

vL  
W.P(C)No. 657 OF 1995  
ITEM No.1  
(Part Heard)

Court No. 6

SECTION PIL  
XIV & III  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(Civil) No.657/1995

RESEARCH FOUNDN. FOR SCIENCE

Petitioner (s)

VERSUS

U O I & ANR.

Respondent (s)

( With Appln(s). for directions & impleading party & directions  
& exemption from filing O.T.& directions & office report)  
( For final disposal)

With

SLP(C)No.16175/1997 - With appln. for ex-parte stay & impleading party  
and intervention (For Final Disposal)

C.A.No.7660/1997 - With Office Report (For Final Disposal)

Date : 11/03/2004: These Petitions were called on for hearing  
ay.

tod

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)M/s. Sanjay Parikh,Abinash K.Misra,  
AN Singh,Advs.

Ms.B.Vijayalakshmi Menon,Adv.

For UOI M/s Sanjay R.Hegde,Rajiv Nanda,SN Terdol,Advs.

For Customs:Mr. A. Subba Rao, Adv.

For MOEF:Mr. A.D.N. Rao, Adv.

For CPCB:Mr. Vijay Panjwani, Adv.

For Noticee Nos.

2,3,7,9,13:Mr. Huzefa Ahmadi, Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Nakul Dewan, Adv.

Mr. Abhimeet Sinha, Adv.

Ms. Minakshi Nag, Adv.

Mr. Gourav Kejriwal, Adv.

For UP:Mr. Kamlendra Mishra, Adv.

Mr. Rajeev Dubey, Adv.

For Respondent:Mr. Nidhesh Gupta, Adv.

Mr. Naveen Singh, Adv.

Ms. S. Janani, Adv.

For MPCB:Mr. R.C. Verma, Adv.

Mr. Mukesh Verma, Mr.Manish Shankar, Advs.

For A.P.:Mr. T.V. Ratnam, Adv.

Mr. K.Subba Rao, Ms.OSG. Prasuna, Advs.

For Noticee No.5/  
Versatile Exports:Mr. Chandrakanta Nayak, Adv.  
Mr. Atish Dipankar, Adv.

For St.of MP/MPPCB:Mr. S.K. Agnihotri, Adv.  
Mr. Anil K. Pandey, Adv.

For Bomay Port Trust:Mr. Buddy A. Ranganadhan, Adv.  
for M/s. J.B.D. & Co., Adv.

For H.P.:Mr. J.S. Attri, Addl.Adv.Gen.  
Mr. Pramod Kumar Yadav, Adv.

For Assam:Ms. Krishna Sarma, Adv.  
Mr. Sanjay C.V. Choudhury, Adv.  
Mr. V.K. Sidharthan, Adv.  
Mr. Niraj Kumar, Adv.  
for M/s. Corporate Law Group, Adv.

For OPCB:Mr. Janaranjan Das, Adv.  
Mr. Swetaketu Mishra, Adv.

For JN Port Trust:Mr. Ajay Sharma, Adv.

For St.of Goa:Ms. A.Subhashini, Adv.

For Tamil Nadu:Mr. R. Ayyam Perumal, Adv.  
Mr. S. Vallinayagam, Adv.

For Arunachal Pd. &  
APPCB:Mr. Anil Shrivastav, Adv.

For Royal Impex:Mrs. Sushila Ram, Adv.  
(Noticee No.15)Mr. Nikhil Nayyar, Adv.  
Mr. Kamakhya Srivastava, Adv.

For Manipur:Mr. KH. Nobin Singh, Adv.

For WBPCB:Mr. R. Mohan, Sr.Adv.  
Mr. V.G. Pragasam, Adv.

For Govt. of Pondicherry &  
Pond.PCC:Mr. V.G. Pragasam, Adv.

For Andaman & Nicobar,  
Dadra & Ng.Haveli,  
Daman & Diu &  
Lakshadweep:Mr. R.K. Rathore, Adv.  
Mr. DS. Mehra, Adv.

For Noticee No.14:Mr. S. Madhusudhan Babu, Adv.  
Mr. D.N. Mishra, Adv.

For Sikkim:Mr. A.Mariarputham, Adv.  
Mrs. Aruna Mathur, Adv.

For KSPCB:Mr. E.C. Agrawala, Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Rishi Agrawal, Adv.

For Tripura:Mr. Gopal Singh, Adv.  
Mr. Navin Prakash, Adv.  
Mr. Anurag Sharma, Adv.

For Indochem India  
Limited:Mr. Tarun Gulati, Adv.  
Mrs. Vanita Bhargava, Adv.  
Ms. Bina Gupta, Adv.

Mrs. Divya Roy Jha, Adv.

For Rajasthan SPCB: M/s K.B. Rohtagi, Aparna R. Jain,  
Mahesh Kasana, Advs.

M/s Ashok Mathur, Rajesh Pathak, Advs.  
Mr. Shakil Ahmed Syed, Adv.

For UP PCB M/s. Pradeep Misra, T. Mahipal, Advs.

For Manipur Mr. Khwairakpam Nobin Singh, Adv.

For Bihar M/s Sunita R. Singh, B.B. Singh, Advs.

For Respondent (s) Mrs. Manik Karanjawala, Adv.

Mr. Anil Kumar Tandale, Adv.

Mr. Rakesh K. Sharma, Adv.

Mr. Radha Shyam Jena, Adv.

Mrs Urmila Sirur, Adv.

Ms. Sushma Suri, Adv.

Mrs Anil Katiyar, Adv.

For West Bengal M/s Dilip K. Sinha, JR Das, Advs. for  
M/s Sinha & Das

For Rajasthan Mr. Aruneshwar Gupta, Addl. Adv. Gen.  
Mr. Amarjit Singh Bedi, Adv.

Mr. Jayant Bhushan, Adv.

Mr. KK Gupta, Adv.

Mr. Pramod Dayal, Adv.

Mr. BV Balaram Das, Adv.

Mr. Shail Kumar Dwivedi, Adv.

For Maharashtra M/s SS Shinde, Mukesh K. Giri, Advs.

For Meghalaya Mr. Ranjan Mukherjee, Adv.

For Gujarat, Mizoram, M/s H. Wahi, Aruna Gupta, Monika Bapna,  
GPCB Sadhna Sandhu, Advs.

For Nagaland M/s U. Hazarika, Sumita Hazarika,  
Madhvi Sharma, Advs.

M/s Neeraj K. Jain, Bharat Singh,  
RS Yadav, Advs.

Mrs. D. Bharathi Reddy, Adv.

M/s Sushil K. Jain, RK Joshi, AP Dhamija,  
Pradeep Aggarwal, A. Mishra, Anjali Doshi,  
Ruchi Kohli, LP Singh, AP Jain, Advs.

For Noticee No.6: Mr. SK. Dhingra, Adv.  
Ms. Shefali Dhingra, Adv.

For Respondent (s)

Mr. Javed M. Rao, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Re: Order dt. 25.9.21003 about 15 Importers. Further directions:

Prima facie finding that 15 importers have illegally imported waste oil in 133 containers in the garb of lubricating oil, this Court by Order dated 25th September, 2003 issued notices to the said importers to show cause why the consignments shall not be ordered to be re-exported or destroyed at their cost and why the amount spent on analysis in the laboratory be not recovered from them and why they should not be directed to make payment of compensation on Polluter Pays Principles and other action taken against them. Pursuant to the said order, most of the importers and other parties have filed affidavits. During hearing on this aspect, one of the contentions urged on behalf of the importers was that in respect of consignments in question, adjudication proceedings are pending before Commissioner of Custom, Mumbai, and this Court may, therefore, defer the decision. Strictly speaking, for the purpose of present proceedings, it is not necessary to await the final decision of adjudication proceedings, but we feel that a report from Commissioner of Custom may assist this Court in deciding the aspects indicated in the Order dated 25th September, 2003. In this view, we direct the Commissioner of Custom to send a report to this Court within a period of three months on the questions whether the consignment in issue are waste oil within the meaning of the term as per the Basel Conventions or Hazardous Waste Rules, 1989, as amended in the year 2000 and/or as amended in the year 2003, also having regard to the relevant Notifications issued on this aspect. The Commissioner would give a reasonable opportunity to the importers to put forth their view point before him. Further, the importers would be permitted to re-export in accordance with law the consignments in question, if so desired, without prejudice to rights and contentions of the parties. Before re-export the samples of the consignments would be retained by the Commissioner of Custom. In terms of the Order dated 14th October, 2003, a Monitoring Committee was constituted so as to oversee that the directions of this Court are implemented timely. The said Monitoring Committee shall be associated by the Commissioner of Custom while examining the matter in terms of this Order.

The Monitoring Committee shall also be associated with the re-export. The question whether any further testing is required to be done as claimed by the importers would be decided by the Commissioner, in consultation with the Monitoring Committee. In case of re-export the document showing that the consignment has been received by the original exporter shall be handed over to the Monitoring Committee.

The Chief Commissioner of Customs is directed to nominate one Commissioner of Custom to decide all these cases. The importers are directed to appear, for present, before Commissioner of Custom (Adjudication) on 22nd March, 2004 who would give further directions as to the officer before whom the parties may have to appear.

List the matter for further directions in July, 2004 after re-opening.

Re: Order dt.14.10.2003 - Compliance Report by Monitoring Committee. Further Directions:

The Monitoring Committee constituted to oversee the implementation of the directions contained in the Order dated 14th October, 2003, has filed First Quarterly Report (October 2003 to January, 2004). Mr. Sanjay Parikh, on behalf of the petitioner, has filed comments of the petitioner to the said Report. The comments are in the format in which the directions in the main Order for compliance within the fixed time were issued. The Monitoring Committee, while submitting the Second Report, shall take into account what has been stated in the comments of the petitioner. The Committee is requested to henceforth file their reports having regard to the format in which the petitioner has filed its comments.

List the matter after receipt of the Second Report.

(S. Thapar)  
PS to Registrar

(V.P. Tyagi)  
Court Master