Case Note: A suo motu petition was taken up on the basis of a report of a Committee consisting of Mr. M.D. Pandya, made on the basis of his visits to the industrial units. The function of municipal corporation to look after public health, sanitation and solid waste management as per Item No. 6 of 12th Schedule to Constitution created under Article 243 W. The discharge of said obligatory duty does not depend on contribution of citizens. The municipal corporation can levy taxes and fees permissible under law.

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Aapplication No. 5361 of 1997

Decided On: 23.09.1999

Suo Motu
Vs.
Municipal Commissioner, Ahmedabad Municipal Corporation and Ors.

Hon'ble Judges:
R.K. Abichandani and D.H. Waghela, JJ.

JUDGMENT

R.K. Abichandani, J.

1. This suo motu petition was initiated on the basis of a report of a Committee consisting of Mr. M.D. Pandya, made on the basis of his visits to the industrial units situated at Saijpur-Gopalpur area, Dani Limda and Shah-Alam. From the order dated 24.11.1997, by which these proceedings were commenced, it transpires that considering the report of Mr. Pandya, an order was made on 15.7.1997, pursuant to which the officers of the Gujarat Pollution Control Board and a representation of the Municipal Commissioner, collected certain information and visited the units and submitted a unit-wise report in detail, in which it was pointed out by the Advisor (Pollution Control), Ahmedabad Municipal Corporation that in all there were 69 units in Behrampura area, which did not have legal drainage connection, nor had they obtained any consent under the Water (Prevention and Control of Pollution) Act, as on 30th Sept. 97. It was also pointed out that 181 units situated in Dani Limda area were operating without legal drainage connection or a valid consent as on that date. In Saijpur - Gopalpur area, which was outside Municipal limits, there were 39 units operating without the requisite consent of the Board. Thus, in all 289 units out of 387 units surveyed by the team were found to be operating without any authorised drainage and/or outlet or without trade licence. These units were named in the order. A direction was issued by the Court under that order that all these units should be closed forthwith. A direction was also issued to the Member Secretary, Gujarat Pollution Control Board and the Municipal Commissioner to ensure that these units

are closed down and the Commissioner was directed to disconnect the drainage connections and seal the outlets. The Ahmedabad Electricity Company was directed to disconnect the electricity supply to these units and to place a compliance report on the record. As regards four units which are named in paragraph 5 of the order, which were allegedly engaged in carbonising, it was ordered that they also should be closed forthwith and the AEC/GEB was directed to disconnect their electricity. All the industries situated in the areas in question were made aware about this petition by way of a public notice issued under Order 1, Rule 8 of the Code of Civil Procedure, on 23rd July, 1997 by publishing it in the Gujarat Samachar daily of 25th July, 1997.

1.1 Thereafter, on 2.12.1997 when it was pointed out by the learned Counsel appearing for the Board that some more units were engaged in carbonisation without any Effluent Treatment Plant, they were also directed to be closed down and GPCB was directed to see that they did not operate. The Ahmedabad Electricity Company/GEB was also directed to disconnect their electricity supply. On hearing the contentions on behalf of the some units, the earlier order was modified by directing that the units mentioned at serial Nos. 8, 19, 25, 31, 78, 108 and 109 of the order that was made, need not be closed under that order of the Court. The units were directed to file separate applications disclosing particulars about such units such as status of consent granted by the GPCB, position of effluent treatment plant, details of production, details of turn-over in last 3 years etc.

1.2 On 30th Dec, 1997, the Court clarified while allowing the electricity supply to be reconnected, that the units will not be entitled to utilise the energy for the purpose other than domestic purpose. On 17.1.1998, the Court made a detailed order and observed that upon a conjoint reading of the affidavits of J.M. Barot, working as Member Secretary of the GPCB and Mr. Nilesh Patel, who is the Deputy Municipal Commissioner of the AMC, alongwith the affidavit of Mr. Rama Prasad, Advisor (Pollution Control) to AMC, the Court was able to gather an impression that there were suggestions under which the units could be permitted to recommence their activity. In the affidavit of the Member Secretary of GPCB, it was stated that majority of the units were Small Scale units operating on hand process and in many of the cases, the waste water discharge was of a small quantity, ranging from 500 to 2000 litres per day. It was also stated that most of the units were discharging their effluent in the Municipal drains, since about last two decades with or without obtaining legal connections for the purpose. Taking into consideration the relevant aspects of the matter, the Court expressed an opinion in paragraph VII of the order that only those units which had taken out Civil Applications and were shown at Annexure _A should be permitted to commence their usual commercial activity, either manufacturing or processing, on a trial basis for a period of three months, during which none of the units would indulge in carbonising or silicating process. With a view to identify the units, the Court suggested a proforma to be presented by the units. For the purpose of easier location of the units, they were directed to take certain measures which included formation of an Association or Associations having a Managing Committee, a President or a Chairman to conduct the activities of the Association, which was required to submit a report specifying the particulars of its members as mentioned in the order. Then there were directions given to the units that they shall apply for: (1) Consent of the GPCB under the relevant Act or Acts as the case may be, (2) the drainage connection from AMC, (3) the building use permission, (4) the registration under the Bombay Shops and Establishments Act and the Factories Act, if required;

and (5) the health permission. It was directed that such applications shall have to be expeditiously decided by the concerned authority on merits, in accordance with law. It was directed that the units shall not discharge the solids, semi-solids and or hazardous waste in any manner other than as approved by the GPCB and that they shall decide and disclose the effluent discharge point and shall notify the same to the Board. It was also directed that the units shall discharge the effluent only after treating them so as to meet the norms to be prescribed by the GPCB within a reasonable time. An undertaking was required to be filed by those units on these aspects.

1.3 Certain directions were also issued under the said order dated 17.1.1998 to the GPCB, requiring them to process the consent applications, file a report in 30 days specifying the norms attained by certain units and indicate a broad plan under which the units could be permitted to carry on their usual activities without causing environmental or ecological hazards and to indicate a broad plan under which a sustained development can be established. The AMC was also given certain directions requiring them to specify particulars regarding the damage likely to be caused to the drainage by the corrosive properties of the effluent discharged by the units in terms of pipe length and expenses within a period of sixty days. The Association, the GPCB and the AMC were directed to undertake a joint endeavour and try to evolve a formula, so that the effluent discharge problem could be solved and the units can also go ahead with the activities. The AMC, without prejudice to its rights and contentions that they are not duty bound or obliged to carry, transport or drain the industrial effluents, was directed to suggest a short term measure, the amount that could be contributed by the Association or its member units for repairs and up-keep of the drains. The units situated at Behrampura and Dani Limda were directed to deposit an amount of Rs. 5 lakhs initially through the Association or the Associations before the Ahmedabad Municipal Corporation, with a view to commence the survey and feasibility study. The contribution by the units was to be decided by their Association having regard to the manaufacturing activity of the unit and quantity and quality of the effluent discharge. The AMC was required to maintain a regular account of the amounts deposited by the units and was asked to place the technical study report when ready, on the record of this case. It was made clear that this arrangement was without prejudice to the contention canvassed on behalf of the AMC that they are not duty bound under the statute to carry the industrial effluents in the existing drains. The Court observed at that stage: "We infact do not express any opinion regarding the statutory obligations in this respect and the question is left open for consideration at the appropriate juncture." The units were permitted to clear the goods manufactured or processed during the trial production, subject to the condition that each of them would maintain the requisite account regarding its activity. The AMC and AEC were directed to reconnect the drainage and electricity connections respectively in cases in which they were disconnected and this was to be done at the cost of the respective units.

1.4 It appears that two Associations were formed pursuant to the directions given, which are known as `Behrampura Dani Limda Industries Association and Ahmedabad South Zone and Small Scale & Cottage Industries Association'. The matter kept on coming from time to time on Board and various orders came to be passed. On 6.5.1998, the Court observed that picture was not yet clear as to who are the members of the Associations. Tata Consultancy Engineers, Mumbai were to be engaged and the Court by that order observed that the terms of reference which were broad based,

were sanctioned but this sanction was without prejudice to the rights and contentions of all concerned. It was then observed that " it shall be open for either the GPCB or the State to take appropriate action, according to law, against the units who are found to be operating without having obtained any orders from this Court."

1.5 By order dated 8th Dec. 1998, these two Associations were directed to be impleaded as party respondents in the main petition. As certain units were not members of the Association, they were directed to become member of one of these two Associations, within a period of ten days, failing which they would cease to have the benefits of the orders made on 8th Dec. 1998 and the earlier order dated 17.1.1998. The GPCB was ordered on 8.12.1998 to decide the applications submitted by the units as early as possible subject to the terms and conditions mentioned in the order. It was made clear that if any delay was caused on the part of the GPCB in deciding the applications, it was understood that the industrial units will not claim the benefit under the deeming fiction. The units were directed to approach the appropriate Department of the AMC through their Associations and to submit proformas, if not already submitted and the AMC was directed to decide all these applications for regularisation of this drainage connections within two weeks thereafter. It was observed: "It is understood that the AMC shall not reject any application for the drainage connection on the ground of the unit causing pollution." The units were directed to complete their own ETPs within eight weeks. The AMC was to provide necessary particulars to Tata Consultancy and obtain the project report at the earliest. Till the report came the AMC was directed to continue to carry the trade effluent in their drainage without prejudice to their rights and contentions before this Court as well as other Courts to the effect that they are under no statutory obligation to carry the industrial effluent of the units in the drainage system. It was made clear that this arrangement was also without prejudice to the rights and contentions of the industrial units, saying that under the statute the AMC was bound to do so. The Court made it clear that the industrial units cannot be permitted to discharge their trade effluent which could be either untreated or which could not meet with the norms to be prescribed by the GPCB under the terms of consent. It was further directed that the permission was limited only for a period of eight weeks and if the consent applications were decided during the time indicated, it shall be the obligation on the part of the units to see that they discharge trade effluent which should be in consonance with the consent orders to be given by the GPCB.

1.6 By order dated 22.3.1999, when attention of the Court was drawn by the learned Counsel for the Corporation that there was no compliance with the orders dated 8.12.1998, the Court gave a last opportunity to the units and adjourned the matter to 30.3.1999, enabling them to comply with the earlier directions. The Associations were directed to give particulars of the progress made by the respective member units and the GPCB was also directed to give a list regarding the consent status in respect of the units who already had made applications for its consent. It was observed that if the Associations did not comply with the directions, the Court would be constrained to pass an order including that of closure against the defaulting units and no further time would be given.

1.7 Since non-compliance of some units persisted, the Court by its order dated 30.3.1999, gave them a further opportunity which was to be the last opportunity for submitting applications to the GPCB and the AMC and adjourned the matter to 16th

April, 1999. In its order dated 16th April, 1999, the Court took note of the fact that the GPCB had received 175 consent applications and 25 member units had not yet submitted such applications. These were required to be submitted by 26th April, 1999. So far the AMC was concerned, it was noted that out of 137 applications received by it, hardly five to six contained full particulars and a direction was therefore, given to the member units of the two Associations who had not submitted the necessary applications to the AMC, to submit them before 26.4.1999 and as regards the applications which did not contain sufficient particulars, a meeting was required to be convened between those who were named in the order. It was submitted by one of the Associations which had 138 members that 78 out of them had completed the ETP facilities and 3 were zero discharge units. The remaining 52 were still to establish the ETP facilities. A direction was therefore, given to them to submit necessary particulars on an affidavit, specifying the names of the member units who had completed the ETPs and a progress report by the remaining units. As regards the other Association, it was noted that only 35 of its members were having ETP facilities and that Association was also directed to file a similar affidavit.

1.8 On 10.5.99, it was again noted that certain member units of an Association had not yet filed necessary consent applications and they were given time to file them by 20.5.1999. It was observed : "Any of the member units who fail to comply with the above direction shall have to close down their industrial manufacturing and processing activity with effect from 21.5.1999." It was also observed that if the units fail to close down themselves, the GPCB officials shall commence the exercise of closing such units from 1.6.1999 at their cost. Both the Associations were directed to indicate the progress made by them for construction of ETP facilities on the next date of hearing.

1.9 In the order dated 21.6.1999, it was noted that in all 54 units had not complied with the directions contained in the order dated 10.5.99 and were liable to be closed down. The GPCB had furnished details about 51 units which had not complied with the directions contained in that order and were liable to be closed. In paragraph 5, giving one more opportunity, the Court observed : "during this period as a last chance, we further direct all those units which had so far not applied for consent, may file application for consent with necessary particulars to GPCB, failing which the units shall stand closed with effect from expiry of 15 days and we authorise the GPCB to take coercive measures to secure its closure thereafter, if so required."

1.10 On 12.7.1999, the Court noted the fact that 30 members of Dani Limda - Behrampura Industrial Associations had still not applied under the Water Act and 9 members of the Ahmedabad South Zone Small Scale and Cottage Industries Association had not at all applied for such consent. These 39 units had therefore rendered themselves liable to closure. They were therefore, directed to be closed down and the Board was required to take necessary steps in that direction. In order to have a clear picture, a direction was given by the Bench to the respective parties to furnish segregated information about the units.

1.11 Thereafter, when the matter came before this Court on 30th August, 1999, it was observed that the interim directions cannot be construed so as to freeze the provisions of law which have to be implemented. It was made clear that the earlier directions have to be construed in consonance with the exercise of powers under the Act, the

nature of the power, and the manner in which it should be exercised. A direction was therefore, given to the Board and the Municipal Corporation to file affidavits stating as to what action they had taken in the matter so far in compliance with the directions issued from time to time and as to what time bound action they propose to take on the basis of the data which had been supplied. It was made clear that there cannot be a constant supervision by the Court over such matters and the Board and the Corporation were directed to give a time bound action plan in the matter in respect of the members of these two Associations, keeping in view the environment laws and the Municipal laws. Affidavits were directed to be filed by the AMC and the GPCB in this regard. It was also observed that the members of the Associations who were doing the work were required to discharge their effluent after treatment and they were bound to comply with the norms laid down by the Board and to comply with the provisions of the Act. It was observed that it is the duty of the Board to ensure such compliance and for that purpose, to maintain regular supervision and if there was any violation at any level, which empowers the Board and/or the Corporation to take action under the law, it was their duty to take such action under the law promptly to prevent pollution. It was observed that the Board and the Corporation cannot sit on the fence to see what directions were being given by the Court from time to time and that it was their primary function to discharge their duties and exercise their powers to ensure that the provisions of law are not violated and that they are properly implemented.

2. The aforesaid narration would indicate the course the matter has taken. It started on the footing of a report by Pandya Committee, indicating the hazards which were created by the working of these units within the areas in question and the Court, taking serious note of the matter, directed immediate closure. The principal two grounds were that no proper drainage connections were obtained and these units were discharging objectionable effluents without obtaining the consent of the Board or without having appropriate licences under the relevant laws. Since it was suo-motu action, it was free for all exercise and the units by their persuasion were able to turn the tables and started continuing their functioning under the Court orders, notwithstanding the fact that they had not obtained Board's Consent and most of them had not obtained any trade licence. Today therefore, the situation is that many of these units have been continuing their activities on the strength of the pendency of this suo motu petition and are carrying on their trade without the requisite licences and without obtaining the consent from the Board. The other fall out of the situation that has arisen is that the AMC and the GPCB have become virtually complacent, because, they are awaiting the directions from the Court from time to time in this suo motu petition. To illustrate this, we may at once refer to the affidavit of T.N.C. Ramaprasad, Advisor (Pollution Control) to the Municipal Corporation sworn on 6th Sept.99, in which it has been stated in paragraph 7 that "in view of the proceedings before this Court since last about two years, no further action have been taken though notices were issued to the units under Section 260 of the BPMC Act". It has been stated that because of the illegal discharge of effluent in the Municipal drains, Municipal drains are collapsing and the drainage system is being deteriorated. It is also stated that the Corporation intends to take action in respect of illegal drainage connections made by such units. It is stated that 165 units that are in Behrampura - Dani Limda area are having such illegal drainage connections. It is stated that necessary data required to be submitted by the units for preparing feasibility report by Tata Consultancy Engineering Services has not been supplied by the units and there is

no progress in the work of Tata Consultancy Services. It is stated that meanwhile, illegal and unauthorised activities are being carried out, which cannot be permitted. The GPCB through its Environmental Engineer, has filed an affidavit, narrating its compliance of earlier orders made from time to time. It has stated that in compliance with the orders of the Court dated 10.5.99, it has closed down 39 industrial units. It is also stated that the Board proposes to take action under Section 5 of the Environment Protection Act, against the industrial units who have not approached the Board for consent or whose applications were earlier rejected, but were carrying on the activities without applying for the consent again. It is pointed out that in case of 84 units, the consent applications were rejected and 37 had not approached the Board for consent.

2.1 It is thus, clear that nowhere on the horizon appears any report from Tata Consultancy Services and many of the units have been functioning in contravention of the provisions of law as alleged by the AMC and the GPCB. It has become clear that any further pendency of this petition will be counter-productive and would afford protection to those who are continuing under the shelter of Court orders without obtaining necessary consent from the Board or the trade licences required under the law. The tone of urgency in such matters is set by the provisions of Sec. 5 of the Environment Protection Act, 1986, by which the Central Government is empowered to give directions, including the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any other service, notwithstanding anything contained in any other law, subject to the provisions of this Act and in exercise of its powers and performance of its functions under the Act. These powers, we are told, are delegated to the State Government by Notification dated 10.2.1988 published in Gazette No.84 dated 10.2.1988. It is a different thing that the State Government has been slow in the exercise of its powers and the excuse perhaps is the pendency of this petition. In paragraph 2 of the affidavit filed by the GPCB, it is mentioned that the Board in pursuance of the Court's order dated 6.5.98, had recommended on 21.1.1999 taking of action under Section 5 of the Environment Protection Act, 1986, against 44 units to the Government and ultimately the Department of Environment and Forest of the Government have issued closure orders against them on 31.3.1999 as per Annexure-I of the affidavit.

3. The units against whom the closure was initially ordered and later on which started refunctioning are mostly screen printing and textile units carrying on trade operations which involve use of chemicals and other hazardous substances. The grievance of the Municipal Corporation is that if the untreated effluents are released by them in the municipal drainage system that would destroy the drainage lines. The further grievance is that these units are operating without any health permit.

3.1 Under Section 376 of the BPMC Act, it is, inter-alia, provided that except under and in conformity with the terms and conditions of licence granted by the Commissioner, no person shall carry on or be allowed to carry on, in or upon any premises, any trade or operation which in the opinion of the Commissioner, is dangerous to life or health or property or likely to cause nuisance either from its nature or by reason of the manner in which or the conditions under which the same is or is proposed tobe carried on. The trades or operations connected with trade, which shall not be carried on in or upon any premises without a licence, are enumerated in part IV of the Manual of the Ahmedabad Municipal Corporation containing the rules bye-laws and standing orders. These include trade or operations connected with trade

of dyeing cloth or yarn in indigo or other colour, cloth printing (where more than 4 persons are engaged), colour mixing, preparing colour for printing and/or dyeing. Admittedly, none of the units who have been carrying on the trade of textile processing by using colours, chemicals and other substances for dyeing and printing, have obtained any licence under Section 376(1) for their trade operations. Under Section 376A of the BPMC Act, the Commissioner is empowered to stop use of premises where such use is dangerous to life, health or property or causes nuisance. Breach of Section 376(1) is an offence punishable under Section 392(1) of the Act.

3.2 Furthermore, there are provisions regulating discharge of trade effluent in Municipal drains. Under Section 166 of the Act, subject to the provisions of the Act, Rules and Bye-laws, the occupier of any trade premises, with the consent of the Commissioner, or so far as may be permitted by any such rules or bye-laws without such consent, discharge into Municipal drains any trade effluent proceeding from those premises. Section 166A of the said Act, inter-alia, provides that notwithstanding anything contained in this Act, rules or bye-laws or any usage, custom or agreement, if the Commissioner is of the opinion that any trade premises are without sufficient means of effectual drainage of trade effluent or the drains thereof, though otherwise unobjectionable are not adapted to the general drainage system of the city, he may by written notice require the owner or occupier of such premises to discharge the trade effluent from the premises, subject to the manner and conditions as may be specified in the notice, to purify it before discharge into Municipal drain and set up for purifying the trade effluent, such appliances, apparatus, fittings and plant as may be specified in the notice, to construct a drain of the type specified in the notice or to alter, amend, repair or renovate any purification plant, existing drains, apparatus, plant-fitting or article, used in connection with any municipal or private drain.

3.3 Under Section 159, while referring to the rights of owners and occupiers of buildings and lands to drain into municipal drains, it is laid down that nothing under sub-section (1) of Section 159 shall entitle any person to discharge directly or indirectly into any municipal drain any trade effluent except in accordance with the provisions of section 166 of the Act or to discharge any liquid or other matter, the discharge of which is prohibited by or under the Act or any other law for the time being in force.

3.4 Therefore, two things become clear from these statutory provisions. Firstly, the units cannot carry on the trade or trade operations of the nature that they have been doing, without obtaining a trade licence under Section 376(1) of the Act, secondly, they cannot discharge their trade effluent except in accordance with the provisions of Section 166 read with Sections 159 and 166A of the Act. In other words, carrying on of such trade or trade operations and discharging of trade effluent are regulated by the statutory provisions, which empower the Municipal Commissioner to issue licences for such trade or permissions for discharge of trade effluents in the Municipal drainage system. Since the trade licences under Section 376(1) are required for carrying on any trade or operation, which is dangerous to life or health or likely to cause nuisance, they are departmentally described as "Health Permits", as we are told by the learned Counsel for the Corporation. It was contemplated in one of the interim directions noted above that the units will approach the Corporation for necessary health permits i.e. trade licence contemplated by Section 376(1) of the Act.

4. The Municipal Corporation has to look after public health, sanitation and solid waste management being one of its functions referred to at item No.6 of the 12th Schedule to the Constitution, created under Article 243-W thereof. It is an obligatory duty of the Municipal Corporation to make reasonable and adequate provision by any means or measures which it is lawfully competent to do, to use or to take for the collection, removal, treatment and disposal of sewerage, offensive matter and rubbish as provided by clause (3) of sub-section (1) of Section 63 of the said Act. It is also its duty to provide for the construction, maintenance and cleansing of drains and drainage work under Clause (4) of Section 63(1). The discharge of this obligatory duty does not depend on the contribution of the citizens, though ofcourse the Municipal Corporation can levy such taxes and fees as may be permissible under the law. Provision of drainage being the basic necessity for the citizens, is made an obligation of the Corporation and it is not just a discretionary duty. The discretionary duties are separately enumerated under Section 66 of the Act. Since the Corporation has to construct and maintain the drainage works, it can prevent its indiscriminate use by the owners and occupiers who are ordinarily entitled to cause their drains to empty into a Municipal drain under Section 159(1) of the Act. There are statutory restrictions in built in the proviso to sub-section (1) of Section 159, which disentitle any person from abusing such drainage system. Every person desirous of availing of the provision of sub-section (1) of Section 159 has to obtain written permission from the Commissioner and comply with such conditions as the Commissioner may prescribe as to the mode in which and the superintendence under which connections with municipal drains or other places aforesaid are to be made. Therefore, no drainage connections can be made without obtaining requisite permission from the Commissioner and if any of these units have made connections which cause their drains to empty into a Municipal drain, without obtaining the requisite permission, it is obvious that the local authority can take action in accordance with law. As provided by Section 161, no person shall, without complying with the provisions of Sections 158 or 159 and the rules, make or cause to be made any connection of a drain belonging to himself or to some other person with any municipal drain or other place legally set apart for the discharge of drainage, and the Commissioner may close, demolish, alter or remake any such connection made in contravention of Sec. 161 and the expenses incurred by the Commissioner in so doing shall be paid by the owner or occupier as provided. The powers of issuing trade licences and regulating trade effluents being discharged in the municipal drainage, which are vested in the local authority are obviously to be exercised by them and the Court can have no say in the matter except when there is some breach of duty and a writ of mandamus is sought for a direction on the municipal authorities to discharge their duties or to prevent any action which is contrary to any legal provision: We would even say that the Court would have no power to issue any directions which have the effect of contravening the provisions of law. It is therefore, obvious that the units cannot be assisted by the Court by its directions to enable them to continue their operations, in violation of the statutory provisions, which empower the local authority to take action in respect of trade licences or discharge of trade effluents against the defaulters.

5. It has been, inter-alia, provided under Section 25 of The Water (Prevention and Control of Pollution) Act, 1974 that no person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or

on land, to bring into use any new or altered outlets for the discharge of sewage, or begin to make any new discharge of sewage, provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months; till the disposal of such application. There is provision for appeal under Section 28 of the Act, against any order made by the State Board under Sections 25 , 26 or 27 of the Act. The State Government has also revisional jurisdiction in the matter under Section 29 of the Act. Emergency measures can be taken in case of pollution of well or stream as provided under Section 32 of the Act. Under Section 33 of the Act, the Board is empowered to make an application to a Court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate First Class for restraining the apprehended pollution of water in streams or wells. Section 44 of the Act, inter-alia, provides that whoever contravenes the provisions of Section 25 or 26 of the Act, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to six years and with fine. Cognizance of an offence under this Act can be taken by a Court on a complaint made by the Board or any officer authorised in this behalf by it under Section 49 of the Act. Under Section 60 of the Act, it is, inter-alia, provided that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Thus, adequate provisions are statutorily made to prevent contamination of water or alteration of the physical, chemical or biological properties of water or such discharge of any sewage, trade effluent or any other liquid, gaseous or solid substance into the water, as may or is likely to create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses or to the life and health of animals or plants or aquatic organisms, which all amount to pollution within the meaning of clause (e) of Section 2 of this Act. In respect of the matters which are required to be dealt with by an appellate authority constituted under the Act, the Civil Court's jurisdiction is barred under Section 58 of the Act. Thus, in the matter of prevention and control of pollution of water, the State Board has wide powers coupled with duties to ensure that speedy and decisive action is taken against the defaulters.

5.1 The requisite consent under Section 25 of the Act is entirely within the domain of the State Board. The consent is to be granted in accordance with the provisions laid down in detail and the speed with which the Board is required to act, is contemplated by the provisions of sub-section (7) of Section 25, which, inter-alia, provides that the consent referred to in sub-section (1) shall unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board. However, even such deemed consent will not entitle a person to discharge trade effluent which contravenes the provisions of law and entails penal consequences. On the other hand, if the concerned officers of the State Board allow such time to lapse without applying their mind to the applications and create a situation where such default consents come into existence under sub-section (7) of Section 25 of the Act, that would not only reflect the inefficiency of the Board, but would amount to dereliction of duty on the part of the concerned officers. The very nature of the provisions indicate an expeditious application of mind by the State Board whenever

applications for consent are made in accordance with Section 25 of the Act. Initially when this matter commenced on the basis of the report of Pandya Committee, the position was that many of the units were alleged to have been carrying on their trade activities without obtaining the necessary consent from the Board. During the pendency of this petition, applications were made by several units to the Board and they have been dealt with by the Board as indicated in their affidavit. Some of the applications are pending.

5.2 The Board has its own norms for dealing with such applications. It is entirely for the Board to examine such applications and take its own decision in accordance with law and to decide whether the applicant merits consent or not. Such work cannot be subjected to the supervision of the High Court. If any unit is aggrieved against a refusal of consent, then there is a provision for appeal and the State Government has revisional jurisdiction in the matter. If there is failure of duty, then ofcourse the High Court is there to examine in its writ jurisdiction such individual case. But we make it clear that it is not for the High Court to monitor the manner or method of granting the consent, which is exclusive statutory function of the Board under the law.

6. The Environment (Protection) Act, 1986 has been framed to meet with the urgent need for the enactment of a general legislation on environmental protection, which, inter-alia, should enable co-ordination of activities of various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation on discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health. This Act, as provided under Section 24 shall have effect, notwithstanding anything inconsistent therewith contained in any enactment other than this Act, subject to the provisions of sub-section (2) and the Rules or the orders made therein. Section 5 of this Act empowers the Central Government, in exercise of its powers and functions to issue directions, inter-alia, for the closure, preservation and regulation of any industry, operation or stoppage or regulation of the supply of electricity or water or any other service. The Central Government has powers to take all such measures for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. The Ministry of Environment and Forests has issued a Notification on 10th February, 1988, being No. SO.152(E) delegating to the State Government the powers vested in it under Section 5 of the Act. Therefore, the State Government has ample powers to give directions for closure etc. as and when warranted by the provisions of Section 5 of the Act. For exercise of such powers, there cannot be any supervision or direction by the High Court and it would be entirely for the State Government to exercise these powers in appropriate cases without any monitoring or supervision of the High Court, direct or indirect. If there is any violation of duty and a writ of mandamus is sought in a given case, the High Court would examine such alleged failure and issue appropriate directions.

7. We came across a direction in these proceedings that certain benefits would be available only to those who become members of one of the two Associations. The Associations came to be constituted perhaps, on the basis of a suggestion made in the affidavit of the Deputy Municipal Commissioner Shri Nilesh Patel, filed in January, 1998, in which it was suggested on behalf of the AMC that the units in Dani Limda

and other areas may be directed to form a common Association of all industrial units in the area, which would be representing the units. Under Article 19(1)(c) of the Constitution, all citizens shall have the right to form Associations or Unions. As provided by Article 19(4) nothing in sub-clause (c) of Art. 19(1) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause. The right to form Association would itself exclude an idea of compelling a citizen to become a member of an Association or an idea of the requiring a citizen to form an Association under some compulsion. It is only a freedom ensured to the citizens to form Associations or Unions and that freedom can be curtailed only to the extent spelt out in clause (4) of Article 19 by imposing reasonable restrictions under the law, in the interests of the sovereignty and integrity of India or public order or morality. We are therefore of the view that even the units who may not have become members of the two Associations which are constituted pursuant to the interim directions given earlier, which seems to have been given on the basis of consensus, cannot be denied consideration of their applications for trade licences by the local authority or for consent by the GPCB. Thus, not only the members of the two respondent - Associations, but others also stand on an equal footing and have to be treated without discrimination in the matter of consideration of their applications for grant of trade licence and the requisite consent. Therefore, the Board and the local authority will have to consider the applications of all units irrespective of the fact whether they are the members of any Association or not.

7.1 The applications made by the units before the local authority or the Board, as the case may be, are required to be processed fast and the units who apply with the requisite norms, standards and/or requirements, must not have to wait for grant of trade licences or consents as the case may be, because such grant of licence or consent are not bounties, but are only regulatory measures under the law for balancing the exercise of fundamental right to carry on trade or business vis-a-vis the interests of the general public. If the requirements laid down by the law are satisfied, such trade licence, consent, sanction or approval as the case may be, must follow as a matter of course to enable the compliant citizen to exercise his right to carry on trade and business.

7.2 If, however, there is any violation of the statutory requirements by a person by indulging in trade or other activity, requiring such licence, consent, sanction or approval of the concerned authority under the law, such authority must not connive at it and should ensure that the consequences of such breach provided by the law follow. When running of any trade or business requires obtaining a trade licence under Section 376 of the BPMC Act or the consent under Section 25 of the Water Act or any permission, sanction, approval or licence by any authority under any other law, such statutory requirement cannot be waived even by the Court. The Court orders cannot operate as exceptions to statutory provisions, which lay down mandatory requirements of running the trade or business only after following such regulatory measures. If running of trade or business can be done only on obtaining a trade licence from the local authority or consent of the Board, the normal state of events is of not doing it without getting the statutory clearance and in such cases, the Court cannot be expected to allow it to be run under its orders, notwithstanding the statutory provisions. It would therefore be open for the Municipal authorities and the Board to

take such action as is open to them under the law without awaiting any orders from the High Court on the regulatory aspects, which fall within their province. If a trade licence or prior consent or permission is statutorily required for running a trade or business, that procedure has to be undergone and cannot be scuttled by Court's intervention. What statute requires cannot be dispensed with by the Courts.

8. It was submitted on behalf of the Associations that the member units should be allowed to continue for some time under Court orders so that they are not made to close down abruptly. We have noted above that the present suo motu proceedings were initiated to ensure that the fundamental right to clean environment of the citizens who did not ordinarily approach the Court, was enforced by directing closure of the erring units. After the closure was initially effected by Court orders, effort was made to involve the authorities who were duty bound to protect the environment in discharge of their statutory functions, as noted above. The Court attempted to evolve some method for a smooth transition from the utter disregard of the law to compliance with the statutory provisions pertaining to trade licences issued by the local authority and the consent required to be obtained from the Board. However, as the course of events indicate the compliance of statutory provisions continues to be evaded and now virtually the interim directions have enabled the defaulting units to continue their operations despite their not having any trade licence and/or the requisite consent. It is essentially the function of the local authority and the Board to find out the defaulters and take suitable action under the provisions, to which we have referred. The High Court cannot suo motu take up any managerial functions of these bodies and participate in their administration under the statutory provisions for taking action against the defaulting units. The basis of Court's jurisdiction in a matter is case and controversy brought before it. Without a case and controversy coming before the Court there would be no scope for exercise of its jurisdiction. The ordinary process of bringing the controversy and claiming relief is to be initiated by the person seeking a remedy. Remedies are sought for protection of rights recognised by law. They can be individual or collective rights as the law may recognize. When Court takes cognizance of the matter on an informal communication to it by the person interested, it merely dispenses with the procedural formality of presenting a writ petition in the prescribed form. The controversy essentially remains of the same nature of a lis between person affected and the authority, though such initiation is sometimes ineptly described as suo motu exercise of power by the Court. The power to initiate proceedings of its own which is called suo motu power is not an unbriddled power of the Court to generate litigation by initiating fact finding missions. Even power to initiate suo motu proceedings properly so called has to be warranted by law. It can be specifically conferred or be necessarily implied from the powers conferred. For example the High Court is statutorily vested with the power of calling for the record of any case decided by the subordinate court which can be exercised by the High Court on being moved by the aggrieved party or, in an appropriate case, of its own. In its writ jurisdiction under Article 226 of the Constitution, the High Court has high prerogative powers to issue appropriate writs or orders for the enforcement of any of the fundamental rights or for any other purpose. Article 227(2) of the Constitution empowers the High Court in exercise of its power of superintendence to call for returns from subordinate courts and regulate their proceedings. This the High Court can do of its own. The extent of suo motu power of the High Court depends upon the Constitutional and statutory provisions warranting its exercise and there seems to be no scope for entering into the arena of administrative supervision over the functioning

of the executive authorities via the door of suo motu power. The High Court therefore, cannot assume functions entrusted to the statutory authorities like the Municipal Corporation or the Pollution Control Board or the Government, nor can it maintain any supervision over the exercise of such functions. Any such course will violate the Constitutional Scheme of separation of powers. The High Court of course, has wide powers to command the authorities in case of failure of their duty to perform their functions in accordance with law or to set aside any illegal order or action of such authority or to prevent illegality by issuing writs or orders of the nature appropriate for such purpose while granting relief under its writ jurisdiction. It would therefore, primarily be the duty of these statutory authorities to take necessary steps for implementing the provisions for bringing to book the defaulters. It is equally their duty to see that the units who complied are not made to suffer unnecessarily and the applicants who met with the standards laid down by the law get their trade licences and consents in accordance with law at the earliest.

8.1 We therefore issue the following directions:-

1. The units whether they are members of the two Associations or not, would be free to apply as per the rules for necessary trade licence to the local authority or for consent to the GPCB or for any other clearance as may be required by the law before any authority for the purpose of running their units and no interim directions issued by this Court will provide any basis to them for continuing their trade or trade operations in contravention of the law.

2. When licence or consent or permission as required by law is sought for by any unit from the AMC, the Board or any authority, they shall take expeditious decision on such application under the relevant provisions in exercise of their statutory powers.

3. The entitlement of the units to run their trade or operations will depend upon the requirements of the relevant provisions of the Municipal law, the Pollution Control laws and other applicable laws. It will be for the concerned authorities i.e. local authority or the Board or the appropriate authority as the case may be, to consider the applications for requisite clearance that may be sought under such laws, and take their own decisions without awaiting any orders from this Court hereafter

4. The applications which are pending before these authorities shall be expeditiously decided, preferably within one month from today.

The petition stands disposed of accordingly and notice is discharged with no order as to costs.

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