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W.P(C)No. 657 OF 1995
ITEM No.1 Part-heard
XIV & III

Court No. 6

SECTION PIL

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
SLP(C)No.16175/1997,C.A.No.7660/1997

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

Date : 14/10/2003 These Petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE B.N. AGRAWAL

For the parties : M/s. Sanjay Parikh,Abinash K.Misra,
AN Singh,Advs.

Ms.B.Vijayalakshmi Menon,Adv.

For UOI Mr.PP Malhotra,Sr.Adv.
M/s Sanjay R.Hegde,Rajiv Nanda,SN Terdol,
Anil K.Mishra,Advs.

For JN Port Trust Mr.Altaf Ahmad,ASG
Mr.Ajay Sharma,Adv.

M/s ADN Rao,P.Parmeswaran,
BK Prasad,

Mr.A.Subba Rao,Adv.

Mr. Anil Kumar Jha, Adv.

For CPCB Mr. Vijay Panjwani,Adv.

Mrs Manik Karanjawala,Adv.

M/s K.B. Rohtagi,Aparna R.Jain,
Mahesh Kasana,Advs.

For Maharashtra CPB M/s R.C. Verma,Mukesh Verma,
Manish Shanker,Advs.

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

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

For Tripura M/s. Gopal Singh,Rajiv Mohapatra,Navin Prakash,Anurag Sharma,Advs
.

For Manipur M/s.Khwairakpam Nobin Singh,M.Gireesh Kumar,Advs.

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

For Arunachal P.PCB M/s. Anil Shrivastav,Jyoti Dutt,Advs.
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 G.Biswal, JR Das,S.Mishra,
Dilip K.Sinha,Advs.for
M/s Sinha & Das

For Mumbai Port Trust M/s JB Dadachanji,Buddy A.Rangnadhan,Advs.for
M/s J.B. Dadachanji & Co.

For Assam M/s Krishna Sarma,Asha G.Nair,
VK Sidatharan,Ng.JR Luwang,Advs.for
M/s Corporate Law Group

For Rajasthan M/s Ranji Thomas,Bharati Upadhyay,AK Shukla,
VN Raghupathy,Advs.

For Orissa PCB M/s Janaranjan Das,G.Biswal,
S.Mishra,Moushami Gahlot,Advs.
Mr.Jayant Bhushan,Adv.
Mr.KK Gupta,Adv.
Mr.Pramod Dayal,Adv.
Mr.BV Balaram Das,Adv.
Mr.Shail Kumar Dwivedi,Adv.

For A.P. M/s TV Ratnam,K.Subba Rao,Advs.

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

For Meghalaya Mr.Ranjan Mukherjee,Adv.

For Sikkim M/s A.Mariarputham,Aruna Mathur,
Anurag D.Mathur,Advs.for
M/s Arputham Aruna & Co.

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

For Nagaland M/s VD Khanna,SK Shandilya,V.Hazarika,
Sumita Hazarika,Kamal Shankar,Advs.
M/s Neeraj K.Jain,Bharat Singh,
RS Yadav,Advs.

For Goa Ms.A.Subhashini,Adv.

e to minimise it. In developing nations, there are additional problems including that of dumping of hazardous waste on their lands by some of the nations where cost of destruction of such waste is felt very heavy. These and other allied problems gave birth to Basel Convention. The key objectives of the Basel Conventions are:

" To minimize the generation of hazardous wastes in terms of quantity and hazardousness;

to dispose of them as close to the source of generation as possible;

to reduce the transboundary movement of hazardous wastes."

Due to alarming situation created by dumping of hazardous waste, its generation and serious and irreversible damage, as a result thereof, to the environment, flora and fauna, health of animals and human beings, the petitioner approached this Court under Article 32 complaining of violation of Article 14 and 21 of the Constitution of India.

The petitioner has, inter alia, relied upon the Basel Convention. The Basel Convention was signed by India on 15th March, 1990 and ratified on 24th June, 1992.

From time to time various affidavits have been filed in this matter by Ministry of Environment and Forests (for short MOEF) and Pollution Control Boards. The aspects that have been considered and reflected in various orders that have been passed and are further required to be considered and appropriate directions issued relate to the provisions of Hazardous Waste (Management and Handling) Rules, 1989 (for short H.W. Rules), the implementation of these Rules and other connected issues relating to hazardous waste. These Rules have been amended during pendency of this petition, the latest amendment being of 23rd May, 2003. Considering the magnitude of the problem and the extent of hazardous waste generated, this Court issued notices to all the State Governments, Central Pollution Control Board and State Pollution Control Boards so as to identify the problem, identify the extent of such waste, availability of the disposal sites and various other aspects relevant to minimising the generation, its proper handling and disposal with a view to safeguard the environment degradation.

By order dated 5th May, 1997, this Court, inter alia, directed that no authorisation/permission would be given by any authority for the import of hazardous waste items which have already been banned by the Central Government or by any order made by any Court or any other authority and no import would be made or permitted by any authority or any person, of any hazardous waste which is already banned under the Basel Convention or to be banned hereafter with effect from the dates specified therein. In view of the magnitude of the problem and its impact, the State Governments were directed to show cause why an order be not made directing closure of Units utilising the hazardous waste where provision is not already made for requisite safe disposal sites. It was further ordered that cause be shown as to why immediate order be not made for closure of all unauthorized hazardous waste handling units.

We have extensively perused the record with the assistance of learned counsel. The material on record demonstrates that proper attention was not paid by the concerned authorities in implementing H.W. Rules, 1989. These Rules were amended with effect from 6th June, 2000 and further amended on 23rd May, 2003. The problem is not as much of absence of the Rules as it is of implementation. If the Rules are amended, but not implemented, the same remain on paper. If H.W. rules as in 1989 had been properly implemented, the problem would not have been as grave as faced now. Likewise, if the Rules as amended in the year 2000 were implemented, the problem would not have been as grave as it is presently.

Our attention has been drawn by Mr. Parikh, learned counsel for the petitioner, to various orders that have been passed by this Court commencing from 19th October, 1995 till date, to various affidavits that have been filed on behalf of the MOEF, Central Pollution Control Board (CPCB) and others which substantially amount to an admission of the authorities about lack of various basics so as to handle the issue. One of the such elementary aspect is lack of correct information as to the extent of the hazardous wastes. At one stage it was represented that the total quantity of hazardous wastes generated in the Country was in the region of 2000 tonnes per day which worked out to be 0.7 million tonnes per year. At a later stage the figure rose to more than 4.4 million tonnes per year. This is just one illustration.

In the order dated 4th August, 1997 it was observed that all State Governments have not taken steps required under the applicable laws as well as earlier directions of the Court and have not placed before the Court all material facts inspite of considerable time having been given.

It has been further observed that all the authorities do not appear to appreciate the gravity of situation and need for prompt measures being taken to prevent serious adverse consequences. Even Central Government was not given full information by all the State Governments about the compliance of the directions of this Court. Under these circumstances, it was observed that an appropriate Committee deserves to be constituted to ensure that needful is done to arrest further growth of the problem. Learned counsel for the petitioner and the learned Additional Solicitor General were requested to furnish the names of suitable persons including experts who could be appointed to such Committee. In this background, by order dated 13th October, 1997 a High Powered Committee (HPC) with Prof. MGK. Menon as its Chairman was constituted to examine all matters in depth relating to hazardous waste and to give a report and recommendations

at an early date. The fourteen Terms of Reference on which the High Powered Committee was required to give its report and recommendations are:

"(1) Whether and to what extent the hazardous wastes listed in Basel Convention have been banned by the Govt. and to examine which other hazardous wastes, other than listed in Basel Convention and Hazardous Wastes (Management and Handling) Rules, 1989, require banning.

(2) To verify the present status of the units handling hazardous wastes imported for recycling or generating/recycling indigenous hazardous wastes on the basis of information provided by respective States/UTs and determine the status of implementation of Hazardous Wastes (Management and Handling) Rules, 1989 by various States/UTs and in the light of directions issued by the Hon'ble Supreme Court.

(3) What safeguards have been put in place to ensure that banned toxic/hazardous wastes are not allowed to be imported.

(4) What are the changes required in the existing laws to regulate the functioning of units handling hazardous wastes and for protecting the people (including workers in the factory) from environmental hazards.

(5) To assess the adequacy of the existing facilities for disposal of hazardous wastes in an environmentally sound manner and to make recommendations about the most suitable manner for disposal of hazardous wastes.

(6) What is further required to be done to effectively prohibit, monitor and regulate the functioning of units handling hazardous wastes keeping in view the existing body of laws.

(7) To make recommendations as to what should be the prerequisites for issuance of authorisation/permission under Rule 5 and Rule 11 of the Hazardous Wastes (Management and Handling) Rules, 1989.

(8) To identify the criteria for designation of areas for locating units handling hazardous wastes and waste disposal sites.

(9) To determine as to whether the authorizations/permissions given by the State Boards for handling hazardous wastes are in accordance with Rules 5(4) and Rule 11 of hazardous Waste Rules, 1989 and whether the decision of the State Pollution Control Boards is based on any prescribed procedure of checklist.

(10) To recommend a mechanism for publication of inventory at regular intervals giving area-wise information about the level and nature of hazardous wastes.

(11) What should be the framework for reducing risks to environment and public health by stronger regulation and by promoting production methods and products which are ecologically friendly and thus reduce the production of toxics?

(12) To consider any other related area as the Committee may deem fit.

(13) To examine the quantum and nature of hazardous waste stock lying at the docks/ports/ICDs and recommend a mechanism for its safe disposal or re-export to the original exporters.

(14) Decontamination of ships before they are exported to India for breaking."

The High Powered Committee comprised of experts from different disciplines and fields as would be apparent from the following:-

1. Dr. Claude Alvares (scientific aspects of environmental damage and their impacts on society, legal aspects, Basel Convention, accountability to the public);

2. Dr. D.B. Boralkar (chemistry, pollution control, Basel Convention, experience at CPCB and SP CB in enforcement of regulations);

3. Dr. Mrs. Indrani Chandrasekharan (chemistry, formulation of legislation, Basel Convention, experience at MOEF);

4. Dr. VK. Iya (chemistry and biomedical aspects, public involvement);

5. Shri Prem Chand (non-ferrous metals and industry);

6. Dr. K.R. Ranganathan (environmental studies, pollution control and functioning of CPCB, accountability to the public);

7. Dr. A.K. Saxena (environmental engineering, experience at National Productivity Council on hazardous waste management projects, particularly landfill technology);

8. Dr. P.K. Seth (aspects of health and hazardous wastes; industrial toxicology);

9. Dr. Sudhir Singhal (issues relating to oil);

10. Shri Paritosh Tyagi (pollution control, institutional mechanisms and experience as a former Chairman, CPCB).

11. Dr. R.R. Khan, Director Ministry of Environment and Forests & Member-Secretary;

12. Dr. T.S.R. Prasad Rao, Director, Indian Institute of Petroleum, Dehra Dun (represented by Dr. Himmat Singh, Deputy Director).

With the assistance of Mr. Sanjay Parikh, learned counsel appearing for the petitioner, Mr. A.D.N. Rao, learned counsel appearing for the Central Government and Mr. Vijay Panjwani learned counsel appearing for Central Pollution Control Board, we have gone through the extensive report submitted by High Powered Committee. At the outset, we wish to place on record our gratitude for the efforts made and dedication shown by HPC in preparation of the report and recommendations made therein after in-depth study of numerous facets of the problem.

The Report has highlighted the areas which result in generation of the hazardous wastes and the limited area on which the High Powered Committee focussed its attention, namely, industrial operations (solid, liquid, gaseous waste) including industries recycling hazardous waste and others as detailed in paragraph 1.3 relating to scope of work. Out of 14 Terms of Reference, on T.O.R.No.13 the High Powered Committee submitted its Report on 20th April, 1998, on consideration whereof, directions were issued in terms of the order dated 10th December, 1999.

The ratification of Basel Convention by India shows the commitment of our country to solve the problem on the principles and basis stated in the said document. The decision stated to have been taken by 65 conference parties by consensus to ban all exports of hazardous wastes from Organisation for Economic Co-operation and Development (OECD) to non-OECD countries immediately for disposal and in the beginning of the year 1998 for recycling are, therefore, required to be kept in view while considering the number of items to be banned. It also deserves to be noticed that having regard to the broad outlook in framing the Terms of Reference including the rein not only the aspect of imported hazardous wastes but also management of indigenous hazardous waste, the HPC has rightly not confined itself just to the crisis situation that has arisen from continuous illegal import and dumping of hazardous wastes, but has also gone into the systemic weaknesses that had developed as a result whereof there was slow progress in handling the problem. HPC has observed that the problems raised by indigenous processing of toxic substances such as lead and waste oil and by industrial processes that generated these as also by methods of disposal like incinerators and landfills to be far more serious and of far greater magnitude than those associated with the import of such waste. In this view various aspects of indigenous generation and handling of hazardous wastes have been examined in depth. Having regard to this approach, we agree with conclusion drawn by HPC that MOEF made no concerted or consistent efforts which necessarily have to be of a promotional, educational and co-ordinating nature - to show the implementation of H.W.Rules, 1989. We hope that on the matter in issue, henceforth, there would not be any lack of serious and concerned action on the part of MOEF. On 23rd September, 2003, Mr. Parikh filed a brief summary of directions required to be issued on the basis of the recommendations of High Powered Committee and also indicated therein the aspects on which MOEF agreed and also the aspects which are now covered by amendment of H.W. Rules, 1989, by Notification dated 23rd May, 2003. The aspects to which MOEF has agreed are stated in their affidavit dated 13th September, 2003. The MOEF shall ensure that the agreement does not remain only on paper. The directions sought for by the petitioner to which MOEF has agreed shall be implemented in letter and spirit. The implementation wherever it is to be done by the MOEF, should be done forthwith and wherever it is required to be done by any other Ministry or authority or agency, the Nodal Ministry/MOEF shall ensure that it be so implemented. In case of any doubt or dispute it would be the responsibility of MOEF to satisfy this Court. Further, the Ministry shall also develop a mechanism to ensure that wherever its directions are not implemented, necessary action is taken against those who are responsible for it. If any Inter-Ministerial consultation is required, the lead is to be taken by MOEF to see that such consultation takes place and effective measures are taken.

First, the legal principles in brief may be noticed.

The legal position regarding applicability of the precautionary principle and polluter pays principle which are part of the concept of sustainable development in our country is now well settled. In Vellore Citizens' Welfare Forum Vs. Union of India & Ors. [(1996) 5 SCC 647], a three Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter pays principle have now emerged and govern the law in our coun

try, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum's case that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) and Ors. [(1996) 5 SCC 718] where, after referring to the principles noticed in Vellore Citizens' Welfare Forum's Case, the same have been explained in more detail with a view to enable the Courts and the Tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the working group of the International Law Commission in 1996 on "Prevention of Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary "legislative, administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed at same pedestal as human rights concerns, both being traced to Article 21 of the Constitution of India. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the Court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by Courts as facets of those fundamental rights and hence enforceable as such (see People's Union for Civil Liberties Vs. Union of India & Anr. [(1997) 3 SCC 433]). The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The rights to information and community participation for protection of environment and human health is also a right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-shrined principles have been kept in view by us while examining and determining various aspect and facets of the problems in issue and the permissible remedies. There are various aspects of the Report which require a serious consideration and implementation by the Central Government. Before we indicate some of those aspects, directions/orders that have been passed by this Court on 23rd, 24th and 25th September, 2003, may be reproduced as under:

Order/directions Dt: 23rd September, 2003

"While considering the recommendations regarding the changes required to be made to regulate the functioning of Units handling hazardous waste under the category of safeguards in the import of hazardous waste and the suggestion about deletion of sub-rule (3) of Rule 12 of Hazardous Waste Rules, as amended in May, 2003, our attention has been drawn to Schedule-3. Schedule-3, in turn, refers to Rule 3(14)(c) and Rule 12(a). Rule 3(14) defines "hazardous waste". Rule 3(14)(c) reads as under:

"Rule 3:

Sub-rule (14)(c): Wastes listed in Lists 'A' and 'B' of Schedule-3 (Part-A) applicable only in case(s) of import or export of hazardous wastes in accordance with Rules 12, 13 and 14 if they possess any of the hazardous characteristics listed in Part-B of Schedule-3.

Explanation: For the purposes of this clause:

(i) all wastes mentioned in column (3) of Schedule-1 are hazardous wastes irrespective of concentration limits given in Schedule-2 except as otherwise indicated and Schedule-2 shall be applicable only for wastes or waste constituents not covered under column(3) of Schedule-1;

(ii) Schedule-3 shall be applicable only in case(s) of import or export."

In the Notification dated 23rd May, 2003, there is no Rule 12(a). The apprehension expressed is that Rule 12(3) on account of its ambiguity may be abused and under garb of the said Rule the raw material of banned items may be imported. Further, Mr. Parikh contends that there does not appear to be any necessity of sub-rule(3) in view of Rule 12(1). Let Mr. ADN. Rao take instructions and file affidavit clarifying the position. If necessary, requisite corrigendum should be issued.

Rules 13, 14 read with definition of 'export' 'exporter' and 'import' 'importer' may lead to some confusion on account of certain apparent ambiguities. Let Government of India look into it and file an affidavit.

Sub-rule (12) of Rule 19 reads as under:-

"In case of units registered with the Ministry of Environment and Forests or the Central Pollution Control Board for items placed under "free category" in Notification nos.22(RE-99) 1997-2002 dated 30th July, 1999; 26(RE-99) 1997-2002 dated 10th September, 1999; 38 (RE-2000) 1997-20

02 dated 16th October, 2000 and 6(RE-2001) dated 31st March, 2001 issued by the Directorate General of Foreign Trade and other similar notifications issued based on the advice of Ministry of Environment and Forests, prior import permission from that Ministry shall not be required." Rule 19 deals with procedure for registration and renewal of registration of recyclers and re-refiners.

Sub-rule (1) requires every person desirous of recycling or re-refining non-ferrous metal wastes as specified in Schedule 4 or used oil or waste oil to register himself with the Central Pollution Control Board. There are two provisos to sub-rule (1). The said provisos provide the cases where registration is not required. Apparently, it seems difficult to comprehend the reason for inserting sub-rule (2) in Rule 19 which provides for registration and renewal and sub-rule (12) providing for dispensing with prior import permission. Prima-facie we hope that the intention is not to permit banned items or hazardous waste items under the guise of sub-rule (12) of Rule 19. It can have the effect of setting at naught Rule 13. This aspect too requires to be examined by Ministry of Environment & Forests and affidavit filed within 8 weeks."

Order/directions Dt:24th September, 2003

"In respect of adequate facilities of testing at the laboratories at the gateway points, i.e., Ports, ICDs Customs Areas, for testing potentially hazardous wastes and recyclables and the said laboratories being manned by the trained staff, the stand of MOEF is that the customs labs are being upgraded. Mr.ADN Rao seeks 12 months time to upgrade the labs. Allowing the said request, but directing quarterly reports to be filed in this court detailing the progress made, the labs as suggested should be upgraded and manned staff officers posted within the period of 12 months. Compliance report shall be filed soon after expiry of 12 months. Meanwhile, the test shall be conducted by accredited laboratories certified by CPCB.

CPCB, Mr.Panjwani states, is imparting periodical training to Customs and Port officials, the document prepared by Dr.KR Ranganathan, a member of HPC, on the aspect of testing method for analysis of hazardous wastes, instrumentation and training requirements shall form part of the training imparted by CPCB.

RE: Customs Act:

Section 11 of the Customs Act, 1962 empowers the Central Government to prohibit either absolutely or subject to such conditions as may be specified in the Notification the import and export of the goods if satisfied that it is necessary so to do for any of the purposes stated in sub-section (2). It is implicit that if import is in contravention of any law for the time being in force, such import is required to be prohibited.

The import of 29 items has already been prohibited under Schedule-8 of the Hazardous Waste Rules as amended in May, 2003. We see no reason why Notification under Section 11 prohibiting the import of the said 29 items shall not be issued forthwith. We direct the Central Government to issue such a Notification without any further delay.

Basel Convention has banned 76 items. We are contemplating issuance of directions to Ministry of Environment and Forests to examine the remaining items. It is implicit that if more items are banned, the corresponding Notification shall be issued by the Central Government under Section 11 of the Customs Act.

The HW Rules allow import of certain items subject to fulfillment of conditions. The requisite notification shall be issued making the compliance of the said conditions mandatory before the imported consignment is cleared.

RE: Major Port Trust Act:

The Competent Authority, while disposing of hazardous waste, in exercise of power under Sections 61 & 62 of the Major Port Trust Act, 1963, is directed to ensure that the Hazardous Waste Rules, as amended up to date, shall be complied with, in particular, Rule 19 and 20 thereof.

RE: Foreign Trade (Development & Regulation) Act, 1992:

The Export and Import Policy (Exim Policy) issued from time to time, under the Foreign Trade (Development and Regulations) Act, 1992, inter alia, sets out the goods, import whereof is prohibited. We direct the Central Government that the said policy shall also correspond with the Hazardous Waste Rules, as amended from time to time, which means that if import of any item is prohibited under Hazardous Waste Rules, it shall be reflected in the prevalent Exim Policy. For design and setting up of disposal facility as provided in Rule 8-A of HW (M & H) Rules, the Criteria for Hazardous Waste Landfills published by CPCB in February, 2001 and the Manual for Design, Construction & Quality Control of Liners and Covers for Hazardous Waste Landfills published in December 2002 shall be followed and adhered to. Alongwith the affidavit of Mr.M.Subbba Rao, filed on 13th September, 2003, Annexure II sets out status of hazardous waste disposal sites. According to the said Annexure, 89 sites were identified out of which 30 were notified. Mr.ADN Rao, on instructions, states that out of 30, 11 common landfills are ready and operational -- two in Maharashtra, one in Andhra Pradesh and eight in Gujarat and that some of these landfills are in accordance with the Criteria and Manual aforesaid. The steps shall be taken to expedite the completion of the remaining landfills. In this view, steps should be taken of shifting of hazardous waste from wherever it is permissible to these landfills. The transport of hazardous waste would be in accordance with Rule 7 and the Guidelines issued by CPCB from time to time. Mr.Panjwani states that the guidelines are ready. Let the same be issued forthwith.

MONITORING :

The CPCB shall issue guidelines to be followed by all concerned including SPCB and the operators of disposal sites for the proper functioning and upkeep of the said sites.

RE: Impact of Hazardous Waste on Worker's Health:

We have considered the suggestion of HPC under term of reference no.4 relating to impact of Hazardous Waste on Worker's Health. Having regard to the recommendations and submissions made by the learned counsel we direct the Ministry of Labour and Ministry of Industry to constitute a special committee to examine the matter and enumerate medical benefits which may be provided to the workers having regard to the occupational hazard as also keeping in view the question of health of the workers and the compensation which may have to be paid to them. The Committee while examining the recommendations, shall also keep in view the judgment of this Court in Consumer Education and Research Centre vs. Union of India (1995 (3) SCC 42). The report of the special committee shall be submitted within a period of four months."

Order/directions Dt:25th September, 2003

"Pursuant to the directions of this Court dated 4th February, 2002 and the affidavits filed on behalf of Ministry of Environment & Forests, Government of India, in particular, the affidavits of Mr.PV Jayakrishnan dated 22nd February, 2002 (page 2291), 6th March, 2002 (page 2381) and Mr. M.Subba Rao dated 19th March, 2002 (page 2385), prima facie it seems that 15 importers, whose names and addresses are given at page 2386, illegally imported waste oil in 133 containers in the garb of lubricating oil. The HPC in its report (pp.170-171) had noticed the presence of the consignment of this waste oil. On direction of this Court, the laboratory tests undertaken have shown the same as hazardous waste oil. By order dated 5th May, 1997, this Court directed that no import would be made or permitted by any authority or any person of any hazardous waste which is already banned under the Basel Convention or to be banned hereafter with effect from the date specified therein. The Ministry of Environment & Forests is said to have spent a sum of Rs.6.35 lacs on analysis of waste oil. There does not appear to be anything on record showing that any action of substance has been taken against the importers and others in permitting the import in violation of the order of this Court. Further, it does not appear that MOEF has taken any steps to recover the amounts spent on analysis. It seems that the said containers are lying at Nhava-Sheva Port. Presently one of questions that requires consideration, is of re-export or destruction of the said substance and other action/s to be taken as a result of the illegal import. Before we pass orders, we deem it appropriate to issue notice to the 15 importers as also to the concerned Commissioner of Customs. The Commissioner of Customs shall file an affidavit stating as to what steps have been taken up to date in respect of the aforesaid 133 containers. The importers are directed to show cause why the consignment in question 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. We direct Ministry of Environment & Forests to serve the 15 importers as also the concerned Commissioner of Customs. The Ministry would be empowered to have assistance from Police/District Magistrate/Metropolitan Magistrate for effecting service of notice on the importers. We direct these authorities to render all possible assistance in this regard. Dasti notices to be given."

The importers and the Commissioner of Customs have been given time to file affidavits and on consideration thereof appropriate directions would be issued.

The Basel Convention, which we have noticed hereinbefore has banned import of 76 items. The H.W. Rules, 1989, however, ban 29 items. What is the position of the remaining items, we

do not know except the stand of MOEF that the same is under consideration. We do wish to place on record that the Report of High Powered Committee (HPC) was submitted nearly 2 ½ years ago.

Considering the magnitude of the problem the MOEF should have bestowed more serious consideration that it has on these matters and taken appropriate steps.

In Chapter 5 relating to General Findings: Environment Protection Authorities - relating to the working of the Ministry of Environment and Forests and its various divisions, the structure of the Ministry, funds available to it, HPC has highlighted the approach which this particular Ministry and other connected with environment matter, are required to adopt. The said observations are:

5. GENERAL FINDINGS; ENVIRONMENT PROTECTION AUTHORITIES

5.1 THE MINISTRY OF ENVIRONMENT AND FORESTS (MOEF)

"The MOEF is the focal point in the Government of India for all matters relating to the environment. As the nodal Ministry, its first and foremost responsibility is to ensure coordination with all other Ministries that come into the picture. HPC discussions and studies show that there are major roles that have to be played by other Ministries as well.

For example, all imported goods have to pass through Customs, which comes under the Ministry of Finance. All matters relating to imports and exports are handled by the Ministry of Commerce under whom the DGFT and DGCIS (located in Calcutta) operate. The need for employment generation, and consequently, matters relating to labour and industrial policy, industrial safety, o

occupations health hazards, compensation for disability/death are all matters dealt with by the Ministry of Labour.

A significant part of environmental pollution relates to water (both surface water and, particularly, groundwater); the Ministry of Water Resources is clearly involved. Toxicological aspects of hazardous wastes like heavy metals, hormone disrupting chemicals and such other issues have to be dealt with by the Ministry of Health and major research facilities that come under it, particularly the Indian Council of Medical Research, and in accordance with the CSIR and the Department of Biotechnology.

There will also be many other Ministries involved on specific issues, such as the Ministry of Petroleum and Natural Gas in respect of the oil sector, and the Ministries of Railways, Defence and Surface Transport on matters relating to large scale use of battery systems and their disposal. There will be need for interaction with the Ministry of Law on matters that relate to legislation, and extensively with the State Governments in relation to implementation of laws, rules and regulations, and guidelines at grassroots level. This is not meant to be a complete statement covering all those who carry responsibilities that are connected with the environment, but only to highlight the major ones.

The HPC has noticed that the principal way of functioning thus far has been for the Ministry of Environment and Forests to write standard letters (usually at lower official levels) which either are not answered, unsatisfactorily answered or provide information that will not bear scrutiny; usually there is no scrutiny. There seems to be a uniform lack of concern at all levels in Government about the serious implications of the import, generation, buildup, transport and disposal of hazardous wastes in the country.

The MOEF is (presently) headed by a Cabinet Minister assisted by a Minister of State; and they have under them a Secretariat headed by a Secretary to the Government of India (from the transferable administrative side). The Ministry has staff consisting of administrative and technical personnel. The administrative staff strength (IAS/IRS/CSS etc.) in the Environment Wing of the MOEF has 435 sanctioned posts against which 416 posts are filled up. However, scientific/technical staff strength has only 86 sanctioned posts against which 79 posts are filled up. It is thus seen that there is a severe imbalance between the number of administrative and scientific posts in the MOEF. The factual position is presented in Vol.II: Annex A25. It must be recalled that this Ministry - both Environment and Forestry sides - was set up as a scientific, promotional Ministry and not as an administrative/bureaucratic Ministry which it has become.

The HPC is of the view that this change has been most undesirable, particularly with officers as senior levels, who are all administrators, subject to frequent transfers.

The Ministry can (and sometimes does) call upon the CPCB for advice on technical matters. From time to time, it appoints, at its discretion, technical committees for dealing with special issues.

The MOEF has a Hazardous Substances Management Division (HSMD) - presently headed by an IAS officer at Joint Secretary level - which deals with the management of hazardous wastes (both indigenous and imported), hazardous chemicals, major chemical accidents, municipal solid waste, biomedical waste and liability and compensation connected with chemical accidents. The Division is also the focal point for international environment agreements, namely, the Basel Convention on the Trans-boundary Movement of Hazardous Waste and its Disposal; the Convention on Persistent Organic Pollutants (POPs) (being negotiated); and Prior Informed Consent (PIC) procedures. The overall implementation of the HW rules, 1989, along with various regulations enacted on the above subjects all over the country lies with this Division. The Division has an allotment of only 6 scientists.

The ministry of Environment and Forests has a total annual plan budget of Rs.765 crores (Rs. 432 crores for Environment and Rs.333 crores for Forests) and a non-plan budget of Rs.115 crores (Rs.81 crores for Environment and Rs.34 crores for Forests) for the year 2000-2001. The HPC was told that the HSM Division is allocated approximately Rs.3.6 crores (of the Plan budget).

However, from the 53rd report on the demands for grants (1998-99) presented in the Rajya Sabha, the HPC noted that out of the sum of Rs.4 crores allocated to the HSM Division in that year, actual expenditure was only Rs.2.74 crores and the rest was surrendered. Yearwise budget allocations of the MOEF for the last five years are shown under Table 19.

It may be noted from Figure 1 (MOEF structure dealing with hazardous wastes) that there are only four officers responsible for overseeing the implementation of the HW Rules throughout the country. These officers are also responsible for formulation and implementation of new policies concerning management of these hazardous wastes, besides representing the Government at the Basel negotiations. Further, as can be seen from the same Figure 1, these officers also have responsibilities other than hazardous wastes within the Ministry.

The fact that the technical component of the MOEF is small, particularly noting that it was set up as a scientific department, and further, that the HSMD is even smaller, and the resources made available cannot be fully utilized, are all causes for the all-pervading malaise e.g. dependence on formulation of rules and introducing legislation, ritualistic adherence to bureaucratic formalities and no thought relating to promotional approaches, complacency, and finally, lack of focus on implementation.

The HPC believes that the principal role and responsibility of the MOEF should be to ensure the necessary concern and sense of urgency, and to ensure coordination amongst the various Ministries and State Governments on issues as they come up. Such coordination can be at the level of meetings taken by the Minister/Secretary in-charge of the Department; or where necessary, referred to the Cabinet Secretary who chairs Secretary-level inter-Departmental meetings. Ultimately, what we expect are results and not the paper-pushing, characteristic of bureaucracy, that provides the usual alibi.

Another important role that the MOEF has to play is to create awareness in society and other stakeholders at large, and to ensure educational training programmes. The latter should certainly cover those directly concerned with implementation programmes, e.g. environmental scientists, officials etc. A broader scope is required, one such as characterizes the campaign relating to tobacco where the hazards of lung cancer, respiratory diseases and so on are brought out in stark fashion; increasingly this has resulted in a ban on smoking in public areas/buildings, in aircraft, etc.

The MOEF also has a responsibility to ensure that research and development is conducted on scientific and technological aspects relating to this area. By and large, broad ranging and futuristic research has to be conducted with the support of the Central Government. It is unlikely that, in the present financial situation, any significant financial support will come from State Governments for this. The MOEF should also encourage industry and industrial associations to participate in research, particularly related to their specific areas of activity e.g. ETPs, CETPs, disposal facilities, clean and cleaner technologies, etc. There can also be a cess levied on those industries dealing with hazardous material, which should be specifically earmarked for the promotion of research and development. The HPC has dealt with the importance of research and development in this area at another place in this Report.

The MOEF has to work closely with the Planning Commission in the area of sustainable development. The need for development programmes to increase production, productivity and to create employment are well recognized. GDP growth, industrialization, energy production, exports are all part of this. However, this cannot be at the cost of present and the future in terms of quality of life for society as a whole. Industrial policy relating to what industries should be encouraged and permitted, the role of Small and Medium Enterprises (SMEs), issues relating to industrial estates (including their governance, facilities to be provided etc.), land use patterns, urban development and zoning and such other matters are of a general nature which call for overall national policy. These cannot be dealt with by any individual Ministry/Department with concerns only for its limited area of responsibility. MOEF has the responsibility to put forward the environmental implications implicit in various policy options.

The MOEF will clearly be the focal point in the Government of India with regard to the international issues that arise in this area.

The MOEF must be encouraged to make use of the vast technical capabilities that exist in the country. This may be in the form of facilities under a National Environment Protection Agency if such is constituted, or the present CPCB, suitably strengthened and assigned necessary responsibilities. In addition, the State Pollution Control Boards must be equipped and staffed properly, as also laboratories coming under various scientific agencies in the country and in the private sector. The MOEF must ensure that adequate facilities are available at the gateway points in the country (e.g. Ports, ICDs, Customs areas) to make the first level measurements to aid decision-making; as also certified laboratories (whether these are in the public or the private sector) which can provide reports that are scientifically valid and credible. Increasingly, exports will have to be environmentally compliant, suitably labelled and certified.

The above is meant to illustrate the firm view of the HPC that there are enough tasks for the MOEF to perform at the highest level, in terms of ensuring that the rest of the structure concerned with the area of environment (particularly hazardous wastes, their import, generation and disposal) functions in a manner where there is waste minimization in production, reduced use of toxics, maximum environmentally sound recycling, alternative uses of so-called wastes, reduced end-of-the pipe solutions and, finally, where unavoidable, environmentally safe disposal facilities. It is the foremost responsibility of the MOEF that the national institutional framework operates in a manner that can ensure this; and that there is a phased targeted program

me of actions. It should not be satisfied with just issuing rules/guidelines that are not implemented.

Nothing much seems to have been done. It is, therefore, imperative to direct the Central Government to consider in detail and with all seriousness, the recommendations of restructuring and other suggestions which flow from the aforementioned part of the Report. The Central Government and MOEF would also consider the strengthening of Hazardous Substance Management Division but not at the cost of weakening the other divisions.

Reverting to the question of ban on the lines of Basel Convention, while examining the question of placing a ban on other items in addition to 29 items, the MOEF will take into consideration what has been stated under heading 'A' (Imported Hazardous Waste which need to be included in the Rules and ban of other Wastes) in the directions sought for by the petitioner on the basis of the recommendation of HPC. Further, the Ministry would also examine the question of banning used edible oil, cow dung, plastic scrap used PVC in any form, pet bottles etc. which, though not covered by Basel Convention, has hazardous impact in terms of the HPC Report. According to the recommendations of HPC, these items also deserve to be banned. The Ministry shall also examine any other item which may have hazardous impact.

Next we consider the aspect of units that are operating without any authorisation or in violation of the conditions of authorisation issued under H.W. Rules, 1989 as amended up to date. There are many such Units as per report of HPC. [See HPC Report at B:Present status of units handling Hazardous Wastes included in ToRs.2,6,7 and 9]. State Pollution Control Boards and Pollution Control Committees are directed to close forthwith such Units.

On aforesaid aspect, one of the directions sought for by the petitioner is also that the authorization for any unit should not be issued or renewed until the occupier undertakes that they have a programme in place to reduce the volume or quantity and toxicity of hazardous wastes to the degree determined by them to be economically practicable and that the proposed method of treatment, storage or disposal is the most practicable method currently available to them which minimizes the present and future threat to human health and environment. By the Hazardous Wastes (Management & Handling) Amendment rules, 2003 Rule 21 in respect of Environmentally Sound Technologies and Standards for re-refining or recycling has been incorporated. Instead of issuing the directions as suggested, in our view, the purpose would be better served if the CPCB, from time to time, issues directions to SPCBs and all PCCs bringing to their notice the latest technologies and requiring the said Boards/Committees to ensure compliance thereof by the concerned units within the fixed time frame. CPCB is directed to comply.

Regarding the role of SPCBs, it has been observed by the HPC that in relation to authorisation granted, few or no authorizations were granted by the said Boards practically in the entire period after the Rules were notified up to the filing of the Writ Petition and the orders of the Court. Thereafter authorizations were granted enmasse. These authorizations were granted explicitly for the purpose of fulfilling the formal requirement under Rule 5 of the Rules so as not to attract punishment of the Court. The same were found by the Committee to have been granted without the recyclers having appropriate facilities for safe disposal of hazardous waste as required under Rule 5(4). It has further found that except in few cases like Andhra Pradesh and Gujarat no efforts appeared to have been made by the SPCB's to inspect facilities and to bring pressure on the units to bring their practice of handling hazardous wastes in line with the authorization granted.

HPC has recommended "the concerned SPCB should evolve a mechanism or checklist to ensure that an authorization to any unit generating or handling hazardous waste is granted only where it is justified by the availability of adequate treatment and disposal facilities and of adequately trained manpower. The authorization should be renewed only when, additionally, (a) the conditions prescribed by the SPCB have been duly observed by the occupier, (b) proper measures for the protection of health of workers have been taken and (c) a sound record of compliance with regulatory requirements imposed earlier has been maintained. The SPCBs should insist that any hazardous waste previously dumped by a unit be cleared before authorization is issued or renewed to a unit. Citizens may be consulted by public notice in this respect." In order to achieve the above object CPCB shall issue requisite checklist to SPCBs and ensure its compliance. Further, for effective implementation of the directions and to regulate the hazardous waste it is necessary to strengthen the SPCBs and CPCB by providing them the requisite infrastructure and manpower so that they can issue the necessary guidelines to monitor the handling of the hazardous wastes as suggested under Term of Reference No.12, in particular, the suggestion as contained at serial nos.3,4,6 & 7.

The HPC has found Hazardous Waste dumped in open and has stated that:

"The HPC has concluded that the hazardous wastes situation in India is fairly grim:

Hazardous wastes, found dumped in the open environment have been the cause of widespread pollution of ground water, creating drought-like situations in areas traditionally not lacking in water suppliers. Public hearings conducted by the HPC in several cities brought forward pleas and representations of distress from affected victims and harsh complaints about lack of response from statutory authorities. The authorities appear to have ignored several warnings, reports, investigations and studies that highlighted zones of ecological degradation due to indi

scriminate dumping and disposal of hazardous wastes. The HPC noted that there was a lack of policy and vision at the highest level. This has resulted in a very poor management system. This situation cannot be allowed to continue."

The authorities are directed to ensure that hazardous wastes are not allowed to be discharged in open dumps and on violation thereof prompt action be taken as per law.

RE: C. Implementation of Plastic Waste Recycling Rules, Battery Waste Recycling Rules, Draft Used Oil (Management and Handling) Rules.

MOEF is directed to ensure compliance of "Recycled Plastics, Plastics Manufacture and Usage Rules, 1999 and the "Batteries Management and Handling Rules 2001." The Ministry shall issue directions to all Public Sector Institutions not to openly auction their hazardous wastes but only to those who are registered units having Environmentally Sound Management Facilities.

RE: D. Safeguards in the import of Hazardous Waste; changes required to regulate the functioning of the Units handling hazardous waste:

Having considered the observations of HPC it would be appropriate at this stage to direct CPCB to consider the following suggestion of HPC:-

Particular care must be taken to prevent industries that use our Indian soil for processing of products and commodities of which production has been banned in other industrial countries.

Units which propose to engage in this activity should not be permitted or licensed under any circumstances. The Rules should effectively prevent this. It is not enough to protect the country from the import of hazardous wastes; we should also look carefully at the import of those industries that will generate problematic hazardous wastes. The import of industries or products must be carefully screened in order to avoid dirty technologies and products, and the CPCB should do research on this so that the relocation of these industries from industrialised countries to India is effectively thwarted and technology transfer does not turn into hazards transfer. The research done in this regard should be communicated by the CPCB to the SPCBs to form part of their decision-making data regarding consents and authorizations. After research, if necessary, CPCB shall take up the matter with the MOEF for requisite regulatory measure.

Another aspect that has been brought to our notice is the malpractice arising out of purported import of some permitted items.

From the submissions of Mr. Parikh and Mr. Joshi appearing for Container Corporation of India, it appears that unscrupulous traders in the garb of importing used oil or furnace oil, in fact, import waste oil which is a banned item. They also illegally import zinc wastes despite it being not permissible except in case where more than 65% of zinc can be recovered from the wastes.

Having regard to above, we direct that besides other action, when illegal import of hazardous waste takes place due to non-fulfilment of the requisite conditions required under the Rules, an enquiry should be conducted and appropriate action taken against concerned officer/officers of department responsible therein and, if necessary, a specific provision to that effect can be incorporated in Rules, wherever needed.

In respect of collection and transportation of used oil from different sources, authorities shall ensure that the same are sold to registered refiners or recycler and they give an undertaking to refine or recycle in terms of the Rules.

Reverting now to the issue of incinerators it is to be kept in view, as observed by the HPC that incineration is the most important treatment method for the destruction of all high calorific and highly toxic wastes. High temperature incineration at 12000 degree celcius mineralises (breaks down into basic non-toxic components) all kinds of organic matter. Destruction efficiencies of effectively 99.99% of toxic compounds with no generation of persistent organic pollutants should be the prime criteria for design of such disposal systems. It has further observed that in addition, while designing the disposal system, relevant operating parameters for example temperature, residence time and turbulence should be considered. On inspection it was found by HPC that barring a few, most of the incinerators are mere combustion chambers or industrial boilers where the maximum temperature is around 500/550 degree C, which is much too low.

Often they are not equipped with adequate air pollution control devices and all types of wastes, including non-chlorinated and chlorinated hydrocarbons, being burnt in the so-called incinerators. In the view of the HPC such incinerators, rather than destroying the hazardous constituent, actually succeed in generating toxic gases. There seems to be an urgent need to develop the design criteria for incinerators to safeguard the environments so as to have proper and efficient working of incinerators close to the place of generation of hazardous waste.

The HPC has comprehensively dealt with under Chapter 6.2 aspect of Right of Information and public involvement in hazardous waste issues, while considering the future agenda of taking hazardous waste aspect seriously.

Section 3(2)(12) of Environment Protection Act, 1986 stipulates collection and dissemination of information in respect of matters relating to environment pollution. Principle 10 of Rio Declaration recognizes the right to receive information and community participation with particular emphasis on hazardous materials. The said principle reads as under:

"Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including

g information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

Principle 4 stipulates that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 19 stipulates that the States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse trans-boundary environment effect and shall consult with those States at an early stage and in good faith.

The Report has emphasized that the members of alert and informed community who are fully aware of the nature of hazards and its impact on their health can help in protecting and saving the natural resources. It has referred to the law enacted in USA in the wake of Bhopal Gas Tragedy, namely, Emergency Planning and Community Right to Act, 1986, which requires preparation of emergency response plans by the companies with involvement of local community. It is also noticed that though Bhopal Gas Tragedy took place in our country, no such legislation has been enacted so far. Further HPC has given example of decision taken by Andhra Pradesh Pollution Control Board which decided that all Industrial factories shall put up two sign boards 6x4 ft. each at publically visible place at the main gate; the first providing information regarding the facility specific consent for establishment and consent for operating (CFO) conditions and the second providing information of release of pollutants - air emissions, water discharges and solid waste. It has been recommended that public participation should be secured in the management of Environment Pollution and Hazardous Waste to maximum possible extent. Suggestions given in these regards are these:

(i) Selected local residents should be appointed as wardens for environmental surveillance, particularly to take note of illegal dumping of hazardous wastes.

(ii) Access to public records with the environment protection authorities should be freely allowed to the public, as the right to a healthy environment has been defined as part of the Right to Life under Article 21 of the Constitution.

(iii) Relevant important information should be displayed on notice boards and newspapers and communicated through radio, television and the Internet. The HPC would like to see all industries, involved in hazardous chemicals and generating hazardous wastes display on-line data outside the factory gate, on quantity and nature of hazardous chemicals being used in the plant, as well as water and air emissions and solid wastes generated within the factory premises. If such data is not made available, the unit should be asked to show cause or even be asked to close down.

(iv) Informers and "whistle-blowers" within industry who provide information, should be protected and strict confidentiality about them maintained.

(v) Third-party audit of hazardous wastes, where the audit team includes members of the community, should be made a routine practice."

The suggestion is that an extensive awareness generation campaign should be taken by regulatory agencies. The HPC has prepared a list of Themes and short T.V. Programmes on hazardous wastes. All these aspects require a serious consideration by the concerned authorities.

The legal position has already been noticed. Clearly, the Right to Information and Community Participation necessary for Protection of Environment and Human Health is an inalienable part of Article 21 and is governed by the accepted environment principles. The Government and the authorities have to motivate the public participation by formulating the necessary programmes.

Another aspect which deserves to be noticed is about the effect of ship breaking activity covered TOR No.14. We are not suggesting discontinuing of ship breaking activity but it deserves to be strictly & properly regulated. When the ship arrives at a port for breaking, the concerned authorities have to be vigilant about the hazardous waste which may be generated if appropriate timely action by various agencies, in particular, Maritime Board and the SPCB are not taken. The major ship breaking activity in India is at Alang in State of Gujarat and, therefore, Gujarat Maritime Board and Gujarat SPCB have to be alive to the consequences of the appropriate steps to be taken before the breaking activities start. According to the recommendations of HPC, the Inter-Ministerial Committee comprising Ministry of Surface Transport, Ministry of Steel, Ministry of Labour and Ministry of Environment should be constituted with the involvement of Labour and Environment organizations and representatives of the ship breaking Industries. The ship breaking operation referred to above cannot be permitted to be continued without strictly adhering to all precautionary principles, CPCB guidelines and taking the requisite safeguards which have been dealt with extensively in the report of HPC which include the aspect of t

he working conditions of the workmen.

One of the issues to be dealt with is the disappearance of hazardous waste from authorised ports/(Indian Container Depots)ICDs/Container Freight Stations (CFSs) and also how to deal with the number of containers lying there. Disappearance of hazardous waste is subject matter of Term of Reference No.13. By Order dated 10th December, 1999, it was directed by this Court that list of importers who made illegal imports shall be placed on record. Our attention has been drawn to various affidavits as also to para 4.2 of HPC Report relating to large scale unauthorised imports. Since the list of such illegal imports was not forthcoming, this Court by an Order dated 3rd December, 2001 directed the Government to enquire into the matter. The Order dated 3rd December, 2001 led to appointment of 8 members Committee by the Government, to be chaired by Mr. A.C. Wadhawan. The Wadhawan Committee has submitted Report dated 26th July, 2002.

According to the Report of the said Committee, the stock position of hazardous goods lying at various ports/ICDs/CFSs is as follows;

" Name of Port/ICD/CFSNo. of Containers
ICD, Ludhiana.....63(+21747 drums)
ICD Tughlakabad.....427
ICD Ballabgarh.....10
Kandla Port Trust..... 21
Mumbai Port Trust..... 34
Jawaharlal Nehru Port Trust..331
Calcutta Port Trust.....1
Chennai Port Trust.....83+990 drums
(Quantity in tonnes)
ICD Bangalore.....86

The Report suggests that action against the importer for illegal import as per Customs Act, 1962 may have to be taken. Further, it notices that Central Board of Excise and Custom, Ministry of Finance were requested to ensure action against the importers of illegal consignments of hazardous waste.

Broadly there are two aspects of the matter; one relating to those illegal imports which have been cleared and the consignments have already found its way to the market. These alleged illegal imports were made few years back. In respect of this category of illegal imports, we direct that action against all concerned shall be taken by the concerned authorities in accordance with law..

The second aspect relates to the stocks of aforesaid hazardous waste, lying at various ports/s/ICDs/CSFs. The question is as to the manner in which this stock be cleared from the respective ports/ICDs/CSFs. Such stocks can again be divided into two categories; one, the category in respect whereof the import is banned under H.W. Rules, as amended upto date or falling under a banned category in terms of Basel Convention. Reference in this regard be also made to the order of this court dated 5th May, 1997 referred to hereinbefore. Out of the various consignments lying at aforesaid places, the consignments under this category shall have to be treated differently. Such consignments have either to be reexported, if permissible, or destroyed at the risk, cost and the consequences of the importer. There cannot be any question of permitting these consignments making their way to the Indian soil.

The second category relates to such hazardous waste in respect whereof the ban is not complete and which hazardous waste is regulated since it is permissible to recycle and reprocess it within the given and permissible parameters by specified authorised persons having requisite facilities, under the Rules, as amended up-to-date. The consignments falling under this category shall be released/disposed of or auctioned, in terms of Rules, to the registered recyclers/reprocessors. In case, after efforts, an importer of any of the categories is not traceable, the consignment imported by such importer may be dealt with at the risk, cost and consequences of that importer. The consignment of such importer cannot be permitted to remain at the ports etc. for reason of the importer not being traceable.

These consignments in terms of the directions aforesaid shall be dealt with/disposed of/auctioned by the Monitoring Committee appointed pursuant to this order.

It appears from the Report that about 80% of country's hazardous waste is generated in the States of Maharashtra, Gujarat, Tamil Nadu and Andhra Pradesh. This may also show good industrial growth in those States. Be that as it may, to ensure that the generation of hazardous waste is minimum and it is properly handled in every State including the aforesaid States, in particular, it is necessary to appoint a Monitoring Committee to oversee the compliance of law, directions of this Court and Rules and Regulations.

MOEF has constituted a Standing Committee on hazardous waste to advise the Ministry on issues pertaining to hazardous waste and other related areas. The Terms of Reference of the said Committee are these:

(a) Characterisation of hazardous wastes: Identification of hazardous waste and characterisation of the constituents that would render such wastes hazardous.

(b) Prohibition/restriction of Hazardous Wastes:- Identification and listing of hazardous wastes of prohibition/restriction for exports/imports and handling of these wastes.

© Environmentally Sound Technologies:- Identification and listing of Environmentally Sound Technologies for Reprocessing and recycling of wastes, treatment and disposal; and

(d) Any other matter requiring special advise from time to time.

The composition of the Committee is:-

Dr.G.Thayagarajan,Chairman
Senior Secretary,
COSTED, Chennai.

Mr.V.Rajgopalan,Chairman, CPCBMember

Director, NEERI, NagpurMember

Director, NML, JamshedpurMember

Director, IIP, DehradunMember

Director, NCL, PuneMember

Dr.NH HosabettuMember-Secretary
Director, HSH Dir,MOEF

Director, IICTCo-opted Member

We constitute a Monitoring Committee comprising of the aforesaid members as also Dr. Claude Alvares, NGO and Dr. DB Boralkar. This Committee shall oversee that the directions of this Court are implemented timely. It would also oversee that the aspects to which the Ministry has agreed are implemented in letter and spirit and without any laxity or delay in the matter. It would be open to the Monitoring Committee to co-opt a representative of the State Government or State Pollution Control Boards or any other person or authority as the Committee may deem fit and proper. The Monitoring Committee shall file quarterly reports in this Court.

In regard to import of sludge oil under Marpol Convention, we direct Central Government to file an affidavit, within three weeks, indicating in detail how the said oil is dealt with after import. It shall also be clarified in the affidavit whether such oil can, in the perception of the Central Government, be imported or it is only a technical import at the time of discharge of oil as suggested in the affidavit of Mr. M. Subba Rao, dated 14th February, 2003. This aspect including case of import by Daya Lubricant would be considered after filing of affidavit by the Central Government.

In the above background, in addition to directions as aforesaid, for the present, we issue the following further directions:-

SPCB:

(1)We direct all SPCBs/PCCs to implement the directions that may be issued by the Ministry of Environment and Forests (MOEF).

The SPCBs are directed to produce a comprehensive report on illegal hazardous waste dump sites in their jurisdiction. Reports should be based on inspection, assessment of the size of the dump site; age; whether the dump site is passive or active; whether any precautions have been taken to prevent damage to the environment. The SPCB will also take samples of the groundwater in the vicinity of the dump site at different points and prepare a report on contamination of the groundwater, if any, and if so, to what extent.

The SPCBs are directed to draw up a plan with financial estimates for immediate measures that may be required to stop environmental damage. A full scale rehabilitation plan should also be prepared, together with detailed estimate of costs. All these reports will be sent to the CP CB.

(2)Ship Breaking:-

We accept the following recommendations of HPC:

"1. Before a ship arrives at port, it should have proper consent from the concerned authority or the State Maritime Board, stating that it does not contain any hazardous waste or radioactive substances. AERB should be consulted in the matter in appropriate cases.

2. The ship should be properly decontaminated by the ship owner prior to the breaking. This should be ensured by the SPCBs.

3. Waste generated by the ship breaking process should be classified into hazardous and non-hazardous categories, and their quantity should be made known to the concerned authority or the State Maritime Board.

4. Disposal of waste material, viz. Oil, cotton, dead cargo of inorganic material like hydrate d/solidified elements, thermocol pieces, glass wool, rubber, broken tiles, etc. should be done

in a proper manner, utilising technologies that meet the criteria of an effective destruction efficiently of 99.9 per cent, with no generation of persistent organic pollutants, and complete containment of all gaseous, liquid and solid residues for analysis and, if needed, reprocessing. Such disposed of material should be kept at a specified place earmarked for this purpose. Special care must be taken in the handling of asbestos wastes, and total quantities of such waste should be made known to the concerned authorities. The Gujarat Pollution Control Board should authorize appropriate final disposal of asbestos waste.

5. The ship breaking industries should be given authorisation under Rule 5 of the H.W. Rules, 2003, only if they have provisions for disposal of the waste in environmentally sound manner. All authorizations should be renewed only if an industry has facilities for disposal of waste in environmentally sound manner.

6. The State Maritime Board should insist that all quantities of waste oil, sludge and other similar mineral oils and paints chips are carefully removed from the ship and taken immediately to areas outside the beach, for safe disposal.

(7) There should be immediate ban of burning of any material whether hazardous or non hazardous on the beach.

(8) The State Pollution Control Board (of Gujarat and other coastal States where this ship breaking activity is done) be directed to close all units which are not authorized under the HW Rules.

(9) That the plots where no activities are being currently conducted should not be allowed to commence any fresh ship breaking activity unless they have necessary authorisation.

(10) The Gujarat PCBs should ensure continuous monitoring of ambient air and noise level as per the standards fixed. The Gujarat PCBs be further directed to install proper equipment and infrastructure for analysis to enable it to conduct first level inspection of hazardous material, radio-active substances (wherever applicable). AER shall be consulted in such cases.

(11) The Gujarat SPCB will ensure compliance of the new Gujarat Maritime Board (prevention of Fire & Accidents for Safety & Welfare of Workers and Protection of Environment during Ship breaking Activities) Regulations, 2000, by Gujarat Maritime Board and should submit a compliance report to the Court within one year of the coming into force of the said regulations.

(12) The Notification issued by GMB in 2001 on Gas Free for Hot work, should be made mandatory and no ship should be given a beaching permission unless this certificate is shown. Any explosion irrespective of the possession of certification should be dealt sternly and the license of the plot holder should be cancelled and Explosives inspector should be prosecuted accordingly for giving false certificate.

(13) A complete inventory of hazardous waste on board of ship should be made mandatory for the ship owner. And no breaking permission should be granted without such an inventory. This inventory should also be submitted by the GMB to concerned SPCBs to ensure safe disposal of hazardous and toxic waste.

(14) Gujarat Maritime Board and Gujarat SPCB officers should visit sites at regular intervals so that the plot owners know that these institutions are serious about improvement in operational standards. An Inter-Ministerial Committee comprising Ministry of Surface Transport, Ministry of Steel, Ministry of Labour and Ministry of Environment should be constituted with the involvement of labour and environment organizations and representatives of the ship breaking industry.

(15) The SPCBs along with the State Maritime Boards should prepare land fill sites and incinerators as per the CPCB guidelines and only after prior approval of the CPCB. This action should be taken in a time bound manner. The maximum time allowed should be one year.

(16) At the international level, India should participate in international meetings on ship breaking at the level of the International Maritime Organization and the Basel Convention's Technical Working Group with a clear mandate for the decontamination of ships of their hazardous substances such as asbestos, waste oil, gas and PCBs. prior to export to India for breaking. Participation should include from Central and State level.

(17) The continuation or expansion of the Alang ship breaking operations should be permitted subject to compliance with the above recommendations by the plot-holders.

(18) That the above conditions also apply to other ship breaking activities in other Coastal States.

(3) Inventory:-

We direct that toxic inventory prepared by SPCBs regarding the generation of hazardous wastes, after its verification by CPCB shall be filed in this Court within 4 months so that order for its conversion into National Toxic Inventory can be passed.

(4) Dump sites:-

The Toxic inventory with regard to hazardous waste dump sites in different States should be prepared by SPCBs and after verification by CPCB, shall be filed in this Court within 4 months so that the orders can be passed on the same being treated as Authenticated National Inventory on hazardous waste dump sites.

(5) National Inventory:-

National inventory shall also be prepared by CPCB for rehabilitation of hazardous waste dump sites. The SPCBs are directed to ensure that all parties involved in hazardous chemicals and generating hazardous wastes display on line date outside the factory at the pattern of Andhra Pradesh.

(6) Bank Guarantee in Import of certain Items:-

MOEF should consider making a provision for bank guarantee being given by importer while seeking permission to import used oil, furnace oil and zinc wastes to be released only on the imported consignment being found to be in conformity with the declared item of import. After taking a decision, affidavit shall be filed within 4 weeks.

(7) Legislation:-

Under Article 9 the HPC has recommended that in order to deter any transboundary movement of hazardous wastes or other wastes, i.e. illegal traffic, the national/domestic legislation shall be enacted/amended appropriately to prevent and punish illegal traffic. The Government is directed to examine this aspect and file a report.

(8) Steps before clearance:-

Before clearance of any hazardous wastes imported to India the Port and Customs authorities would ensure that the consignment in question corresponds with the details of authenticated copy of Form 7 sent by the country of export.

(9) CPCB's Role:-

(CPCB, for a period of two years, would be empowered to monitor the import of hazardous waste, which means, it would be empowered to undertake random check from time to time as a safeguard

The CPCB will collate the data from the SPCBs directly from each SPCB, and will randomly cross-check the data upto 10% of the units, prior to preparing the National Inventory. In its report, the CPCB will also discuss any problems in the making of the inventory and particulars/details of any SPCB that has not cooperated with the Inventory.

The CPCB be directed to repeat the procedure (set out for inventory of hazardous wastes) for listing of illegal hazardous waste dump sites in the country.

The CPCB is directed to study the SPCB reports, make an evaluation of the proposals, countercheck the data generated in the reports, and produce a National Plan for Rehabilitation of Hazardous Waste Dump Sites. Such a Plan should be submitted to the Court within 4 months.

(10) Testing:-

The testing procedure and criteria evolved or which may be evolved by CPCB shall be followed by the concerned laboratories.

(11) Publication of Toxic Inventory & Community Participation:-

SPCBs take steps to ensure that relevant important information on Hazardous Wastes should be displayed on notice boards and newspapers and communicated through radio, television and the Internet. SPCBs should ensure that all industries involved in hazardous chemicals and generating hazardous wastes display on-line data outside the main factory gate, on quantity and nature of hazardous chemicals being used in the plant, water and air emissions and solid wastes generated within the factory premises. If such data is not made available, the unit should be asked to show cause or even be asked to close down.

(12) RE: Location of Industrial Sites and Secured Landfills:

The MOEF would consider the suggestion of HPC regarding development of National Policy for or landfill sites. The suggestion is to the following effect:

"In industrialised countries, the final selection of sites for disposal facilities lies with the Government. In view of this, a national policy needs to be developed for locating such centralised/common TSDFs. The location of final disposal facilities should be based on the total quantity of hazardous waste generated in the individual State. For effective monitoring and an economically viable facility, it is important to locate a centralised facility within a distance of about 100 km. of the waste-generating units. Those States which generate less than 20,000 tonnes per year of hazardous waste may be permitted to have only temporary storage facilities and then transfer the waste to the final treatment and disposal facilities in the nearby State. It is not necessary and also not advisable to develop a facility in each and every district and/or State as land is a valuable natural resource."

They would also keep in view the suggestion of the areas which may be excluded from locating the landfill sites.

(13)RE: National Policy Document on Hazardous Wastes:_

MOEF is directed to either itself or through the CPCB or any other agency draft a policy document on hazardous waste generation and its handling within the country. While examining this aspect the following recommendations of the HPC would be kept in view:

"The policy document should emphasise a commitment to the recycling of wastes and materials, and propose incentives for encouraging and supporting recycling. Industries must be given a clear message that they must show concrete and tangible results as far as prevention and reduction of wastes are concerned. If they do not, they should be made to pay a waste generation tax.

The policy document should enunciate a doctrine of partnership between SPCBs, entrepreneurs and other stakeholders like the community, which will involve working together on monitoring, preventing and reducing hazardous waste generation. The policy should review further growth of non-ferrous metallic waste, waste oil and used lead acid battery recycling in the SSI sector."

MOEF and Health Ministry shall examine and respond to the recommendations of HPC which read:-
"MOEF and Ministry of Health to compile an extensive data regarding exposure and epidemiological studies. They should also conduct a comprehensive research programme to determine the effect of hormonally effective synthetic chemicals. Directions may also be issued for centres of excellence for environmental health science and for existing institutes engaged in related activities. A network of R & D institutions, medical colleges and universities may also be created. MOEF should encourage the industries and their associations to participate in research activities concerning environmental health. These studies should be made public so that people can know about toxicity and its impact. A cess can be levied on the industries dealing with H.W., which should be specifically earmarked for promotion of R & D."

In the aforesaid order, wherever time frame for taking action has not been fixed the action shall be taken as per the Schedule hereunder:

S.No.

Activity

Time Frame

Agency

1

Proposed changes in the HW Rules,1989 as amended in 2003.

4 Months for compliance

MOEF

2

Review of List "A" Schedule VIII Items in BASEL Convention other than 29 banned items already included in the HW Rules,2003

4 Months for compliance

MoEF

3

Review of waste materials like used edible oil, cow dung, plastic scrap, used PVC in any form, PET bottles etc.,which are required to be banned.

4 Months for compliance

MoEF

4

Directions regarding compliance of Recycled Plastics, Manufacture and Usage Rules, 1999 and the Batteries (Management and Handling) Rules, 2001.

4 Weeks

MoEF

5

Directions to be issued regarding collection and transportation of used oil from different sources to be sold and recycled by registered refiners with requisite undertaking from refineries

4 Weeks

MoEF/CPCB

6

Closure directions to the units operating without any authorisation or in violation of conditions of operations issued under HW Rules, 1989 as amended.

3 Weeks

SPCBs/PCCs

7

Directions to SPCBs/PCCs bringing to their notice the latest cleaner technology and requiring the said Boards/Committees to ensure compliance thereof by concerned units within the fixed time frame.

3 Months

CPCB

8

Preparation and issuance of check-list and ensuring its compliance by SPCBs/PCCs.

3 Months

CPCB

9

Transportation of HWS (Preparation of Guidelines)

3 Weeks

CPCB

10

Amendment in the Rules incorporating the principles of Article 9 of the BASEL Convention-Affidavit to be filed.

4 Months

MoEF

11

Upgradation of Laboratories at Port/Docks/ICDs(Gateways)

12 Months with quarterly reports.

MoEF/Nodal Ministries

12

Uniform Testing Procedure to be followed by the Labs.

6 Weeks

CPCB

13

Direction regarding display of relevant information on HW by concerned Units.

4 Weeks

SPCBs/PCCs

14

Awareness Programmes in Media regarding HWS.

8 Weeks

MoEF/CPCB

15

Preparation of State/UT Inventories re. HW generation by SPCBs/PCCs.

3 Months

SPCBs/PCCs

16

Random check-up of the inventories by CPCB.

4 Months

CPCB

17

Submission of the State/UT Inventories regarding HW generation before this Hon'ble Court for preparation of National Inventory.

5 Months

CPCB/SPCBs/PCCs.

18

Preparation of States/UT inventories regarding Waste Dump Sites and Rehabilitation Plan.

3 Months

SPCBs/PCCs

19

Cross check by the CPCB and evaluation of the Rehabilitation Plan.

4 Months

CPCB
20

Submission of the said Inventory and Rehabilitation Plan before this Hon'ble Court.

5 Months
CPCB/SPCBs/PCCs.
21

Preparation and publication of National Inventory of HW generation and HW Dump Sites.

7 Months
MoEF/CPCB
22

Fixing time frame for implementation of Rehabilitation Plan by SPCBs/PCCs.

3 Months
SPCBs/PCCs
23

National Policy for Landfill Sites.

4 Months
MoEF/CPCB
24

Guidelines for proper functioning and upkeep of disposal sites.

3 Months
CPCB
25

Guidelines of HW Incinerators.

8 Weeks
MoEF/CPCB
26

Institutional Reforms MOEF/CPCB/SPCBs/PCCs.

3 Months
MoEF/Nodal Ministries
27

National Policy Documents on HW

9 Months
MoEF/CPCB
28

CPCB to do research and take up the matter with MOEF for requisite regulatory measures in regard to import of dirty technologies in Industries. -Steps to be taken

3 Months
MoEF/CPCB
29

Various directions with regard to ship-breaking.

1 Month
MoEF/State Maritime Boards/SPCBs

With the aforesaid directions the matters are adjourned.

Sd/-

.....J
(Y.K. Sabharwal)

Sd/-

New Delhi,.....JOctober 14,2003(B.N. Agrawal)

