavatia Report proceeds on the assumption that the effluent from the A.M.C. Sewage Treatment Plant will be having the total discharge of 320 M.L.D. with T.D.S. at 1500 mg/L and the Vatva treated effluent will be of 40 M.L.D. with T.D.S. of 7,000 mg/L, with the result that after mixing of both these effluent, the combined T.D.S. of the discharged water will be within the norms of the G.P.C.B. During the course of the hearing, on behalf of the A.M.C. an affidavit has been filed, stating that the treated effluent of Vatva Industrial area could be mixed with only 130 M.L.D. of treated domestic sewage.

101. The aforesaid circumstances show that the acceptance of Bhanujan Committee Report by the Government may not necessarily lead to a lasting solution to the problem on hand. It is not as if Shri K. V. Bhanujan has carried out a detailed study himself, possibly because of the time constraint and, therefore, relied upon Chokhavatia Associates Report. But, it is more than doubtful that the implementation of the said report would help in meeting the G.P.C.B. parameters.

102. In Bhanujan Committee Report, it is also mentioned that it may be possible to put the effluent into the drains at different points. Counsel for the A.M.C., however, submitted that this cannot be allowed as it will result in corrosion of the

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drains and the sewage would itself become untreatable at this Pirana Sewage Plant. In other words, the A.M.C. is not prepared to allow the mixing of the Vatva effluent with the domestic sewage before the treatment of the domestic sewage at the Pirana Treatment Plant. In other words, it is the case of A.M.C. that the industrial effluent is not to enter the Pirana Treatment Plant but the treated industrial effluent is to be mixed with the domestic sewage after the latter has been treated. It is only just before the discharge into river that the two separately treated effluents are to be mixed.

103. In such a situation, the question which arises is : What should the Court do ? Does it allow the pollution to continue while giving time to the units to set up the treatment plants or does it direct the enforcement of the law and order closure of the units who do not have G.P.C.B. clearance and/or are not in a position to meet the G.P.C.B. parameters ? This indeed is a very vexed question because on the one hand, closure may mean loss of money and employment while on the other hand, continued pollution would cause permanent damage to environment and will also result in a few lac people's rights under Art. 21 of the Constitution of India being continuously violated.

104. Except in the case of Mardia Chemicals and Metrochem Industries, the arguments of all the other Counsels appearing for the various industrial units has been the same, namely, give the units more time in order to enable them to set up the treatment plants. Apart from contending that the G.I.D.C. has not laid the required drainage and other lines, no attempt was made to hide the established fact that the industrial units have been responsible for polluting, to the extent contended by the petitioners, since the last few years. The industry is now ready to mend its ways and, therefore, it is submitted, more time be granted. How much time is required is, however, not specifically stated. The main plea was that even temporary closure of the polluting units should not be ordered as this will result in large scale unemployment, loss of revenue to the Government and financial loss to the industry.

105. It was contended by Mr. Ramaswamy, learned Counsel for Mardia that it has no effluent and, therefore, it was not necessary for it to get any permission or licence from the G.P.C.B. We find it difficult to agree with this submission. Firstly, Mardia Chemicals had itself, on 6-2-1995, applied to the G.P.C.B. for permission. If it did not have any effluent, there was no occasion for it to have applied. Secondly, this approval was refused, vide letter dated 19-5-1995. M/s. Mardia Chemicals did not, at any stage, think it proper to inform the Court that it had sought approval of the G.P.C.B. and the same had been expressly refused. Thirdly, when the Pandya Committee visited the unit in May, 1995, it found that not a single treatment plant was in operation though the production plant was functioning. Presumably, that is why the treatment given to the effluent was to have arrangement to throw it over the boundary wall, as observed by the Pandya Committee on its visit there. The Committee was informed by the concerned operator that the treatment plant had been shut up for maintenance. The Committee rightly found this explanation not to be worthy of acceptance. That apart, the so-called zero effluent discharge of Mardia has been examined by the G.P.C.B. According to Shri H. J. Trivedi, Counsel for G.P.C.B., such treatment can be approved by it only after it examines the same for a period of about 60 days and it finds the same to be

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effective. *Prima facie,* it appears to us that the zero effluent discharge may not be possible. According to the documents placed on record, the quantum of effluent discharged by Mardia Chemicals is about 70,000 litres per day. According to the information supplied by it to the G.I.D.C., it expects evaporation at the rate of 2,200 liters per hour. Assuming that the evaporation takes place at a uniform rate throughout 24 hours of the day, the maximum evaporation can only be 52,800 litres, whereas the quantity of effluent is stated to be 70,000 litres per day. Furthermore, no mention has been made by this unit with regard to the manner or mode of disposal of the solid waste. Incidentally, expansive plots of land near this factory were found to be filled with solid waste by the Pandya Committee.

106. Similar is the position with regard to another big unit, viz., Metrochem. This Company has also no approval from G.P.C.B. and has made no effort to set up its own S.E.T.P. despite having a profit of Rs. 9.27 crores for year ending 1993-94 on a gross turnover of Rs. 71.44 crores. This unit also claims to have zero effluent, but as already observed, there is no technical acceptance of the same by the G.P.C.B. or any other authority. Mr. Mridul, learned Counsel for Metrochem, has submitted that this system was based on a system devised by M/s. Bordia Chemicals, Ratlam. The fact that this technology is not proved is evident from the "Status Report of H. Acid and G. Salt", prepared by the Central Pollution Control Board, in June, 1994. At Page 44 of the report, it observed as follows :—

> "..... M/s. Bardia Chemicals, Ratlam, claims to discharge no liquid effluent. They are totally evaporating the mother liquor from H-acid isolation step, to get black crystals of sodium sulphate. They are reusing filter press washes in the preparation of "Nitro light wash". *No further details about quality and disposal of sodium sulphate and evolution of gases in evaporation are available...."* (Emphasis added)

It is possible that effort is being made by these leaders of the industry to find alternative mode or means of treating the effluent but the statutory authority, viz., the G.P.C.B. is not satisfied about its effectiveness and unless the Board accepts such manner of treatment being sufficient and effective, it is not possible for this Court to accept and approve the mere contention of the said industrial units. This is a teachnical matter which has to be examined by experts, and the authority under the law is G.P.C.B. on whose behalf a statement was made in the Court that the said method has not so far been examined or approved.

107. It was contended by the Counsel for some of the industrial units that before any order of closure is passed, an opportunity of hearing should be granted. Such a contention had been raised before a single Judge of this Court in the case of *M/s. Narula Dyeing & Printing Works v. Union of India & Ors.,* 1995(1) GLH 679. In that case, the State Government had issued directions to stop the manufacturing activities which were causing pollution, without affording any opportunity to file objections. Power in that case was sought to be exercised under Sec. 5 of the Environment Act and in support of its action in not giving an opportunity of hearing, reliance was placed on Rule 4(5) framed under the said Act, which Rule reads as follows :-

> "4(5). In a case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an

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opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity."

While dismissing the writ petitions filed by the aggrieved industrial units, it was observed by R. K. Abichandani, J., that looking at the gravity of the situation, the Government could exercise its jurisdiction of ordering closure, without giving an opportunity of hearing, because of the specific powers conferred on it by Rule 4(5). In this connection, the Court referred to the release of trade effluents into Kharicut Canal where those units were causing damage to the crops in the fields. While upholding the orders of closure issued by the Government, the Court observed at page 690 as follows :-

"..... There were several complaints received by the Hon'ble the Chief Minister and the concerned Department regarding the pollution caused due to release of untreated effluents in river Khari. This naturally called for immediate action, and the record shows that urgent action was overdue. Therefore, if the State Government became suddenly aware of its duties and took action for preventing further damage to the crops and the agricultural lands, it cannot be said that there was no justification for such action because it was not taken earlier. The gravity of the situation was in the extent of damage which was resulting due to discharge of such effluents. The Government was fully empowered to dispense with the opportunity being given for filing objections against the proposed directions in such cases of grave injury to the environment. The provisions of Rule 4(5) are intended to safeguard the environment from any grave injury to it and in the present case, it has been amply borne out that the release of the effluents by the petitioner units was resulting in pollution of the irrigation canal causing vast damage to the crops and the agricultural fields. This fact has been recorded in writing in the impugned orders dated 19th October, 1994. The petitioners did not operate effluent treatment plant and could not be allowed to release untreated effluents resulting in damage to the fertile lands of Kheda District. The State Government was, therefore, fully justified in proceeding under Rule 4(5) of the said Rule while exercising its delegated powers for issuing directions under Sec. 5 of the Act as per the impugned orders. These petitions are, therefore, without any substance and are rejected......."

We are in respectful agreement with the aforesaid reasoning and, in our opinion, the law on the point has been correctly laid down by the single Judge and we reaffirm the same. In appropriate cases, where the circumstances warrant, orders can be passed by the Government, ordering closure even without giving an opportunity to file objections to the direction so issued. Of course, such orders can be passed by the Central Government if the circumstances mentioned in Rule 4(5) exist and in that case, there was no doubt that the circumstances existed. In any case, in the present case, the requisite notice under Rule 4 was given on 10-3-1995 and no replies have been filed to the Governmental authority and the time provided for has expired.

108. It has been contended by Shri S. V. Raju, appearing for industrial units in Narol which are, mainly processing and printing units, that rather than imposing closure of the textile units, it may be more appropriate that fines should be imposed. The fallacy in this argument is that this will prompt the continued violation of the law by payment of money. In a sense, this would legalise the violation. That certainly is not permissible. Where, however, the imposition of a fine can remedy the situation or the threat of fine can act as a deterrent, then the G.P.C.B. would certainly be

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in a position to do the needful. The policy of paying and polluting can, however, never be accepted by the Court specially when the pollution results in violation of Art. 21 of innocent persons.

109. These textile processing units are causing pollution primarily because of the use of chemical dyes. It is possible for the industry to achieve the G.P.C.B. parameters by installing the requisite primary and secondary treatment plants and/ or C.E.T.P. If this cannot be done, then it is not necessary to order the closure of these units because an alternative solution is possible and that is that they may voluntarily, or be directed to use vegetable dyes which are non-polluting in nature. Vegetable dyes are not used, it is submitted in the Court, primarily because of the fact that they are expensive. But the textile industry cannot be given the licence or permission to use the cheap chemical dyes, as opposed to expensive vegetable dyes and also not to take the remedial action of controlling pollution emanating from such units.

110. The textile industry consists of large as well as small units. The main parameters which are not met by this industry is that of pH, BOD, COD, TDS and suspended solids. While some of them can be met with the establishment of primary treatment plant, the main cause of the serious pollution is the method of carbonisation which is adopted by them. An industrial unit which does carbonising cannot be permitted to continue with that process without it setting up a primary and secondary treatment plant, or an effective C.E.T.P. even if its effluent is less than 25,000 litres per day. The closure of carbonising process will not put the industrial units out of business and it should not be difficult for the units using this method either to establish the requisite plants or to shift this process to be nearer a seashore which is one of the long term measures suggested in Bhanujan Committee Report.

111. It had been contended on behalf of the learned Counsel for the G.P.C.B. that there is a serious handicap in its functioning and that handicap is because of the lack of personnel. In the Bhanujan Committee Report, in Chapter IV, dealing with Monitoring and Enforcement, it has been stated that :-

> "......unless the Board is suitably strengthened, it would be impossible for it to carry out its statutory duties with due diligence and promptness. With the increasing pace of industrialisation, particularly in the field of chemical and petrochemicals, the strengthening of the Board brooks no delay......"

It has been rightly observed in Bhanujan Committee Report that :-

> "...... the best law is not better than the weakest enforcement......."

It is, therefore, imperative that immediate steps are taken to see that the Board is strengthened. Now when environmental engineering is one of the subjects in some of the engineering colleges, and young graduates holding the requisite expertise are available, there is no reason as to why effective steps should not be taken by the Government for the creation of more posts in an effort to strengthen the Board. It is the policy of the State Government to encourage industrialisation. In order to ensure that with the increase of industrialisation, pollution does not increase, it would be disastrous to economise in the matter of recruiting competent persons to monitor the pollution in the State.

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112. The G.P.C.B. can and should play the role of, what, for the sake of convenience may be called "Environmental Audit and Checking". Just as Chartered Accountant or the Comptroller and Auditor General checks the accounts of private or public companies and other organisations, similarly, a cell could be created in the G.P.C.B. of young environmental engineers and other technicians, who would then be given the responsibility of monitoring and enforcing the pollution laws in the State.

113. In paragraph 4.1 of Bhanujan Committee Report, the indication seems to be that about 200 posts are required to be created for effective monitoring of the law. The G.P.C.B. should assess its need of additional manpower and forward the same to the Government, who would be under an obligation to create such posts and the additional posts would be created in order to oversee or monitor the function of the industrial units. The said units may be required to pay a sort of cess or a fee to the G.P.C.B. which would, possibly, be adequate to make the creation of posts not uneconomic or would not place much extra burden on the State Exchequer.

(f) Solid Waste :

114. Hazardous Waste (Management & Handling) Rules, 1989 were framed which required that hazardous wastes have to be disposed of in environmentally safe manner. The G.P.C.B. entrusted the National Productivity Council with a task of carrying out "Environmental Impact Assessment Studies for Identification of Hazardous Waste Disposal Sites in Odhav, Naroda and Vatva Industrial Estates of Ahmedabad District" and to investigate the old dump sites in these industrial estates. The said National Productivity Council submitted its report dated 10th of April, 1995. With regard to the Hazardous Waste Inventorisation, it was estimated that more than 62,500 tons of hazardous wastes are presently being generated per year by about 554 industrial units. In addition to this, about 32,500 tons per annum of hazardous wastes were expected to be generated from the treatment of industrial waste water. In the report, it was, *inter alia,* stated in paragraph 2.4 that :-

> "........ In view of the lack of any organised waste disposal system, the hazardous wastes are being disposed of indiscriminately on land. The waste management practices varies from industry to industry. As such, there is no practice for segregation of various types of hazardous wastes, however, any waste having economic value is being segregated........."

Giving an inventory of existing dump sites in Odhav, Naroda and Vatva, in paragraph 6.1 of the report, it was stated that the site in Odhav was located on the side of Odhav-Ahmedabad Road and that :-

> "........the waste is being dumped on the banks of Kharicut Canal and along the Naroda Viratnagar Road........."

The dump site in Naroda was identified as being situated on the left side of Gayatri Mandir Road and there were two sites at Vatva. The first site was situated adjacent to the Ahmedabad-Baroda Railway line and :-

> ".....it is surrounded by M/s. Mardia Chemicals on southern side and a railway line on the western side. The second dump site was situated in Phase II of the Vatva Industrial Estate on both sides of Vinjol Village Road near Kharicut Canal..."

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115. In paragraph 6.2, the National Productivity Council suggested remediation of the said dump sites in the following words :-

".....6.2. REMEDIATION OF DUMP SITES :

With regard to hazards observed at the dump sites and the probable migration paths of pollutants, the following remedial options are suggested :-

Further dumping of hazardous wastes should not be allowed.

Hazardous wastes dumped on the bank of Canal and on the side of the road have to be excavated and placed on the secured landfill facility as quantity of waste dumped is less than 1,000 tonnes.

The bottom of the Canal has to be lined with proper liner along the stretch of site so that further contamination of ground water due to percolation of Canal effluent beneath the dump site can be avoided.

The waste water collected on the site has to be pumped out for proper treatment at some treatment unit.

The wastes dumped on the site have to be levelled and covered with the compacted impervious soil layer of thickness 1.0 meter with proper side slope so that run off will directly go into the drain without contamination. In order to prevent percolation of rain water into the waste body, it is recommended to apply a layer of asphalt coated tarpoline followed by a layer of top soil of thickness 1.0 meter above the impervious soil layer. The grass or vegetation has to be applied for preventing the soil erosion and land slide....."

116. It is pertinent to note that till after the filing of the present writ petition, no serious thought had been given by the authorities concerned, whether it be the Gujarat Government or the G.P.C.B. or the G.I.D.C. with regard to the disposal of the solid wastes. In the permissions which were granted to the different industrial units by the G.P.C.B. under the Hazardous Waste (Management & Handling) Rules, 1989, the industrial units were required to keep the solid wastes within their factory premises but, as is evident from the report of the National Productivity Council, the solid wastes being generated in huge quantities were being dumped, with impunity, and without any regard for safety or environment, on the open areas which were available in the said industrial estates. What was happening to the said solid wastes during monsoon is, of course, beyond imagination.

117. In fact, as reported by the Pandya Committee, large plots of land were found filled with solid waste adjoining Mardia Chemicals. This is in the background that the factories are required to keep the waste in their compound only. As per the law/consent Mardias were expected to remove their solid waste to Surendranagar which it apparently did not do.

General Directions :

118. There has been a considerable debate, in public, and arguments were addressed in the present case, that there has to be a balancing between the industrialization and ecology. In other words, one should not be sacrificed for the sake of the other. In the name of ecology, the industries should not be asked to shut down, for the complications which will arise with the closure of the industry would result in untold hardship.

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119. In our opinion, the object underlying the promulgation of the aforesaid Acts relating to environment is essentially to achieve this balance between industrialisation and ecology. The fact that industrialisation affects the air, water and other factors of environment, cannot be denied. What the three Acts provide is that the emissions into the air, the discharge of water by the industry and other forms of pollution are to be contained within permissible limits. In other words, the extent to which pollution can take place, is permitted or legalised. In laying down various parameters, the Government and the Pollution Control Boards are expected to take into consideration not only the state of the industry, but also the extent to which pollution will be accepted by nature. For example, norms have been laid down under the Water Act, which require various parameters to be achieved for the discharge of effluents. The permissible norms show as to what extent water can be permitted to be polluted. For instance, according to the said norms, the total dissolved solids of the effluent into river should not be more than 2,100 mg/L. The meaning of this is that the pollution which is caused by the industry would be permissible or tolerated upto 2,100 mg/L and no more. Therefore, it is in this way that balance is struck between industrialisation and ecology.

120. The Advocate General has informed the Court that it is possible for this industry to achieve the norms though some efforts have to be made by installing requisite plant and following a particular method of treatment of effluent. This will undoubtedly involve some expense, but if the parameters can be achieved, then it will be not correct to contend that industrialisation is being adversely affected in the name of ecology. Industrialisation and ecology can and should coexist. It only requires the will and the effort. The Industries cannot, in effect, contend that because we are unable to achieve the G.P.C.B. norms, therefore, do not enforce the law.

121. What is required is industrialisation and ecology and not industrialisation at the expense of ecology or ecology at the expense of industrialisation. In our opinion, the power granted under Sec. 5 has to be exercised in order to see that pollution is controlled and the balance between industrialisation and ecology is maintained. Whether the directions which are issued should be that of closure or in the nature of prohibition or be regulatory in character, must depend on the facts of each case. With the object to be achieved being known, viz., preventing pollution and requiring the adherence to the G.P.C.B. parameters, it would be for the Government or the G.P.C.B. to decide what type of action to be taken against an erring unit. It would stand to reason that if, by a regulatory order, pollution can be controlled then that is the first option to be exercised. If a prohibitory order is required for the purpose of controlling pollution, then that has to be issued. Possibly, as a last resort, if the pollution norms are not met or there is a persistent default or the norms cannot be met, then there may be no option but to order closure.

122. There are instances where the industrial units have got the requisite plants but because of the expense in running the same, they are lying idle. It would be the duty of the G.P.C.B. to see that necessary directions are issued requiring the said plants to be operated. Otherwise, the units would be liable to have more stringent orders passed against them. There are other instances, where the plants are being run, but not in an efficient manner so as to achieve the desired results. Regulatory directions can be issued which may even be in the nature of informing the industrial

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units as to how best to operate the said plants and in any case, time can be granted to such units to see that the requisite parameters can be achieved.

123. It is difficult to appreciate the contention that the Court should grant more time to all for completion of the setting up of the secondary treatment plants or the C.E.T.P. by the industry. At no point of time has the Court stopped or prevented the industry from setting up the said treatment plants. In fact, various directions and extensions which have been issued only show the anxiety of the Court to see that such plants are set up as expeditiously as possible. The Court, however, would not be justified in allowing the industry to continue to pollute when it is not in a position to treat its effluent and meet the statutory pollution norms. Just as a human being, with a bad digestive system, may have to be given a medicine and be required to go on a fast, similar is the position with the Chemical industrial units in these areas. As it is not in a position to effectively take care of its effluent, a temporary closure, akin to a man going on fast, may be necessary and may have to be taken as a strong medicine for seeing that the laws are obeyed and these industries do not continue to violate other people's fundamental rights merely for the sake of earning money for themselves.

124. It is quite obvious that if the industrial units had set up the treatment plants, their date of commencement of manufacture may have been postponed to some extent. Normally, as already noticed, such plants have to be set up before commencement of business. Having saved time at that stage, by not caring for the law, such units cannot have a legitimate grievance, if at this stage they are required to do what they should have done before commencing manufacture. A temporary closure at this stage which will have the effect of stopping pollution and during which period the requisite treatment plants can be set up, would only ensure that the continued violation of the law is put an end to. Otherwise, it would mean that the Court would, in effect, be giving approval of continued infringement of the law. This temporary closure is, so to say, invited by the industry itself, which has been criminally negligent in not complying with the requirements of the law.

125. It has to be borne in mind that the pollution which is spread by these industrial units is adversely affecting large number of citizens of Ahmedabad and the residents of adjoining 11 villages, in particular. Water and air pollution is not only continued to the immediate area in which the pollution is generated, but the same affects other areas as well. Wherever polluted water goes, the pollution spreads along with it. The Supreme Court in *M. C. Mehta v. Union of India,* AIR 1988 SC 1037, *Virender Gaur & Ors v. State of Haryana & Ors.,* 1995(2) SCC 577 and *C.E.R.C. v. Union of India,* AIR 1995 SC 922, has now authoritatively held that persons who suffer as a result of this pollution can justifiably contend that the fundamental right to live under Art. 21 of the Constitution is violated. Under these circumstances, when the pollution caused by the industrial units is violating the rights under Art. 21 of over 5 lac people in the City and about 5 lac people in the surrounding areas, and that pollution is being caused only by 756 units, out of 6,122 units, can this Court, in exercise of its powers under Art. 226 of the Constitution of India, justifiably hold that it would not order the closure of these polluting units, because they and their employees, possibly, will suffer financial loss ?

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126. Closure of some of the units would, undoubtedly, cause them a financial set back. From the report submitted by the Counsel appearing for the State of Gujarat, it appears that in these 756 units, about 25,000 workers are employed. The main revenue, which is contributed by this group of industries is by way of sales tax, which comes to, according to the State, approximately, Rs. 6.50 crores per year. As against this, the pollution which is being caused by these units is adversely affecting nearly 10 lacs of people. The sales tax which is paid represents less than 1% (one percentum) of the gross turnover of this industiry which seems to imply that even sales tax may not have been fully paid by it. At the same time, large scale damage, perhaps, some of it irreversible, is being done to the soil and the sub-soil and river water.

127. Such cases relating to environment cannot be merely regarded as being cases of *lis* between the petitioners and the respondents. The problems which are sought to be tackled are with regard to the effects which today's action or inaction will have on the posterity. But, even if it was to be regarded as a *lis* between the petitioners and the industry, we find that approximately five lacs of people are residing in the 11 villages, which are, admittedly, being directly affected by the pollution. It has been alleged in the writ petition that the agricultural yield has been reduced from 2.00 tons per acre to 0.50 tons per acre per year. There are approximately, 8,000 acres of land in these villages. This being so, the loss of agricultural yield has been estimated to be Rs. 6.40 crores per year. Therefore, whereas a closure of the industry, till it is able to mend its ways and install the pollution control plants is only temporary, and the loss to be suffered by them will not be permanent, on the other hand, the loss to the agriculturists, relatively speaking, would be of much greater magnitude and the damage to environment more permanent. In fact, their grievance has been subsisting at least for last 15 years.

128. The owners and the workers in the industrial units are living within the municipal limits of Ahmedabad Municipal Corporation. They are most likely getting all the facilities, which a city dweller gets, like municipal water, sewage, drainage etc. On the other hand, the villages are not supplied with treated water by any Municipality and they have, perforce, to rely upon the river water and the ground water, which is available to them from well. With the pollution of these waters, the villagers do not get even potable water, which is the most basic need for a man to survive. Under these circumstances, where even if competing or rival claims are to be taken into consideration, the Court cannot allow continued violation of the right to live guaranteed under Art. 21 to the villagers, just because 15% of the total industrial units have been and wants to continue to violate the law merely for the sake of earning profits. It will be opposed to all canons of fair play, justice and law, if continued illegal activity is accorded judicial protection or sanction which, in effect, would be the result if more time is granted to the polluting industries to continue to function till they are able to achieve the parameters set by the G.P.C.B.

129. In the scheme for setting up C.E.T.P. and also in Bhanujan Report, there is a mention that part of the expense, to the tune of 20 crores will be spent by G.I.D.C. and the AMC out of their own funds. We do not see any justification for the same. This is not a case where due to financial hardship, the industry cannot pay. The

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turnover of this Chemical industry is of hundreds of crores of rupees. In fact, as per the advertisement in "The Times of India", (Ahmedabad Edition) dated 27th July, 1995, issued by Mardia Group, it is stated that they have an annual turnover of Rs. 550/- crores, including that of its steel plants. Therefore, there should be no need for such industrial units to ask for any financial contribution from the State or its organs. The industrial units which are polluting are trying to hold the society to ransom and extract tax payers' money from G.I.D.C. and A.M.C. Why should the public bodies pay for discharging an obligation of the Industry. While loans may be granted, no other financial assistance should be extended. The Industry has the means and it should mend its own ways at its own cost. We, therefore, restrain G.I.D.C. or A.M.C. from spending its own money for setting up of the C.E.T.P. but they should continue to discharge their statutory or contractual obligations like laying of drains and pipes which they would be required to do as a part of their normal duty.

Summary :

130. From the aforesaid discussion, the conclusions that follow can be, for the sake of convenience, summarised as follows :-

1. There is admittedly, large scale pollution being caused by about 756 industrial units situated in the G.I.D.C. Industrial Estates of Vatva, Naroda and Odhav and also by some textile units and processing houses situated in and around Narol.
2. The pollution has been caused since over 15 years with the continued discharge into Kharicut Canal by the Odhav, Naroda and Vatva industrial units, which has also resulted in increasing salinity and degradation of the quality of soil, which has the effect of drastically reducing the agricultural produce at least in the 11 villages around Kharicut Canal, including the land of the petitioners.
3. Pollution can be controlled by giving primary and secondary treatment to the effluent.
4. The Government as well as G.P.C.B. and G.I.D.C. have been negligent in discharge of their statutory duties and they have, by their inaction, connived or collaborated or abetted to the continued pollution by these 756 polluting units. The Government, in particular, has shown little or no concern to the environment's degradation in the State. It is guilty of total inaction in taking effective steps for protecting and/or improving the environment and thereby, the quality of life.
5. The individual units causing pollution have shown complete disregard to the statutory provisions. For them, the rule of law did not exist as they seemed to have some protection or assurance that no effective action will be taken against them. Their industrial progress and affluence has been at the cost of environment.
6. Different industrial units cause pollution to different extents. Ordinarily, the greater the use of the water, the more pollution it will cause. The 756 industrial units which cause pollution and to whom notices have been issued by the Government under Sec. 5 of the Environment Act, are categorised as follows:-

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I. Units manufacturing the 7 specified items, which are :-

(i) C. Acid;

(ii) H. Acid;

(iii) K. Acid;

(iv) Vinyl Sulfone;

(v) Napthalene based other intermediates;

(vi) Pigments - (a) CPC Blue (Alpha) and (b) CPC Green; And

(vii) Phathalocynine Blue.

II. Stainless rolling and rerolling mills;

III. Carbonising units which have been established in the textile units;

The aforesaid three categories are the most polluting industrial units and the quality of their pollution does not depend upon the quantity of the effluent. Therefore, irrespective of their effluents, these units cannot be permitted to have any discharge without its receiving primary and secondary treatment within the units.

IV. (a) Textile units, i.e., dyeing, processing and printing houses. Those using more than 50,000 litres of water per day are stated to be about 51 in number while textile units using less than 50,000 litres of water per day are about 50.

It is possible, according to the parties, that the effluent can be brought within the G.P.C.B. norms provided that the effluent is given primary and secondary treatment. In the textile printing and processing industry, the main cause of pollution is the carbonisation process which is carried out by some of the units. Counsels for some of the industrial units agreed to shut down the carbonisation process with immediate effect till they are able to give primary and secondary treatment to their effluent;

(b) Chemical Industry, including dyes and dyes intermediates :-

(i) Those units which have a discharge of over 25,000 litres a day which require the said units themselves giving primary and secondary treatment to the effluent;

(ii) Chemical units having a discharge of less than 25,000 litres per day which are required to give primary treatment to the effluent before the same can be given the secondary treatment in a common effluent treatment plant.

7. Under Sec. 5 of the Environment Act, different types of orders can be passed by the Government, depending on the facts and circumstances of each case and the orders which can be passed include the order of closure and/or disconnection of electricity and/or water.

8. The industrial units want time so as to enable them to meet the G.P.C.B. norms. Effort is made to set up common effluent treatment plant, after which effluent will be taken and mixed with the treated sewage which is discharged from the municipal works at Pirana.

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9. The Government has accepted the Bhanujan Committee Report, but it is doubtful whether the implementation of the same will lead to the pollution being controlled within a reasonable time.
10. As suggested by the Bhanujan Committee Report, the G.P.C.B. requires to be strengthened.

Directions :

131. Under Sec. 5 of the Environment Act, appropriate directions are to be issued by the State Government. Normally, a Court would not pass an order. directing the closure of any unit. Where, however, there is a complete abdication of authority by the Government and the Court comes to the conclusion, like in the present case, that the Government has failed to discharge its statutory duty, and which failure has resulted in the violation of the fundamental right of the petitioners and lacs of other people, guaranteed under Art. 21 of the Constitution, then the Court is left with no option but to issue appropriate direction to the Government to pass the necessary orders under Sec. 5 of the Environment Act. We would like to observe that non-enforcement of a good law will invariably lead to the arising of an ugly situation. The Environment Acts were passed by the Parliament because the need had arisen to give statutory protection to the environment because degradation of the same was adversely affecting the quality of life. Having seen that the Government and the G.P.C.B. have shied away from taking effective steps under the Environment Act in protecting the environment or preventing its destruction in its desire to industrialise, it is necessary to issue directions which are required to be followed by the State Government and also to make suggestions or recommendations for the consideration of the Government.

132. Even though this is a public interest litigation pertaining to the protection of the environment, the Court cannot, however much it may desire to do so, transgress the jurisdiction which it has under Art. 226 of the Constitution. While enforcement of the law can certainly be directed but, at the same time, it will not be possible for the Court to direct the State Government to formulate any particular policy or scheme with regard thereto. In our opinion, only a recommendation or suggestion can be made which the State Government will, no doubt, consider with all the seriousness which it deserves.

133. A contention had been raised during the course of arguments that an Expert Body should be set up in order to see that the directions which are issued by the Court are complied with and that the No Objection Certificates are not wrongly given. Attractive as this suggestion is, it would not be advisable to constitute a permanent body which can have no sanction in law. The Environment Acts are to be administered by the State and the Pollution Control Board has been set up as a watchdog agency. The constitution of another High Power Committee under the aegis of the Court will, undoubtedly, impinge upon the statutory obligations of the State and the G.P.C.B. The non-functioning of these agencies should now at least not cause much worry for the reason that the general public has become aware of the need to protect and preserve ecology. The best watchdogs or protectors of environment, in our opinion are the general public and specially those people living in the neighbourhood of polluting industries or who suffer pollution. The members

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of the public individually or collectively will certainly and hopefully raise their voice if any pollution occurs or the said authorities are negligent in discharging their duties. If required, they can always approach the Court for necessary direction to the Government agencies for the purpose of containing pollution.

134. The two Committees which had been appointed, viz., the Pandya Committee and Nema Committee, were only for the purposes of assisting the Court and were in the nature of Court Commissioners, in deciding these matters and their life need not extend hereafter. The Court would, however, like to place on record its gratitude and appreciation for the work done not only by these Committees but also for the assistance which the Court received from the Counsels and Shri M. D. Pandya, in particular.

135. We accordingly :-

A. I. Issue a writ of mandamus to the State of Gujarat to direct the closure forthwith of the manufacturing operations of :-

(i) Those polluting industrial units, manufacturing the seven specified items, viz.:-

C. Acids;

H. Acids;

K. Acids;

Vinyl Sulfone;

Napthalene based other intermediates;

Pigments - (a) CPC blue (alpha); and (b) CPC green; and

Phathalocynine blue,

which require fully operative E.T.P. of their own but do not have such E.T.P. or have either only primary or secondary treatment plant but do not achieve the G.P.C.B. norms, till these units are able to achieve the G.P.C.B. norms;

(ii) Those polluting chemical industrial units having discharge of more than 25,000 litres of water per day, which do not have arrangement for primary and secondary treatment and do not conform to the inlet/outlet parameters as per G. P. C. B. norms, till the same are achieved;

(iii) The carbonising units in the textile processing industries till the said units have the effluent treatment plants and are able to achieve the G.P.C.B. norms;

(iv) Stainless steel rolling and rerolling mills until they have the requisite effluent treatment plants and are able to achieve the G.P.C.B. norms;

(v) Those textile processing units using more than 25,000 liters of water per day shall suspend their operations unless they give primary and secondary treatment to their effluent and/or are able to achieve the G.P.C.B. norms and obtain NOC/Consent.

(vi) The two units claiming to have zero effluent, viz., Mardia and Metrochem, will not have commercial production whatsoever from their units unless they are able to satisfy the G.P.C.B. that they are in a position to achieve these G.P.C.B. norms and obtain a "No Objection Certificate" from the G.P.C.B. This NOC will not be given unless satisfactory arrangement is made for the disposal of the hazardous solid wastes by these two units.

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II. In order to ensure that production is suspended by those units, to whom the directions have been issued, the State will issue, where necessary, directions for the stoppage of supply of electricity and/or water in order to ensure compliance. These units, however, will be given the connection, if they require, for the purposes of satisfying the G.P.C.B. that the units are in a position to meet the G.P.C.B. norms. Electricity and water are required for sufficiently long time to enable the checking of the claim but till NOC/Consent is obtained, no permission should be given for commercial production.

III. Furthermore, the units ordered to suspend or close their operations, as aforesaid, may start them only after obtaining the consent letter of the G.P.C.B.

B. (i) A writ of mandamus is issued directing the State Government to see that the textile units as well as the polluting Chemical industrial units having a discharge of less than 25,000 litres per day achieve the G.P.C.B. norms by 31st of December, 1995, failing which they shall be liable to be closed down with effect from 1st of January, 1996. In the event of all or any of the units having a discharge of less than 25,000 litres per day failing to meet the G.P.C.B. norms by 31st December, 1995, they shall close with effect from 1st January, 1996 and in order to ensure that their production is suspended, the State will issue necessary directions to them to stop production and in this connection will also issue necessary direction for the stoppage of supply of electricity and/or water in order to ensure compliance. Such directions should be issued, if necessary, by 10th January, 1996, by which time the names of erring units, if any, should be ascertained. These units can recommence only after achieving the G.P.C.B. norms and their obtaining the requisite consent letter from G.P.C.B.

(ii) The State of Gujarat, G.I.D.C. and A.M.C. are directed to lay separate/necessary pipes and/or drains to carry the treated industrial effluent to Pirana for mixing the same with the treated sewage before discharge into the river. The expense for this shall be borne entirely by the polluting units, who shall contribute *pro-rata* as and when demanded by the Government. The work on this should start immediately and be completed by 31st December, 1995, or within such extended time as the Court may allow on a proper application being made.

(iii) In case any common treatment plant/s is/are required to be set up for these industrial estates, no public funds shall be diverted to them. The State/AMC/GPCB/GIDC/AEC may assist in such an endeavour by making suitable land for such units/pipelines available at reasonable rate and by taking early administrative decisions and may as well consider grant of loans. In the event of any such collective treatment units being set up, the same shall be on the condition that the participation of the public authorities in the management of these units shall not be less than 51%.

Note : It has been submitted and accepted by all the parties that if the industrial units in these estates are taken together in their collectivity, the G.P.C.B. norms regarding TDS can be fully met only after the treated effluents from the industrial units are mixed with the Pirana Sewage discharge after its treatment. The TDS is expected to be reduced to the level of the G.P.C.B. norms either as a result of the secondary treatment given by the industrial unit concerned at the plant level or by

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mixing the treated industrial effluent of the estates taken together and mixed with the municipal sewage after its treatment in the Pirana Plant. Time has been given for this purpose upto 31st December, 1995. Hence, for the purposes of aforesaid directions A and B, the compliance with G.P.C.B. norms will essentially mean compliance with norms other than TDS.

C. Orders are further issued to the following effect :

(i) The respondents will ensure that all unauthorised connections with the Municipal drains from the industrial units are disconnected forthwith.

(ii) Direction is issued to the State of Gujarat to implement the reports of the National Productivity Council regarding the disposal of the solid waste, and the recommendation of the said Council should be carried out within a period of six months from today and in the meantime, the industrial units are restrained from disposing of any solid waste on open plots of land which have not been demarcated for such purpose by the G.P.C.B. The solid wastes should be retained within the factory premises and be disposed as per the directions to be issued by the State/G.P.C.B.

(iii) The State is directed not to allow the establishment of any new polluting industry or to allow the expansion of any existing polluting industry without its first satisfying the G.P.C.B. and the State that it has the capability of the effluent meeting the G.P.C.B. norms.

(iv) G.I.D.C., G.P.C.B. and the State are directed to carry out within a period of three months a unit to unit survey of industry operating within the industrial limits of Ahmedabad and to collect and make available data relating to :-

(a) nature of industry;

(b) water consumption;

(c) consent status;

(d) E.T.P. facilities;

(e) sample analysis reports;

(f) identifying units engaged in production without required NOC / Consent; and

(g) identify most polluting units of processes other than those dealt with and the copy of the report and data be submitted to the Chief Secretary for his information and thereafter, action should be taken against the defaulting units in the light of this judgment. During the period when the production of the industries is suspended on account of their not meeting the G.P.C.B. norms, services of workers or employees shall not be terminated by the industrial units.

(v) In order to strengthen the pollution enforcement agency, the recommendation contained in the Bhanujan Committee report for additional posts for G.P.C.B. should be accepted and implemented at the earliest and the Government should devise a system where the cost of monitoring is ultimately borne by the Industry.

(vi) The Government should consider whether it should not order that a cell, consisting of professionals, with requisite educational/technical qualifications,

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be established under the control of the state or the G.P.C.B. for carrying out p11eriodical "ENVIRONMENTAL MONITORING, DATA CERTIFICATION AND AUDIT".

(vii) Direction should be issued by the State under Sec. 5 of the Environment Act, requiring the G.I.D.C. and the industries to make the area inside and surrounding the industrial units more "GREEN" by plantation on open plots.

(viii) The State should evolve a policy for the location of chemical and other hazardous industries in such a way so that they are located in areas, where population is scarce so that the risk to the community is less and it should be ensured that large human habitation does not grow around the said units so as not cause danger in future. All such hazardous units should have a compulsory Green Belt around it.

(ix) The Government may consider the setting up of a State-level Ecological Science and Research Group, consisting of independent persons, professionals, and experts in different branches of science and technology to act as INFORMATION BANK to the Environment and Industries Department of the Government, whose advice would be relevant on the question of "INDUSTRIALISATION WITH ENVIRONMENT PROTECTION".

(x) The State should consider the proposal contained in Bhanujan Committee report for shifting highly polluting and water-intensive units to suitable alternative sites which may be nearer the sea.

(xi) A Committee should be set up by the State to study the aspect of safety and health hazards of the labour employed in the polluting industries, including their working conditions and the units should be required to comply with the labour welfare legislation and appropriate action should be taken that may be warranted upon such study.

(xii) Since for the last number of years pollution has adversely affected the 11 Kalambandi villages of Kheda, as also villages of Lali, Navagam, Bidaj, Sarsa, Aslali, Jetalpur, Bareja, Vinzol and Vatva, comprised in Dascroi and Mahemedabad Talukas, a lumpsum payment should be made by the 756 industrial units, calculated at the rate of 1% of their one year's gross turnover for the year 1993-94 or 1995-96, whichever is more and that amount should be kept apart by the Ministry of Environment and should be utilised for the works of socio-economic uplift of the aforesaid villages and for the betterment of educational, medical and veterinary facilities and the betterment of the agriculture and livestock in the said villages. Payment should be quantified by the G.I.D.C. within three months and the collection made within two months thereafter.

(xiii) In as much as pollution has been allowed to spread due to the neglect of the State authorities and in order to see that this does not recur, certain amount of accountability is necessary. Time-bound directions have been issued in this case in order to ensure that the pollution is contained. If after 31st of December,1995, the water in Kharicut Canal is not within the G.P.C.B. parameters, the State Government shall be duty bound to take action against

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the defaulting units. But if effective steps are found not to have been taken by the State or its agencies because of the negligence /inaction of its Officers, then the Government will be expected to take appropriate action against such Officers.

(xiv) Closure of the units at any point of time due to their not meeting the G.P.C.B. parameters will not result in the denial of wages to any of the workmen. This will not mean a closure under the Industrial Disputes Act, 1947

AND

(xv) The State may issue such other orders or directions, in the light of the observation made in this judgment, which it considers appropriate and necessary in order to see that the pollution is contained within the G.P.C.B. norms.

136. This petition is disposed of in the aforesaid terms, but the State of Gujarat shall file a report, indicating as to whether the directions issued herein have been complied with or not. The report be placed before the Court on 15th January, 1996.

137. The parties will be at liberty to apply to the Court for any clarifications or directions, if necessary.

138. We further direct respondent Nos. 1, 2 and 3 together to pay Rs. 10,000/- to each of the petitioners by way of costs.

(ATP) *Petition allowed*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice R. K. Abichandani

AHMEDABAD GREEN BELT KHEDUT MANDAL & ORS. v.

STATE OF GUJARAT & ORS.*

Urban Land (Ceiling and Regulation) Act, 1976 (XXXIII of 1976) — Secs. 3, 6 & 15 — Land which was not for any reason "vacant land" on 17-2-1976 may become "vacant" after that date and the holder of such land incurs all the liabilities specified in the Act.

According to the petitioners the lands once included in the Agricultural Zone, i.e., "Green Belt" as on 17-2-1976 being the date of commencement of Urban Land (Ceiling and Regulation) Act, 1976 could never be after that date, treated as "vacant land" so as to attract the provisions of the said Act. A direction is, therefore, sought on the respondents to hold that provisions of the said Act did not apply to these lands and to restrain the authorities from taking any proceedings under the said Act in respect of these lands. (Para 4)

The subsequent inclusion of these agricultural lands in the Final Development Plan and by virtue thereof reserving them for "Public Housing" under Sec. 12(2)(k) of the Gujarat Town Planning and Urban Development Act, 1976, would have the effect of non-vacant land becoming "vacant land" within the purview of Sec. 6(1) read with Explanation (ii) thereof, enjoining a duty on the holders of that area to file a statement under Sec. 6(1) of the Act as regards their holdings as on that later date. (Para 12)

*Decided on 31-7-1995. Special Civil Application No. 933 of 1984 for a writ restraining the Respondents from taking action under the Urban Land (Ceiling and Regulation) Act, 1976.

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