REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

IA NO.36 AND IA NO.44
IN
WRIT PETITION (C) No.967 OF 1989

Indian Council for Enviro-Legal Action … Petitioners

Versus

Union of India & Others … Respondents

JUDGMENT

Dalveer Bhandari, J.

1. This is a very unusual and extraordinary litigation where even after fifteen years of the final judgment of this court (date of judgment 13th February, 1996) the litigation has been deliberately kept alive by filing one interlocutory application or the other in order to avoid compliance of the judgment. The said judgment of this Court has not been permitted to acquire finality till date. This is a classic example how by abuse of the process of law even the final judgment of the apex court can

be circumvented for more than a decade and a half. This is indeed a very serious matter concerning the sanctity and credibility of the judicial system in general and of the apex court in particular.

2. An environmentalist organisation brought to light the sufferings and woes of people living in the vicinity of chemical industrial plants in India. This petition relates to the suffering of people of village Bichhri in Udaipur District of Rajasthan. In the Writ Petition No.967 of 1989, it was demonstrated how the conditions of a peaceful, nice and small village of Rajasthan were dramatically changed after respondent no. 4 Hindustan Agro Chemicals Limited started producing certain chemicals like Oleum (concentrated form of sulphuric acid) and Single Super Phosphate. Respondent numbers 4 to 8 are controlled by the same group and they were known as chemical industries. The entire chemical industrial complex is located within the limits of Bichhri village, Udaipur, Rajasthan. Pursuit of profit of entrepreneurs

has absolutely drained them of any feeling for fellow human beings living in that village.

3. The basic facts of this case are taken from the judgment delivered in the Writ Petition No.967 of 1989. In the beginning of the judgment of this court delivered on February 13, 1996, it is observed as under:

> "It highlights the disregard, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialisation and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings - for that matter, for anything else. And the law seems to have been helpless. Systemic defects? It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them -particularly, if they are men with means. Strong words indeed - but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us."

4. It seems that the court was prophetic when it made observation that at times men with means are successful in avoiding compliance of the orders of this court. This case is a classic illustration where even after decade and a half of the

pronouncement of the judgment by this court based on the principle of 'polluter pays', till date the polluters (concerned industries in this case) have taken no steps to ecologically restore the entire village and its surrounding areas or complied with the directions of this court at all. The orders of this court were not implemented by keeping the litigation alive by filing interlocutory and interim applications even after dismissal of the writ petition, the review petition and the curative petition by this court.

5. In the impugned judgment, it is mentioned that because of the pernicious wastes emerging from the production of 'H' acid, its manufacture is stated to have been banned in the western countries. But the need of 'H' acid continues in the West and that need is catered to by the industries like the Silver Chemicals and Jyoti Chemicals in this part of the world.

6. In the impugned judgment, it is also mentioned that since the toxic untreated waste waters were allowed to flow out freely and because the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances

have percolated deep into the bowels of the earth polluting the aquifers and the sub-terrain supply of water. The water in the wells and the streams has turned dark and dirty rendering it unfit for human consumption. It has become unfit for cattle to drink and for irrigating the land. The soil has become polluted rendering it unfit for cultivation, which is the main source of livelihood for the villagers. The resulting misery to the villagers needs no emphasis. It spreads disease, death and disaster in the village and the surrounding areas. This sudden degradation of earth and water had an echo in Parliament too and the concerned Minister said that action was being taken, but nothing meaningful was done on the spot. The villagers then rose in virtual revolt leading to the imposition of Section 144 of the Criminal Procedure Code by the District Magistrate in the area and the closure of Silver Chemicals in January, 1989. It is averred by the respondents that both the units, Silver Chemicals and Jyoti Chemicals have stopped manufacturing 'H' acid since January, 1989 and are closed. We may assume it to be so, yet the consequences of their action remain - the sludge, the long-lasting damage to earth,

to underground water, to human beings, to cattle and the village economy.

7. The Rajasthan State Pollution Control Board (for short "R.S.P.C.B.") in pursuance of the show cause notice filed a counter affidavit and stated the following averments:

(a) Re.: Hindustan Agro Chemicals Limited (respondent for short) [R-4]: The unit obtained 'No-Objection Certificate' from the R.S.P.C.B. for manufacturing sulphuric acid and Aluminum sulphate. The Board granted clearance subject to certain conditions. Later 'No-Objection Certificate' was granted under the Water [Prevention and Control of Pollution] Act, 1974 [Water Act] and Air (Prevention and Control of Pollution) Act, 1981 [Air Act], again subject to certain conditions. However, this unit changed its product without clearance from the Board. Instead of sulphuric acid, it started manufacturing Oleum and Single Super Phosphate [S.S.P.]. Accordingly, consent was refused to the unit on February 16, 1987. Directions were also issued to close down the unit.

(b) Re.: Silver Chemicals [R-5]: This unit was promoted by the fourth respondent without obtaining 'No-Objection Certificate' from the Board for the manufacture of 'H' acid. The waste water generated from the manufacture of 'H' acid is highly acidic and contains very high concentration of dissolved solids along with several dangerous pollutants. This unit was

commissioned in February, 1988 without obtaining the prior consent of the Board and accordingly, notice of closure was served on April 30, 1988. On May 12, 1988, the unit applied for consent under Water and Air Acts which was refused. The Government was requested to issue directions for cutting off the electricity and water to this unit but no action was taken by the Government. The unit was found closed on the date of inspection, viz., October 2, 1989.

(c) Re.: Rajasthan Multi Fertilizers [R-6]: This unit was installed without obtaining prior 'No-Objection Certificate' from the Board and without even applying for consent under Water and Air Acts. Notice was served on this unit on February 20, 1989. In reply thereto, the Board was informed that the unit was closed since last three years and that electricity has also been cut off since February 12, 1988.

(d) Re.: Phosphates India [R-7]: This unit was also established without obtaining prior 'No-Objection Certificate' from the Board nor did it apply for consent under the Water and Air Acts. When notice dated February 20, 1989 was served upon this unit, the Management replied that this unit was closed for a long time.

(e) Re.: Jyoti Chemicals [R-8]: This unit applied for 'No-Objection Certificate' for producing ferric alum. 'No-Objection Certificate' was issued imposing various conditions on April 8, 1988. The 'No-Objection Certificate' was withdrawn on May 30, 1988 on account of non-compliance with its conditions. The consent applied for under Water and Air Acts by this unit was also refused. Subsequently, on February 9, 1989, the unit applied for fresh consent for manufacturing

> 'H' acid. The consent was refused on May 30, 1989. The Board has been keeping an eye upon this unit to ensure that it does not start the manufacture of 'H' acid. On October 2, 1989, when the unit was inspected, it was found closed.

8. The Government of Rajasthan filed counter-affidavit on January 20, 1990. The Para 3 of the affidavit reads as under:-

> "That the State Government is now aware of the pollution of under-ground water being caused by liquid effluents from the firms arrayed as Respondent Nos. 4 to 8 in the writ petition. Therefore, the State Government has initiated action through the Pollution Control Board to check further spread of pollution."

9. The State Government stated that the water in certain wells in Bichhri village and some other surrounding villages has become unfit for drinking for human beings and cattle, though in some other wells, the water remains unaffected.

10. The Ministry of Environment and Forests, Government of India (for short 'MOEF') in its counter affidavit filed on February 8, 1990 stated that M/s. Silver Chemicals was merely granted a Letter of Intent but it never applied for conversion of the Letter of Intent into industrial licence.

Commencing production before obtaining industrial licence is an offence under Industries [Development and Regulation] Act, 1951. So far as M/s. Jyoti Chemicals is concerned, it is stated that it has not approached the Government at any time even for a Letter of Intent. The Government of India stated that in June, 1989, a study of the situation in Bichhri village and some other surrounding villages was conducted by the Centre for Science and Environment. A copy of their report was enclosed with the counter affidavit. The report states the consequences emanating from the production of 'H' acid and the manner in which the resulting wastes were dealt with by Respondents Nos. 4 to 8 thus:

> "The effluents are very difficult to treat as many of the pollutants present are refractory in nature. Setting up such highly polluting industry in a critical ground water area was essentially ill-conceived. The effluents seriously polluted the nearby drain and overflowed into Udaisagar main canal, severely corroding its cement-concrete lined bed and banks. The polluted waters also seriously degraded some agricultural land and damaged standing crops. On being ordered to contain the effluents, the industry installed an unlined holding pond within its premises and resorted to spraying the effluent on the nearby hill-slope. This only resulted in extensive seepage and percolation of the

> effluents into ground water and their spread down the aquifers. Currently about 60 wells appear to have been significantly polluted but every week a few new wells, down the aquifers start showing signs of pollution. This has created serious problems for water supply for domestic purposes, cattle-watering crop irrigation and other beneficial uses, and it has also caused human illness and even death, degradation of land and damage to fruit, trees and other vegetation. There are serious apprehensions that the pollution and its harmful effects will spread further after the onset of the monsoon as the water percolating from the higher parts of the basin moves down carrying the pollutants lying on the slopes - in the holding pond and those already underground."

11. This court passed number of orders during the period 1989-1992.

12. On February 17, 1992, this Court passed a fairly elaborate order observing that respondent nos. 5 to 8 are responsible for discharging the hazardous industrial wastes; that the manufacture of 'H' acid has given rise to huge quantities of iron sludge and gypsum sludge - approximately 2268 MT of gypsum-based sludge and about 189 mt. of iron-based sludge; that while the other respondents blamed respondent no.9 as the main culprit but respondent no. 9

denied any responsibility, therefore, according to the Courts, the immediate concern was the appropriate remedial action. The report of the R.S.P.C.B. presented a disturbing picture. It stated that the respondents have deliberately spread the hazardous material/sludge all over the place which has only heightened the problem of its removal and that they have failed to carry out the orders of this Court dated April 4, 1990. Accordingly, this Court directed the MOEF to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron-based sludge, to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was to be recovered from the concerned respondents.

13. Pursuant to the above order, a team of experts visited the area and submitted a report along with an affidavit dated March 30, 1992. The report presented a highly disturbing picture. It stated that the sludge was found inside a shed and also at four places outside the shed but within the premises of

the complex belonging to the respondents. It further stated that the sludge has been mixed with soil and at many places it is covered with earth. A good amount of sludge was said to be lying exposed to sun and rain.

14. The report stated: "Above all, the extent of pollution in the ground water seems to the very great and the entire aquifer may be affected due to the pollution caused by the industry. The organic content of the sludge needs to be analysed to assess the percolation property of the contents from the sludge. It is also possible that the iron content in the sludge may be very high which may cause the reddish colouration. As the mother liquor produced during the process (with pH-1) was highly acidic in nature and was indiscriminately discharged on land by the unit, it is possible that this might have eroded soil and caused the extensive damage. It is also possible that the organic contents of the mother liquor would have gone into soil with water together with the reddish colour." The report also suggested the mode

of disposal of sludge and measures for re-conditioning the soil.

15. In view of the above report, the Court made an order on April 6, 1992 for entombing the sludge under the supervision of the officers of the MOEF. Regarding revamping of the soil, the Court observed that for this purpose, it might become necessary to stop or suspend the operation of all the units of the respondent but that, the Court said, requires to be examined further.

16. The work of entombment of sludge again faced several difficulties. While the respondents blamed the Government officers for the delay, the Government officials blamed the said respondents of non-cooperation. Several Orders were passed by this Court in that behalf and ultimately, the work commenced.

Orders passed in 1993, filing of Writ Petition (C) No. 76 of 1994 by Respondent No. 4 and the orders passed therein:

17. With a view to find out the connection between the wastes and sludge resulting from the production of 'H' acid

and the pollution in the underground water, the Court directed on 20th August, 1993 that samples should be taken of the entombed sludge and also of the water from the affected wells and sent for analysis. Environment experts of the MOEF were asked to find out whether the pollution in the well water was on account of the said sludge or not. Accordingly, analysis was conducted and the experts submitted the Report on November 1, 1993. Under the heading "Conclusion", the report stated:

> 5.0 Conclusion
>
> 5.1 On the basis of the observations and analysis results, it is concluded beyond doubt that the sludge inside the emoted pit is the contaminated one as evident from the number of parameters analysed.
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> 5.2 The ground water is also contaminated due to discharge of H- acid plant effluent as well as H-acid sludge/contaminated soil leachiest as shown in the photographs and also supported by the results. The analysis result revealed good correlation between the colour of well water and H-acid content in it. The analysis results show high degree of impurities in sludge/soil and also in well water which is a clear indication of contamination of soil and ground water due to disposal of H-acid waste.

The report which is based upon their inspection of the area in September, 1993 revealed many other alarming features. It represents a commentary on the attitude and actions of the respondents. In Para-2, under the heading "Site Observations & Collection of Sludge/Contaminated Soil Samples", the following facts are stated:

2.1. The Central team, during inspection of the premises of M/s. HACL, observed that H-acid sludge (iron gypsum) and contaminated soil are still lying at different places, as shown in Figure 1, within the industrial premises(Photograph 1) which are the left overs. The area, where the solar evaporation pond was existing with H-acid sludge dumped here and there, was observed to have been leveled with borrowed soil (Photograph 2). It was difficult to ascertain whether the sludge had been removed before filling. However, there are visual evidences of contaminated soil in the area.

2.2 As reported by the R.S.P.C.B. representatives, about 720 tonnes out of the total contaminated soil and sludge scraped from the sludge dump sites is disposed of in six lined entombed pits covered by lime/flash mix, brick soling and concrete (Photographs were placed on record). The remaining scraped sludge and contaminated soil was lying near the entombed pits for want of additional disposal facility. However, during the visit, the left over sludge and contaminated soil could not be traced at site. Inspection of the surrounding area revealed that a huge heap of foreign soil of 5 metre height heap of foreign soil of 5 metre height (Photograph was placed on record) covering a large area, as also indicated in Fig. I, was raised on the sloppy ground at the foot hill within the industry premises. The storm water run-off pathway over the area showed indication of H-acid sludge leachate

coming out of the heap. Soil in the area was sampled for analysis.

2.3 M/s. HACL has a number of other industrial units which are operating within the same premises without valid consents from the R.S.P.C.B. These plants are sulphuric acid (H2SO4), fertilizer (SSP) and vegetable oil extraction. The effluents of these units are not properly treated and the untreated effluent particularly from the acid plant is passing through the sludge dump area playing havoc (Photograph was placed on record). The final effluent was collected at the outlet of the factory premises during operation of these units, at the time of groundwater monitoring in September 1993, by the RSPCB. Its quality was observed to be highly acidic (pH : 1.08, Conductivity : 37,100 mg/1, SO4 : 21,000 mg/1, Fe : 392 mg/1, COD : 167 mg/1) which was also revealed in the earlier visits of the Central teams. However, these units were not in operation during the present visit.

Under Para 4.2.1, the report stated inter alia:

The sludge samples from the surroundings of the (presently nonexistent) solar evaporation and the contaminated soil due to seepage from the newly raised dump site also exhibited very high values of the above mentioned parameters. This revealed that the contaminated soil is buried under the new dump found by the team.

25. So much for the waste disposal by the respondents and their continuing good conduct. To the same effect is the Report of the R.S.P.C.B. which is dated October 30, 1993.

26. In view of the aforesaid Reports, all of which unanimously point out the consequences of the 'H'

acid production, the manner in which the highly corrosive waste water (mother liquor) and the sludge resulting from the production of 'H' acid was disposed of and the continuing discharge of highly toxic effluents by the remaining units even in the year 1993, the authorities [R.S.P.C.B.] passed orders closing down, in exercise of their powers Under Section 33A of the Water Act, the operation of the Sulphuric Acid Plant and the solvent extraction plant including oil refinery of the fourth respondent with immediate effect. Orders were also passed directing disconnection of electricity supply to the said plants.

The fourth respondent filed Writ Petition (C) No. 76 of 1994 in this Court, under Article 32 of the Constitution, questioning the said Orders in January, 1994. The main grievance in this writ petition was that without even waiting for the petitioner's [Hindustan Agro Chemicals Limited] reply to the show-cause notices, orders of closure and disconnection of electricity supply were passed and that this was done by the R.S.P.C.B. with a malafide intent to cause loss to the industry. It was also submitted that sudden closure of its plants is likely to result in disaster and, may be, an explosion and that this consideration was not taken into account while ordering the closure. In its Order dated March 7, 1994, this Court found some justification in the contention of the industry that the various counter-affidavits filed by the R.S.P.C.B. are self-contradictory. The Board was directed to adopt a constructive attitude in the matter. By another Order dated March 18, 1994, the R.S.P.C.B. was directed to examine the issue of grant of permission to re-start the industry or to permit any interim arrangement in that behalf. On April 8, 1994, a 'consent' order was passed whereunder the industry was directed to deposit a

sum of Rupees sixty thousand with R.S.P.C.B. before April 11, 1994 and the R.S.P.C.B. was directed to carry on the construction work of storage tank for storing and retaining ten days effluents from the Sulphuric Acid Plant. The construction of temporary tank was supposed to be an interim measure pending the construction of an E.T.P. on permanent basis. The Order dated April 28, 1994 noted the Report of the R.S.P.C.B. stating that the construction of temporary tank was completed on April 26, 1994 under its supervision. The industry was directed to comply with such other requirements as may be pointed out by R.S.P.C.B. for prevention and control of pollution and undertake any works required in that behalf forthwith. Thereafter, the matter went into a slumber until October 13, 1995.

NEERI REPORT:

27. At this juncture, it would be appropriate to refer to the Report submitted by NEERI on the subject of "Restoration of Environmental Quality of the affected area surrounding Village Bichhri due to past Waste Disposal Activities". This Report was submitted in April, 1994 and it states that it is based upon the study conducted by it during the period November, 1992 to February, 1994. Having regard to its technical competence and reputation as an expert body on the subject, we may be permitted to refer to its Report at some length:

18. The judgment also dealt with damaging of crops and fields. The finding of the Court was that the entire

contaminated area comprising of 350 hectares of contaminated land and six abandoned dump sites outside the industrial premises has been found to be ecologically fragile due to reckless past disposal activities practised by M/s. Silver Chemicals Ltd. and M/s. Jyoti Chemicals Ltd. Accordingly, it is suggested that the whole of the contaminated area be developed as a green belt at the expense of M/s. Hindustan Agrochemicals Ltd. during the monsoon of 1994.

19. Mr. Shanti Bhushan, learned senior counsel appearing for the respondents-industries made the following submissions:

(1) The respondents are private corporate bodies. They are not 'State' within the meaning of Article 12 of the Constitution. A writ petition under Article 32 of the Constitution, therefore, does not lie against them.

(2) The RSPCB has been adopting a hostile attitude towards these respondents from the very beginning. The Reports submitted by it or obtained by it are, therefore, suspect. The respondents had no opportunity to test the veracity of the said Reports. If the matter had been fought out in a properly constituted suit,

the respondents would have had an opportunity to cross-examine the experts to establish that their Reports are defective and cannot be relied upon.;

(3) Long before the respondents came into existence, Hindustan Zinc Limited was already in existence close to Bichhri village and has been discharging toxic untreated effluents in an unregulated manner. This had affected the water in the wells, streams and aquifers. This is borne out by the several Reports made long prior to 1987. Blaming the respondents for the said pollution is incorrect as a fact and unjustified.

(4) The respondents have been cooperating with this Court in all matters and carrying out its directions faithfully. The Report of the R.S.P.C.B. dated November 13, 1992 shows that the work of entombment of the sludge was almost over. The Report states that the entire sludge would be stored in the prescribed manner within the next two days. In view of this report, the subsequent Report of the Central team, R.S.P.C.B. and NEERI cannot be accepted or relied upon. There are about 70 industries in India manufacturing 'H' acid. Only the units of the respondents have been picked upon by the Central and Sate authorities while taking no action against the other units. Even in the matter of disposal of sludge, the directions given for its disposal in the case of other units are not as stringent as have been prescribed in the case of respondents. The decision of the Gujarat High Court in Pravinbhai Jashbhai Patel case shows that the method of disposal prescribed

there is different and less elaborate than the one prescribed in this case.

(5) The Reports submitted by the various so-called expert committees that sludge is still lying around within and outside the respondents' complex and/or that the toxic wastes from the Sulphuric Acid Plant are flowing through and leaching the sludge and creating a highly dangerous situation is untrue and incorrect. The R.S.P.C.B. itself had constructed a temporary E.T.P. for the Sulphuric Acid Plant pursuant to the Orders of this Court made in Writ Petition (C) No. 76 of 1994. Subsequently, a permanent E.T.P. has also been constructed. There is no question of untreated toxic discharges from this plant leaching with sludge. There is no sludge and there is no toxic discharge from the Sulphuric Acid Plant.

(6) The case put forward by the R.S.P.C.B. that the respondents' units do not have the requisite permits/ consents required by the Water Act, Air Act and the Environment [Protection] Act is again unsustainable in law and incorrect as a fact. The respondents' units were established before the amendment of Section 25 of the Water Act and, therefore did not require any prior consent for their establishment.

(7) The proper solution to the present problem lies in ordering a comprehensive judicial enquiry by a sitting Judge of the High court to find out the causes of pollution in this village and also to recommend remedial measures and to estimate the loss suffered by the public as well as by the respondents. While the

respondents are prepared to bear the cost of repairing the damage, if any, caused by them, the R.S.P.C.B. and other authorities should be made to compensate for the huge losses suffered by the respondents on account of their illegal and obstructionist policy adopted towards them.

(8) The decision in Oleum Gas Leak. Case has been explained in the opinion of Justice Ranganath Misra, CJ., in the decision in ***Union Carbide Corporation etc. etc. v.*** Union of India ***etc. etc.*** AIR 1992 SC 248. The law laid down in Oleum Gas leak Case is at variance with the established legal position in other Commonwealth countries.

20. The Court dealt with the submissions of the respondents in great detail and did not find any merit in the same.

21. In the impugned judgment, the Court heavily relied on the observations of the Constitution Bench judgment in ***M.C. Mehta and Another*** *v.* ***Union of India and Others*** (1987) 1 SCC 395 popularly known as ***Oleum Gas Leak Case***, wherein it was held thus:

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes

an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently. dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and

harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortuous principle of strict liability under the rule in ***Ryland v. Fletcher*** (1868) LR 3 HL 330.

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be corelated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

22. This court in ***M.C. Mehta's case*** *(supra)* further observed as under:

31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in ***Rylands v. Fletcher*** apply or is there any other principle on which the liability can be determined? The rule in ***Rylands v. Fletcher*** was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there

anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry out part of the developmental programme, this rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally

different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule as laid down in Rylands v. Fletcher as is developed in England recognises certain limitations and exceptions. We in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England.

23. This Court applied the principle of Polluter pays and observed thus:

> "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'polluter pays' principle was promoted by the Organisation for Economic Co-operation and Development [OECD] during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed."

24. After hearing the learned counsel for the parties at length, this Court gave the following directions:

> "1. The Central Government shall determine the amount required for carrying out the remedial measures including the removal of sludge

lying in and around the complex of Respondents 4 to 8, in the area affected in village Bichhri and other adjacent villages, on account of the production of 'H' acid and the discharges from the Sulphuric Acid Plant of Respondents 4 to 8. Chapters-VI and VII in NEERI Report [submitted in 1994] shall be deemed to be the show-cause notice issued by the Central Government proposing the determination of the said amount. Within six weeks from this day, Respondents 4 to 8 shall submit their explanation, along with such material as they think appropriate in support of their case, to the Secretary, Ministry of Environment and Forests, Government of India (for short, M.E.F.). The Secretary shall thereupon determine the amount in consultation with the experts of his Ministry within six weeks of the submission of the explanation by the said Respondents. The orders passed by the Secretary, [M.E.F.] shall be communicated to Respondents 4 to 8- and all concerned - and shall also be placed before this Court. Subject to the Orders, if any, passed by this Court, the said amount shall represent the amount which Respondents 4 to 8 are liable to pay to improve and restore the environment in the area. For the purpose of these proceedings, the Secretary, [M.E.F.] and Respondents 4 to 8 shall proceed on the assumption that the affected area is 350 ha, as indicated in the sketch at Page 178 of NEERI Report. In case of failure of the said respondents to pay the said amount, the same shall be recovered by the Central Government in accordance with law. The factories, plant, machinery and all other immovable assets of Respondents 4 to 8 are attached herewith. The amount so determined and recovered shall be

utilised by the M.E.F. for carrying out all necessary remedial measures to restore the soil, water sources and the environment in general of the affected area to its former state.

2. On account of their continuous, persistent and insolent violations of law, their attempts to conceal the sludge, their discharge of toxic effluents from the Sulphuric Acid Plant which was allowed to flow through the sludge, and their non-implementation of the Orders of this Court - all of which are fully borne out by the expert committees' Reports and the findings recorded hereinabove - Respondents 4 to 8 have earned the dubious distinction of being characterised as "rogue industries". They have inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land, their water sources and their entire environment - all in pursuance of their private profit. They have forfeited all claims for any consideration by this Court. Accordingly, we herewith order the closure of all the plants and factories of Respondents 4 to 8 located in Bichhri village. The R.S.P.C.B. is directed to seal all the factories/ units/plants of the said respondents forthwith. So far as the Sulphuric Acid Plant is concerned, it will be closed at the end of one week from today, within which period Respondent No. 4 shall wind down its operations so as to avoid risk of any untoward consequences, as asserted by Respondent No. 4 in Writ Petition (C) No. 76 of 1994. It is the responsibility of Respondent No. 4 to take necessary steps in this behalf. The R.S.P.C.B. shall seal this unit too at the end of one week from today. The re-opening of these plants shall depend upon their compliance with the directions made and obtaining of all requisite

permissions and consents from the relevant authorities. Respondents 4 to 8 can apply for directions in this behalf after such compliance.

3. So far as the claim for damages for the loss suffered by the villagers in the affected area is concerned, it is open to them or any organisation on their behalf to institute suits in the appropriate civil court. If they file the suit or suits in forma pauperis, the State of Rajasthan shall not oppose their applications for leave to sue in forma pauperis.

4. The Central Government shall consider whether it would not be appropriate, in the light of the experience gained, that chemical industries are treated as a category apart. Since the chemical industries are the main culprits in the matter of polluting the environment, there is every need for scrutinising their establishment and functioning more rigorously. No distinction should be made in this behalf as between a large-scale industry and a small-scale industry or for that matter between a large-scale industry and a medium-scale industry. All chemical industries, whether big or small, should be allowed to be established only after taking into considerations all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them. It appears that most of these industries are water-intensive industries. If so, the advisability of allowing the establishment of these industries in arid areas may also require examination. Even the existing chemical industries may be subjected to such a study

and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under Section 3 and 5 of the Environment Act, the Central Government shall ensure that the directions given by it are implemented forthwith.

5. The Central Government and the R.S.P.C.B. shall file quarterly Reports before this Court with respect to the progress in the implementation of Directions 1 to 4 aforesaid.

6. The suggestion for establishment of environment courts is a commendable one. The experience shows that the prosecutions launched in ordinary criminal courts under the provisions of the Water Act, Air Act and Environment Act never reach their conclusion either because of the work-load in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. Those proceedings take years and years to reach conclusion. Very often, interim orders are granted meanwhile which effectively disable the authorities from ensuring the implementation of their orders. All this points to the need for creating environment courts which alone should be empowered to deal with all matters, civil and criminal, relating to environment. These courts should be manned by legally trained persons/judicial officers and should be allowed to adopt summary procedures. This issue, no doubt, requires to

be studied and examined indepth from all angles before taking any action.

7. The Central Government may also consider the advisability of strengthening the environment protection machinery both at the Center and the States and provide them more teeth. The heads of several units and agencies should be made personally accountable for any lapses and/or negligence on the part of their units and agencies. The idea of an environmental audit by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers may be considered. The idea of an environmental audit conducted periodically and certified annually, by specialists in the field, duly recognised, can also be considered. The ultimate idea is to integrate and balance the concern for environment with the need for industrialisation and technological progress."

25. The orders of this Court have not been implemented till date because by filing of number of interlocutory applications the respondent nos.4 to 8 have kept the litigation alive. These respondents have been successful in avoiding compliance of the judgment of this Court for more than fifteen years.

ORDER IN CONTEMPT PETITION

26. The original record of Writ Petition No. 967 of 1989 shows that the R.S.P.C.B. has filed a report of the National Environmental Engineering Research Institute, for short 'NEERI' in this Court on 6.1.1996. It is on this report that reliance was placed by the Court while disposing off the said writ petition. If the report which was submitted in this Court by the R.S.P.C.B. was different from the final report which was submitted by NEERI to the said Board, then it may have been possible to contend that the R.S.P.C.B. and its officers were guilty of fabrication. The affidavit of Mr. S.N. Kaul, Acting Director of NEERI clearly shows that what was filed in this Court was the copy of the final report dated 16.5.1994 which has been prepared by the NEERI. In other words, the NEERI itself states that the report filed in this Court by the Board was a copy of the final report and that there was no fabrication made therein by the Board or any of its officials.

27. It appears that the two scientists had inspected the report in the office of the NEERI and then observed that there has been a fabrication carried out by the Pollution Control

Board. From what has been stated hereinabove, the charge of fabrication is clearly unfounded. It is possible that these two scientists may have seen the draft report which would be with NEERI but the original report when prepared would be one which was, ultimately, submitted to the sponsoring agency, namely, the R.S.P.C.B., and it is only a copy of the same which could have been retained by NEERI. Be that as it may, it is clear that what has been filed in this Court as being the final report of the NEERI was the copy of the final report which was received by it. There is no basis for contending that any of the respondents have been guilty of fabrication. The whole application to our mind is devoid of any merit. The contempt petition was dismissed with costs.

IA NO.36 IN WRIT PETITION (C) No.967 OF 1989

28. This Interlocutory Application has been filed on behalf of M/s Hindustan Agro Chemical Ltd. (for short "HACL") whose industrial units situated in Udaipur were directed to be closed down by this Court on the premise that the said units had caused pollution in village Bichhri. This Court while directing

for closure of the industrial units of HACL vide its order dated 13.2.1996 had further held that the units be not permitted to run until they deposit the remediation costs for restoring the environment in the area. The Court accordingly directed for the attachment of the properties of HACL.

29. There is a serious attempt to reopen the entire concluded case which stands fully concluded by the judgment of this Court delivered on 13th February, 1996. It may be pertinent to mention that even the review and curative petitions have also been dismissed. By this application, the applicant has also made an attempt to introduce before this Court the opinion of various experts, such as, Dr. M.S. Govil, Mr. S.K. Gupta, Dr. P.S. Bhatt and Ms. Smita Jain who visited the Bichhri village at the instance of the applicant in the year 2004 to provide a different picture regarding the conditions of water and soil in the area. These experts submitted reports to demonstrate that now hardly any remediation measures are required in Bichhri village or adjoining areas.

30. The applicant in this application is seeking a declaration that as of now there is no pollution existing in the area which may have been caused by HACL and accordingly there is no necessity for this Court to sell the assets of HACL in order to carry out any remediation in the area. This application also is a serious attempt to discredit the NEERI report of 1996 once again.

31. The sole object of filing of the present application is to introduce before this Court recent reports prepared by experts at the behest of the applicant to demonstrate to the Court that before embarking upon remediation measures and for the said purposes putting the properties of the applicant to sell, the status and conditions of water, soil and environment in the area as at present be reviewed with a view to realistically ascertain whether any measures for remediation are called for at all in the area and if yes, then the nature and the current cost of the same may be ascertained.

32. The applicant submitted that the report of the NEERI which was the basis for the earlier orders of this Court does

not specify the nature of remediation measures which were considered necessary. The report merely indicates a lump sum amount without giving its break up as being a rough estimate of amount considered by them necessary for carrying out remediation measures.

33. It is stated in the application that the Secretary, MOEF after issuing notices to the parties called for the expert opinion of Water and Power Consultancy (WAPCO) and of Engineers India Limited (EIL), both these institutions were established by the Government of India. Both these institutions wrote to the Secretary that the data available was not sufficient to determine the cost of remediation, if any. The Secretary, who under the directions of the Court was directed to determine the amount within six weeks was left with no alternative but to simply affirm the lump sum amount determined by the NEERI.

34. It is stated that now almost fifteen years have passed since the final judgment of this Court and the situation in the area needs to be inspected again to find out as to whether any

remediation is necessary or whether with passage of time nature on its own has taken care of the pollution in the area and because of the same no further remediation is required to be done in the area. This submission is being made without prejudice to the right of the applicant to contend that the applicant had not caused any pollution in the area but the applicant for the limited purpose of this application is ready to assume for the sake of arguments that the applicant had caused pollution in the area and that the nature in the last so many years has taken care of the pollution and on that basis there is no pollution existing in the area at present.

35. One of the issues that came up for consideration before this Court was the liability of the Union of India to take remediation measures in the area even if the applicant were not to pay the remediation costs as determined by the Secretary, MOEF. In these proceedings the counsel on behalf of the applicant made a suggestion to the Court that a fresh team be sent to the units of the applicant to find out whether there is still any pollution existing in the area and also

whether any remediation as of today is required to be done or not. It was suggested during the course of hearing that the remediation cost being sought to be recovered from the applicant is not some kind of a decree in which the applicant is a judgment debtor but is merely a cost which the applicant is being made liable to pay on the "Polluter Pays" principle and there is no necessity of payment if there is no pollution existing. Till date there is no working out as to how the cost of remediation has been worked out by NEERI which had been affirmed by the Secretary, MOEF and which had been further affirmed by this Court.

36. According to the applicant, on the basis of the reports of some experts it is quite evident that there is no pollution in and around the factory premises of the applicant and accordingly there is no need for any remediation to be done in the area and the factory of the applicant is required to be handed over to the applicant forthwith so that the applicant may take proper steps to re-start the factory and generate

resources to meet the liabilities of the financial institutions and banks.

37. It is further prayed that if this Court for any reason doubts the opinion of the experts placed by the applicant in any manner, then this Court may appoint any reputed expert/experts to visit the area and to submit a detailed report to this Court relating to the pollution existing in the area as of now. In other words, the effort is to reopen the concluded case and that also after the review and the curative petitions have been dismissed by this Court.

38. There are two main prayers in this application, the first prayer is that no remediation is required to be done in and around the industrial units of the applicant on the basis of the four reports placed by the applicant along with this application or on the basis of the report submitted by the expert/experts appointed by this Court; and *secondly,* that the Court may pass consequential order directing for closing of these proceedings and thus lift the attachment order dated 13.2.1996.

39. Reply Affidavits to the Interlocutory Application have been filed by the Union of India and other respondents. In the reply affidavits of the respondents it is mentioned that on 13.2.1996 this Court directed closure of the units of the applicant for the reason that the said industries had caused environmental pollution in and around the areas where applicant's units are located. This Court had further directed that the units of the applicant would be permitted to operate only after depositing necessary costs for taking measures to restore the environment of the areas. The judgment of this Court was based upon a report dated 5.4.1994 of the NEERI which was filed by the R.S.P.C.B. on 6.1.1996.

40. The applicant questioned the credibility of the NEERI's report. It is submitted that the remediation cost for restoring the environmental quality of the area was only Rs.3 crores whereas in the report submitted in this Court the remediation cost was stated to be Rs.37.385 crores.

41. The applicant prayed that in the interest of justice the report dated 25.1.2005 submitted by the expert group to the MOEF be ignored and either accept the reports prepared at the instance of the applicant or fresh direction be issued for constitution of an independent expert group not having any association with NEERI to carry out investigation with relation to the environment in the village Bichhri.

42. According to the applicant, the report of NEERI relied upon by this Court was not the authentic report which was officially prepared. Even the copy which was actually filed in this matter was without any supporting affidavit and the same was merely handed over to this Court at the time of hearing. The applicant made his own enquiry and was officially given the report of NEERI. After comparing the report made available to the applicant from the one filed in this matter it came to light that the report actually filed in this Court was not bearing any resemblance to the conclusion and findings mentioned in the actual report.

43. It was also submitted that there have also been attempts on the part of authorities to shield the role of M/s. Hindustan Zinc Limited in causing environment damage in village Bichhri. This issue needs to be addressed and the same can be possible only if an organization having credibility and not having any association with the NEERI actually carries out a detailed investigation.

44. Reply affidavit has also been filed by the R.S.P.C.B. It is stated in the said affidavit:

> 3 (i) That M/s. Hindustan Agro Chemical Ltd., Village Bichhri, Tehsil Girva, District Udaipur, Rajasthan; respondent no.4, established its Sulphuric Acid and Oleum Plant in the year 1985 without obtaining prior consent of the State Board under the provisions of Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974; and section 21 of the Air (Prevention an Control of Pollution) Act, 1981;
>
> (ii) That the State Board vide its letter dated 16.2.1987 refused consent to respondent no.4 under the provisions of section 25 and 26 of the Water Act for discharging trade effluent from its Sulphuric Acid Plant.
>
> (iii) That the State Board issued directions vide order dated 26.11.1993, for closure of Sulphuric Acid Plant under the provisions of

section 33A of the Water Act, 1974 as it was discharging trade effluent without proper treatment and in excess of the prescribed standards. The District Collector Udaipur implemented the directions of closure of Sulphuric Acid Plant passed by the State Board.

4 (i) That M/s. Hindustan Agro Chemical Ltd., Village Bichhri, Tehsil Girva, District Udaipur, Rajasthan; respondent no.4 established its Solvent Extraction coupled with Oil Refinery Plant in the year 1991 without obtaining prior consent of the State Board under the provisions of section 25 and 26 of the Water Act and section 21 of the Air Act.

(ii) That the State Board vide its letter dated 24.7.1992 refused consent to respondent no.4 under the provisions of section 25, 26 of the Water Act for discharging trade effluent from its Solvent Extraction Plant.

(iii) That the State Board issued directions, vide order dated 26.11.1993, for closure of Solvent Extraction Plant under the provisions of section 33A of the Water Act, as it was discharging trade effluent without proper treatment and in excess of the prescribed standards. The District Collector Udaipur implemented the directions of closure of Solvent Extraction Plant passed by the State Board.

5 (i) That respondent no.4 preferred a petition before this Court being Writ Petition (C) No.76 of 1994 Hindustan Agro Chemical Ltd. & Anr. v. State of Rajasthan & Ors. challenging the directions dated 26.11.1993 of the State

Board closing down Sulphuric Acid Plant and Solvent Extraction Plant under the provisions of section 33A of the Water Act, 1974. It was alleged that the action of the State Board closing down Sulphuric Acid Plant and Solvent Extraction Plant was arbitrary and highhanded.

(ii) That this Court during hearing in the matter on 7.3.94, in WP (C) No.76/94 passed the following direction *inter-alia*:-

> "We thought of having the complaints of the petitioner as to harassment, examined by an independent Commissioner to ascertain the bona fides of the action taken by the officers of the Pollution Control Board and also to fix their responsibility. But we thought that at this stage it would be appropriate to ask the learned Advocate-General, who appears for the State of Rajasthan, to have the matter examined at his instance and direct the Pollution Control Board to act more constructively and to suggest measures by which the Plant could be re-commissioned immediately."

(iii) That the said writ petition again came up for hearing on 18.3.94 before this Court. This Court was pleased to pass the following directions *inter alia*:-

> "In the meanwhile, the Pollution Control Board is not prevented from and it shall indeed by its duty to

indicate what, according to it, are such minimal requirements for grant of permission to re-start the industries or to permit any interim arrangements in this behalf."

(iv) That in pursuance of the aforesaid order dated 18.3.94, the respondent Board took appropriate steps and granted permission to restart industry subject to certain conditions communicated vide permission order.

It is submitted that the industry was restarted. However, on subsequent inspection it was found that the industry was violating the prescribed norms and also has not bothered to comply with the conditions mentioned in the permission order. As such an application was moved before this Court for appropriate directions in the matter.

(v) That despite all efforts for re-commissioning of the plants, respondent no.4 failed to take measures required for prevention and control of pollution.

(vi) That this court vide order and judgment dated 13.2.96, dismissed the above mentioned writ petition in view of the decision in writ petition (Civil) No.967 of 1989.

6(i) That M/s. Hindustan Agro Chemical Ltd., Village Bichhri, Tehsil Girva, District Udaipur, Rajasthan, respondent no.4, established its Chlorosulphonic Acid Plant in June 1992 without obtaining prior consent of the State Board under the provisions of Section 25 and

26 of the Water Act and section 21 of the Air Act.

(ii) That the State Board issued directions vide order dated 30.12.1992, for closure of Chlorosulphonic Acid Plant under the provisions of section 33A of the Water Act and 31A of Air Act. The District Collector Udaipur implemented the directions of closure of Chlorosulphonic Acid Plant passed by the State Board.

(iii) That respondent no.4 preferred a petition before this Court being Writ Petition (C) No.824 of 1993, Hindustan Agro Chemical Ltd. & Anr. v. State of Rajasthan & Ors., challenging the directions dated 30.12.1992 of the State Board closing down Chlorosulphonic Acid Plant under the provisions of Section 33A of the Water Act, and 31A of the Air Act. It was alleged that the action of the State Board closing down Chlorosulphonic Acid Plant was arbitration and highhanded.

(iv) That this Court dismissed the above mentioned writ petition by judgment dated 13.2.96 in W.P. (Civil) No.824 of 1993 in view of the decision in Writ Petition (Civil) 967 of 1989.

7(i) That M/s Silver Chemicals, Village Bichhri, Tehsil Girva, District Udaipur Rajasthan, respondent no.5 came into existence in February 1988 to manufacture H-Acid and continued its operations upto March 1989 without obtaining prior consent of the State Board under the provisions of section 25 and 26 of the Water Act and Section 21 of the Air Act.

(ii) That the State Board vide its letter dated 9.1.1989 refused consent application submitted by M/s. Silver Chemicals under the provisions of Section 25/26 of the Water Act as the unit was discharging trade effluent beyond the prescribed standard and without having installed a plant for the treatment of trade effluent. The State Board under the provisions of section 25(5) of the Water Act also imposed several conditions on the industry and informed it that failure to make compliance of the conditions of the conditions shall render it liable for prosecution.

(iii) That the industry however continued its operations and looking to the continued violations of the provisions of the aforesaid Acts, the State Board filed an injunction application under the provisions of section 33 of the Water Act for restraining the industry from discharging polluted trade effluent in excess of the prescribed standards and from causing pollution of underground water n 24.3.89 before the court of Chief Judicial Magistrate, Udaipur.

(iv) That the Court of Chief Judicial Magistrate, Udaipur by order dated 15.6.1989 issued injunction against M/s. Silver Chemicals restraining it from discharging polluted trade effluent without any treatment.

(v) That the State Board also filed a criminal complaint No.176/99 against M/s. Silver Chemicals and its Director on 24.3.89 under the provisions of section 43 and 44 for violation of the provisions of section 24, 25 and 26 of the Water Act.

(vi) That the court of Chief Judicial Magistrate, Udaipur by order and judgment dated 11.8.2004 has convicted M/s. Silver Chemicals with fine of Rs.10 lakh each under section 43 & 44 of the Act. The Court has also sentenced Shri O.P. Agarwal, Director of the said company with simple imprisonment of one year and fine of Rs.10,000/- under section 43 and simple imprisonment of six months and fine of Rs.10,000/- under section 44 of the Act. The company and its Director have preferred criminal appeal no.92 of 2004 under section 374 (3)(a) of the Code of Criminal Procedure before the Sessions Judge, Udaipur. The appeal is pending before the Ld. Sessions Judge.

8(i) That M/s. Rajasthan Multi Fertilizers, Vilalge Bichhri, Tehsil Girva, District Udaipur, Rajasthan respondent no.6, established NKP Fertilizer Plant at the site, without obtaining previous consent of the State Board under the provisions of section 25, 26 of the Water Act and section 21 of the Air Act.

(ii) That the State Board on 20.2.89 issued a notice and directed respondent no.6 to obtain consent of the State Board under the provision of the Water Act for discharging trade effluent from its plant.

9(i) That M/s. Phosphate India, Vilalge Bichhri, Tehsil Girva, District Udaipur, Rajasthan, respondent no.7 established Single Super Phosphate Plant at the site, without obtaining previous consent of the State Board under the provisions of section 25, 26 of the Water Act and section 21 of the Air Act.

(ii) That the State Board on 20.2.89 issued a show cause notice and directed respondent no.7 to obtain consent of the State Board under the provisions of the Water Act for discharging trade effluent from its plant.

10(i) That M/s Jyoti Chemicals, Village Bichhri, Tehsil Girva, District Udaipur, Rajasthan; respondent no.8 established its plant, at the site, in the year 1987, to manufacture Ferric Alum without obtaining previous consent of the State Board under the provisions of section 25 and 26 of the Water Act and section 21 of the Air Act.

(ii) That the State Board vide its letter dated 4.8.1988 issued N.O.C. to respondent no.8 for adequacy of pollution control measures for Ferric Alum Plant. The respondent No.8, however, started manufacturing H-Acid and continued its operation till March, 1989.

(iii) That the State Board vide letter dated 30.5.88 withdrew the NOC for the reason that respondent no.8 violated the conditions of the NOC.

(iv) That the State Board vide its letter dated 30.5.89 also refused application filed by respondent no.8 for discharging trade effluent under section 25, 26 of the Water Act for the reasons, *inter alia*, that it failed to install pollution control measures and changed its product from Ferric alum to H-Acid without the consent of the State Board.

11. That this Court by its common order and judgment dated 13.2.96 in the aforesaid Writ

> Petition (Civil) No.967/89, Indian Council for Enviro Legal Action v. Union of India & Others; Writ Petition (Civil) No.76/94 Hindustan Agro Chemical v. State Pollution Control Board & Others and Writ Petition (Civil) No.824/93 Hindustan Agro Chemical v. State Pollution Control Board and Others attached the factories, plant, machinery and all other immovable assets of respondent nos.4 to 8. The State Pollution Control Board was directed to seal all the factories, plants of respondent nos.4 to 8 forthwith. The State Board in compliance of the aforesaid direction sealed the plants of respondent nos.4 to 8 as directed by this Court.

45. The written submissions were also filed by the Union of India and the R.S.P.C.B. in response to the order dated 03.05.2005 in IA No.36. It is stated in the said affidavit:

> 2. That the Ministry of Environment & Forests, Government of India vide its affidavit dated 29.1.2005 submitted a summary report prepared by a consortium of SENES Consultants Limited, Canada; and NEERI, Nagpur before this Court. The Ministry of Environment & Forest, Government of India and the Rajasthan State Pollution Control Board are making joint submissions herein below for remediation of the environmental damage caused in village Bichhri. Based on the recommendations given in the report of July, 2002, prepared by SENES/NEERI for remediation of degraded environment of Bichhri, District Udaipur, Rajasthan, the

following works will be undertaken on priority-wise:

First Priority:

Phase-I: Source Remediation (Short Term)

- Clean up of water near the plant site with highest H-acid contamination.
- Remediation of contaminated soil and sludge management within the plant site.

Second Priority:

Phase-II: Hot Spots Remediation (Medium Term)

- Clean up of ground water at hot spots.

Third Priority:

Phase-III: Residual Contamination Remediation (Long Term)

- Clean up of residual contaminated water.

Fourth Priority:

Phase-IV (long-term):

- Clean up of contaminated soil outside plant boundary.

3. While dealing with the first phase called as short-term remedies, it has been divided in two parts namely:-

(i) Clean up of water near the plant site with highest H-acid contamination.

(ii) Soil and Sludge management within the plant site.

46. The said recommendation given in the SENES/NEERI report further suggests as follows:

> "Considering the available water quality data the following alternatives were evaluated in the preliminary review:
>
> - Lime soda process plus Fe coagulation
> - Reverse osmosis (RO)
> - Electro-dialysis
> - Ion exchange
> - Activated carbon Sorption and
> - Activated carbon filtration
>
> Similarly, for the second short-term measures namely, the remediation of soil and sludge management many alternative suggestions have been made. The said report has suggested the following four alternatives for clean up of soil:
>
> - Excavation and relocation in a capped landfill.
> - Ex-situ remediation (soil washing)
> - Phyto-remediation
> - Natural attenuation

4. That out of the aforesaid alternative technologies, the most suitable alternative with regard to the human habitation, plantation and vegetation etc., will have to be decided keeping in view the local conditions and priority requirement. This job will have to be done by Technical Advisory Committee having sufficient technical know-how in respect of the remedial measures. The committee may also like to look into the techno-economic feasibility in this regard.

5. In order to go ahead with the above mentioned works on priority-wise, the following steps will be taken:

a) Reconfirmation of National Productivity Council (NPC) New Delhi as the Project Management Consultant (PMC) by the Ministry of Environment & Forests (MoEF). NPC was the PMC for the purpose of conducting feasibility studies by SENES & NEERI in pursuance of the directions dated 4.11.1997 of this Court. The role of PMC will be to -

i) Co-ordinate preparatory activities such as bidding and selection of a suitable expert agency for undertaking remediation work before execution of the remediation works.

ii) Organise Technical Advisory Committee meetings from time to time to guide, review and supervise the progress of remediation works.

iii) Co-ordinate activities/works pertaining to actual remediation and submit progress reports to the MoEF.

b) Constitution of a Technical Advisory Committee by the MoEF having representations of MoEF, CPCB, Government of Rajasthan, RSPCB, NEERI, NPC & Technical Experts of National repute in the relevant fields to –

i) Evaluation the recommendations of SENES NEERI Report (July 2002);

ii) Finalise the detailed line of action and plan for remediation of environmental damages;

iii) Review the alternative technologies from the technologies recommended in the SENES-NEERI report and to recommend suitable technology for remediation of contaminated water and soil.

iv) Supervise the work of actual remediation.

6. As the remediation of environmental damage would require a large sum of money…

47. All issues raised in this application have been argued and determined by an authoritative judgment of this Court about fifteen years ago. This application has been filed to avoid liability to pay the amount for remediation and costs imposed by the Court on the settled legal principle that polluter pays principle. In other words, the applicant through

this application is seriously making an effort to avoid compliance of the order/judgment of this Court delivered fifteen years ago. The tendency must be effectively curbed. The applicant cannot be permitted to avoid compliance of the final order of this court by abusing the legal process and keep the litigation alive.

48. The applicant is in business where sole motto of most businessmen is to earn money and increase profits. If by filing repeated applications he can delay in making payment of huge remediation costs then it makes business sense as far as the applicant is concerned but the Court must discourage such business tactics and ensure effective compliance of the Court's order. It is also the obligation and bounden duty of the court to pass such order where litigants are prevented from abusing the system.

I.A. NO. 44 IN W.P.(C)No.967 OF 1989

49. In this matter the final judgment of the court was delivered on 13.2.1996. A Review Petition filed was also dismissed. Thereafter, a Curative Petition was filed and that

was also dismissed on 18.7.2002. The applicant did not comply with the orders passed by this court even after dismissal of curative petition and has filed this application.

50. This application has been filed by respondent No. 4, Hindustan Agro Chemicals Limited. By this application respondent No. 4 sought an investigation into the reports of April, 1994 prepared by the NEERI, which was employed by the R.S.P.C.B. in September, 1992 to evaluate the extent of contamination done by the applicant's plant in Bichhri village in Rajasthan.

51. It is on the basis of the report that applicant's units in Bichhri village were closed down and the applicant was asked to pay a sum of Rs.37.385 crores towards the costs of remediation to the government. The reports of April, 1994 had alleged that the applicant's units polluted the whole area by discharging its H-acid on the land which would cost Rs.37.385 crores to clean-up.

52. According to the applicant various experts employed by the applicant had found no evidence of H-acid pollution from the applicant's units in the area. In the application, serious effort has been made to discredit the NEERI report. It may be pertinent to mention all objections of the said reports were heard and disposed by the judgment dated 13.2.1996:

> "In fact, while one report mentioned the cost of remediation to be 3 crores, the one which was presented to the Court showed it as 37.385 crores.
>
> As per the original report it was reported by RSPCB that most of wells within 1.5 k.m. radius of the plants were contaminated while the modified report says, wells within 6.5 k.m. radius.
>
> While the original report noted that the sludge had been stored under the supervision of the RSPCB whereas the modified report stated that the industry had scattered the sludge in an unmindful-clandestine manner causing gross pollution to avoid penal liability."

53. According to the reports of the experts, (who visited the site at the instance of the applicant, after the dismissal of Review and Curative petition) the report of the NEERI filed in April 1994 was untenable and unsustainable. According to the applicant the said report was fabricated. In the

application it is also mentioned that this is a fraud in which this court had been unwittingly dragged by the officers of the RSPCB and the NEERI to destroy several industries and the livelihood of about 1700 persons and it has been prayed that this court to direct an investigation into the report of April, 1994 prepared by the NEERI at the instance of the RSPCB to examine whether it was false or malafide.

54. A reply has been filed on behalf of the RSPCB. At the outset it has been mentioned that similar challenge by the respondent Nos. 4 to 8 regarding the factum of pollution in village Bichhri and it being attributed to the said respondents had been dismissed by this court on many occasions. This court conclusively reached the finding that the respondent Nos. 4 to 8, by indiscriminate discharge of their polluted trade effluent is in utter disregard and violation of the provisions of the Pollution Control and Environmental Protection Laws had caused intense severe pollution of underground water and of soil in village Bichhri. The veracity of the report of the NEERI

has already been upheld by this court. This court on 4.11.1997 passed the following order:

> "... ... ...In the affidavit of Progress Report, the Government of India has proposed that for the purpose of undertaking the work relating to remedial measures for the National Productivity Council (NPC) may be appointed as the Project Management Consultants and on the basis of the feasibility report submitted by the NPC, tenders may be invited for entrusting the remedial work. It is also proposed that a High Level Advisory Committee would be constituted consisting of the representatives from (1) Ministry of Environment & Forests (2) National Productivity Council (3) Central Pollution Control Board (4) NEERI and (5) Rajasthan State Pollution Control Board to review periodically and give directions and also to approve decisions to be taken. According to the said affidavit work would be undertaken in two phases. The cost of Phase-I would be Rs.1.1 crores (Rs.50.00 lakhs for Project Management Consultancy and Rs.60.00 lakhs for feasibility studies) and the cost of Phase-II (Actual Remediation) would come to Rs.40.1 crores. In the additional affidavit of Dr. M. Sengupta detailed reasons have been given why it has not been possible to accept the report of the Experts on which reliance was placed by the respondents. We have perused the said reasons given in the said additional affidavit filed on behalf of the Ministry of Environment and Forests and keeping in view the reasons given therein. We are unable to accept the report of the Experts on which reliance has been placed by the respondents. We accept the proposal submitted by the Government of India for the purpose of taking remedial measures by appointing National Productivity Council as the Project

> Management Consultant. In our opinion, the Ministry of Environment & Forests, Government of India has rightly made a demand of Rs.37.85 crores.
>
> … … …Since, we have accepted the aforesaid proposal of the Government of India, we put it to Shri N.D. Nanavati that in order that further steps as per the said proposal are taken the respondents should immediately deposit a sum of Rs.5.00 crores in advance so that the National Productivity Council may be asked to undertake the work of Project Management Consultant and have the feasibility studies conducted and prepare the Terms of Reference for inviting the tenders. Shri Nanavati, after taking instructions from the representative of the respondents, expressed the inability of the respondents to deposit the said amount and states that they are in a position to deposit Rs.5.00 lakhs only. In these circumstances, the only alternative left is to direct that the Ministry of Environment and Forests shall take the necessary steps to implement the directions contained in the judgment of this Court. All that we will say at this stage is that the decision regarding remedial measures taken on the basis of the NEERI Report shall be treated as final. The I.As. are disposed of accordingly."

55. In the reply of RSPCB it is mentioned that respondent No. 4 had preferred a Contempt Petition (Criminal) No. 7/1999 entitled ***Hindustan Agro Chemical v. Alka Kala and others*** and this court dismissed the contempt petition with the costs computed at Rs.10,000/- while observing that

there was no basis for contending that any of the respondents have been guilty of fabrication and the whole contempt application was without any merit.

56. In the reply it is also mentioned that the respondent Nos. 4 to 8 had been operating their industrial plants without obtaining consent from the State Board, as required under the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 and discharging polluted trade effluent indiscriminately without providing any treatment so as to bring it in conformity to the prescribed standards. Discharge of this trade effluent by the respondent Nos. 4 to 8 resulted into severe pollution of underground water and of soil. For the above violation, the State Pollution Control Board filed a Criminal complaint No. 176/1999, under the provisions of Section 43 read with Sections 24 and 44 read with Sections 25/26 of the Water Act before the Court of Chief Judicial Magistrate, Udaipur. The learned Chief Judicial Magistrate, Udaipur by its order dated 11.8.2004 found the accused guilty and convicted him with

imprisonment and fine both under Sections 43 and 44 of the Water Act. The said conviction and sentence was upheld by the learned Session Judge, Udaipur in its judgment dated 21.7.2005. Against the judgment dated 21.7.2005 of the learned Sessions Judge, the accused preferred Criminal Revision Petition No. 634/2004 before the Rajasthan High Court at Jodhpur. The Criminal Revision Petition is pending adjudication before the High Court of Rajasthan at Jodhpur.

57. While denying the averments of the application, the RSPCB has relied on paragraphs 14 and 15 of the affidavit dated 18.9.2007 filed by M. Subba Rao, Director, MOEF. The said paras reads as under:

> "14. The applicant is making reference and reliance upon the recent affidavit filed by the Ministry of Environment and Forests, Government of India dated 08.03.2007 to contend that the earlier report submitted by the NEERI was a result of falsehood/malafide on the parts of some officers responsible for preparing the report. At the outset it is submitted that neither in the report nor in the affidavit of the Union of India dated 08.03.2007 it has been stated that the earlier report submitted by National Environmental Engineering Research Institute was incorrect. The affidavit submitted by the Union of India on 08.03.2007 has only given the present status. The report submitted by Union

> of India along with the affidavit has not dealt with the correctness/incorrectness of the earlier reports submitted by National Environmental Engineering Research Institute to this Hon'ble Court. It is submitted that on the basis of the affidavit filed by Union of India on 08.03.2007 and the report submitted therewith, it cannot be contended that the report submitted by National Environmental Engineering Research Institute in April 1994 was incorrect. It is further submitted that the experts of Union of India have also not gone into an examined the merits of the earlier reports.
>
> 15. It is seen from paras 46-47 of the judgment of this Hon'ble Court reported in the order dated 13.2.1996 (reported at (1996) 3 SCC 212 at 227-231) that a challenge was already attempted by the respondents on the reports of NEERI before this Hon'ble Court at the time of hearing."

58. It may be pertinent to mention here that on 22.8.1990 this court had appointed Mr. Mohinder Vyas as Commissioner to inspect the wells and assess the degree of pollution created by the operation of H-acid plant and the nature and extent of the remedial operations. In pursuance of the directions, the Commissioner visited the site from 31st August to 4th September, 1990, conducted detailed survey and also collected samples from a number of wells and drains. The Commissioner in his report dated 20.7.1991 indicated that

the overall quality of ground water in the area had become highly polluted, the water had become unfit for consumption by man or animal and was not even fit for irrigation.

59. This Court by its order dated 17.2.1992 further directed that the MOEF to inspect the area and ascertain about the existence and extent of Gypsum and Iron based sludge over there. In pursuance of the above directions, a team of experts of MOEF visited the site on 6.3.1992 and assessed the position in regard to storage of sludge collected from various sites and presence of sludge in the factory premises. Samples of water of wells around the factory were also collected for analysis. The Union of India in an affidavit filed before this court in pursuance of the said directions stated as follows:

> "... ... ... That the report would reveal that the extent of pollution in ground water seems to be very great and the entire aquifer may be effected due to the pollution caused by the industry.
>
> ... ...As the mother liquor produced during the process (with pH-1.0) was highly acidic in nature and was indiscriminately discharged on land by the unit, it is possible that this might have eroded the soil and caused the extensive damage. It is also possible that organic contents of mother liquor

would have gone into soil with water to give radish colour.

In another inspection in July, 1992 carried out by a team of experts of Ministry of Environment & Forests and Central Pollution Control Board, it was observed:

> "… … …A part of effluent from Sulphuric Acid Plant is being discharged inside the factory. The effluent dissolves H-acid sludge, which on percolation is likely to cause further pollution of ground water… … …"

60. In pursuance to the order dated 15.7.1992 of this court, the officials of the MOEF conducted inspection on 7.10.1992 and observed as under:

> "… … …Untreated effluent from the solvent extraction plant and the sulphuric acid plant were passing through the sludge dump sites unabated, which was resulting in further leaching of colour to ground water. … … …"

61. The MOEF in the month of September, 1993 submitted a report which reads as under:

"5.0 Conclusion

5.1 On the basis of the observations and analysis results, it is concluded beyond doubt that the sludge inside the entombed pit is the contaminated

one as is evident from the number of parameters analysed.

5.2 The ground water is also contaminated due to discharge of H-acid plant effluent as well as H-acid sludge/contaminated soul leachates as shown in the photographs and also supported by the results. The analysis results revealed good correlation between the colour of well water and H-acid content in it. The analysis results show high degree of impurities in sludge/soil and also in well water which is a clear indication of contamination of soil and ground water due to disposal of H-acid waste."

62. The report which was based upon the inspection of the area in September, 1993 revealed many other alarming features. In para 2, under the heading "Site Observations and Collection of Sludge/Contaminated Soil Samples", the following facts were stated:

"2.1 The Central team, during inspection of the premises of M/s. HACL observed that H-acid sludge (iron/gypsum) and contaminated soil are still lying at different places, as shown in Fig.1, within the industrial premises (photograph 1) which are the leftovers. The area, where the solar evaporation pond was existing with H-acid sludge dumped here and there, was observed to have been leveled with borrowed soil (photograph 2). It was difficult to ascertain whether the sludge had been removed before filling. However, there are visual evidences of contaminated soil in the area.

2.2 As reported by the Rajasthan State Pollution Control Board (RSPCB) representatives, about 720 tonne out of the total contaminates soil and sludge scraped from the sludge dump sites id disposed in six lined entombed pits covered by lime/fly ash mix, brick soling and concrete (photographs 3 and 4). The remaining scrapped sludge and contaminated soil was lying near the entombed pits for want of additional disposal facility. However, during the visit, the left over sludge and contaminated soil could not be traced at site. Inspection of the surrounding area revealed that a huge heap of foreign soil of 5 meter height (photograph 5) covering a large area, as also indicated in Fig. 1, was raised on the sloppy ground at the foothill within the industry premises. The storm water run-off pathway over the area showed indication of H-acid sludge leachates coming out of the heap. Soil in the area was sampled for analysis.

2.3 M/s. HACL has a number of other industrial units which are operating within the same premises without valid consents from the Rajasthan State Pollution Control Board (RSPCB). These plants are Sulphuric Acid (H_2SO_4), fertilizer (SSP) and vegetable oil extraction. The effluent of these units are not properly treated and the untreated effluent particularly from the acid plant is passing through the sludge dump area playing havoc (photograph 7). The final effluent was collected at the outlet of the factory premises during operation of these units, at the time of ground water monitoring in September, 1993, by the RSPCB. Its quality was observed to be highly acidic ($_pH$: 1.08, Conductivity: 37,100 mg/l,

> SO_4:21,000 mg/l, Fe: 392 mg/l, COD: 167 mg/l) which was also revealed in the earlier visits of the Central teams. However, these units were not in operation during the present visit."

63. Under para 4.2.1, the reported stated *inter alia:*

> "The sludge samples from the surroundings of the (presently non-existent) solar evaporation and the contaminated soil due to seepage from the newly raised dump site also exhibited very high values of the above mentioned parameters. This revealed that the contaminated soil is buried under the new dump found by the team."

64. In the reply it is also mentioned that the NEERI submitted its report in April, 1994 on the restoration of environmental quality of the area surrounding village Bichhri, severally affected due to discharge of trade effluent and other industrial wasters by respondent Nos. 4 to 8. The report was submitted before this court in pursuance of its directions in the matter. The report states that the studies were carried out by the NEERI between September, 1992 and February, 1994. The report had been considered by this court at length on its own merits and the observations of the court on the

report are contained in the judgment pronounced by it on 13.2.1996.

65. In the reply it is also stated that this court besides considering the report of the NEERI also looked into a number of reports pertaining to inspections, surveys, studies and analysis of wastes and waste waters carried out by the experts of the MOEF, Central Pollution Control Board (for short 'CPCB') and the R.S.P.C.B on various occasions, while hearing the matter and pronouncing the judgment therein on 13.2.1996. Therefore, it is totally incorrect and erroneous to contend that the order dated 13.2.1996 was solely based upon the report submitted by the NEERI. Para IV of the conclusions of the judgment dated 13.2.1996 observed as follows:

> "… … …this court has repeatedly found and has recorded in the orders that it is respondents who have caused the said damage. The analysis reports obtained pursuant to the directions of the court clearly establish that the pollution of the wells is on account of the wastes discharged by respondent Nos. 4 to 8 i.e. production of 'H' Acid… … …"

66. In its reply the RSPCB further stated that the respondent Nos. 4 to 8 filed a Writ Petition No. 338/2000 challenging the judgment of this court dated 13.2.1996. This court dismissed the petition, by order dated 18.7.2002, having regard to the principles laid down in ***Rupa Ashok Hurra v. Ashok Hurra & Another*** (2002) 4 SCC 388.

67. The RSPCB also stated in its reply that this court by order dated 4.11.1997 directed the MOEF to take necessary steps to implement the directions contained in the judgment dated 13.2.1996 and accepted the proposals submitted by the MOEF for the purpose of taking remedial measures by appointing National Productivity Council (for short NPC), New Delhi as Project Management Consultant. Pursuant to these directions, the MOEF awarded the work of conducting feasibility studies for suggesting alternative methods for remediation of affected environment in Bichhari, to a consortium of consultants namely: M/s. SENES Consultant Limited, Canada and the NEERI, Nagpur. The above consultants in their report stated that an area of 540 hectares

had been affected due to industrial waste and needed remediation of contaminated ground water and soil. The said report categorically stated about contamination of ground water and of soil by H-acid. The report has been submitted by the MOEF before this court in January, 2005. This court on 9.12.2004 made the following order:

> "... ... ...The company M/s. Hindustan Agro Chemical Limited, which is one of the respondents in the main Writ Petition has filed a Petition supported by an affidavit of one Shri D.P. Agarwal, a Director in the respondent Nos. 4-8 companies enclosing therewith certain reports of the experts. It is the claim of the applicant that at present, the effects caused by pollution on account of operation of the concerned industries do not exist and remedial measures, as contemplated in the main judgment of this Court need not be undertaken. The respondents namely: UOI, the State of Rajasthan and the Rajasthan State Pollution Control Board as well as the petitioner will give their responses, if any, to this I.A. The Government of India may depute an expert and be along with the expert nominated by the Rajasthan State Pollution Control Board and the nominee of the State Rajasthan shall visit the spot after giving intimation to the Petitioner-Indian Council for Enviro Legal Action and verify the facts stated in the affidavit and report the latest position to the Court by the next date of hearing... ... ..."

68. An additional affidavit was also filed on behalf of MOEF on the same lines and graphic description of existence of the pollution has affected the ground water to an extent that the entire aquifer may be affected due to the pollution caused by the industry. The report further reveals that the problem in relation to the area in question is basically the contamination of water and the major factor contributing to the cause has been the improper disposal of sludge and liquid wastes from the unit. It has been recommended by the expert team that due to leachable components of the sludge the industry should prepare a double line pit containing impervious liners comprising impervious clay and polyethylene sheets. The sludge should be placed in this lined pit and covered with water proof layering to such extent that no water can percolate through the stored sludge. The soil in the premises of the industry has also been contaminated by the disposal of liquid effluents as well as the sludge on the ground. The contaminated soil needs to be removed and the entire area should be revamped. All industrial activities going on in the premises should be stopped to enable the revamping process.

69. Mr. Shanti Bhushan and Mr. Prashant Bhushan, learned senior counsel in the written submissions filed by the respondent Nos. 4 to 8 have quoted this court's direction. The same is reproduced as under :-

> "The Central Government shall determine the amount required for carrying out the remedial measures....The Secretary shall thereupon determine the amount in consultation with the experts of the Ministry.....the said amount shall represent the amount which respondents 4 to 8 are liable to pay to improve and restore the environment in the area....the factories, plant, machinery and all other immovable assets of respondents 4 to 8 are attached herewith. The amount so determine and recovered shall be utilized by the MEF for carrying out all necessary remedial measures to restore the soil, water resources and the environment in general of the affected area to its former state."

70. According to respondent nos. 4 to 8, two reports of the NEERI of the same date were at variance with each other. In one report, the cost of remediation is mentioned as Rs.3 crores whereas in other report presented before the court, the amount was 37.385 crores.

71. Mr. Bhushan, learned senior counsel has submitted in his written submission that according to the original report, it was reported by the RSPCB that most of the wells within 1.5 km radius of the chemical plants of the respondents were contaminated whereas according to the modified report those wells were located within 6.5 km radius.

72. Mr. Bhushan has also submitted that the sludge had been stored under the supervision of the RSPCB whereas according to the modified report the industry had scattered the sludge in an unmindful clandestine manner causing gross pollution to avoid penal liability.

73. Reference has been made to the opinion of some experts whose opinions were obtained at the behest of respondent nos. 4 to 8. Their reports are contrary to the earlier reports given by the other experts.

74. In the written submissions it is mentioned that M/s Hindustan Zinc Limited was responsible for discharging noxious and polluting effluents.

75. According to the applicant-industry, the RSPCB has not taken a consistent stand.

76. In the supplementary submissions filed by Mr. K.B. Rohatagi, the learned counsel appearing on behalf of R.S.P.C.B., it is mentioned that in Interlocutory Application Nos. 36 and 44 the applicant-industry has resurrected the same grounds which have previously been settled by this court in ***Indian Council for Enviro-Legal Action and others*** *v.* ***Union of India*** **and** ***Others*** (1996) 3 SCC 212.

77. Mr. Rohatagi also submitted in the supplementary submissions that the question of liability and the amounts payable by the applicants based on the NEERI report has been decided by the judgment in the writ petition. The review petition against the said judgment was also dismissed by this court. On 4.11.1997 the applicants had even given an undertaking that they would not dispute any fresh estimate for remedial measures as prepared by the NEERI. The question of fraud and tampering of the NEERI report of 1994

has been dealt with by this court while dismissing the contempt petition filed by the applicants against the R.S.P.C.B. Even the Curative Petition filed by the applicants was also dismissed by this court on 18.7.2002.

78. In the supplementary submissions it is also mentioned that through Interlocutory Application Nos. 36 and 44 the applicants are merely trying to evade paying the amounts to be paid as remedial measures by reopening issues already settled by this court. In the submissions Mr. Rohatagi has drawn our attention to para 66 of the said judgment regarding the applicant's liability, which reads as under:

> "66. Once the law in Oleum Gas Leak case is held to be the law applicable, it follows, in the light of our findings recorded hereinbefore, that Respondents 4 to 8 are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying the affected area (by affected area, we mean the area of about 350 has indicated in the sketch at p. 178 of NEERI report) and also to defray the cost of the remedial measures required to restore the soil and the underground water resources."

79. It is also submitted in the written submissions that the Central Government was directed to determine the amounts for remedial measures for the affected area of 350 hectares, as mentioned in the NEERI report, after allowing the applicants to make a representation. This court in para 70 of the said judgment observed as under:

> "Chapters VI and VII in the NEERI Report (submitted in 1994) shall be deemed to be the show cause notice issued by the Central Government proposing the determination of the said amount. Within six weeks from this day, Respondents 4 to 8 shall submit their explanation, along with such material as they think appropriate in support of their case, to the Secretary, Ministry of Environment and Forests, Government of India (MOEF). The Secretary shall thereupon determine the amount in consultation with the experts of his Ministry within six weeks of the submission of the explanation by the said respondents. The orders passed by the Secretary (MOEF) shall be communicated to Respondents 4 to 8 – and all concerned – and shall also be placed before this Court"

80. This court in the said judgment also directed that the factories, plant, machinery and all other immovable assets of Respondents 4 to 8 are attached herewith. The court also observed that the amount so determined and recovered shall

be utilized by the MOEF for carrying out all necessary remedial measures to restore the soil, water resources and the environment in general of the affected area in the former state.

81. It is also submitted in the supplementary submissions of RSPCB that this court in para 70 of the said judgment also observed that the applicants have inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land, their water resources and their entire environment, all in pursuance of their private profit. They have forfeited all claims for any consideration by this court.

82. In the supplementary submissions filed by Mr. Rohatagi it is also mentioned that the court even settled the issue of the alleged hostility of the RSPCB towards the applicants and felt no reason to suspect the veracity of the reports submitted by the RSPCB. This court in para 39 of the said judgment observed as under:

> "If the respondents establish and operate their plants contrary to law, flouting all safety norms provided by law, the RSPCB was bound to act. On

> that account, it cannot be said to be acting out of animus or adopting a hostile attitude. Repeated and persistent violations call for repeated orders. That is no proof of hostility. Moreover, the reports of RSPCB officials are fully corroborated and affirmed by the reports of the Central team of experts and of NEERI. We are also not prepared to agree with Shri Bhat that since the report of NEERI was prepared at the instance of RSPCB, it is suspect."

83. It is further submitted in the supplementary submissions that in para 55 of the said judgment this court specifically held that Hindustan Zinc Limited is not responsible for the pollution at Bichhri village. The court has observed as under:

> "No report among the several reports placed before us in these proceedings says that Hindustan Zinc Limited is responsible for the pollution at Bicchhri village. Shri Bhat brought to our notice certain reports stating that the discharges from Hindustan Zinc Limited were causing pollution in certain villages but they are all downstream, i.e., to the north of Bichhri village and we are not concerned with the pollution in those villages in these proceedings. The bringing in of Hindustan Zinc Limited in these proceedings is, therefore, not relevant. If necessary, the pollution, if any, caused by Hindustan Zinc Limited can be the subject-matter of a separate proceeding."

84. It is also further mentioned in the written submission of RSPCB that the issue of quantification of amounts to be paid by the industry has been settled by this court in its order dated 4.11.1997. The relevant portion of the order reads as under:

> "... ... ...remedial measures taken on the basis of the NEERI report shall be treated as final.
>
> We accept the proposal submitted by the Government of India for the purpose of taking remedial measures by appointing National Productivity Council as the Project Management Consultant. In our opinion the Ministry of Environment and Forests, Government of India has rightly made a demand for Rs.37.385 crores."

85. It is also mentioned in the supplementary submissions that this court on 3.8.2005 directed that the sale should take place expeditiously to realize the amount for remedial measures. The assessment of areas affected by the pollution and settled by the District Collector at 642 hectares was also accepted by this court vide its order dated 3.8.2005.

86. It may be pertinent to mention that this court had accepted the affidavit of Mr. S.N. Kaul, Acting Director, NEERI

regarding tampering with the report and this court by its order dated 1.10.1999 observed as under:

> "It appears that two scientists appointed by the petitioner had inspected a report in the office of NEERI and then observed that there has been a fabrication carried out by the Pollution Control Board. From what has been stated hereinabove, the charge of fabrication is clearly unfounded. It is possible that these two scientists may have seen the draft report which would be with the NEERI but the original report when prepared would be one which was, ultimately, submitted to the sponsoring agency, namely the Rajasthan Pollution Control Board and it is only a copy of the same which could have been retained by the NEERI. Be that as it may, it is clear that what has been filed in this Court as being the final report of NEERI was the copy of the final report which was received by it. There is no basis for contending that any of the respondents have been guilty of fabrication. The whole application to our mind is without any merit."

87. It is further submitted in his supplementary submissions that this court in para 54 of its order dated 13.2.1996 had upheld the integrity of the reports submitted by the NEERI. Para 54 of order dated 13.2.1996 reads as under:

> "Moreover, the reports of RSPCB officials are fully corroborated and affirmed by the reports of the central team of experts and of the NEERI. We are

> also not prepared to agree with Shri Bhat that since the report of the NEERI was prepared at the instance of RSPCB, it is suspect. This criticism is not only unfair but is also uncharitable to the officials of NEERI who have no reason to be inimical to the respondents. If, however, the actions of the respondents invite the concern of the experts and if they depict the correct situation in their reports, they cannot be accused of any bias.
>
> … … …
>
> … … …
>
> The persons who made the said reports are all experts in their field and under no obligation either to the RSPCB or for that matter to any other person or industry. It is in view of their independence and competence that their reports were relied upon and made the basis of passing orders by this court from time to time."

88. In the supplementary submissions it is also mentioned that the report of 25th January, 2005 is a joint report by the NEERI, R.S.P.C.B. and officers of Department of Environment, Government of Rajasthan. The team collected soil samples from 7 sites, one sample from lake Udaisagar and 17 well water samples from the impacted and nearby areas. The report concluded as under:

> "All the well water samples in the impacted zone have also shown colour from pale yellow to dark brown. As the industries located within the HACL plant premises were the only source of H-acid, HACL alone is responsible for causing pollution by

> H-acid and its derivatives in the impacted area. Considering the remediation goal of Omg/l for H-acid and its derivatives are potential carcinogenic, all well waters, contaminated with H-acid and its derivatives, require remediation.
>
> … … …
>
> … … …
>
> Sudden emergence of H-acid in wells W7(Aug.99) and W9 (Aug. 99) clearly indicate that the plume of H-acid contaminated groundwater is moving away from the source of origin and spreading in the direction of groundwater flow. This is further confirmed from another fairly conservative parameter TDS whose emergence has been documented in all the wells (W7, W9, W1, W13 and W16) from time to time. Similar trend could be observed with respect to sulphate and chloride in well water samples collected from these five wells. Comparison of the results obtained in the present study with that of earlier studies establish that the ground water plume contaminated by H-acid and its derivatives is still moving in the direction of ground water flow thereby contamination area being larger than that earlier. This was predicted in the joint report prepared by SENES and the NEERI (SENES and the NEERI, 2002)."

89. This report was submitted to the court along with the affidavit dated 8.3.2007 filed by the Union of India.

90. In the supplementary submissions it is also submitted that due to some alleged variations, the Director of ITRC (Indian Toxicological Research Centre) was asked to make a

rapid assessment on 6.5.2006. In response, the Director of ITRC stated that there may be a variation due to a lapse of time between the 2002 and 2005 reports. Based on this, MOEF asked the National Chemical Laboratory, Pune to undertake a study, the results of which (placed before the Court in affidavits of 22.1.07 and 8.3.2007) showed that no aspersions can be cast on the NEERI report of 1994. Further, it would be incorrect to suggest that the remedial measures as imposed on the applicants were limited to neutralizing the presence of H-acid in the soil alone, in fact it is clear from the judgment of 1996 and subsequent reports that what has to be done is:

a) removal of sludge which has also percolated down in the soil; and

b) restoration of the area including perforce, making it possible for farmers and others to return to the natural uses of the affected land.

91. It is further submitted in the supplementary submissions of RSPCB that the Interlocutory Applications Nos. 36 and 44 are just another example of obstructive litigation undertaken to avoid responsibility. Since 1996 the

applicants have filed various applications and petitions in this court to delay the payment of damages. It is also submitted that any delay caused in the payment of damages for remedial measures has, therefore, been on the part of the applicants. It would be wrong to suggest that the Union is responsible for the delay in sale of assets of the industry. The applicants have violated orders of this court in relation to disclosure of assets dated 18.8.04, 9.12.04 and 17.3.05, because of which it was impossible for the Union of India to sell the applicant's attached properties.

92. Mr. Rohatagi submitted that the applicants relied upon a series of reports by private consultants, filed subsequent to the decision, which are as follows:

a) IIT Bombay Report of May 2005 suggesting that the samples collected on 5th April, 2005 show that there is no H-acid or other pollutants.

b) A report by Dr. BR Bamniya dated 22.4.04 stating that no soil pollutants or water pollutants found and

> "…the presence of H-acid has not been recorded in any water sample of well and in tube well."

c) Report of Expert Group on Water Pollution of March 1981 showing that pollution caused by M/s. Hindustan Zinc Ltd. Further no action has been taken against M/s. Hindustan Zinc Limited on the basis of that report.

d) Report of M/s. Shah Doctor Associates of April, 1994 critical of the analysis in the NEERI report.

e) Report of SP Mahajan of IIT Bombay dated 19.8.1999 stating that no H-Acid found in the well waters.

93. It is further submitted in the supplementary submissions that the NEERI report of 2005 also dealt with three private reports which were rejected on the basis that they were superficial.

94. Mr. Rohatagi further submitted that the liability of the applicants-industries has been fixed far back in 1996. Merely because there may be a diminution in respect of some pollutants due to the passage of time does not, in any way, take away from the responsibility on the applicant to undertake remedial measures for the past and continuing damage to the people and the environment caused by the applicants-industries. The individual claims of farmers may be dealt within individual cases, which would not obviate the

need for restoration of the area. This flows from a joint reading of directions of the court in para 71 of the judgment reported in ***Indian Council for Enviro-Legal Action (supra)***.

95. According to the RSPCB Interlocutory Application Nos. 36 and 44 are blatant examples of vexatious litigation indulged in to avoid the responsibility fixed by this court. These applications should be dismissed with heavy costs on the applicants.

96. Mr. M.C. Mehta, Advocate has filed written submissions on behalf of Indian Council for Enviro Legal Action. It is reiterated in the submissions that these applications are blatant disregard towards complying with the directions of this court. They have made mockery with the environmental justice delivery system by filing these applications. They have shown no contrition for causing irreparable damage to the life, health and property of the people affected by their commercial activities. The applicants are trying to delay the payment of Rs.37.385 crores for carrying out remedial measures. This

court in para 70 of the judgment reported in ***Indian Council for Enviro-Legal Action*** (supra) observed as under:

> "On account of (the respondents) continuous, persistent and insolent violations of the law....and their non-implementation of the orders of this.... (the respondents) have earned the dubious distinction of being characterized as "rogue industries". They have inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land, their water sources and their entire environment – all in pursuit of private profit."

97. Mr. Mehta also submitted in his submissions that the applicants (respondent Nos. 4 to 8) are related to the discharge of untreated chemical effluents in violation of the laws of the land in Bichhri and surrounding villages and caused grave harm to the environment and people in Bichhri and surrounding villages.

98. In the written submissions Mr. Mehta also submitted that the reports procured by the respondent companies by hiring consultants do not hold any weight due to lack of substantial scientific investigations. They cannot in any way question the credibility of nine scientific reports, submitted following extensive field visits, survey and research by

scientists from reputed scientific institutions such as the CPCB, NEERI, SENES, RSPCB and the Centre for Science and Environment and other reports, respectively submitted by the district collector and the Court Commissioner appointed by this court.

99. Mr. Mehta also mentioned in his written submissions that the veracity of the contents of the NEERI report has been affirmed in at least four subsequent reports from reputed scientific organizations, MOEF, State of Rajasthan as well as the district collector.

100. Mr. Mehta has also submitted that assuming, though not conceding, that there is currently no pollution in Bichhri village, this cannot absolve the applicants-industries from the obligation to pay monies necessary for eco-restoration and damages caused to the life and health of the people as well as their property in the past. The polluters/respondents recklessly destroyed the environment, surface and underground water and the soil and killed fruit trees, animals and vegetation apart from causing suffering and irreparable

damages to the lands, property, life and health of the people in flagrant violation of environmental laws and directions given by various authorities including the orders of this court. The civil and criminal liability upon the respondents for the environmental crimes, irreparable damages caused to the environment, flora and fauna, life, health and property of innocent people living in Bichhri and surrounding villages cannot be condoned at any cost.

101. Mr. Mehta submitted that even if it was possible to accept that all H-acid traces have been removed, the presence of other contaminants in the affected area (including highly toxic wastes emanating from the Sulphuric Acid Plant and other plants) would necessitate remediation. The amount can be deposited in a Fund and utilized for remediation, providing potable water, tree plantation, and such other measures which would be helpful to the environment of the area apart from paying damages to the people.

102. Mr. Mehta has further submitted that this court may impose upon the errant industries as exemplary punitive

damages apart from the amount required for eco-restoration by way of remediation of the land, water and the environment. This may be considered in the light of the continuing public nuisance and suffering due to pollution, severely degraded environment, loss to the property, irreparable damage to the ecology and precious natural resources – land, air, aquifers, surface water, flora and fauna – for over twenty years since the original petition was filed. The implications of failing to remediate the affected land, water and environment over such an extensive period of time are far more severe than had the applicants-industries immediately complied with the orders of this court.

103. Mr. Mehta also placed reliance on a judgment of this court in the case of ***M.C. Mehta*** *v.* ***Kamal Nath and others*** *(2000) 6 SCC 213,* in which the court observed as under:

> "…pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this court under Article 32

> are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner."

104. Mr. Mehta submitted that having regard to the respondent's conduct in the present case, it would be reasonable to impose an additional pecuniary penalty on them. Reliance is placed on ***Minister for the environment and Heritage v. Greentree (No.3) [2004] FCA 1317***, wherein the Federal Court imposed a pecuniary penalty against the respondents totaling $450,000 for having illegally cleared declared a Ramsar wetland. A strong factor contributing to the imposition of a substantial penalty was because the actions of the respondent were deliberate, sustained and serious, they took place over a substantial period of time and the respondents did not exhibit any contrition.

105. Mr. Mehta also submitted that the present case would warrant a severe penalty because the respondents carried out their activities without even possessing any appropriate licenses. Respondents must be required to pay exemplary damages so as to act as a deterrent for others, as also to remedy the harm they have caused to the environment and the villagers of Bichhri.

106. Mr. Mehta has also placed reliance on the famous "Love Canal Case" ***United States v. Hooker Chems and Plastics Corp.,*** 722 F. Supp 960 (W.D.N.Y. 1989). This case was initiated after it was discovered that a school, homes and rental units were built over approximately 21,000 tonnes of chemical waste at Niagara Falls, New York. The Federal Court of New York allowed a claim against the defendants based on public nuisance. This case was ultimately settled with the defendant agreeing to pay $129 million to the Environment Protection Authority. This case led to the development of the *Comprehensive Response Compensation and Environmental Liability Act, 1980,* more commonly referred to as the

"Superfund", into which polluters contribute monies to enable clean-up of toxic sites.

107. In the written submissions filed by Mr. Mehta he has also mentioned about principle of accountability and it is the duty and obligation of the court to protect the fundamental rights of the citizens under Article 32 of the Indian constitution. Pollution and public nuisance resulting from mis-regulation infringes on the fundamental rights, including the right to life under Article 21 of the Indian constitution. Mr. Mehta also submitted that applicants are liable for causing continuous suffering to the people in Bichhri and surrounding villages.

108. Mr. Mehta also submitted in his written submissions that in several cases of environmental pollution the courts have ordered the payment of damages by the errant industries/individuals responsible for causing pollution in violation of environmental related issues and the money recovered be spent for remediation or eco-restoration and damages be paid to the victims or spent for their benefit. It

is the duty of the government to ensure proper administration of this fund in a transparent and accountable manner. The establishment of such a fund would ensure that polluters take responsibility for their actions and that monies derived from penalties, damages and settlement are directly invested towards remediating the environmental damage that has occurred.

109. Mr. Mehta further mentioned in his submissions that creation of such a fund would be consistent with the precautionary principle which has been evolved and accepted by this court. He has also mentioned that similar funds have been set-up in United States of America, Canada, Australia, Malaysia and other countries.

110. Mr. Mehta also made a reference regarding ***Public Liability Insurance Act, 1991*** which makes it mandatory for industries handling hazardous material to be insured against environmental hazards. However, this legislation only provides relief to persons affected by accidents whilst handling hazardous materials, who are most likely to be

workers. Members of the local community would not obtain relief under this legislation, though they are also adversely affected by hazardous industries. This is most pertinently exemplified in the present case.

111. In his written submissions Mr. Mehta also submitted that the applicants clearly show defiance of the environmental laws and the orders of this court. Mr. Mehta prayed for dismissal of Interlocutory Application Nos. 36 of 2004 and 44 of 2007 with heavy costs and direct the respondents to deposit Rs.37.385 crores with the MOEF as per the judgment of this court.

112. This case raises many substantial questions of law. We would briefly deal with some of them.

113. We would also like to discuss the concept of Finality of the Judgment passed by the Apex Court.

FINALITY OF JUDGMENT

114. The maxim 'interest Republicae ut sit finis litium' says that it is for the public good that there be an end of litigation after a long hierarchy of appeals. At some stage, it is

necessary to put a quietus. It is rare that in an adversarial system, despite the judges of the highest court doing their best, one or more parties may remain unsatisfied with the most correct decision. Opening door for a further appeal could be opening a flood gate which will cause more wrongs in the society at large at the cost of rights.

115. It should be presumed that every proceeding has gone through infiltration several times before the decision of the Apex Court. In the instant case, even after final judgment of this court, the review petition was also dismissed. Thereafter, even the curative petition has also been dismissed in this case. The controversy between the parties must come to an end at some stage and the judgment of this court must be permitted to acquire finality. It would hardly be proper to permit the parties to file application after application endlessly. In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this court by

filing repeated interlocutory applications is clearly an abuse of the process of law and would have far reaching adverse impact on the administration of justice.

116. In ***Manganese Ore (India) Ltd.*** *v.* ***The Regional Assistant Commissioner of Sales Tax, Jabalpur*** (1976) 4 SCC 124 this court held that the doctrine of stare decisis is a very valuable principle of precedent which cannot be departed from unless there are extraordinary or special reasons to do so.

117. In ***Green View Tea & Industries*** v. ***Collector, Golaghat and Another*** (2002) 1 SCC 109 this court reiterated the view that finality of the order of the apex court of the country should not lightly be unsettled.

118. A three-Judge Bench of this court in ***M/s Northern India Caterers (India) Ltd***. v. ***Lt. Governor of Delhi*** (1980) 2 SCC 167 held that a party is not entitled to seek a review of this court's judgment merely for the purpose of rehearing and for a fresh decision of the case. Departure from the normal principle that the court's judgment is final would be justified

only when compelling our substantial circumstances make it necessary to do so. Such circumstances may be that a material statutory provision was not drawn to the court's attention at the original hearing or a manifest wrong has been done.

119. Relying on ***Union of India & Another*** *v.* ***Raghubir Singh (Dead) by L.Rs.*** (1989) 2 SCC 754, this Court in ***Krishna Swami*** v. ***Union of India and Others*** (1992) 4 SCC 605 held that the plea for reconsideration is not to be entertained merely because the petitioner chooses to reagitate the points concluded by the earlier decision in ***Sub-committee on Judicial Accountability*** v. ***Union of India*** (1991) 4 SCC 699.

120. In ***Mohd. Aslam*** *v.* ***Union of India & Others*** (1996) 2 SCC 749, the Court considered the earlier decisions and held that the writ petition under article 32 of the Constitution assailing the correctness of a decision of the Supreme Court on merits or claiming reconsideration is not maintainable.

121. In ***Khoday Distilleries Ltd. and Another*** *v.* ***Registrar General, Supreme Court of India*** (1996) 3 SCC 114, the Court held the reconsideration of the final decision of the Supreme Court after review petition is dismissed by way of writ petition under article 32 of the Constitution cannot be sustained.

122. In ***Gurbachan Singh & Another*** *v.* ***Union of India & Another*** (1996) 3 SCC 117, the Court held that the judgment order of this court passed under Article 136 is not amenable to judicial review under Article 32 of the Constitution.

123. Similar view was taken in ***Babu Singh Bains and others*** *v.* ***Union of India and Others*** (1996) 6 SCC 565, a three-Judge bench of this Court held that a writ petition under Article 32 of the Constitution against the order under Article 136 of the Constitution is not maintainable.

124. Another three-Judge bench of this Court in ***P. Ashokan*** *v.* ***Union of India & Another*** (1998) 3 SCC 56, relying upon the earlier cases held that the challenge to the correctness of a decision on merits after it has become final cannot be

questioned by invoking Article 32 of the Constitution. In the instant case the petitioner wants to reopen the case by filing the interlocutory application.

125. In ***Ajit Kumar Barat*** *v.* ***Secretary, Indian Tea Association & Others*** (2001) 5 SCC 42, the Court placed reliance on the judgment of a nine-judge Bench in ***Naresh Shridhar Mirajkar*** *v.* ***State of Maharashtra and another*** AIR 1967 SC 1 and the Court observed as under:

> "It is difficult to see how this decision can be pressed into service by Mr. Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself.... In view of this decision in ***Mirajkar case*** it must be taken as concluded that judicial proceedings in this Court are not subject to the writ jurisdiction thereof."

126. The Court in the said case observed that having regards to the facts and circumstances of the case, this is not a fit case to be entertained to exercise jurisdiction under Article 32 of the Constitution.

127. In ***Mr. "X"*** *v.* ***Hospital "Z"*** (2000)9 SCC 439, this Court held thus:

> "Writ petition under Article 32 of the Constitution against the judgment already passed by this Court cannot be entertained. Learned counsel for the petitioner stated that prayer (*a*) which seeks overruling or setting aside of the judgment already passed in *Mr X* v. *Hospital Z* may be deleted. This prayer shall accordingly be deleted. So also, the other prayers which indirectly concern the correctness of the judgment already passed shall stand deleted. Learned counsel for the petitioner stated that the petition may not be treated as a petition under Article 32 of the Constitution but may be treated as an application for clarification/directions in the case already decided by this Court, viz., *Mr X* v. *Hospital Z* (CA No. 4641 of 1998)."

128. In ***Triveniben v. State of Gujarat*** (1989)1 SCC 678 speaking for himself and other three learned Judges of the Constitution Bench through Oza, J., reiterated the same principle. The court observed: (SCC p. 697, para 22)

> "…It is well settled now that a judgment of court can never be challenged under Articles 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in ***Naresh Shridhar Mirajkar* (supra)** and also in ***A.R. Antulay* v. *R.S. Nayak***, the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or

inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper.…"

129. In ***Rupa Ashok Hurra*** *(supra)*, this Court observed thus:

24. … when reconsideration of a judgment of this Court is sought the finality attached both to the law declared as well as to the decision made in the case, is normally brought under challenge. It is, therefore, relevant to note that so much was the value attached to the precedent of the highest court that in ***The London Street Tramways Co. Ltd.* v. *London County Council*** (1898 AC 375) the House of Lords laid down that its decision upon a question of law was conclusive and would bind the House in subsequent cases and that an erroneous decision could be set right only by an Act of Parliament.

… … …

… … …

26. …This Court will not sit as a court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public

interest if cases once decided by the Court could be reopened and reheard:

> "There is a salutary maxim which ought to be observed by all courts of last resort — *interest reipublicae ut sit finis litium*. (It concerns the State that there be an end of lawsuits. It is in the interest of the State that there should be an end of lawsuits.) Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this."

32. "…When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down

any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions."

33. In ***Maganlal Chhaganlal*** (1974) 2 SCC 402 *case* a Bench of seven learned Judges of this Court considered, inter alia, the question: whether a judgment of the Supreme Court in ***Northern India Caterers*** *case* (1967) 3 SCR 399 was required to be overruled. Khanna, J. observed: (SCC p. 425, para 22)

> "At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of rule of law. Certainty in law would be considerably eroded and suffer a serious setback if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify the overruling of the view. The law laid down by this Court is binding upon all courts in the country under Article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this

> Court on the basis of which numerous cases have been decided and many transactions have taken place is held to be not the correct law."

42. The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. "We are faced with competing principles — ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principles of natural justice or giving scope for apprehension of bias due to a Judge who participated in the decision-making process not disclosing his links with a party to the case, or on account of abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice — a concept which is not disputed but by a few. We are of the view that though Judges of the highest court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error. After giving our anxious consideration to the question, we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in the public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be

oppressive to judicial conscience and would cause perpetuation of irremediable injustice."

130. A four-judge bench of this court in ***Sumer v. State of U.P.*** (2005) 7 SCC 220 observed as under:

"In ***Rupa Ashok Hurra*** (supra) while providing for the remedy of curative petition, but at the same time to prevent abuse of such remedy and filing in that garb a second review petition as a matter of course, the Constitution Bench said that except when very strong reasons exist, the court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of review petition. In this view, strict conditions including filing of certificate by a Senior Advocate were provided in ***Rupa Ashok Hurra*** (supra). Despite it, the apprehension of the Constitution Bench that the remedy provided may not open the flood gates for filing a second review petition has come true as is evident from filing of large number of curative petitions. It was expected that the curative petitions will be filed in exceptional and in rarest of rare case but, in practice, it has just been opposite. This Court, observing that neither it is advisable nor possible to enumerate all the grounds on which curative petition may be entertained, said that nevertheless the petitioner is entitled to relief ex debito justitiae if he establishes (*1*) violation of principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice, and (*2*) where in the proceedings a learned Judge failed to disclose his connection with

the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner. To restrict filing of the curative petitions only in genuine cases, ***Rupa Ashok Hurra*** (supra) provided that the curative petition shall contain a certification by a Senior Advocate with regard to the fulfilment of all the requirements provided in the judgment. Unfortunately, in most of the cases, the certification is casual without fulfilling the requirements of the judgment."

131. In ***Sita Ram Bhandar Society, New Delhi*** *v.* ***Lieutenant Governor, Government of NCT, Delhi & Others*** (2009)10 SCC 501, this Court held thus:

"41. We must also observe that the petitioner has been able to frustrate the acquisition and development of the land right from 1980 onwards by taking recourse to one litigation after the other. The record reveals that all the suits/writ petitions, etc. that had been filed had failed. Undoubtedly, every citizen has a right to utilise all legal means which are open to him in a bid to vindicate and protect his rights, but if the court comes to the conclusion that the pleas raised are frivolous and meant to frustrate and delay an acquisition which is in public interest, deterrent action is called for. This is precisely the situation in the present matter.

42. The appeals are, accordingly, dismissed with costs which are determined at rupees two lakhs. The respondents, shall, without further loss of time proceed against the appellant.**"**

132. This court in a recent judgment in ***M. Nagabhushana v. State of Karnataka and others*** *(2011) 3 SCC 408* observed that principle of finality is passed on high principle of public policy. The court in para 13 of the said judgment observed as under:

> "That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the color and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties."

133. In order to discourage a litigation which reopens the final judgment of this court, while dismissing the petition imposed costs of rupees 10 lakhs.

134. We find full corroboration of this principle from the cases of other countries. We deem it appropriate to mention some of these relevant cases in the succeeding paragraphs.

ENGLAND

135. The England cases have consistently taken the view that the judgments of final court must be considered final and conclusive. There must be certainty in the administration. Uncertainty can lead to injustice. Unless there are very exceptional or compelling reasons the judgment of apex courts should not be reopened.

136. In ***Regina*** *v.* ***Gough,*** [1993] 1 A.C. 646, with regards to setting aside judgments due to judicial bias, the House of Lords held that there "is only one established special category and that exists where the tribunal has a pecuniary or proprietary interest in the subject matter of the proceedings as in ***Dimes*** *v.* ***Proprietors of Grand Junction Canal*** , (1852) 3 H.L. Cases 759. The courts should hesitate long before creating any other special category since this will

immediately create uncertainty as to what are the parameters of that category and what is the test to be applied in the case of that category." Lord Goff of Chievely stated that

> "I wish to draw attention to the fact that there are certain cases in which it has been considered that the circumstances are such that they must inevitably shake public confidence in the integrity of the administration of justice if the decision is to be allowed to stand. Such cases attract the full force of Lord Hewart C.J.'s requirement that justice must not only be done but must manifestly be seen to be done. These cases arise where a person sitting in a judicial capacity has a pecuniary interest in the outcome of the proceedings. In such a case, as Blackburn J. said in ***Reg. v. Rand*** (1866) L.R. 1 Q.B. 230, 232: "any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter." The principle is expressed in the maxim that nobody may be judge in his own cause (nemo judex in sua causa)... In such a case, therefore, not only is it irrelevant that there was in fact no bias on the part of the tribunal, but there is no question of investigating, from an objective point of view, whether there was any real likelihood of bias, or any reasonable suspicion of bias, on the facts of the particular case. The nature of the interest is such that public confidence in the administration of justice requires that the decision should not stand" (p. 661).

137. In ***R*** *v.* ***Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 2)*** *(*1999) 2 W.L.R.

272, the House of Lords set aside one of its earlier orders. In this case, the majority at the House of Lords had earlier ruled whether Augusto Pinochet, the former dictator of Chile, could be extradited to Spain in order to stand trial for alleged crimes against humanity and was not entitled to sovereign immunity. Amnesty International had been an intervener in this case in opposition to Pinochet. Lord Hoffman, one of the majority judges, was a director of Amnesty International Charitable Trust, an organization controlled by Amnesty International, and Lady Hoffman had been working at AI's international secretariat since 1977. The respondent was not aware of Lord Hoffman's relationship to AI during the initial trial. In this case, the House of Lords cited with approval the respondents' concession acknowledging the House of Lords' jurisdiction to review its decisions -

> "In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered."

138. According to the English law, the judgment of the Apex Court can be reviewed in exceptional circumstances particularly when the judge associated with any of the organizations to be a good ground for reviewing the judgment.

139. In *Pinochet* test in ***Regina (Edwards)*** *v* ***Environment Agency and others*** [2010] UKSC 57, the Supreme Court of the United Kingdom overruled an earlier order of costs made by the erstwhile apex court, the House of Lords, on the grounds that the House of Lords had made a substantive error in the original adjudication. However, this appeal was lodged under Rule 53 of the ***The (U.K.) Supreme Court Rules, 2009*****, 2009 No. 1603 (L. 17)**. Rule 53 provides as follows:

> 53. (1) A party who is dissatisfied with the assessment of costs made at an oral hearing may apply for that decision to be reviewed by a single Justice and any application under this rule must be made in the appropriate form and be filed within 14 days of the decision.
>
> (2) The single Justice may (without an oral hearing) affirm the decision made on the assessment or may, where it appears appropriate, refer the matter

> to a panel of Justices to be decided with or without an oral hearing.
>
> (3) An application may be made under this rule only on a question of principle and not in respect of the amount allowed on any item in the claim for costs.

140. In this case, Lord Hope, citing the *Pinochet* case stated that:

> The Supreme Court is a creature of statute. But it has inherited all the powers that were vested in the House of Lords as the ultimate court of appeal. So it has the same powers as the House had to correct any injustice caused by an earlier order of the House or this Court... In this case it seems that, through no fault of the appellant, an injustice may have been caused by the failure of the House to address itself to the correct test in order to comply with the requirements of [certain EU] directives [at para. 35].

CANADA

141. The Canadian Supreme Court is of the same view that judicial bias would be a ground for reviewing the judgment. In ***Wewaykum Indian Band v. Canada*** [2003] 2 SCR 259 the court relied on ***Taylor Ventures Ltd. (Trustee of)*** v. ***Taylor*** 2005 BCCA 350 where principle of judicial bias has been summarized.

142. The principles stated in *Roberts* regarding judicial bias were neatly summarized in ***Taylor Ventures Ltd. (Trustee of)*** (supra), where Donald J.A. stated –

(i) a judge's impartiality is presumed;

(ii) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;

(iii) the criterion of disqualification is the reasonable apprehension of bias;

(iv) the question is what would an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;

(iv) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think that it is more likely than not that the judge, whether consciously or unconsciously, would not decide fairly;

(v) the test requires demonstration of serious grounds on which to base the apprehension;

(vi) each case must be examined contextually and the inquiry is fact-specific (at para 7).

143. Cases from Australia also support the proposition that a final judgment cannot ordinarily be reopened, and that such steps can be taken only in exceptional circumstances.

144. In ***State Rail Authority of New South Wales*** *v.* ***Codelfa Constructions Propriety Limited*** (1982) 150 CLR 29, the High Court of Australia observed:

> "... it is a power to be exercised with great caution. There may be little difficulty in a case where the orders have not been perfected and some mistake or misprision is disclosed. But in other cases it will be a case of weighing what would otherwise be irremediable injustice against the public interest in maintaining the finality of litigation. The circumstances that will justify a rehearing must be quite exceptional. ..."

145. In ***Bailey*** *v.* ***Marinoff*** (1971) 125 CLR 529, Judge Gibbs of the High Court of Australia observed in a dissenting opinion:

> "It is a well-settled rule that once an order of a court has been passed and entered or otherwise perfected in a form which correctly expresses the intention with which it was made the court has no jurisdiction to alter it. .. ....The rule tests on the obvious principle that it is desirable that there be an end to litigation and on the view that it would be mischievous if there were jurisdiction to rehear a matter decided after a full hearing. <u>However, the</u>

rule is not inflexible and there are a number of exceptions to it in addition to those that depend on statutory provisions such as the slip rule found in most rules of court. Indeed, as the way in which I have already stated the rule implies, the court has the power to vary an order so as to carry out its own meaning or to make plain language which is doubtful, and that power does not depend on rules of court, but is inherent in the court…."

And, further:

"The authorities to which I have referred leave no doubt that a superior court has an inherent power to vary its own orders in certain cases. The limits of the power remain undefined, although the remarks of Lord Evershed already cited suggest that it is a power that a court may exercise "if, in its view, the purposes of justice require that it should do so".

146. In ***DJL*** *v.* ***Central Authority*** (2000) 170 ALR 659, the High Court of Australia observed:

"…It is now recognized both in Australia and England that orders made by ultimate appellate courts may be reopened by such courts in exceptional circumstances to repair accidents and oversights which would otherwise occasion a serious injustice. In my view, this can be done although the order in question has been perfected. The reopening may be ordered after due account is taken of the reasons that support the principle of finality of litigation. The party seeking reopening bears a heavy burden to demonstrate that the

> exceptional course is required "without fault on his part. …"

147. Lastly, in ***Lexcray Pty. Ltd.*** *v.* ***Northern Territory of Australia*** 2003 NTCA 11, the Court appeals of the Supreme Court of the Northern Territory expressly stated:

> "…As a final court of appeal the High Court of Australia has inherent jurisdiction to vacate its orders in cases where there would otherwise be an irremediable injustice…."

148. American courts also follows a similar pattern. In ***United States of America*** *v.* ***Ohio Power Company*** 353 US 98 (1957), the U.S. Supreme Court vacated its earlier order denying a timely petition for rehearing, on the ground that "the interest in finality of litigation must yield where interests of justice would make unfair, strict application of Supreme Court's Rules.

149. In ***Raymond G. Cahill*** *v.* ***The New York, New Haven and Hartford Railroad Company*** 351 US 183, the Supreme Court observed:

> "…There are strong arguments for allowing a second petition for rehearing where a rigid

application of this rule would cause manifest injustice."

FIJI

150. The Supreme Court of Fiji Islands incorporating Australian and British case law summarized the law applicable to review of its judgments. It has been held that the Supreme Court can review its judgments pronounced or orders made by it. The power of the appellate courts to re-open and review their orders is to be exercised with great caution.

151. The cases establish that the power of appellate courts to re-open and review their orders is to be exercised with great caution. The power, and the occasions for its exercise were considered in ***In Re Transferred Civil Servants (Ireland) Compensation*** (1929) AC 242, 248-52; and ***State Rail Authority NSW*** *v* ***Codelfa Construction Pty Ltd*** (1982) HCA 51 : (1982) 150 CLR 29, 38-9, 45-6, where earlier Privy Council cases are referred to. The principles were summarised

in ***Smith*** *v* ***NSW Bar Association*** (1992) 176 CLR 252, 265 where the High Court of Australia said:

> "The power is discretionary and, although it exists up until the entry of judgment, it is one that is exercised having regard to the public interest in maintaining the finality of litigation. Thus, if reasons for judgment have been given, the power is only exercised if there is some matter calling for review ... these considerations may tend against the re-opening of a case, but they are not matters which bear on the nature or the review ... once the case is re-opened ... the power to review a judgment ... where the order has not been entered will not ordinarily be exercised to permit a general re-opening ... But ... once a matter has been re-opened, the nature and extent of the review must depend on the error or omission which has led to that step being taken."

152. The principles were further considered in ***Autodesk Inc*** *v* ***Dyason*** (No 2) (1993) HCA 6 : (1993) 176 CLR 300, 303 where Mason CJ said:

> "What must emerge, in order to enliven the exercise of the jurisdiction, is that the Court has apparently proceeded according to some misapprehension of the facts or the relevant law and this ... cannot be attributed solely to the neglect of the party seeking the rehearing. The purpose of the jurisdiction is not to provide a backdoor method by which unsuccessful litigants can seek to reargue their cases."

153. The ratio of these judgments is that a court of final appeal has power in truly exceptional circumstances to recall its order even after they have been entered in order to avoid irremediable injustice.

154. Reviewing of various cases of different jurisdictions lead to irresistible conclusion that though the judgments of the apex court can also be reviewed or recalled but it must be done in extremely exceptional circumstances where there is gross violation of principles of natural justice.

155. In a case where the aggrieved party filing a review or curative petition was not a party to the lis but the judgment adversely affected his interest or he was party to the lis was not served with notice of the proceedings and the matter proceeded as if he had notice. This court in ***State of M.P.*** v. ***Sugar Singh & Others*** on 9th March, 2010 passed the following order in a curative petition :

> "Though there were eight accused persons, only four accused were arrayed as party respondents in the said appeals namely, Sughar, Laxman, Onkar and Ramesh. Other accused, namely,Bhoja, Raghubir, Puran and Balbir were not impleaded as

respondents in these Criminal Appeals and consequently notices were not issued to them. This Court, by judgment on 7th November, 2008 in the aforesaid Criminal Appeals, reversed the acquittal of the accused by the High Court and found them guilty of the offences punishable under Section 304 Part-II read with Section 149 of the I.P.C. and sentenced them to undergo imprisonment for a period of six years. The conviction of the accused for the offences punishable under Section 148 as also Section 326 read with the Section 149 of the I.P.C. and the sentence imposed by the Sessions Court in regard to the said offences was upheld by this Court.

We have heard learned counsel for the petitioners. The respondent State, though served with a notice through standing counsel, has not chosen to enter appearance. These Curative Petitions have been filed by accused No.2 (Raghubir) and by accused no.4 and 5 (Sughar Singh and Laxman) on the ground that acquittal of Bhoja, Raghubir, Puran and Balbir have been reversed without affording an opportunity of being heard. We see that there is serious violation of principles of natural justice as the acquittal of all the accused has been set aside even though only four of them were made respondents before this Court and the others were not heard. We are, therefore, constrained to recall the 3 judgment passed by this Court in Criminal Appeal Nos.1362-1363 of 2004 on 7th November, 2008.

Consequently, the accused Sughar Singh, Laxman, Onkar and Ramesh, if they are in custody, are directed to be released forthwith.

In the result, these Curative Petitions are disposed of and the Criminal Appeal Nos.1362-

> 1363 of 2004 are restored to the file for being heard afresh with a direction that the other four accused (Bhoja, Raghubir, Puran and Balbir) be impleaded as respondents and all accused be served with fresh notices."

156. In the instant case, the applicants had adequate opportunity and were heard by the court at length on number of occasions and only thereafter the writ petition was disposed of. The applicants aggrieved by the said judgment filed a review petition. This review petition was also dismissed. In the instant case even the curative petition has also been dismissed. The applicants now want to reopen this case by filing these interlocutory applications.

157. The applicants certainly cannot be provided an entry by back door method and permit the unsuccessful litigant to re-agitate and reargue their cases. The applicants have filed these applications merely to avoid compliance of the order of the court. The applicants have been successful in their endeavour and have not permitted the judgment delivered on 3.2.1996 to acquire finality till date. It is strange that other

respondents did not implement the final order of this court without there being any order or direction of this court. These applications being devoid of any merit deserve to be dismissed with heavy costs.

The other important principles which need elucidation are regarding unjust enrichment, restitution and compound interests.

158. Dr. Arun Mohan, Senior Advocate of this court in a recently published book with the title "Justice, Courts and Delays" analytically, lucidly while taking in view pragmatic realities elucidated concepts of unjust enrichment, restitution and compound interest.

159. By the judgment dated 13.02.1996 this court fixed the liability but did not fix any specific amount, which was ordered to be ascertained. It was on the lines of a preliminary decree in a suit which determines the liability, but leaves the precise amount to be ascertained in further proceedings and upon the process of ascertainment being completed, a final decree for payment of the precise amount is passed.

160. By judgment dated 4.11.1997 this Court, accepting the ascertainment, fixed the amount. The order reads as under:

> "... ... ...remedial measures taken on the basis of the NEERI report shall be treated as final.
>
> We accept the proposal submitted by the Government of India for the purpose of taking remedial measures by appointing National Productivity Council as the Project Management Consultant. In our opinion the Ministry of Environment and Forests, Government of India has rightly made a demand for Rs.37.385 crores."

161. The exact liability was quantified which the applicant-M/s Hindustan Agro Chemical Ltd. was under an obligation to pay. The liability to pay arose on that particular date i.e. 4.11.1997. In other words, this was in the lines of a final decree pursuant to a preliminary decree.

162. On that judgment being passed, the position of the applicant in Application No.44 was that of 'judgment-debtor' and the applicant became liable to pay forthwith.

163. Admittedly, the amount has not been paid. Instead, that payment they sought to postpone by raising various challenges in this court and in the meantime 'utilised' that

money, i.e., benefitted. As a consequence, the non-applicants (respondents-states herein) were 'deprived' of the use of that money for taking remedial measures. The challenge has now – nearly 14 years later – been finally decided against them.

164. The appellant they must pay the amount is one thing but should they pay only that amount or something more? If the period were a few days or months it would have been different but here it is almost 14 years have been lapsed and amount has not been paid. The questions therefore are really three:

1. Can a party who does not comply with the court order be permitted to retain the benefits of his own wrong of non-compliance?

2.Whether the successful party be not compensated by way of restitution for deprivation of its legitimate dues for more than fourteen years? and

3.Whether the court should not remove all incentives for not complying with the judgment of the court?

Answering these questions will necessitate analysis of certain

concepts.

165. It is settled principle of law that no one can take advantage of his own wrong.

166. Unless courts disgorge all benefits that a party availed by obstruction or delays or non-compliance, there will always be incentive for non compliance, and parties are ingenious enough to come up with all kinds of pleas and other tactics to achieve their end because they know that in the end the benefit will remain with them.

167. Whatever benefits a person has had or could have had by not complying with the judgment must being disgorged and paid to the judgment creditor and not, allowed to be retained by the judgment-debtor. This is the bounden duty and obligation of the court.

168. In fact, it has to be looked from the position of the creditor. Unless the deprivation by reason of delay is fully restituted, the creditor as a beneficiary remains a loser to the extent of the un-restituted amount.

UNJUST ENRICHMENT

169. Unjust enrichment has been defined as: "A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense." See Black's Law Dictionary, Eighth Edition (Bryan A. Garner) at page 1573.

170. A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."

171. 'Unjust enrichment' has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has

and retains money or benefits which in justice and equity belong to another.

172. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even though he may have received [it] honestly in the first instance." (***Schock*** v. ***Nash***, 732 A.2d 217, 232-33 (Delaware. 1999). USA)

173. Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain.

174. In the leading case of ***Fibrosa*** *v.* ***Fairbairn***, [1942] 2 All ER 122, Lord Wright stated the principle thus :

> "....(A)ny civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are

> generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."

175. Lord Denning also stated in ***Nelson*** *v.* ***Larholt***, [1947] 2 All ER 751 as under:-

> "It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular frame-work. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."

176. The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment.

RESTITUTION AND COMPOUND INTEREST

177. American Jurisprudence 2d. Volume 66 Am Jur 2d defined Restitution as follows:

> "The word 'restitution' was used in the earlier common law to denote the return or restoration of a specific thing or condition. In modern legal usage, its meaning has frequently been extended to include not only the restoration or giving back of something to its rightful owner, but also compensation, reimbursement, indemnification, or reparation for benefits derived from, or for loss or injury caused to, another. As a general principle, the obligation to do justice rests upon all persons, natural and artificial; if one obtains the money or property of others without authority, the law, independently of express contract, will compel restitution or compensation."

178. While Section (§) 3 (Unjust Enrichment) reads as under:

> "The phrase "unjust enrichment" is used in law to characterize the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor. It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly."

179. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

180. While the term 'restitution' was considered by the Supreme Court in ***South-Eastern Coalfields*** 2003 (8) SCC 648 and other cases excerpted later, the term 'unjust

enrichment' came to be considered in ***Sahakari Khand Udyog Mandal Ltd*** *vs* ***Commissioner of Central Excise & Customs*** ((2005) 3 SCC 738).

181. This Court said:

> "'Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else."

182. The terms 'unjust enrichment' and 'restitution' are like the two shades of green – one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Which label is appropriate under which circumstances would depend on the facts of the particular case before the court. The courts have wide powers to grant restitution, and more so where it relates to misuse or non-compliance with court orders.

183. We may add that restitution and unjust enrichment, along with an overlap, have to be viewed with reference to the

two stages, i.e., pre-suit and post-suit. In the former case, it becomes a substantive law (or common law) right that the court will consider; but in the latter case, when the parties are before the court and any act/omission, or simply passage of time, results in deprivation of one, or unjust enrichment of the other, the jurisdiction of the court to levelise and do justice is independent and must be readily wielded, otherwise it will be allowing the Court's own process, along with time delay, to do injustice.

184 . For this second stage (post-suit), the need for restitution in relation to court proceedings, gives full jurisdiction to the court, to pass appropriate orders that levelise. Only the court has to levelise and not go further into the realm of penalty which will be a separate area for consideration altogether.

185. This view of law as propounded by the author Graham Virgo in his celebrated book on "The Principle of Law of Restitution" has been accepted by a later decision of the House of Lords (now the UK Supreme Court) reported as

Sempra Metals Ltd (formerly Metallgesellschaft Limited) *v* ***Her Majesty's Commissioners of Inland Revenue and Another*** [2007] UKHL 34 = [2007] 3 WLR 354 = [2008] 1 AC 561 = [2007] All ER (D) 294.

186. In similar strain, across the Altantic Ocean, a nine judge Bench of the Supreme Court of Canada in ***Bank of America Canada*** *vs* ***Mutual Trust Co.*** [2002] 2 SCR 601 = 2002 SCC 43 (both Canadian Reports) took the view :

> "There seems in principle no reason why compound interest should not be awarded. Had prompt recompense been made at the date of the wrong the plaintiff should have had a capital sum to invest; the plaintiff would have received interest on it at regular intervals and would have invested those sums also. By the same token the defendant will have had the benefit of compound interest. Although not historically available, compound interest is well suited to compensate a plaintiff for the interval between when damages initially arise and when they are finally paid."

187. This view seems to be correct and in consonance with the principles of equity and justice.

188. Another way of looking at it is suppose the judgment-debtor had borrowed the money from the nationalised bank as a clean loan and paid the money into this court. What would be the bank's demand.

189. In other words, if payment of an amount equivalent of what the ledger account in the nationalised bank on a clean load would have shown as a debit balance today is not paid and something less than that is paid, that differential or shortfall is what there has been : (1) failure to restitute; (2) unfair gain by the non-complier; and (3) provided the incentive to obstruct or delay payment.

190. Unless this differential is paid, justice has not been done to the creditor. It only encourages non-compliance and litigation. Even if no benefit had been retained or availed even then, to do justice, the debtor must pay the money. In other words, it is this is not only disgorging all the benefits but making the creditor whole i.e. ordering restitution in full and not dependent on what he might have made or benefitted is what justice requires.

LEGAL POSITION UNDER THE CODE OF CIVIL PROCEDURE

191. One reason the law has not developed on this is because of the wording of Section 34 of the Code of Civil Procedure which still proceeds on the basis of simple interest. In fact, it is this difference which prompts much of our commercial litigation because the debtor feels – calculates and assesses – that to cause litigation and then to contest with obstructions and delays will be beneficial because the court is empowered to allow only simple interest. A case for law reform on this is a separate issue.

192. In the point under consideration, which does not arise from a suit for recovery under the Code of Civil Procedure, the inherent powers in the court and the principles of justice and equity are each sufficient to enable an order directing payment of compound interest. The power to order compound interest as part of restitution cannot be disputed, otherwise there can never be restitution.

PRECEDENTS ON EXERCISE OF POWERS BY THE COURT TOMAKE THE BENEFICIARY WHOLE - RESTITUTION

193. This court in ***Grindlays Bank Limited*** *vs* ***Income Tax Officer, Calcutta*** (1980) 2 SCC 191 observed as under :-

> "...When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. ..."

194. In ***Ram Krishna Verma and Others*** *vs* ***State of U.P. and Others*** (1992) 2 SCC 620 this court observed as under :-

> "The 50 operators including the appellants/ private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in ***Jeevan Nath Bahl's*** case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sept. 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in ***Grindlays Bank Ltd.*** *vs* ***Income-tax***

Officer - [1990] 2 SCC 191 held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated Feb. 26, 1959. ..."

195. This court in ***Kavita Trehan*** *vs* ***Balsara Hygiene Products*** (1994) 5 SCC 380 observed as under :-

"The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, ...". The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

196. This court in ***Marshall Sons & Co. (I) Ltd.*** *v.* ***Sahi Oretrans (P) Ltd. and Another*** (1999) 2 SCC 325 observed as under :-

> "From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate order so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is passed and to

protect the property including further alienation."

197. In ***Padmawati*** *vs* ***Harijan Sewak Sangh*** - **CM (Main) No.449 of 2002 decided by the Delhi high Court on 6.11.2008, the court held as under:-**

> "The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

198. We approve the findings of the High Court of Delhi in the aforementioned case.

199. The Court also stated: "Before parting with this case,

we consider it necessary to observe that one of the main reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the *lis*, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these

years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

200. Against this judgment, Special Leave to Appeal (Civil) No 29197/2008 was preferred to the this Court. The Court passed the following order:

> "We have heard learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The Special Leave Petition is, accordingly, dismissed."

Interest on interest

201. This court in ***Alok Shanker Pandey*** *vs* ***Union of India & Others*** (2007) 3 SCC 545 observed as under:-

> "We are of the opinion that there is no hard and fast rule about how much interest should be granted and it all depends on the facts and circumstances of the each case. We are of the

> opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount the respondent should then in addition to the interest at the rate of 12% per annum also pay to appellant interest at the same rate on the aforesaid interest from the date of payment of instalments by the appellant to the respondent till the date of refund on this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.
>
> It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital."

Compound Interest

202. To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of Time Value of Money, restitution and unjust enrichment noted above – or to simply levelise – a convenient approach is calculating interest. But here interest has to be calculated on compound basis – and not simple – for the latter leaves much uncalled for benefits in the hands of the wrongdoer.

203. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors, i.e., use of the money and the inflationary trends, as the market forces and predictions work out.

204. Some of our statute law provide only for simple interest and not compound interest. In those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on administration of justice. However, the power of the court to order compound interest by way of restitution is not fettered in any way. We request the Law Commission to consider and recommend necessary amendments in relevant laws.

205. 'Compound interest' is defined in Black's Law Dictionary, Eighth Edition (Bryan A. Garner) at page 830 as 'Interest paid on both the principal and the previously accumulated interest.' It is a method of arriving at a figure

which nears the time value of money submitted under Head-2 earlier.

206. As noted, compound interest is a norm for all commercial transactions.

207. Graham Virgo in his important book on 'The Principles of the Law of Restitution" at pp26-27 has stated and relevant portion is reproduced as under:

> "In ***Westdeutsche Landesbank Girozentrale*** *v* ***London Borough Council*** 1996 A.C. 669 the issue for the House of Lords was whether compound interest was available in respect of all restitutionary claims. By a majority it was decided that, since the jurisdiction to award compound interest was equitable, compound interest could only be awarded in respect of equitable restitutionary claims. Consequently, where the claim was for money had and received the claimant could only obtain simple interest because this was a common law claim. The majority supported their conclusion by reference to a number of different arguments. In particular, they asserted that, since Parliament had decided in 1981 that simple interest should be awarded on claims at common law, it was not for the House of Lords to award compound interest in respect of such claims. But the Supreme Court Act 1981 does not specifically exclude the award of compound interest in respect of common law claims. Rather, it recognizes that the court can award simple interest for such claims. The equitable

jurisdiction to award compound interest is still available in appropriate cases.

In two very strong dissenting judgments, Lords Goff and Woolf rejected the argument of the majority. They asserted that, since the policy of the law of restitution was to remove benefits from the defendant, compound interest should be available in respect of all restitutionary claims, regardless of whether they arise at law or in equity. This argument can be illustrated by the following example. In the straightforward case where the claimant pays money to the defendant by mistake and defendant is liable to repay that money, the liability arises from the moment the money is received by the defendant, who has the use of it and so should pay the claimant for the value of that benefit. This was accepted by all the judges in the case. The difficulty relates to the valuation of this benefit. If the defendant was to borrow an equivalent amount of money from a financial institution, he or she would be liable to pay compound interest to that institution. It follows that the defendant has saved that amount of money and so this is the value of the benefit which the defendant should restore to the claimant, in addition to the value of the money which the defendant received in the first place. If it could be shown that, had the defendant borrowed the equivalent amount of money, the institution would only have paid simple interest, it would be appropriate for the interest awarded to the claimant to be simple rather than compound. Usually, however, the interest awarded in commercial transactions will be compound interest."

208. In ***Marshall sons and company (I) Limited v. Sahi Oretrans (P) Limited and another*** (1999) 2 SCC 325 this court in para 4 of the judgment observed as under:

> "…It is true that proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation. …"

209. In ***Ouseph Mathai and others v. M. Abdul Khadir*** *(2002) 1 SCC 319* this court reiterated the legal position that

the stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risk and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

210. This court in ***South Eastern Coalfields Limited v. State of M.P. and others*** *(2003) 8 SCC 648* on examining the principle of restitution in para 26 of the judgment observed as under:

> "In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see ***Zafar Khan*** v. ***Board of Revenue, U.P*** - *(1984) Supp SCC 505*) In law, the term "restitution" is used in three senses: (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another."

211. The court in para 28 of the aforesaid judgment very carefully mentioned that the litigation should not turn into a fruitful industry and observed as under:

> "… … …Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

212. The court in the aforesaid judgment also observed that once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

213. In a relatively recent judgment of this court in ***Amarjeet Singh and others v. Devi Ratan and others*** (2010) 1 SCC 417 the court in para 17 of the judgment observed as under:

> "No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. … …"

214. In another recent judgment of this court in ***Kalabharati Advertising v. Hemant Vimalnath Narichania and others*** (2010) 9 SCC 437 this court in para 15 observed as under:

> "No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court."

215. In consonance with the concept of restitution, it was observed that courts should be careful and pass an order neutralizing the effect of all consequential orders passed in pursuance of the interim orders passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits.

216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while

rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

218. This court in a very recent case ***Ramrameshwari Devi and Others v. Nirmala Devi and Others*** 2011(6) Scale 677 had an occasion to deal with similar questions of law regarding imposition of realistic costs and restitution. One of us (Bhandari, J.) was the author of the judgment. It was observed in that case as under:

> "While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.
>
> The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and

> defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years."

219. We reiterate that the finality of the judgment of the Apex Court has great sanctity and unless there are extremely compelling or exceptional circumstances, the judgments of the Apex Court should not be disturbed particularly in a case where review and curative petitions have already been dismissed.

220. This Court has consistently taken the view that the judgments delivered by this Court while exercising its jurisdiction under Article 136 of the Constitution cannot be reopened in a writ petition filed under Article 32 of the Constitution. In view of this legal position, how can a final judgment of this Court be reopened by merely filing interlocutory applications where all possible legal remedies have been fully exhausted? When we revert to the facts of this case, it becomes abundantly clear that this Court delivered

final judgment in this case way back in 1996. The said judgment has not been permitted to acquire finality because the respondent Nos. 4 to 8 had filed multiple interlocutory applications and has ensured non-compliance of the judgment of this Court.

221. On consideration of pleadings and relevant judgments of the various courts, following irresistible conclusion emerge:

i) The judgment of the Apex Court has great sanctity and unless there are extremely compelling, overriding and exceptional circumstances, the judgment of the Apex Court should not be disturbed particularly in a case where review and curative petitions have already been dismissed

ii) The exception to this general rule is where in the proceedings the concerned judge failed to disclose the connection with the subject matter or the parties giving scope of an apprehension of bias and the judgment adversely affected the petitioner.

iii) The other exception to the rule is the circumstances incorporated in the review or curative petition are such that they must inevitably shake public confidence in the integrity of the administration of justice if the judgment or order is allowed to stand.

222. These categories are illustrative and not exhaustive but only in such extremely exceptional circumstances the order can be recalled in order to avoid irremedial injustice.

223. The other aspect which has been dealt with in great details is to neutralize any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view.

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts.

224. It may be pertinent to mention that even after dismissal of review petition and of the curative petition on 18.7.2002, the applicants (respondent Nos. 4 to 8) have been repeatedly filing one petition or the other in order to keep the litigation alive. It is indeed astonishing that the orders of this court have not been implemented till date. The applicants have made all possible efforts to avoid compliance of the judgment of this Court. This is a clear case of abuse of process of the court.

225. The Court in its order dated 04.11.1997 while accepting the report of the MOEF directed the applicant – M/s

Hindustan Agro Chemical Ltd. to pay a sum of Rs.37.385 crores towards the costs of remediation. The amount which ought to have been deposited way back in 1997 has yet not been deposited by keeping the litigation alive.

226. We have carefully considered the facts and circumstances of this case. We have also considered the law declared by this Court and by other countries in a number of cases. We are clearly of the opinion that the concerned applicant-industry must deposit the amount as directed by this Court vide order dated 4.11.1997 with compound interest. The applicant-industry has deliberately not complied with the orders of this court since 4.11.1997. Thousands of villagers have been adversely affected because no effective remedial steps have been taken so far. The applicant-industry has succeeded in their design in not complying with the court's order by keeping the litigation alive.

227. Both these interlocutory applications being totally devoid of any merit are accordingly dismissed with costs.

Consequently, the applicant-industry is directed to pay Rs.37.385 crores along with compound interest @ 12% per annum from 4.11.1997 till the amount is paid or recovered.

228. The applicant-industry is also directed to pay costs of litigation. Even after final judgment of this Court, the litigation has been kept alive for almost 15 years. The respondents have been compelled to defend this litigation for all these years. Enormous court's time has been wasted for all these years.

229. On consideration of the totality of the facts and circumstances of this case, we direct the applicant-industry to pay costs of Rs.10 lakhs in both the Interlocutory Applications. The amount of costs would also be utilized for carrying out remedial measure in village Bichhri and surrounding areas in Udaipur District of Rajasthan on the direction of the concerned authorities.

230. In case the amount as directed by this Court and costs imposed by this Court are not paid within two months, the same would be recovered as arrears of the land revenue.

231. Both these interlocutory applications are accordingly disposed of.

.....J.
(DALVEER BHANDARI)

.....J.
(H.L. DATTU)

New Delhi;
July 18, 2011