Before Binod Kumar Roy, C.J. & S.S. Nijjar, J

SUKHDEV SINGH & ANOTHER,—*Petitioners*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 12919 OF 1999

30th May, 2003

Constitution of India, 1950—Arts 21 & 226—Haryana Notifications dated 18th December, 1997 & 30th October, 1998—Identification of stone crushing zones—Government by issuing notification dated 30th October, 1998 reducing the minimum distance for setting up stone crushers from village Abadi as prescribed in Notification dated 18th December, 1997—Challenge thereto—No challenge to Notification dated 18th December, 1997—High Court already upholding Notification dated 30th October, 1998 in a number of cases—Maintainability—Petitions barred on the principles of res judicata & constructive res judicata—Public Interest Litigation—Meaning of—Not for personal gain or private profit or political motive or any oblique consideration—No public interest in the petitions—Petitions not vated by interests other than those of the public—Abuse of the process of Court—Petitions dismissed being misconceived—Costs imposed.

Held, that the writ petitions are wholly misconceived. Notification dated 18th December, 1997 has not even been challenged. The challenge is only to notification dated 30th October, 1998 which is merely an amendment of the notification dated 18th December, 1997. By this notification, the limit of 1Km has been reduced to 400 metres as the minimum limit for setting up stone crushers from the village Abadi by notification dated 18th December, 1997. The notification dated 18th December, 1997 is a culmination of the piece-meal steps taken by the State of Haryana for controlling pollution generated by the stone crushers.

(Para 16)

Further held, that the parameters of the limits prescribed for stone crushers within the identified crushing zones were not the same as the parameters prescribed for stone crushers outside the identified

zones. All the notifications had been challenged by respondent No. 4 and some others in CWP No. 17459 of 1995. The same was dismissed in limine. The Civil Appeals filed before the Supreme Court were dismissed as withdrawn. For the reasons stated by the Division Bench in the judgment rendered in CWP 17459 of 1995, the present writ petitions are barred on the principles of *res judicata*/ constructive res *judicata.*

(Paras 22 & 23)

Further held, that the scope of judicial review in matters of policy is confined to the very narrow limits. We, therefore, find no reason to interfere with the various decisions taken by the State of Haryana in modifying the distance limits for setting up stone crushers from the village abadi from time to time.

(Para 40)

Further held, that the writ petitions have not been filed in public interest. Had there been even an iota of truth in the claims put forward by the petitioners, they would have challenged the original provision in the Notification dated 18th December, 1997 which had excepted the stone crushers sited within the identified zones from the distance of 1KM from the village Abadi. The petitioners are motivated by interests other than those of the public of the village. The process of this court has been thoroughly abused by the petitioners in the name of public Interest Litigation. The writ petitions have not been filed in good faith to genuinely redress any grievance of the inhabitants of the village. The writ petitions seem to be filed merely to stall the setting up of the new stone crushers under the present parameters.

(Para 41 & 43)

2. C.W.P. NO. 17168 OF 1998

Sukhdev Singh and others versus *State of Haryana and another.*

3. C.W.P. NO. 8121 OF 1999

Satish Kumar and other versus *State of Haryana and Anr.*

J.K. Sibal, Sr. Advocate with Sapan Dhir, Advocate—*for the petitioner.*

Randhir Singh, Sr. Deputy Advocate General, Haryana, *for respondent-State*

M.L. Sarin Sr. Advocate,—*with* Hemant Sarin, Advocate,—*forrespondent* No. 2

H.S. Mattewal,—*Sr. Advocate with* Sanjiv Sharma, Advocate,—*for respondents No. 4 to 7*

JUDGMENT

S.S. NIJJAR, J

(1) This Judgment will dispose of CWPs No. 12919 of 1999, 17168 of 1998 and 8121 of 1999. It is claimed that the writ petitions have been filed in public interest.

(2) The Supreme Court pioneered the concept of Public Interest Litigation (PIL) for the effective enforcement of the Fundamental Rights enshrined in the Constitution of India.

(3) Public Interest Litigation was initially resorted to ventilate the grievances of the poor, ignorant and socially disadvantaged segments of the Indian Society. By normal process, many weaker sections of the society are not able to reach the portals of justice due to the normally tardy and expensive procedure of law. Public Interest Litigation was resorted to for protecting the human rights of the weaker sections of the Indian Society guaranteed under Article 21 of the Constitution of India. But this sphere of public interest litigation has grown many fold over the last few years. The Supreme Court has, therefore, had to lay down, on a number of occasions the guidelines in which a particular matter may be treated as Public Interest Litigation. Merely because a writ petition is stated to be filed in Public Interest Litigation is not to be taken by the courts on its face value. The Courts have to examine as to whether the petition has been *bona fide* presented to protect any of the Fundamental Rights or to root out any particular menace in the society. In the Case ***BALCO Employees Union (Regd.)*** versus ***Union of India, (1)*** the Supreme Court observed as under :-

> "76 Public Interest Litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It

(1) AIR 2002 S.C. 350

will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the Court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interest. Public Interest Litigation was intended to mean nothing more than what words themselves said viz., 'litigation in the interest of the public.'

77. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in following words :—

"PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive.

*Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).

*Where the affected persons belong to the disadvantaged sections of society (Women, Children, bonded labour unorganised labour etc.).

*Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).

*Where judicial intervention is necessay for the protection of the sanctity or domocratic institutions (independence of the judiciary, existence of grievances redressal forums).

*Where administrative decision related to development are harmful to the resources such as air or water."

78. There is, in recent years, a feeling which is not without any foundation that Public Interest Litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counter-productive.

79. PIL is not pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same."

(4) Thereafter, the Supreme Court quoted Bhagwati, J. in the case of ***S.P. Gupta*** versus ***Union of India and another(2)*** wherein it was observed as follows :-

"24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration . . . ."

(2) 1981 (Supp.) S.C.C. 87

(5) The aforesaid observations of Bhagwati, J. have been reiterated in the case of ***Shri Sachindanand Pandey and another*** versus ***The State of West Bengal and others, (3)*** V. Khalid, J. observed as under :-

> "61. It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants." (Emphasis supplied)

(6) Thereafter, in the case of ***Janata Dal*** versus ***H.S. Chowdhary and others, (4)*** the Supreme Court observed as follow :—

> "109. It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievances, deserves rejection at the threshold. (Emphasis supplied)
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> .....the busybodies, moddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for

(3) AIR 1987 S.C. 1109
(4) (1992) 4 SCC-305

themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffliing their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system."

(7) With the aforesaid preface, we now proceed to examine the present three writ petitions on the basis of the guidelines laid down by the Supreme Court. The relevant facts have been culled out from the voluminous pleadings of the parties in the aforesaid three writ petitions.

(8) CWP No. 8121 of 1999 has been filed by two individuals praying for the issuance of a writ in the nature of certiorari quashing the Notification, dated 30th October, 1998 and for the issuance of writ in the nature of mandamus directing the respondents to pass appropriate orders for closing the stone crushers operating in Gurgaon region outside the Notified Crushing Zones, Without obtaining "No Objection Certificates". They were particularly aggrieved by reduction of the minimum limit to 400 metres from village abadi from the 1000 metres which has been prescribed in the Notification, dated 9th June 1992. Similarly CWP No. 17168 of 1998 has been filed by 20 residents of village Naurangpur. They have pleaded that they have been compelled to come to court again due to the *mala fide* action of the Haryana Government in reviving the work of the stone crusher units which had been closed by the judgment passed by the Division Bench of this Court on 10th July, 1995 in CWP No. 7418 of 1994 ***(Ishwar Singh*** versus ***State of Haryana and others, (5)***. They have pleaded that the action of the Haryana State is violative of fundamental duties as enshrined under Article 51 (g) of the Constitution of India. They have also stated that their right to healthy environment as protected in Article 21 of the constitution of India has also been violated. They

(5) (1995-3) PLR 613

have pleaded that there were many bouts of litigations on behalf of the stone crushers which were directed to be closed in view of the judgment of this Court passed in Ishwar Singh's case *(supra)*. The stone crushers had lost the battles to the Supreme Court. Reluctantly, the stone crusher units shifted to identified zones or to new sites falling within the prescribed limits of parameters. The petitioners had come to know that the State of Haryana was intending to reduce the minimum distance prescribed in the Notification dated 18th December, 1997 to 400 meters or so. The petitioners sent a legal notice to the respondents dated 24th September, 1998 asking them to desist from relaxing the distance of 1 KM to 500 meters. However, without taking any decision on the legal notice, respondents no. 1 and 2 issued the Notification dated 30th October, 1998, reducing the prescribed distance to 400 meters. The effect of this Notification would be to nullify the judgment of this Court passed in Ishwar Singh's case *(supra)*. They have come to the court with the prayer that the Notification, Annexure P-9 reducing the minimum distance from village abadi to 400 meters be quashed. It is stated that the Notification is issued for extraneous considerations.It is further pleaded that earlier also, the Supreme Court had the occasion to consider the problem with regard to extensive air pollution when CWP No. 4677 of 1985 ***(M.C. Mehta etc.*** versus ***Union of India and others (6)*** and CWP No. 484 of 1994 *(Kanshi* versus *Union of India)* were filed in public interest. In those writ petitions, it was undertaken inter-alia by the State of Haryana that no stone crushers would be permitted at all by the Government of Haryana to function within a distance of 1 KM from the village abadi. Subsequently, however, the State of Haryana has succumbed to political pressure and this minimum distance has now been ultimately reduced to only 400 meters from the village abadi. The petitioners have taken these facts from CWP No. 14527 of 1998, which is said to have been filed by R.A. Goel, former chairman of the Haryana Pollution Control Board challenging the super-session of the Board. The petitioner herein also seeks the quashing only of Notification dated 30th October, 1998. No challenge is made to the Notification dated 18th December, 1997. Amended CWP No. 12919 of 1999, has been filed by one Sukhdev Singh and one Ram Saran. These two

(6) J.T. 1992 (4) S.C. 46

pettioners are petitioners no. 1 and 2 in CWP No. 17168 of 1998. The petitioners claim to be landlords of village Naurangpur. They claim to be farmers. They also claim to have filed this writ petition in public interest to put an end to the pollution being caused by the stone crushers operatiing within the distance of 400 meters from the village abadi. This writ petition is almost a verbatim copy of CWP No. 17168 of 1998. They, however, acknowledge that in the Notification dated 18th December, 1997, the normal minimum distance of the identified zone from the village abadi stood reduced to 850 meters for such crushers which are continuously working for more than one year as on the date of Notification. The petitioners became suspicious as they noticed some feverish activity in Naurangpur by the local politicians of Gurgaon District. They had been joined by the owners of stone crushers who had been ordered to be closed by this Court in Ishwar Singh's case *(supra)*. Owner of respondent-Deepak Grit Udyod (Mahinder Singh) is said to have purchased two acres of land in the name of his wife and his wife's brother. They have challenged the issuance of "No Objection Certificates" Annexures P-9, P-10 and P-11 which have been issued in favour of respondents no. 4 to 6 by the Pollution Control Board, respondent no. 2. It is stated that Note 2 added to Scheduled I of Notification dated 18th December, 1997 has destroyed the main provision of the Notification which provided that the minimum distance for setting up stone crushers shall be 1 KM from village abadi. This, according to the petitioners, has been the position since 1992 which has been upheld by various judgments of this Court. Still Note 2 was added to Schedule I in Notification dated 18th December, 1997. A prayer is, therefore, made to quash the No Objection Certificates" issued in favour of respondents no. 4 to 6 (Annexures P-9 to P-11). A direction is sought to restrain respondents No. 2 and 7 from permitting to install new stone crushers within 1000 meters from village abadi. Again, it is to be noticed that the Notification dated 18th December, 1997 has not been challenged.

(9) Written statements have been filed by the respondents. It has been stated that the writ petitions have not been filed in public interest. They have been filed at the instance of stone crushers which are operating beyond the limit of 850 meters from the village abadi, but within the 1 KM limit. In the written statement filed by respondent

No. 4 in CWP No. 17168 of 1998, it has been stated that the writ petition is filed at the instance of 11 firms operating withing a distance of 720 metres from the village abadi. The names of these firsm are as under :-

(1)	M/s New Geeta Stone Crusher Co.,	Naurangpur
(2)	M/s Rathi Stone Crusher Co.,	-do-
(3)	M/s Super Blue Grit Udyog	-do-
(4)	M/s Super Fast Grit Udyog	-do-
(5)	M/s Aravali Grit Udyog	-do-
(6)	M/s Dagar Grit Udyog	-do-
(7)	M/s New Yadav Grit Udyog	-do-
(8)	M/s New Maman Grit Udyog	-do-
(9)	M/s Dharam Stone Crushing Co.,	-do-
(10)	M/s Puja Stone Crushing Co.,	-do-
(11)	M/s Sivaji Stone Crushing Co.,	-do-

(10) According to the written statements filed by the respondents, respondents no. 4, 5 and 6 have been shifted to the identified zones in view of the orders passed by this Court in **Ishwar Singh's case** *(supra)*. It is also stated that the controversy raised herein has already been settled by a Division Bench Judgment of this Court in the case of Fatia Mohammad in CWP No. 19010 of 1995 decided on 28th May, 1996. Subsequently, also a number of writ petitions were filed in this Court which were disposed of by the Division Bench on 23rd December, 1999.

(11) We have heard the learned counsel for the parties at length and perused the paper book.

(12) Mr. Sibal has submitted that the notification, Annexure P-7 is vague and arbitrary. There is no justification for excluding the stone crushers within the identified zones from the operation of the notification, Annexure P-7. He further submitted that the "No Objection

Certificates", Annexures P-9 to P-11 have been granted illegally in violation of the siting parameters laid down in the notification dated 18th December, 1997. According to the learned Sr. Counsel, deviation from the distance of 1KM amounts to colourable exercise of powers. Learned Sr. Counsel further submitted that the "No Objection Certificates" could not have been issued without hearing the affected parties. Mr. Sibal further argued that the "No Objection Certificates" have been issued in contravention of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. The entire land of Naurangpur has been declared as controlled area. Learned Sr. Counsel further argued that the action of the respondents is clearly aimed at nullifying the judgment of this Court in Ishwar Singh's case *(supra)*. In support of this submission, learned Sr. Counsel relied on the judgment of the Supreme Court in the case of ***Indian Aluminium Co. and others*** versus ***State of Kerala, (7).***

(13) Mr. Randhir Singh, Deputy Advocate General, Haryana has submitted that a number of notifications have been issued by the State of Haryana to bring under control any violation that may be caused by the stone crushing units. Therefore, crushing zones were notified throughtout State of Haryana. Learned counsel has placed on record a compilation of all the notifications issued by the State of Haryana since 9th June, 1992. He further submitted that the siting parameters have been prescribed, on the basis of the advice rendered by the expert bodies. The State of Haryana has followed the State of Punjab which had set up an expert body to lay down the proper criteria for sitting of the stone crushers and for control of pollution.

(14) Mr. Mattewal has argued that the respondents have been shifted to identified zones, on the basis of the directions issued by this Court in Ishwar Singh's case *(supra)*. He has submitted that respondents no. 4, 5 and 6 have been deliberately dragged into the litigation by the petitioners. The original stone crusheres belonging to the respondents have been closed by orders of this Court. The new stone crushers which have been established by the respondents in the identified zones are not in infringement of any law.

(15) Mr. M.L. Sarin, Learned Sr. Counsel has pointed out the entire litigation history with regard to the location of the stone crushers. Learned Sr. Counsel has submitted that "the No Objection Certificates"

(7) (1996) 7 S.C.C. 637

have been issued in accordance with law. The writ petitions are liable to be dismissed as being motivated by consideration other than public interest. He further argues that the writ petitions are not maintainable on the principles of *res judicata* and constructive *res judicata.*

(16) We have considered the submissions made by the learned counsel for the parties. We are of the considered opinion that the writ petitions are wholly misconceived. Notification dated 18th December, 1997 has not even been challanged in CWP No. 17168 of 1998. The challenge is only to notification dated 30th October,1998 which is merely an amendment of the notification dated 18th December, 1997. By this notification, the limit of 1 K.M has been reduced to 400 metres as the minimum limit for setting up stone crusheres from the village abadi by notification dated 18th December, 1997. This limit had been reduced to 850 metres provided the stone crusheres satisfy the other conditions contained in the aforesaid notification. The notification dated 18th December, 1997 is a culmination of the piece-meal steps taken by the State of Haryana for controlling pollution generated by the stone crushers. In the land-mark judgment in the case of ***M.C. Mehta etc.*** versus ***Union of India and others (8),*** the Supreme Court held that every citizen has a right to fresh air and to live in pollution-free environment. Certain directions have been given in the aforesaid judgment. The Government of Haryana in accordance with the provisions of the Environment Protection Act, 1996 and the rules framed thereunder in order to protect and to maintain an ecological balance, issued a notification on 9th June, 1992. In this notification, the siting parameters of stone crushers were fixed. The stone crushers were also given certain directions to install pollution control measures. This notification provided that no stone crusher unit shall be allowed to operate within 1 K.M from village abadi. It was further provided that the stone crushers which do not fall within the siting parameters will shift to the crushing zones which will be identified by the Government within six months from the date of the issue of the notification. By Notification No. S.O.94/C.A., 1986/S.5 &7/92, dated 4th August, 1992, the Haryana Government identified the stone crushing zones. 25 stone crushing units would be accommodated in a single zone. It was also provided in the notification that crusher units which do not fall within the parameter as laid down in the notification dated 9th June, 1992 shall be closed dwon. In village

(8) J.T. 1992 (4) S.C. 46

Naurangpur certain lands which have been included in the identified zones were found to be within 1 KM limit from village abadi. Therefore, notification dated 4th August, 1992 was clarified by notification dated 24th November, 1992. These areas falling within 1 K.M limit were excluded from the identified zones. Relying on the aforesaid, Mr. Sibal has vehemently argued that identified zones cannot be permitted to be in an area which is within 1 K.M of the village abadi.

(17) We are unable to accept the aforesaid submission. As noticed earlier, identified zones had been earmarked by the Haryana Government on 4th August, 1992. Respondents No. 4, 5 and 6 and some other stone crushing units were not being shifted to the identified zones, although they were operating within the 1 K,M limit from the village abadi of Naurangpur. A public spirited villager, Ishwar Singh filed CWP No. 7418 of 1994 (1995-3) PLR 613 challenging the inaction of respondents No. 1 and 2 and sought directions for the closure of the stone crushers and their shifting to identified zones. A Division Bench of this Court consisting of R.P. Sethi and S.S. Sudhalkar, JJ. allowed the writ petition on 10th July, 1995, as follows :—

> "45. Under the circumstances this petition is disposed of with the following directions.
>
> (1) That all the private respondents who are owners of the stone crushers, shall close down their stone crushing business and shift them to the identified zones positively within a period of one month from the date of this judgment;
>
> (2) The State Government shall take immediate steps for closure and shifiting of stone crushers to the identified zones and issue licenses only in favour of such persons who decide to shift their business of stone crusher to the identified zones;
>
> (3) That all the stone crushers located at present locations shall be deemed to have been closed after one month and shall not be permitted to carry on business of stone crusher on any ground or pretext whatsoever;
>
> (4) That the private respondents shall not purchase and the petitioner shall not sell his land, situated in identified zones for the purposes of installation of crushers or any other identical and ancillary purpose;

(5) That the citizens of the area are authorised to prefer their claims for grant of compensation; for those persons who are proved to have suffered due to pollution caused by stone crushers owned and managed by private respondents. Claims for such compensation may be entertained within two months after such right is notified to the inhabitants of the area. Such claims, if preferred, shall be considered and disposed of within three months and if any of the respondents-stone crusheres is found to be responsible for making compensation, the same shall be paid by him within a period of two months thereafter, failing which his license for carrying on stone crusher business shall be cancelled. It is expected that while issuing the notification inviting the claims for compensation, the respondent-State shall appoint an Authority for entertainment and adjudication of such claims for compensation. It would be appreciated it the person having judical background is appointed as such authority;

(6) That even though the State of Punjab has not been a party before us, yet copy of this judgment shall be served upon the Chief Secretary of State of Punjab for taking up appropriate steps as per our observations made hereinabove.

(7) A copy of this judgment shall be sent to the Chief Secretary of Government of Himachal Pradesh and the Registrar of the High Court of Himachal Pradesh for their information and necessary action. If so desired."

(18) As a result of the aforesaid directions, the crushers belonging to respondents No. 4, 5 and 6 were ordered to be closed. The aforesaid judgment in the case of Ishwar Singh was rendered by this Court on 10th July, 1995. Within six months, on 29th November, 1995, respondents No. 4, 5 and 6 alongwith 15 other stone crushing units moved the Court again by way of CWP No. 17459 of 1995 (1996-1) PLR 609. It was pleaded that the petitioners had been running stone crushers since 1981-82 in the revenue estate of Village Naurangpur and Manesar in District Gurgaon. They were directed to be closed on 9th August, 1995, in view of the judgment given by

this Court in CWP No. 7418 of 1994 decided on 10th July, 1995. The petitioners challenged notifications dated 9th June, 1992, 4th August, 1992, 24th November, 1992, 30th November, 1992 and 11th December, 1992. It was pleaded that the vires of the aforesaid Notifications had not been challenged in Ishwar Singh's case (*supra*). The claim that the stone crushers of the petitioners therein are situated at the foothills of Arawali ranges. Therefore, there is natural protection for the residents of village Naurangpur from any pollution which may be caused by the stone crushers. It was also pleaded that the distance of the stone crushers of the petitioners was more than 500 meters. This distance, according to the petitioners, was a reasonable distance which was also supported by a study carried out by the Central Pollution Control Board and the Notional Productivity Council of India. In the reports submitted by these two institutions, a distance of 500 meters has been recommended as a safe distance for setting up of the stone crushers. The recommendations of the reports prepared are for the guidance of the entire country. It was pleaded that they have been followed by Pollution Control Boards in the States of Punjab. Karnataka, U.P. and Bihar. A Notification dated 10th May, 1993 was issued by the State of Punjab fixing the siting parameters not within 500 metres from the National Highway or the State Highway or important roads or from residential areas. In the State of Karnataka, the prescribed distance from dwelling areas was sought to be only 250 metres. In U.P., the minimum distance prescribed was 300 metres from abadi. In Bihar, it was prescribed to be 1500 metres which is equal to 500 yards. The distance was said to have been prescribed by the Madhya Pradesh also. Inspite of the aforesaid report, the State of Haryana in the Notification dated 9th June, 1992 had prescribed a minimum limit of 1 K.M from village abadi for sitting of the stone crushers. These parameters were said to have been made more stringent by adding new parameters in the amended Notification dated 18th December, 1992. These Notifications were said to be unreasonable as they did not follow the guidelines laid down by the Central Pollution Control Board. They did not take into account the fact that balance has to be struck between requirement of the Society and the Industrial sectors and the requirement of citizen for clean environment. The unreasonableness of the sitting parameters was proved, according to the petitioners, by the fact that most of the stone crushing zones

identified by the Haryana Government itself in Notification dated 4th August, 1992 do not fulfil the parameters fixed by the Notification dated 9th June, 1992 and 18th December, 1992. It was pleaded that the fixing of the parameters by the aforesaid two notifications are arbitrary and amounts to placing unreasonable restrictions on the rights of the petitioners to carry on the business of stone crushers. It was further pleaded that the stone crushers situated in the identified zones are not immune from the siting parameters fixed by the aforesaid Notification. On the basis of the aforesaid averments, it was, *inter alia,* prayed that the stone crushers which fulfil the criteria laid down in the national level guidelines, should be allowed to function at their respective places by modifying the directions contained in the judgment dated 10th July, 1995 rendered in Ishwar Singh's case (*supra*). The writ petition was dismissed with the following observations :—

> "6. The facts narrated hereinabove clearly and unambiguously lead to the conclusion that the present writ petition is barred by the principle of *res judicata.* The said principle has been acknowledged to be founded on equity, justice and good conscience, intended to give conclusiveness of judgments as to the points decided, in every subsequent suit between the same parties. The Principle of *res judicata* is based partly on the maxim of Roman *Jurisprudence*, interest *relpublicae ut sit finis litium*-it concerns the State that there be an end to law suits and partly on the maxim memo debet *bis vexari pro una et eadem causa*-no man should be vexed twice over the same cause. In the absence of such a rule, there is every likelihood of the multiplicity of litigation, with no end to it and rights of the persons would be involved in endless confusion and great injustice done under the cover of law. The principle of *res judicata* is intended not only to prevent a new decision, but also to prevent a new investigation so that the same person cannot be harassed again and again in various proceedings upon the same question of law.

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13. Otherwise also, the arguments of learned counsel for the petitioners based upon the study report on stone crushers at National Level conducted by Central Pollution Control Board and National Productivity Council of India, cannot be accepted. This Court in Ishwar Singh's case *(supra)* had referred to the experts report and found on facts that appropriate directions were required to be issued. The reliance of learned counsel for the petitioners again is misconceived inasmuch as the experts have nowhere opined that the stone crushers be located within 500 metres of the inhabited areas. We have perused the aforesaid report and found that this Court had already taken sufficient precautions while upholding the action of the respondent/State of Haryana in providing the demarcated zones at a well defined and well reasoned distance. Similarly, reliance of learned counsel upon Annexures P/3 is again the subject matter of pending litigation and secondly, the notification relied upon is an interim arrangement made by the State of Punjab Annexure P/4 is also not based upon any scientific study and the mere mentioning of the fact that the distance of the stone crushing units from the nearest dwelling should not be less than 205 metres" does not help the petitioners inasmuch as in the same annexure, it is mentioned, that the mimimum distance should be 2 K.Ms. from temples, schools, highway and rivers.

14. The writ petition even on merits is misconceived, filed *mala fidely* with the object of frustrating the earlier judgment of this Court in Ishwar Singh's case *(supra)* and intended to prolong the agony of polluting the atmosphers near Gurgaon and around the Capital of India. No fundamental or legal right of the petitioners has been violated as they have been given liberty to shift their stone crushers to the demarcated zones subject to availability of the land. Permitting to continue the profession at a specified place which admittedly affects the health and safety of the people in general cannot be held to be equated with any fundamental

right as enshrined in part III of the Constitution of India. The writ petition being totally misconceived, is dismissed in limine."

(19) A perusal of aforesaid observations shows that the Division Bench dismissed the writ petition in limine. It has held :— (1) that the second writ petition is barred on the principle of *res judicata*/constructive *res judicata*; (2) that even the expert study report has nowhere opined that the stone crushers can be located within 500 metres of the inhabited area; (3) that no fundamental right or legal right of the petitioner has been violated as they have been given opportunity to shift their own stone crushers to the demarcated zones subject to availability of the land. Therefore, the claim of the stone crushers to continue operation within 1 K.M, even outside the identified zones has been specifically negatived. We are informed that the petitioners filed Special Leave Petition Nos. 5282 and 5283 of 1996 against the aforesaid judgments in Ishwar Singh's case and Deepak Grit Udyog's case. Civil Apeeal Nos.14175-1476 of 1996 arising out from the aforesaid SLPs were dismissed by the Supreme Court on 18th July, 200 with the following orders :—

"Mr. Sibal, the learned senior counsel for the appellant submits that the notifications in question pertaining to the location of the stone crushers which are the subject matter of the present civil appeals have been superseded by fresh notifications which have been issued by the State of Haryana. In view of this, appeals have beçome infructuous.

He further states that the new notifications have been challenged in C.W.P. Nos. 17168/98 and 12919/98 being in the nature of public interest litigation relating to the stone crusheres are pending in the High Court of Punjab and Haryana and implementation of the notification has been stayed. He submits that as a result thereof the petitioners herein and the other similar stone crushers are very seriously affected. We expect and hope that the said writ petitions will be taken up and disposed of by the High Court as expeditiously as possible. These appeals are dismissed as withdrawn."

(20) The appeals have been dismissed as withdrawn. The aforesaid judgments are, therefore, final and binding.

(21) We are, however, unable to agree with the submissions of Mr. Sibal to the effect that no stone crusher can be permitted to function within the limit of 1 K.M from the village abadi. Much water has passed under the bridge since the judgments were rendered by this Court in Ishwar Singh's case *(supra)* and the Deepak Grit Udyog's case *(supra)*. Eversince 6th June, 1992, immediately after the pronouncement of the law by the Supreme Court in **M.C. Mehta's** case *(supra)* on 15th May, 1992, the Haryana Government Commenced the work for establishment of identified zones. All the crushers within the limit of 1 K.M from the village abadi were directed to shift to the zones as identified by the Government within six months from the date of issuance of notification. On 4th August, 1992, identified zones were earmarked. The period for shifting to identified zones was extended up to 8th December, 1992. When the government found that certain areas given in the schedule to the notification dated 4th August, 1992 were actually situated within the limit of 1 K.M from village abadi, a notification was issued on 24th November, 1992 excluding such areas from the Schedule. Till that time, Mr. Sibal is correct in his submission that the Haryana Government was endeavouring to identify the stone crushing zones in an area outside the limit of 1 K.M from the village abadi. But the notification dated 9th June, 1992 was amended by the notification dated 18th December, 1992 which provided as under :—

> "In the Haryana Government Environment Department, Notifiation No. S.O. 81/C.A. 1986/S.5 & 7/92, dated the 9th June, 1992 in para 5, for clause (ii), the following clauses shall be substituted namely :—
>
> (ii) That no stone crusher unit except those which are in the identified zone or which have been certified by the Haryana State Pollution Control Board for having fulfilled the sitting parameters in pursuance of Haryana Government Environment Department, notification

No. S.O. 81/C.A. 1986/S.5 & 7/95, dated the 9th June, 1992, shall henceforth be allowed to operate within the limits of:—

**** **** **** ****

(g) One Kilometre from the village abadi or any land regarded as forest in Government records or any area which comes under the controlled area."

(22) From that time onwards, the parameters of the limits prescribed for stone crushers within the indentified crushing zones were not the same as the parameters prescribed for stone crushers outside the identified zones. All these notifications had been challenged by respondent No. 4 and some others in C.W.P. No. 17459 of 1995. As noticed above the same was dismissed *in limine*. The aforesaid two judgments were challenged in SLP Nos. 5282-83 of 1996 and the SLP was numbered as Civil Appeal No. 14175-14176 of 1996. The Civil appeals were dismissed as withdrawn.

(23) In view of the above, it would be futile for the parties to now argue that the vires or constitutionality of the aforesaid provision could be reagitated in the present writ petitions. In our opinion for the reasons stated by the Division Bench in the judgment rendered in C.W.P. No. 17459 of 1995, the present writ petitions are barred on the principles of *res-judicata*/constructive *res-judicata*. As noticed eariler, the petitioners have now challenged Note 2 to Schedule I attached to notification dated 18th December, 1997 in which it is provided as follows :—

"2. The already notified approved crusher zone would not be affected by the above cited minimum distance criteria as the feasibility of having a conglomeration of Stone Crushing units in conjunction with the siting criteria above is not possible. The above mentioned siting criteria will only be applicable to new crushing units to be established in the area outside the identified zones."

(24) Mr. Sibal has vehemently argued that this provision nullifies the main provision which provided that the minimum distance required from the nearest village abadi for setting up a stone crusher would be 1 K.M. We have thoughtfully considered the aforesaid

submissions of the learned Sr. Counsel. We have already held that the 1 K.M limit was not applicable to the crushers operating within the identified zones. Even in **Ishwar Singh's case** *(supra)*, this Court had directed the stone crushers to shift to the identified crusher zones. According to the pleaded case of the petitioners in Deepak Grit Udyog's case, these identified zones were operating within the 1 KM distance limits from abadi of various villages. Even otherwise, this direction would not have been necessary, if the limit of 1 KM distance from village abadi was to apply to the identified zones also. According to various notifications, any stone crusher can be set beyond the prescribed distance limit, provided, they comply with the other conditions laid down for the control of pollution. The whole controversy sought to be raised in the present writ petitions is no longer res integra.

(25) After completion of the aforesaid bout of litigations, one Fatia Mohammad son of Barkat and six other had filed CWP No. 19010 of 1996 which was decided by the Division Bench consisting of N.K. Kapoor and P.K. Jain, JJ. on 28th May, 1996. The petitioners therein had challenged resoultion passed by the Gram Panchayat of Village Kotian Ambwala, Tehsil Kalka, District Panchkula dated 7th March, 1995 leasing out the Panchayat land to some stone crushing units. It was the case of the petitioners therein that shamlat land of the village which had been leased out to various stone crushing units, on the basis of the resolution dated 7th May, 1995 is in violation of the Notification dated 18th December, 1992. As noticed earlier in the notification dated 18th December, 1992, it was provided that no stone crushing unit, except those which are in the identified zone or which have been certified by the Pollution Control Board shall be allowed to operate within the limits of 1 KM from the village abadi. The land which was proposed to be leased out to the stone crusher was within 300 meters of the Link Road and within 1 KM from the village abadi. Taking note of the aforesaid situation, the Division Bench observed as follows :—

> "We have heard the learned counsel for the parties as well as perused the various documents referred to by the respective counsel. The process of shifting of stone crushers units to an identified/demarcated stone crushing zone has in fact been initiated by the State of Haryana in view of the specific directions given by

the apex court in M.C. Mehta's case (supra). The court while disposing of the petition directed the authorities to initiate suitable measures for shifting of the existing units to a specified place to be known as crushing zone and further directed the authorities that they must make available sufficient land in the said zone to accommodate all the stone crushers affected by their order. It was further directed that since crushing units to install scientific devices to control air pollution. Though, this direction was given with regard to stone crushing units situated within the Union Territory of Delhi as well as the areas nearby i.e. Surajkund, Lakhanpur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Baraikhaja, Anangpur, and Balabgarh areas of Haryana taking a clue from the direction of the apex court chose to create stone crushing zones at other places as well. Precisely for this a notification dated 4th August, 1992 was issued by the Government of Haryana identifying the zones for stone crushers. As per Schedule annexed with notification dated 4th August, 1992, Annexure R-3/1 particulars of land, details of which have already been given in the earlier part of the judgment situated in village Burj Kotian, in all measuring 105 acres, has been earmarked/ identified as a stone crushing zone. Thus, *vide* notification annexure P-1 dated 18th December, 1992, the basis of claim of the petitioner when read in the light of the earlier notification, the objections raised by the petitioners are devoid of any merit. In fact, the operative part of Clause 2 of Para 5 read :—

"That no stone crusher unit except the one which are in the identified zone or which have been certified by the Haryana State Pollution Control Baord for having fulfilled the sitting parameters in pursuance of Haryana Government, Environment Department, notification dated 9th June, 1992, shall henceforth be allowed to operate within the limits of :—

(a) 1-1/2 kilometers of the National Highway etc. etc."

So the prohibition that the setting up of a stone crushing unit within 1 1/2 kilometers of the National Highway or one kilometer from the State Highway or 1 1/2 kilometers from the town abadi or one kilometer from the village abadi etc. do not apply to an area which has been identified as a stone crushing zone. So, we find this precise objection of the petitioners devoid of any substance."

(26) After making the aforesaid observations, the Division Bench observed that the legality or otherwise of the resolution of the Gram Panchayat can be challenged before the authorities under the Gram Panchayat Act and the proposed lease in favour of stone crushers could be challenged before the Collector under the Punjab Village Common Land (Regulation) Act, 1961. This opportunity was seized by the parties to commence another round of litigation. The petitioners had challenged the proposed lease before the Collector. However, during the pendency of the proceedings before the Collector, Notification dated 11th July, 1997 was issued for increasing the area of stone crushing zones by including some portion of the land earmarked for the Proprietors of Muslim Patti. The petitioners therein, therefore, challenged notifications dated 7th November, 1997 and 18th December, 1997 by filing CWP Nos. 12178 of 1996 and 12547 of 1996 on the ground of violation of Article 14 of the Constitution of India. Their contention was that inclusion of the land earmarked for the proprietors of Muslim Gujjar Patti is tainted by *mala fides* and arbitrariness because the whole object of this exercise is meant for depriving the Muslim Gujjars of their rights over the land in question. In the written statements filed by the respondents therein, it was averred that the whole village of Buraj Kotia was identified for stone crushing zones, keeping in view the directions given by the Supreme Court in M.C. Mehta's case (supra). In any case, it is submitted that the matter is concluded against the petitioners by the judgment of this Court in Fatia Mohammad's case (supra). These writ petitions were decided by a Division Bench of this Court consisting of G.S. Singhvi and Mehtab S. Gill, JJ. On 23rd December, 1999. The Division Bench examined the entire matter, including the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and Environment Protection Act, 1986. After examining the two Acts in detail, the Division Bench held as under :—

" ***Haryana Cases***

Shri H.L. Sibal, Senior Advocate and Shri Rameshwar Sharma, Advocate appearing for the petitioners in

C.W.P. Nos. 12178 and 12547 of 1996 argued that the decision of the State Government to set up stone crusher zones in Villages Buraj Kotian and Kotian should be declared violative of Article 14 of the Constitution because the pollution caused by operation of stone crushers would gravely affect the health of the residents. Learned Deputy Advocate General relied on the directions given in **M.C. Mehta's case** (supra) and **Ishwar Singh's case** (supra) and argued that notification dated 11th July, 1997 cannot be declared violative of Article 21 of the Constitution because the stone crushers zones have been set up with a view of check the menace of pollution caused by stone crushers in various parts of the State. Shri Jaswant Singh submitted that the measures required to be adopted by the stone crushers to be established in stone crushing zones would provide complete safeguard against air pollution and there is no possibility of any injury to the health of the residents of the area. Counsel for the non-official respondents relied on the decision of the Division Bench in **Fatia Mohammad's case** (supra) and argued that the petitioners cannot challenge notification dated 11th July, 1997 because similar challenge by other residents has been negatived.

In our opinion, the submission of the learned Deputy Advocate General and counsel for the non-official respondents merits acceptance.

(27) A perusal of the aforesaid observations clearly shows that the decision in Fatia Mohammad's case (supra) has been specifically approved by the subsequent Division Bench. It also becomes apparent that the argument of the petitioner with regard to the violation of Article 14 of the Constitution of India has also been negatived. The conclusion of the Division Bench is in the following words :—

"In view of the above decision we do not find any justification to entertain the grievance of the petitioners, more-so because the State Government has laid down rigorous conditions which are required to be complied with by the stone crushers for control of pollution."

(28) It also deserves to be noticed that in the aforesaid judgment, a number of petitions were disposed of relating to both the States of Punjab and Haryana. CWP No. 16105 of 1995 had been registered in this Court as Public Interest Litigation on a complaint filed by one Suresh Thapar. He had complained that the stone crushers units operating on G.T. Road, District Ludhiana, Punjab were causing air pollution. Pursuant to the direction given by a Division Bench of this Court a notification dated 15th May, 1996 was issued by the State of Punjab. In this notification, it was provided that no stone crushers shall be allowed to operate within 1 KM from the village abadi. As a consequence of this Notification, 46 out of 142 stone crusher units mostly located on the National Highways were directed to be closed by order dated 15th November, 1996. This closure of stone crusher units was challenged in CWP Nos. 17654, 17647, 16520, 16853 and 16832 of 1996. A Committee of Experts was constituted by the State Government by order dated 12th December, 1996 to determine a criteria for siting of stone crushers. The report of this Committee was considered and accepted by the Council of Ministers in its meeting held on 25th February, 1998. In compliance of the decision taken in the aforesaid meeting, Notification dated 17th March, 1998 was issued. In this Notification, a criteria was laid down for setting up the new stone crushers. It was provided that no stone crusher units shall be allowed to operate within the following parameters :—

> "A. (i) 500 metres on National Highway/State Highway/ Scheduled Roads in plain areas and 250 metres in sub-mountaneous areas.
>
> xxx xxx xxx xxx
>
> (vi) 500 metres of village Phirni/Lal Lakir/Approved Residential Colony.
>
> (vii) 300 metres of Historical places/Educational Institutions/ Zoological Park, Wild Life Sanctuaries Monuments.
>
> (viii) 100 metres of link roads and other district roads.

(29) The Division Bench considered the entire matter alongwith the two writ petitions from Haryana being CWP No. 12178 of 1996

and CWP No. 12547 of 1996. By a detailed judgment dated 23rd December, 1999, all the writ petitions were dismissed. With regard to the submission made in the Punjab cases, the Division Bench observed as follows :—

> "We have given serious thought to the respective arguments and have gone through the report of the Expert Committee constituted by the State Government. It is true that some of the stone crushers in question were set up before the enactment of the 1981 and 1986 Acts and after its constitution, the Punjab Board had given consent under Section 21 of the 1981 Act. However, that by itself cannot justify invalidation of the steps taken by the State Government and the Punjab Board in compliance with the directions given by the Supreme Court in **M.C. Mehta's case** (supra) and by this Court in **Ishwar Singh's case** (supra) and Sudesh Thapar's case (supra). A careful study of the report of the Expert Committee and the impunged notifications shows that new siting parameters have been laid down keeping in view the directions given by the Supreme Court and the High Court for checking pollution caused by stone crushing units situated in different parts of the State. The measures required to be adopted by the stone crushing units are intended to minimise the pollution caused by operation of stone crushers and consequential health hazard to the public at large. Therefore, the same cannot be termed as violative of Articles 19(1)(g) and 21 of the Constitution simply because the petitioners may have to incur additional expenditure for installation of new pollution control devices or may have to shift to alternative sites.

Though the written statements filed on behalf of the official respondents do not spell out reasons for not setting up separate zones for stone crushers, the impunged notifications cannot be struck down on that account, more-so because the revised parameters laid down for the existing stone crushers appear to be sufficient for achieving the object of minimising the pollution caused due to operation of stone crushers. However, at the same time, we feel that the State Government

should constitute a Committee to go into the issue of identifying separate zones for stone crushers.

The arguments of learned counsel for the petitioners that the government should not have laid down revised parameters for the existing stone crushers because there were no reports of air pollution deserves to be rejected because the State Government has done nothing except to comply with the directives given by the Supreme Court in **M.C. Mehta's case** (supra) and by the High Court in Ishwar Singh's case (Supra) and Sudesh Thapar's case (supra). That apart, a perusal of the orders passed by the Punjab Board and the averments contained in the written statement filed on its behalf shows that some of the stone crushing units set up by the petitioners were operating without obtaining consent under Section 21 of the 1981 Act and most of those, who had obtained consent, were operating in violation of the conditions imposed by the Punjab Board. It is, therefore, not open to the petitioners to question the directions given to them to take additional measures for checking the pollution and consequential health hazards by operation of stone crushers."

(30) The aforesaid observations of the Division Bench leave no manner of doubt that the entire cotroversy raised in the present writ petitions has been concluded against the peitioners. We, therefore, find no substance in the submission made by Mr. Sibal.

(31) Petitions for Special Leave to Appeal (Civil) pollution control measures. The affect on the environment has been somewhat lessened. Keeping the aforesaid facts and circumstances in view, the Supreme Court as well as this Court has upheld the Notifications laying down limitation of 500 meters or less from the village abadi. Notification dated 30th October, 1998 has been specifically upheld in CWP No. 15438 of 1999 **(Ibrahim son of late Sh. Munshi** versus **State of Haryana and others)** decided on 19th september, 2000. In that case, it was claimed that respondent No. 5 M/s Mangla Grit Gram Udyog Samiti had set up a stone crusher on fertile land. There is no stony mountain/hill within a radius of 1 KM thereof. The dust emitted by the stone crusher besides other pollutants are likely to render the land absolutely infertile and useless, which cannot be permitted especially in the face of agriculture being the main stay of the country and its citizens. The stone crusher is situated at a distance

of 500 meters of the abadi village Ghira and is thus in direct contravention of Clause (ii) (g) of the Notification dated 18th December, 1992. It was also said to be within a distance of about 800 KM from a primary health centre established on the land of village Panchayat. It was also pleaded that the Notification dated 18th December, 1997 lays down that no stone crusher can be established within a distance of 1 KM from the nearest village abadi. It was also pleaded that the stone crusher has been set up contrary to Clause N Schedule II of the 1997 Notification which gave relaxation to stone crushers which had been in operation for at least a continuous period of one year from 18th December, 1997. This distance was first first reduced to 800 meters and then reduced to 400 meters by way of Notification dated 30th October, 1998. After hearing the learned counsel for the parties, the Division Bench has passed the following order :—

> "...Considering the aforesaid facts, a notification was issued on 30th October, 1998, copy Annexure P18, amending the earlier notification dated 18th December, 1997 to certain extent and one of the amendment was in the following terms :—
>
> "For Para N, the following paras shall be substituted, namely :—
>
> 'N' in case of stone crushing units which have been in operation at any time for a continuous period of at least one year before the issue of this notification in respect of siting criteria infringement only in respect of distance from the village Lal Dora (phirni where there is no lal dora), a structurally safe 50 meters long and 16 feet high wind breaking wall will have to be provided. However, no relaxation will be allowed even with the addition of protecting wind breaking wall in respect of stone crushers coming within 400 meters or less of any village lal dora (phirni where there is no village lal dora)."
>
> From the perusal of the concluding portion of the appellate order, it is seen that certain directions were given to the owners of the stone crushing Unit to provide certain safeguards against pollution. Those directions are in consonance with the substituted para 'N' of notification dated 30th October, 1998 which has already been

reproduced above. As per the averments, respondent stone crusher has provided these safeguards. Now, it is for the Pollution Control Board to see from time to time as to whether the polluting elements, which may be emitted by the stone crusher are within the prescribed limits. If it is found at any time that the emission of the polluting elements is beyond the permissible limits, the pollution Control Board would naturally direct the respondent stone crushing Unit to take remedial measures and if despite such opportunity having been granted to the respondent stone crushing unit, the polluting elements are still beyond the permissible limits, action in accordance with law would be taken by the Pollution Control Board.

The writ petition is disposed of in the above terms."

(32) Special Leave Petition (Civil) No. 1442 of 2001 filed against the judgment was dismissed by the Supreme Court on 2nd February, 2001. Again in CWP No. 6969 of 2000 **(Jai Bharat Stone Crushing** Vs. **State of Haryana and others),** the petitioners sought the issuance of a writ of Mandamus directing the Pollution Control Board to grant consent letter for the year 1999-2000 for operating stone crusher in village Lakhuwas, District Gurgaon. An application of the petitioner therein had been rejected by the Pollution Control Board on 8th June, 2000, on the basis of the Notification dated 18th December, 1997 which debars the creation of stone crusher within the radius of 850 meters from the village abadi. The petitioner brought to the notice of the Court the latest Notification dated 30th October, 1998 by which distance had been reduced to 400 meters. The stone crusher of the petitioner therein was situated at a distance of 500 meters from the village abadi. This Court directed that the application of the petitioner be considered in view of the Notification dated 30th October, 1998. The aforesaid order was passed on 14th December, 2000. From the above, it has become apparent that Notification dated 30th October, 1998 has been judically approved by this Court.

(33) This apart, we are of the opinion that the distances having been laid down by the respondents, on the basis of the opinion of the expert will have to be accepted by the Court. It is to be noticed that the topography of the State of Punjab is virtually identical to that of

State of Haryana. For this reason, the State of Haryana has accepted the report of the experts appointed by the Government of Punjab. We are of the view that the action of the respondents cannot be said to be either arbitrary or *malafide.*

(34) It is not disputed before us that respondents no. 4, 5 and 6 have been given licences to set up the stone crushing units within the stone crusher zones. The judgment rendered in Ishwar Singh's case *(supra)* related to stone crushers operating within a distance of 1 KM from the village abadi. They were operating in violation of provisions of notification dated 18th December, 1992. Therefore we have no hesitation in holding that there is no infringment or circumvention of any of the directions issued by this Court in the earlier litigation. The siting parameters are based on the reports submitted by the Expert Committee. The opinion of the expert has been accepted in all the earlier litigations between the parties. We see no reason to take a different view. In fact relying on the reports of the Expert Committee constituted by State of Punjab, some other States have reduced the siting parameters to a distance of 500 meters, 250 meters and 200 meters. Therefore, we find no merit in the submissions made by the learned Sr. counsel for the petitioners. We also find no merit in the submission of Mr. Sibal that the crusher zones have been set up in violation of the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development act, 1963. The necessary notification under the aforesaid Act had been issued on 22nd January, 1991. But no challenge was made in the earlier litigation.

(35) Mr. Sibal had also argued that although the respondents have justified the reduction of the distance in various notifications from 1 KM to 400 meters from village abadi, on the basis of the expert report submitted to the State of Punjab. The aforesaid reasons are not mentioned in the official files. We had, therefore, asked the State Counsel to produced the relevant file. The same has been produced. We have examined the record. We find that the submission made by the learned Sr. Counsel is without any basis. The reasons stated in the writ petitions are fully borne out from pages 72, 73, 79 and 84 of the official file. In such circumstances, it would be wholly inappropriate for this Court to substitute its own views for the views

expressed by the expert bodies which have been accepted by the respondents-State of Haryana. A similar objection was considered by the Supreme Court in a landmark judgment rendered in the case of **Shri Sachidanand Pandey** *(supra)*. In that case, it was argued that the Government was not alive to the ecological considerations, particularly to the question of the migratory birds when they took the decision to lease the land to the Taj Group of Hotels. This argument was sought to be supported that neither of the two Cabinet Memoranda dated 7th January, 1981 and 9th September, 1981 referred to the migratory birds. Chinnappa Reddy, J. speaking for the Bench observed as follows:—

> "22. .....It is wrong to think that everything that is not mentioned in the Cabinet Memoranda did not receive consideration by the Government. We must remember that the process of choosing and allotting the land to the Taj Group of Hotels tool nearly two years, during the course of which objections of various kind were raised from time to time. It was not necessary that every one of these objections should have been mentioned and considered in each of the Cabinet Memoranda. ..."

(36) The argument of Mr. Sibal seems to be squarely covered by the observations of the Supreme Court in paragraph 4 of the judgment which is as follows :—

> "4. In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the Zoological garden that it warrants interference by this Court. Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision

after taking them into account, it may not be for this Court to interfere in the absence of malafides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48-A of the constitution, Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country," and Article 51-A (g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures." When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority. We may now proceed to examine the facts of the present case.

(37) The scope of judicial review in these matters has been well defined by the Supreme Court in a large number of cases. In S.P. Gupta's case *(supra)*, the Supreme Court observed as follows :—

"24. It is also necessary for the Court to bear in mind that there is a vital distinction between *locus standi* and justifiability and it is not every default on the part of

the State of a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution...."

(38) In the case of **Tata Cellular** *versus* **Union of India, (9)** it has been categorically held that judicial review is conserned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making-process itself. This principle has been culled out from the judgment of Lord Brightman in the case of **Chief Constable of the North Wales Police versus Evans (10)** wherein it was observed as follows :—

"Judicial Review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, itself guilty of usurping power."

(39) The Supreme Court approved the rule laid down in the case of **Associated Provincial Picture Houses Limited** *versus* **Wedenesbury Corporation(11)** by Lord Green M.R. It is popularly known as Wedenesbury principle which is as follows :—

"4. Wedenesbury principle—a decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concluded that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it."

(9) JT 1994 (4) S.C. 532
(10) (1982)3 All E.R. 141 at 154
(11) (1947)2 All E.R. 680 = (1948) 1 K.B. 223

(40) From the above, it becomes apparent that the scope of judicial review in matters of policy is confined to the very narrow limits defined above. We, therefore, find no reason to interfere with the various decisions taken by the State of Haryana in modifying the distance limits for setting up stone crushers from the village abadi from time to time.

(41) We have discussed the factual position elaborately to demonstrate that the writ petitions have not been filed in public interest. Had there been even an iota of truth in the claims put forward by the petitioners, they would have challenged the original provision in the Notification dated 18th December, 1992 which had excepted the stone crushers sited within the identified zones from the distance of 1 K.M. limit from the village abadi. Even in Ishwar Singh's case (supra), the plea put forward was that stone crushers operating outside the identified zones and within a distance of 1 K.M. from the village abadi be closed. This prayer of the petitioners therein was accepted. The private respondents in that case or any of the other stone crushers did not care to challenge the Notification dated 18th December, 1992 by filing counter writ petitions. They had, therefore, accepted the identified zones provided in the Notification dated 4th August, 1992. Thereafter the stone crusher owners filed CWP No. 17459 of 1995 *inter alia,* seeking amendment in the directions issued by the Division Bench in Ishwar Singh's case (supra). This claim was rejected by the Division Bench as noticed in the earlier part of the judgment. Civil Appeals filed against the aforesaid judgments were dismissed as withdrawn. The difference in criteria for the stone crushers operating within the identified zones and those not operating within the identified zones has been accepted by the Division Bench of this Court in Fatia Mohammad's case (supra). Relying on the aforesaid judgment when CWP Nos. 17654, 17647, 16520, 16853, 16832, 17101, 12178 and 12547 of 1996 were dismissed. In a number of other writ petitions, details of which have been noticed above, this Court upheld the criteria laid down in the Notification dated 30th October, 1998. Inspite of the aforesaid factual position, the present three writ petitions have been filed. We are constrained to observe that the petitioners in these writ petitions are motivated by interests other than those of the public of the village Naurangpur. The submissions made by the learned counsel for respondents to the effect that these writ petitions have been filed at the instance of stone crushers operating beyond

the limit of 850 meters seem to be plausible. We are of the view that the process of this Court has been thoroughly abused by the petitioners in the name of Public Interest Litigation.

(42) In CWP No. 12919 of 1999, notice of motion was issued on 14th September, 1999 for 4th October, 1999. In the meantime, respondents No. 4 to 6 were directed not to start operating their stone crusher zones in terms of Annexures P-9 to P-11. The interim order of stay is continuing till date. The petitioners have stated that the writ petitions were similar to CWP No. 17168 of 1998. In this writ petition, notice of motion had been issued on 9th November, 1998 for 16th November, 1998. The matter then came up for hearing on 16th November, 1998 and was adjourned to 26th November, 1998. It was also directed that "if the stone crushers had not started functioning till date, the same would not be allowed to start by virtue of the impugned Notifications". Thereafter, on 7th December, 1998, the writ petition was admitted to be heard by a Division Bench. The case was directed to be listed for hearing on 11th January, 1999 high-up in the list. The interim order is continuing till date. During the hearing of the writ petitions, learned counsel for the private respondents had been at pains to point out the enormity of financial losses being incurred by them on daily basis. They have made huge investments and the stone crushers are lying idle, in view of the interim orders passed by this Court.

(43) We have come to the conclusion that the present writ petitions have not been filed in good faith to genuinely redress any grievance of the inhabitants of the village Naurangpur. The writ petitions seem to be filed merely to stall the setting up of the new stone crushers under the present parameters.

(44) In view of the circumstances narrated above, we would be justified in imposing very heavy costs on the petitioners. However, we merely place on record the displeasure of the court about the conduct of the petitioners by dismissing the writ petitions with costs of Rs. 2,000 each.

(45) Ordered accordingly.

BINOD KUMAR ROY, C.J.

(46) I agree.

R.N.R.