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W.P(C)No. 657 OF 1995

ITEM No.1 Part-heard

Court No. 5

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

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 : 07/10/2003 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,A.Subba Rao,Ajay Sharma,Advs.

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 PCB 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.

For Pondicherry Mr.R.Mohan,Sr.Adv.

& W.Bengal PCB Mr.VG Pragasam,Adv.

For Karnataka PCB M/s Mahesh Agrawal,Rishi Agrawal,
EC Agrawala,Manu Krishnan,Advs.

For H.P. MrJS Attri,AAG
Mr.Vineet Sinha,Adv.

For M.P. PCB M/s SK Agnihotri,Sakesh Kumar,AK Pandey,
Yogmaya, Rohit K.Singh,Advs.

Mrs.D.Bharathi Reddy,Adv.

For U.P. Mr.Subodh Markandeya,Sr.Adv.
M/s Kamlendra Mishra,
Manoj Mishra,Rajeev K.Dubey,Advs.

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

For T.Nadu M/s PN Ramalingam,V.Balaji,Advs.

Noticee No.6 Mr.SK Dhingra,Adv.

Noicee No.14M/s S.Madhusudhan Babu,DN Mishra,Advs.

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

Pursuant to the orders dated 25th September, 2003, besides Commissioner of Customs, 13 out of 15 importers have been served. These parties are granted 10 days' time to file affidavits. Reply to those affidavits may be filed by the petitioner and/or the Ministry of Environment & Forests within a week thereafter.

The two importers that have not been served are permitted to be served by publication in one regional and one English Daily Newspaper having adequate circulation in Mumbai & Delhi. The steps for this mode of substituted service shall be undertaken by Ministry of Environment & Forests. To consider the aspect in relation to the imports affected by these 15 importers, the matter shall be placed on 4th November, 2003.

Seen the office report dated 12th April, 2003.The amount of Rs.35,000/- lying in the Registry shall be given to Indian Council of Legal Aid and Advice.

[Naresh Kumar] [VP Tyagi]
AR-cum-PS Court Master

[The Court further dictated the order. For further proceedings, list on 9th October, 2003, as last item among miscellaneous matters.]

24/9/2003

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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 PCB 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.

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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.

For Pondicherry & W. Bengal PCB Mr. R. Mohan, Sr. Adv. Mr. VG Pragasam, Adv.

For Karnataka PCB M/s Mahesh Agrawal, Rishi Agrawal, EC Agrawala, Manu Krishnan, Advs.

For H.P. Mr. JS Attri, AAG Mr. Vineet Sinha, Adv.

For M.P. PCB M/s SK Agnihotri, Sakesh Kumar, AK Pandey, Yogmaya, Rohit K. Singh, Advs.

Mrs. D. Bharathi Reddy, Adv.

For U.P. Mr. Subodh Markandeya, Sr. Adv. M/s Kamalendra Mishra, Manoj Mishra, Rajeev K. Dubey, Advs.

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

For T. Nadu M/s PN Ramalingam, V. Balaji, Advs.

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

After hearing learned counsel for the parties, the Court made the following order:
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 issue 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 Section 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 landfills are ready and operational -- two in Maharashtra, one in Andhra Pradesh and eight in Gujarat and that these landfills are in accord 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 should issue the requisite guidelines to be followed for the purpose of upkeep of the disposal sites.

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 occasional 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.

The matter remains part-heard.

[Naresh Kumar][S.Thapar] [VP Tyagi]
AR-cum-PSPS to Registrar Court Master