Before Hon'ble R. P. Sethi & S. S. Sudhalkar, JJ.

ISHWAR SINGH,—*Petitioner.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 7418 *of* 1994

10th July, 1995

Constitution of India, 1950—*Art.* 226—*Public Interest Litigation*—Locus standi—*Public interest litigation cannot be invoked to satisfy personal grudge & enmity.*

Held, that public interest litigation cannot be permitted to be invoked by a person or a body of persons to satisfy his or its personal grudge and enmity. Public interest litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.

The question of *locus-standi* would not be material and the Court would allow litigation in public interest if it is found :—

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement ;

(ii) That the action complained of is palpably illegal or *mala fide* and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance of law ;

(iii) That the person or a group or persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law ;

(iv) That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with *mala fide* intention of vindicating their personal vengeance or grievance ;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justiciable in public in such litigation ;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country ;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out of technicalities ;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination ;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives ;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscruplous litigant, politicians, busy body or persons or groups with *mala fide* objective of either for vindication of their personal grievance or by resorting to blackmailing or considerations extraneous to public interest.

(Paras 24 & 25)

Constitution of India, 1950—Art. 226—Abadi Deh—Defination—Means inhabited village site not included in Shamlat Deh.

Held, that on the basis of judicial pronouncements, Abadi Deh means inhabited village site which is not included in the definition of Shamlat Deh. Abadi Deh, therefore, means inhabited site of the village. In other words, Abadi Deh would mean such land which is inhabited by villages including plots of land in which cattles are penned, manure is stored and straw is staked and other waste attached to the village site which is not assessed to land revenue.

(Para 34)

Constitution of India, 1950—Art. 226—Environment (Protection) Act, 1986 (29 of 1986)—Distance to be maintained for installation of stone crushers—State to decide point from which distance is to be measured for the purpose of achieving objectives of statute & notification framed thereunder.

Held, that whatever be the position regarding the definition of *Lal Lakir* or *Phirni*, it is admittedly for the respondents to decide the point from which the distance is to be measured for the purpose of achieving of the objective of the statute, the notifications and the rules framed thereunder. The opinion of the State unless shown to be unreasonable or *mala fide* cannot be substituted by the opinion of others who have vested and personal interests in the matter.

(Para 36)

Constitution of India, 1950—Art. 19—Fundamental right to do business not at the expenses of social health of man and environment—Courts would not hesitate to issue appropriate directions for preservation of pollution free atmosphere.

Held, that to achieve the goal of free and unpolluted environment, this environmental goal would demand the acceptance of responsibility by citizens and communities and by enterprises and

institutions at every level, all sharing equitably in common efforts. It was expected by the Court that individuals in all walks of life as well as organisations in many fields, by their values and the sum of their actions, would shape and world environment of the future. Wherever, it is found that atmosphere and environment was being polluted, the Court would not hesitate to issue appropriate directions for preservation of pollution free atmosphere.

(Para 42)

Constitution of India, 1950—Art. 226—Operation of stone crushers—Directions issued.

Held, that :

(1) 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 shifting of stone crushers to the identified zones and issue licences 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 stone 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 respondent-stone crushers 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 licence 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 if the person having judicial background is appointed as such Authority.

(Para 46)

J. K. Sibal, Sr. Advocate with R. S. Chahar, Advocate, *for the Petitioner.*

D. D. Gupta, Advocate, *for Respondent No.* 1.

V. K. Vashisht, Advocate, *for Respondent No.* 2.

Ashok Aggarwal, Sr. Advocate with Sanjay Vij, Advocate *for Respondent No.* 8, 10 *to* 14.

P. S. Patwalia, Advocate, Sidharath Sarup, Advocate, N. S. Dalal, Advocate.

ORDER

R. P. Sethi, J.

(1) In pursuance to the directions given by the Supreme Court in *M. C. Mehta* versus *Union of India and others* (1), Government of Haryana issued notification dated 4th August, 1992 wherein it was declared that the State Government was of the opinion that the stone crushers units in the State of Haryana have been causing grave air pollution and hazards to traffic and human health, which necessitated that they be not located within the paramet as laid down in the Haryana Government Notification dated 9th June, 1992. On 18th December, 1992 respondent government again issued notification whereby earlier notification dated 9th June, 1992 was amended and new parameters were prescribed. As despite judgment from the Supreme Court and notification issued in consequence thereof, stone crushers were not shifted from Naurangpur village, District Gurgaon, the petitioner filed this writ petition in public interest for isuance of direction to the respondents to close stone crushing business in village Naurangpur, District Gurgaon with immediate effect and shift their business to the area earmarked for the purpose of stone crushing.

(2) It is submitted that on account of non-shifting of the stone crushers to the alternative site provided by the Government, the respondents-stone crushers are causing health hazards and obstacles in the life of common citizen in general and residents of the village in particular. It is alleged that the living condition of the village where stone crushers are located, is not safe. The dust which comes out of the machines which on breaking of stones causes tuberculosis resulting in loss of lives of the residents of the village. It is contended that air due to dust created by the stone crushers causes

(1) (1992) 3 S.C.C. 256.

pollution and after it is breathed by the residents of the village, breathing problems are created on account of infection of the lungs.

(3) While admitting this petition to D.B., respondents No. 3 to 7 were restrained from carrying on any stone crushing business at the premises which fall within the radius of 1 kilometer from the village abadi on the ground that they did not have any license /permission from the State Government and yet they were continuing the stone crushing business within the radius of 1 kilometer from the village abadi.

(4) In the reply filed on behalf of respondents No. 1 and 2, it is submitted that the grievances projected in the writ petition were under active consideration of the Government and investigations were being made as to whether, stone crushers mentioned in the petition, being respondents No. 3 to 23, were meeting the parameters of the notifications dated 9th June, 1992 and 18th December, 1992 or not. In case any of the stone crushers were found to be not meeting the parameters of the aforesaid notifications, appropriate action would be taken as per provisions of Air Act, 1981. It is submitted that in the notification dated 9th June, 1992, siting parameters for location of the stone crushers were fixed whereas in the notification of 4th August, 1992, areas for stone crushing were identified. It is, however, submitted that stone crushers were allowed to function upto 8th December, 1992. On the representation of the owners of stone crushers, extensions were granted from time to time. It is contended that the villages are not suffering from any ailment due to running of the stone crushers as the normal wind direction is away from the village. It is further submitted that most of the stone crushers are located near foothills away from the village. All the stone crushers are stated to have been provided proper air pollution control measures like covered sheds and sprinklers on all emission points including those stone crushers which are not meeting siting criteria.

(5) In their reply, respondents No. 3, 5, 6 and 7 have submitted that the petition was liable to be dismissed as Directors Mines and Geology who is licensing Authority, had not been impleaded as party respondent in the case. The petition is alleged to be not maintainable for non-joinder of Union of India through its Secretary Pollution Departments which according to the aforesaid respondents was necessary party. It is submitted that the petitioner being not aggrieved person had no right to file the present writ petition. The stone crushing units of the answring respondents do not require

shifting to some other place as no pollution is being caused by their functioning as the stone crushers are claimed having pollution control devices and installed sprinklers etc. to supress the dust. It is further submitted that,—*vide* notification dated 18th December, 1992, the whole State of Haryana has been declared to be stone crushing zone and any person desirous of installing a stone crushing unit can instal the same after obtaining license from the Director Mines and Geology. The aforesaid respondents have already applied to the Haryana Pollution Control Board for the issuance of licenses in their favour. The applications are stated to have been filed by the answering respondents on 28th June, 1993 alongwith the report of the Local Commissioner appointed by the Tehsildar, Gurgaon as regards the distance of the village abadi from the crushers. The Local Commissioner is stated to have reported that the distance between the village abadi and stone crushing units of the answering respondents was more than 1 kilometer. Since June, 1993. the Department of Haryana Pollution Control Board is alleged to have not decided the applications with the result that aforesaid respondents filed a Civil Writ Petition in this Court wherein a direction was issued to the Haryana Pollution Control Board to give decision thereon within a period of two months. It is contended that without informing them, the Haryana Pollution Control Board has rejected their applications. The answering respondents have claimed to have already installed anti-pollution control devices/ measures and no pollution was being created or caused by them. The writ petition is stated to be misconceived and liable to be dismissed.

(6) In their reply, respondents No. 8, 10 to 23 resisted the writ petition on technical grounds as noted herein-above in the reply filed on behalf of other private respondents. It is further submitted that the peitioner has wrongly quoted Civil Writ Petition No. 4648 of 1994. It is contended that the facts and circumstances of aforesaid C.W.P. are totally different from the case of the answering respondents. The aforesaid writ petition pertained to stone crushers of Punchkula area which according to the answering respondents do not fulfil the conditions for the grant of stone crushing license and were allegedly being operated unauthrisedly whereas the Stone Crushing Units of the answering respondents were being run under a valid license issued by the Director, Mines and Geology, Haryana. under the relevant Act and rules framed thereunder. They claimed to have installed a shed over their stone crushers to contain the dust created by stone crushing and have also installed anti pollution control measures like sprinklers to supress the dust. It is submitted that State Pollution Control Board has already issued a consent

letter permitting the answering respondents to run stone crusher unit at the site where they are presently located. The Directors Mines and Geology is also stated to have issued a license in favour of answering respondents for the purpose of crushing of stones. The petitioner is alleged to be a busy body and black-mailer who had threatened the answering respondents that in case he is not paid a handsome amount, he would get their stone crushers closed by dragging them in the litigation. It is further contended that as the petitioner is likely to be benefited on account of shifting of the stone-crushers, he has chosen to have filed the present petition with ulterior motives. It is further alleged that the petitioner owns land in the area where the stone crushers are likely to be shifted. By issuance of the writ, the petitioner alone would be benefited. As the stone crusher units are stated to have been installed on the basis of the license issued by the competent Authority and all pollution control devices have been installed, no pollution is being caused/ created by running stone crushing units by the answering respondents.

(7) In pursuance to the direction of the Court dated 21st September, 1994, the petitioner filed an additional affidavit stating therein that,—*vide* notifications dated 9th June, 1992 and 18th December, 1992 issued in accordance with the provisions of Environment (Protection) Act and the Rules framed thereunder, Government of Haryana has laid down that no stone crusher unit shall be permitted to operate *inter-alia* within 1 kilometer from any village abadi or any area recorded as Forest in the Government record or any area which comes under controlled area. The abadi of Village Naurangpur is stated to be shown in separate colour in the map attached alongwith the additional affidavit. The abadi is stated to be located in Khasra No. 102. In the map, the crushers have been indicated in red outline. The map Annexure P/5 is stated to have been prepared on the basis of the village revenue map as supplied by the revenue authorities. Most of the crushers are stated to be located in khasra Nos. 98, 99 or 100. The blue line on the map indicates the distance of 1 kilometer from the abadi of the village. It is alleged that all the 21 crushers run by the respondents were within 1 kilometer which was prohibited.

(8) In the additional affidavit filed by Shri B. D. Sardana, Member Secretary, Haryana State Pollution Conrtol Board, Chandigarh, it is submitted that after issuance of notification dated 18th December, 1992 a difficulty was faced on account of the fact that

the notification did not mention as to from which point the distance of 1 kilometer was to be measured. The matter was referred to the Government by Secretary of the Pollution Control Board,—*vide* his letter dated 16th February, 1994 seeking advice regarding the point from which distance was to be measured from the village abadi. It was submitted as to whether the distance has to be measured from centre of the village abadi or from *Lal Dora* of the village as per revenue record or last house built even. out of the *Lal Dora* of the village or house built near the crusher. In response to the letter of the Secretary a reply was received from the Commissioner and Secretary to Government Haryana, Environment Department, Chandigarh dated 16th March, 1994 informing that while measuring the distance of stone crusher from the village abadi, "the practice of measuring distance from outer boundary of the crusher unit to the nearest stretch of the *Phirni* of the village may be followed." The instructions were sent to the Regional Officers for reverification of the sites of stone crushers. In view of the aforesaid instructions, the Regional Officer, Gurgaon had revealed that the distance of all stone crushers from village abadi was less than 1 kilometer. After receipt of the report from the Regional Officer, Gurgaon, the matter was referred to the Government,—*vide* letter dated 24th May, 1994 detailing all the facts. The matter is stated to be pending before the Government for taking further action.

(9) Separate additional affidavits have also been filed by some individual private respondents as well controverting all the allegations made by the petitioner.

Heard.

(10) In M. C. Mehta's case (supra) decided on 15th March, 1992, the Supreme Court noted that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Dealing with the case of stone crushers located near or around Delhi, the Supreme Court observed that "we are constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly remiss in the performance of their statutory duties and have failed to protect the environments and control air pollution in the Union Territory of Delhi. Uttar disregard to environment has placed Delhi in an unenviable position

of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by the World, Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environments." The Supreme Court thereafter issued the following directions :—

(1) The mechanical stone crushers established/operating in Lal Kuan, Anand Parbat, Rajokri, Tughlakabad and in any other area of the Union Territory of Delhi shall stop operating/functioning with effect from August 15, 1992. No stone crusher shall operate in the Union Territory of Delhi from August 15, 1992 onward.

(2) The mechanical stone crushers established/operating in Suraj Kund, Lakhanpur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Saraikhaja, Anangpur and Ballabgarh areas of Haryana shall stop operating/functioning with effect from August 15, 1992. No stone crusher shall operate in the abovesaid area from August 15, 1992 onward.

(3) The writ petitions filed by the owners/proprietors of stone crushers in the Delhi High Court which have been transferred to this Court shall stand dismissed with no order as to costs.

(4) The stone crushers in the Union Territory of Delhi/ Faridabad Ballabgarh Complex which do not have valid licenses from the authorities under the Delhi Municipal Corporation Act, 1957/Faridabad, Complex Administration (Regulations and Development) Act, 1971 or from any other authority which the law requires, shall stop functioning and operating with immediate effect.

(5) The stone crushers, in respect of which closure-orders/ directions have been issued by the Central Pollution Control Board under Section 31-A of Air (Prevention and Control of Pollution) Act, 1981 or by the Central Government under Section 5 of the Environment (Protection) Act, 1986, shall stop functioning/operating with immediate effect.

(6) The Delhi Development Authority through its Vice-Chairman and Commissioner (Planning), the Delhi Municipal Corporation through its Commissioner, Faridabad Complex Administration through its Chief Administrator, Director Town and Country Planning Department, Haryana Deputy Commissioner Faridabad, Haryana Urban Development Authority through its Commissioner/Chief Executive, Central Pollution Control Board through its Member-Secretary Central Government under the Environment (Protection) Act, 1986 and the Commissioner Police Delhi are directed to ensure the compliance with our above orders.

(7) The Officers of the Town and Country Planning Department, Government of Haryana, who were present in Court, informed us that new "Crushing Zone" has been approved at Village Pali and the lay-out Plan has been prepared and is in the process of demarcation by the Haryana Urban Development Authority. The said "Crushing Zone" has been set up with the object of rehabilitating the existing stone crushers who are being stopped from functioning as a result of our orders. We, therefore, direct the State of Haryana through the Director, Town and Country Planning Department, Haryana, Chandigarh, the Chief Administrator Faridabad Complex Administration, the Deputy Commissioner, Faridabad and the Haryana Urban Development Authority to demarcate, and allot the sites to the stone crushers mentioned in paras 1, 2, 4 and 5 above by draw of lots or by any other fair and equitable method. We further direct these authorities to provide additional land in or around the "Crushing Zone" if there is not sufficient land in the said zone to accommodate all the stone crushers affected by our orders. This exercise shall be completed and plots offered to the stone crushers within a period of six months from today. The Director, Town and Country Planning Department, Haryana, Chandigarh is further directed to send a progress report to the Registry of this Court before July 31, 1992 in this respect."

(11) In pursuance to the directions of the Supreme Court, the State of Haryana issued notification dated 4th August, 1992 Annexure P1 to take immediate steps under Sections 5 and 7 of the Environment (Protection) Act, 1986 and rules framed thereunder with the

object to maintain ecological balance in the State, to prevent environmental degardation and to avoid traffic and human hazards. The Governor of Haryana identified the zones for stone crushers as given in column 2 of the Schedule attached therewith. All stone crushers which did not fulfil the parameters as stipulated in the Haryana Government Environment Department, Notification No. S.O. 81, C.A. 1986 and 5 and 7, 92 dated 9th June, 1992, were directed to be shifted to the above identified zones by the 8th December, 1992. It was further notified that there shall be a maximum 25 stone crushers in one Zone on first come first basis. Notification dated 18th December, 1992 Annexure P2 reads as under :—

"No. S.O. 155/C. 1986/S. 5 and 7/92, whereas the Government of Haryana issued notification No. S.O. 81/C.A./1986/S. 5 & 7/92, dated the 9th June, 1992, that such stone crusher units which are in the prohibited limits as detailed in it will shift to zones as identified by the Government within six months from the date of issue of the said notification.

And, whereas the State Government is of the opinion that it is necessary and expedient to make certain amendments in the Haryana Government Environment Department notification No. S.O. 81/C.A./1986/S. 5 & 7/92, dated the 9th June, 1992.

Now, therefore, in exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986, read with Government of India, Ministry of Environment and Forests, Department of Environment, Forests, and Wild Life, notification No. S.O. No. 152 (E) dated the 10th February, 1988 and in pursuance of the provisions of Section 7 of the said Act and rule 4 of the Environment (Protection) Rules, 1986 and all other powers, enabling him in this behalf, the Governor of Haryana hereby makes the following amendment in the Haryana Government, Environment Department Notification No. S.O./8 W.C.A. 1986/2, 5 & 7/92, dated the 9th June, 1992 namely :—

AMENDMENT

In the Haryana Government Environment Department Notification No. S.O/81/C.A./1986/5 & 7, 92, dated the 9th

June, 1992 in para 5 for clause (ii), the following clauses will be substituted namely :—

(ii) that no stone crusher units except those which are in the identified zone or which have been certified by the Haryana State Pollution Control Board for having fulfilled the siting parameters in pursuance of Haryana Government, Environment Department, notification No. S.O./81/C.A./1986/S. 5 & 7, 92, dated the 9th June, 1992, shall henceforth be allowed to operate within the limits of :—

(a) 1½ Kilometers of the National Highway ;

(b) One kilometer from the State Highway ;

(c) 300 meters from the link road ;

(d) 5 kilometers away from the boundary of metropolitan city ;

(e) 3 kilometers away from the District headquarters ;

(f) 1½ kilometers from the town abadi other than district headquarter, approved Urban Colony and any existing tourist complex ;

(g) One kilometer from the village abadi or any land recorded as forest in Government records or any area which comes under the controlled area ;

(iii) that each stone crusher shall be located in a minimum area of one acre which should be owned by the stone crusher unit and should not be owned on lease from the panchayat ; and

(iv) that the stone crusher unit shall install suitable pollution control measures to the satisfication of the Haryana State Pollution Control Board and shall obtain "No objection Certificate" from the Town and Country Planning Department, Haryana and also conform to all other statutory regulations, if any.

(12) The stone crusher owners henceforth would be permitted to install stone crusher anywhere provided, they fulfil the above siting parameters."

(13) It may not be out of place to mention that in the United Nations Conference on the Human Environment held at Stockholm

in June, 1972, decisions were taken to take appropriate steps for the protection and improvement of human environment and Government of India being party to such decision considered it necessary to take appropriate steps for protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. It was thereafter decided to enact the Environment (Protection) Act, 1986 on 23rd May, 1986. It is also worth mentioning that,—*vide* forty second constitution amendments Part IV A, Article 51-A was incorporated which deal with the fundamental duties of the citizen of India of which clause (g) provides "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." To achieve the same objective Art. 48-A was also added in Part IV of the Constitution dealing with the Directive Principles of State Policy.

(14) Before dealing with the merits of the case, it is necessary to dispose of the preliminary objection raised by the respondents regarding maintainability of the writ petition at the instance of the petitioner. It has been submitted that the petitioner being a busy body *inter loper* had no interest with the environment but was only interested in his personal gain allegedly likely to rise on account of shifting of the stone crushers from their present location. It is submitted that without having any *locus standi*, the petitioner could not be permitted to file the present petitioner with the oblique motive of pressurising, harassing and black-mailing the private respondents who were carrying on their business of stone crushing on the basis of valid license granted in their favour. A Division Bench of this Court in *Lawyers' Initiative* v. *State of Punjab and others* being C.W.P. No. 17983 of 1994, decided on 25th March, 1995 dealt with the scope of public interest litigation, right of a person to file the petition without having a *locus standi* and the consideration which must be weighed with the Court while exercising under Article 226 at the instance of a party initiating action in public interest. On the basis of various pronouncements made by the Supreme Court in this behalf, it was held as under :—

> "Under the normal circumstances and on the basis of traditional rule in regard to *locus standi*, it is only a person who has suffered a legal injury by reason of violation of his legal right by the impugned action, or who is likely to suffer an injury by the reasoning of threatened violation of his legal right, can alone approach the Court

invoking it jurisdiction for the issuance of any of the writ contemplated under Article 226 of the Constitution of India. The basis of entitlement of judicial redress being personal injury to property, body, mind or reputation arising from violation, actual or threatened of the legal right or legally protected interest of the person seeking such redress, only such aggrieved person could approach the Court for the redressal of his grievance."

(15) The Supreme Court in *S. P. Gupta and others* v. *Union of India and others* (2), held that such a rule to be a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. 'After referring to the case in *Sidebotham's case* (3), and *Reed Bowen* & Co.'s *case* (4), of the English Courts, it was held, "but narrow and rigid though this rule may be, there are few exceptions to it which have been evolved by the Courts over the years." In *K. R. Shenoy* v. *Udipi Municipality* (5), it was held that against an illegal action of the local authority, a rate payer could question the action of the Municipality in granting a cinema license to a person.

(10) After referring to various other judgments of the Supreme Court of United States of America, English Courts and of its own, the Supreme Court in S. P. Gupta's case (Supra) held :—

"We could, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective "Law". as pointed out by Justice Krishna Iyer in Fertilizer Corporation *Kamgar Union* v. *Union of India,* AIR 1981 SC 844 is a social auditor and this audit function can be put in to action when some one with real public interest ignites the jurisdiction. A fear is sometimes expressed that if we keep the door, wide upon for any member of the public to enter the portals of the

(2) A.I.R. 1982 S.C. 149.
(3) 1980 (14) Chd. 458.
(4) 1887 (19) QBD 174.
(5) A.I.R. 1974 S.C. 2177.

Court to enforce public duty or to vindicate Public interest, the Court will be flooded with litigation. But this fear is totally unfounded and the argument based upon it is answered completely by the Australian Law Reforms Commission in the following words :

"The idle and whimsical plaintiff a dilettante who litigates for a lark, is spectre which haunts the legal literature not the court room (Prof. K. E. Scott; "Standing in the Supreme Court : A Functional Analysis" (1973) 86.

A major expressed reason for limiting standing rights is fear or a spate of actions brought by busy bodies which will unduly extend the resources of the courts, No argument is easier put, none more difficult to rebut. Even, if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered. Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented (OP Cit, 673).

When the flood gates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissentors feared.

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter."

We wholly endorse these remarks of the Australian Law Reforms Commission. We may add, with Justice Krishna Iyer :

"In a society where freedoms suffer from atrophy, and activism is essential for participative public justice, some

> risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding *locus standi.*" It is also interesting to note that in India, as in other Commonwealth countries, the strick rule of standing does not apply to a writ of *quo warranto* or a rate payer's action against a municipality, but there is no evidence that this has let loose the flood gates of litigation in these areas. The time, money and other inconveniences involving in litigating a case act as sufficient deterrents for most of us to take recourse to legal action,— *vide* article of Dr. S. N. Jain on "Standing and Public Interest Litigation."

(17) The Supreme Court, however, warned the Courts to be careful of such persons who approach the Court in public interest that they were acting *bona fidely* and not for personal gains or private profit or political motivation or other oblique considerations. The Court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. It was further pointed out that the distinction between *locus standi* and justiciability must be kept in mind and that every default on the part of a State or public authority was not justiciable. The Court must take care to see that it does not over-step the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. The public interest litigation being a new jurisprudence evolved by the Courts demand judicial statesmanship and high creative ability It was further observed. "the frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future. are beginning to be born."

(18) In that case. the Supreme Court noted that the circular letter, the subject matter of litigation, had not caused any specific legal injury to an individual or to a determinate class or group of individuals, but it caused public injury by prejudicially affecting the independence of the judiciary. The Court held that the petitioners therein being Lawyers had sufficient cause to challenge the constitutionality of the circular letter and were entitled to file the writ petition as a public interest litigation. They were found to have a concern deeper than that of a busy body. In a developing democratic country like ours no attempt should or allowed to be made to

hide the State action under the carpet of technical pleas but permitted to be judicially scrutinised to allay the apprehension of the common man with the object of inspiring confidence in the democratic functioning of the system under the Constitution. The judiciary cannot remain a mere bystander or spectator when any violation is brought to its notice by a person of the public provided the initiator does not approach the Court *mala- fidely* or with ulterior purposes. The power of judicial review vested in the Courts is to be exercised without any fear or favour and keeping in view the established glory of our Constitutional system which is held to be of envisaging social revolution which casts an obligation on every instrumentality including the judiciary which is a separate but equal branch of the State to transform the *status quo ante* unto a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has, therefore, a socio economic destination and a creative function. It has to use the words of Glanville Austin' to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man.' It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio-economic justice.

(19) Earlier in *Fertilizer Corporation Kamagar Union* v. *Union of India* (6), it was held that the law was a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. In a society like ours activism was considered essential for participative public justice for which some risks were considered to be taken by affording more opportunities for the public minded citizens to rely on the legal process and not be repelled from it by narrow pendantry now surrounding *locus standi*. To sum up the Court held :—

> "If a citizen is nor more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of that country.. the door of the Court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although

(6) A.I.R. 1981 S.C. 344.

whether the issues raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226."

(20) The Supreme Court entertained a petition on the basis of a letter in *Sheela* v. *State of Maharashtra* (7), *Veera* v. *State of Bihar* (8), in various other cases. The practice of encouraging public interest litigation by the High Courts was approved by the Supreme Court in *Chaitanya* v. *State of Karnataka* (9), wherein it was held that where the public interest was threatened to be undetermined by arbitrary and perverse executive action, it was the duty of the High Court to issue a writ. The Court before issuing the process or exercising the powers in public interest should be *prima facie* statisfied that the information laid before the Court was of such a nature which required examination. *Prima facie* satisfaction can be derived from ascertaining the credentials of the person approaching the Court or the nature of the information given or the gravity and seriousness of the complaint set out in the information or the other circumstances brought to the notice of the Court which require interference for the purposes of instilling confidence of the common man in the democratic set up in the country in general and in the institution of judiciary in particular. The Court has to take note of the fact that the person approaching the Court is not permitted to indulge in wild and reckless allegations besmirching the character of others and avoidance of public mischief is pre-dominated, the Court is required to act promptly by giving appropriate directions.

(21) In specified cases, the Court would not insist more on *locus standi* where it is satisfied that the matter brought to its notice was of great public importance for its impact on the social system and values which if not prevented or remedied may result in the breach of faith of a common man in the institution of judiciary or the democratic edifice adopted and prevalent in our polity. In *Bandhua Mukti Morcha* v. *Union of India* (10), the Supreme Court held that while dealing with the fundamental rights the Court's approach must be guided not by any verbal or formalitic cannons of construction but by the paramount object and purpose for which the powers have been conferred for protection of the fundamental

(7) A.I.R. 1983 S.C. 378.
(8) A.I.R. 1983 S.C. 339.
(9) A.I.R. 1986 S.C. 825.
(10) A.I.R. 1984 S.C. 892.

rights, the interpretation of which is required to receive illumination from the trinity of provisions which permeate and energise the entire constitution namely, the Preamble, the Fundamental Rights and the Directive Principles of the State Policy. Normally. the Court would not intervene at the instance of meddlesome interloper or busy body and would ordinarily insist that only a person whose fundamental rights have been violated should be allowed to activise the Court but where the fundamental rights of a person or a class of persons are found to have been violated but who are shown to be not in a position to have resort to the Court on account of their poverty, disability or socially and economically disadvantaged position, the Court must act and allow any member of the public acting *bona fide* to espouse the cause of such a person or a class of persons.

(22) In *Janta Dal* v. *H. S. Chowdhary* (11), the expression 'public interest litigation' was defined to mean :—

> "The expression 'litigation' means legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest which the public or a class of the community, have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decision explaining expression 'PIL' in its wider connotation in the present day context in modern social a few of which we will refer to in the appropriate part of this judgment."

(23) In '*K. R. Srinivas* v. *R. M. Prem Chand and others*' (12), it was held that the petitioner who comes to the Court for relief of public interest must come not only with clean hands, but also with clean heart, clean mind and clean objective. The Court in that case did not allow action to be taken in public interest on the ground that the petitioner had approached at the belated point of time particularly when he was aware that the answer books had been destroyed which were relevant to disapprove his allegations.

(11) A.I.R. 1993 S.C. 893.
(12) 1994 (6) S.C.C. 620.

(24) Public interest litigation cannot be permitted to be invoked by a person or a body of persons to satisfy his or its personal grudge and enmity. Public interest litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.

(25) The question of *locus standi* would not be material and the Court would allow litigation in public interest if it is found :—

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement ;

(ii) That the action complained of is palpably illegal or *mala fide* and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance of law ;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law ;

(iv) That such person or group of persons is not a busy body of meddlesome *inter loper* and have not approached with *mala fide* intention of vindicating their personal vengenance or grievance ;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justiciable in public in such litigation.

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country ;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out of technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination ;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives ;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being mis-used by any unscruplous litigant, politicians, busy body or persons or groups with *mala fide* objective or either for vindication of their personal grievance or by resorting to blackmailing or considérations extraneous to public interest."

(26) In this case, it was alleged that as the petitioner was harassing, pressuring and trying to black-mail the private respondents, he should be held not entitled to file this writ petition in public interest. It may be worthwhile to mention that the respondents have not placed anything on the record to show the alleged *mala-fides* of the petitioner or the circumstances showing or suggesting the filing of the petition on account of any vindictive mind or personal grudge of the petitioner. The Court would definitely not allow a person to invoke the jurisdiction of this Court in public interest, if it is proved that such a person or body of persons was trying to satisfy his personal grudge or enmity to the persons likely to be affected by issuance of the directions. This Court would also be reluctant to interfere if it is found that its process is being mis-used by politicians or busy body for political or unrelated objectives. However, the Court would not hesitate to interfere if it is found that the action complained of if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratice set up of the country. If a person is alleged to have approached the Court not with clean hands, clean heart or clean objectives the Court would either reject his prayer for issuance of appropriate directions or make such provision by which he is not allowed to take any advantage of judicial process to fulfil his just of power or intention of usurping the benefit in any form whatsoever.

(27) In the instant case what has been brought to our notice is that the petitioner owns land in the area where stone crushers are

likely to be shifted and if the writ petition is accepted, he is alleged to be the only beneficiary. It is further submitted that the petitioner is not watching or safeguading any public interest but is only compeling the private respondents to shift their stone crushers to new places so that he can force them to purchase his land at the rates distated by him. In the additional affidavit filed on behalf of respondents No. 23, it is submitted that "the present petition is nothing else, but an abuse and mis-use of the process of law". In the affidavit it is stated" that the deponent is hereby filing the copy of the Ak-Shajara/map showing certain lands belonging to the petitioner which he wanted to sell to the various persons and he was compelling the deponent and other similarly situated persons to purchase the land and since it was refused by the deponent and other persons as there was no necessity for them and nor it was physically for them as they are carrying on the work and meeting out and fulfilling all the requirements of law for carrying on the work and this is the only fact and reason and which is an ulterior one which seems to have prompted the petitioner to approach to this Hon'ble Court. That the present exercise on the part of the petitioner is nothing else, but to black-mail the deponent and to compel him to come to the terms of the petitioner."

(28) The petitioner in his reply affidavit has denied all those allegations and termed the same to be misconceived and without any basis. He is admitted to be land owner in Village Naurangpur for about 20 years and was living there on permanent basis. He claims to be living in the village alongwith his sons, and grand sons, and is a cultivator of the village. He categorically stated that he never tried to compel the respondents to purchase his land. He has specifically stated that "it is incorrect that there is any ulterior motive in filing this petition or that in view of black-mailing, as alleged. The Crusher owners who want to locate their crushers in Naurangpur are free to purchase land from whosoever they as the dependent does not own all the land in the identified zone. The allegations made by respondent No. 23 are wholly mischievous and vague and without any basis and are denied that the petition filed by the petitioner is mischievous with ulterior motive. That it is clarified for the purpose of record that the deponent is the owner of only about 13 acres of land in the zone as identified by the Haryana Government in Village Naurangpur. The total area of the zone is about more than 100 acres."

(29) Testing on the touch stone of all the criterions laid, in Lawyers' Initiative case (supra), it cannot be said that the present

writ petition is not maintainable in public interest. It is also established that the action complained of is not palpably illegal or *mala fide* or initiated at the instance of busy body or meddlesome interloper. The action complained of is admittedly of public interest apparently affecting the health and lives of the common citizens living in the areas where stone crushers are located. The official-respondents despite having passed various orders, apparently appear to have omitted to perform the duties cast upon them under the statute, rules framed thereunder and the directions of the Supreme Court.. The present petition having been filed in public interest is, therefore, maintainable. However, while granting relief and issuance of appropriate directions, safeguards can be provided by which the petitioner may not be permitted to take any undue advantage of the present litigation initiated by him for the benefit of public in general and for compliance of the directions issued for not having unpolluted atmosphere.

(30) The admitted facts in the case are that after the judgment of the Supreme Court in *M. C. Mehta's Case* (supra), the respondent-State issued notification dated 4th August, 1992 Annexure P1 whereby specific zones were identified for stone crushers which were detailed in the schedule attached with the said notification. *Vide* Annexure P2 notification dated 12th December, 1992, the amendments were made in the Haryana Government notification dated 9th June, 1992 providing that no stone crusher unit except which are in the identified zone shall be allowed to operate within the limits of the area specified therein. According to the said notification, no stone crusher could be located within the limits of 1½ kilometers of the National Highway, 1 Kilometer from the State Highway, 300 meters from the link road, 5 Kilometers away from the boundary of metropolitan city, 3 kilometers away from the district headquarters, 1½ kilometers from the town and other than district headquarter, approved Urban Colony and any existing tourist complex, one kilometer from the village abadi or any land recorded as Forest in Government records or any area which comes under the controlled area. The stone crushers were obliged to comply with the other directions specified in the said order.

(31) Admittedly, the notifications issued by the State Government did not specify the points from which the referred areas were to be measured. While replying the letter dated 16th February, 1994 of the Member Secretary, Haryana State Pollution Control Board, the Commissioner and the Secretary to the Government of

Haryana, Environment Department, Chandigarh,—*vide* his letter dated 16th March, 1994 (Annexure R4/1) clarified that while measuring the distance of stone crusher from the village abadi, the practice of measuring distance from outer boundary of the crusher unit to the nearest stretch of the *Phirni* of the village may be followed.

(32) Before proceeding further to decide the rival contentions of the parties, a reference is required to be made to the report of the Project Entitled Health Effects of Environment Pollution due to Stone Crushers in Haryana State Sponsored by Environment Depratment, Government of Haryana which is attached with the petition as Annexure P3. The report was based on the investigations conducted by Dr. S. K. Jindal, Additional Professor and Head, Department of Polumonary Medicine and Dr. Kartar Singh, Additional Professor, (Head, Unit II), Department of Gastroenteroly, Post Graduate Institute of Medical Education and Research, Chandigarh. The summary of the report is as under :—

> "We have investigated the health problems due to the pollution caused by stone crushers in Panchkula and Surajpur areas of Haryana, in a pilot fashion. We have examined the health status of 397 subjects working at the sites, as well as residents of the nearby areas of several stone crushers. We found a significantly high prevalence of repiratory (46.6 per cent) and gastrointestonal (30.2 per cent) problems. Needless to say that the problems are similar for other places as well. The issue of Health effects of environmental pollution is very important. We are aware that stone crushers are required in the overall development of the state and the society. But a balance has to be struck between the needs of the industry, increased costs and due to measures to minimize the health hazards, versus the issues of human health and aesthetic values. Considering the fact that health is the supreme goal, it is essential to achieve the same. Some of remedial measures and educational steps which may help in minimizing the health risks, have been suggested in this report
>
> The air we breathe, is a mixture of nitrogen and oxygen with minor constituents like carbon dioxide and trape gases. Pollutants are 'substances which are not normally present in the air e.g. dust, smoke industrial and automobile exhaust, gaseous and particulate matter. Nature and amount of these pollutants vary from place to place depending upon population, vehicular density, location of industrial units etc.

Lungs are the major organs affected by the air pollution because of the direct contact of the respiratory track with outside atmosphere. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Exposure to many of the occupational and environmental pollutants can precipitate and/or aggrevate asthma. Organic matter/dusts can also cause other allergic reactions producing allergic alveolitis. Inorganic dusts may get deposited in the lungs and produce fibrosis. This produces respiratory disability and decreased work efficiency. While anthracosic is common in coal miners, silicosis occurs in those exposed to the silica dust namely the workers involved in mining, pottery work an sand blasting. Exposure to dust may lower the lung defences and clearing mechanism resulting in infections particularly tuberclosis. Some such occupational exposures may cause lung cancer as well.

Stone crushing is an important occupation in Haryana. There are plenty of stone crushers in Panchkula, Chandimandir, Surajpur, Tosham (Bhiwani), Gurgaon and Faridabad areas. Due to stone crushing a lot of thick dust is generated polluting the environment, visible dust contained particles more than 50 u in diameter, which settle down in the nose and pharynx. Smaller particles of 5—10 u size remain suspended in air and are inhaled deeper. These are deposited in trache obronchial tree and lung perenchyma and may induce fibrosis. This causes lung function impairment and debility. These may also reactivate the old tubercular foci in the lungs.

The water sources of these areas are also effected. This happens due to the dust deposited on exposed water courses and containers and unhygienic living conditions of the workers involved in the profession. Many gastro-intestinal and liver ailments may, therefore, be seen. There is no information available about the health status of the workers involved in stone crushing as also of the residents of the nearby localities. From the general evidence available from similar occupations, it is quite likely that the health status of these people is significantly impaired. Therefore, we proposed to study this problem in a pilot fashion in a limited area."

(33) From the affidavit of Shri B. D. Sardana, Member Secretary, Haryana State Pollution Control Board, Chandigarh, it is established that the distance of all stone crushers from the village *abadi* is less than 1 kilometer. The distance has admittedly been measured from the outer boundary of the crusher unit to the nearest stretch of the *Phirni* of the village, as per directions contained in Annexure R4/1.

(34) Learned counsel appearing for the respondents have submitted that as,—*vide* notification Annexure P2 the distance was required to be measured from the village *abadi*, the same can be measured either from the centre of the village or from the *Lal Lakir* but not from the *Phirni* of the village. Abadi Deh has not been specifically defined either under the Punjab Revenue Act or Punjab Village Common Land (Regulation) Act which are applicable to the State of Haryana. On the basis of Judicial pronouncements Abadi Deh means inhabited village site which is not included in the definition of Shamlat Deh. Paragraph 11 of the appendix VII of the Punjab Settlement Manual reads :—

> "The village site should be measured in one number, together with the small plots attached in which cattle are penned, manure is stored, and straw is staked and other waste attached to the village site. The entry in the column of ownership and occupancy will be simply Abadi Deh".

Abadi Deh, therefore, means inhabited site of the village. Paragraph 131st page 67 of the Settlement Manual deals with the expression "The Abadi" and reads as under :—

> "The houses of the members of the brotherhood and of their dependents are usually built close together in some convenient part of the village. It may be noted that this inhabited site or 'abadi' is excluded from the operation of the Land Revenue Act "except so far as may be necessary for the record recovery, and administration of village cesses' (See Section 4(1) of the Punjab Land Revenue Act, 1887). The houses of the village menials are usually placed on the outskirts of the *abadi*, and those occupied by men of impure caste sometimes occupy of separate site or sites at a little distance from it".

in other words, Abadi Deh would mean such land which is inhabited by villages including plots of land in which cattles are

penned, manure is stored and straw is staked and other waste attached to the village site which is not assessed to land revenue.

(35) In the Shajras such an area is inked in red and in common parlance abadi deh is known as area within the *Lal Lakir*. According to the instructions for the guidance of the consolidation staff issued under the East Punjab Holdings (Consolidation of Prevention and Fragmentation) Act 1948, it is provided that in every village after ascertaining the Shajras a provision shall be made for the passages and roads leading to the main highway, railway line and canals etc. The passages provided for going from one village to the other and the circular roads around the village are known as *Phirni* the width of which is required to be from 4 to 6 Karams. The properties within *Lal Lakir* and *Phirni* are therefore well defined and properly understood by the revenue agencies. If the plea of the respondents regarding acceptance of the central point of the village to measure the specified area, is accepted, the issuance of notification dated 18th December, 1992 would be completely frustrated. For example, the said notification provides that no stone crusher shall operate within 5 klm from the boundary of the metropolitan city. The acceptance of such a plea would permit the installation of stone crushers within the city of Delhi itself, the boundaries of which have admittedly been expanded by many folds. If the centre of city of Delhi is taken to be Rajghat, the private respondents can prefer claim for installation of the stone crushers near or around Canaught Circus or even Rashtrapati Bhawan. If such a plea is accepted and stone crushers are permitted to be located within 3 kilometers away from the district headquarters, the owners of the stone crushers could prefer their claims to locate such crushers within the limits of the town of the district headquarter. Such a plea which apparently defeats the purpose and object of enactment or notifications, cannot be accepted. Similarly in case of village Abadi, the plea of the respondents to accept the *Lal Lakir* as the point from where the distance is to be measured, cannot be accepted particularly when the villages have expanded with the passage of time and improved condition particularly in and around important cities.

(36) Whatever be the position regarding the definition of *Lal Lakir* or *Phirni*, it is admittedly for the respondents to decide the point from which the distance is to be measured for the purpose of achieving of the objective of the statute, the notifications and the rules framed thereunder. The opinion of the State unless shown to be unreasonable or *mala fide* cannot be substituted by the opinion

of others who have vested and personal interests in the matter. The official-respondents in their wisdom have, therefore, rightly decided,—*vide* annexure R2 to measure the distance from the *Phirni* point. It may not be out of place to mention that the private respondents have not challenged the vires of notifications Annexure P1 and Annexure P2 by which the restrictions were imposed and stone crushers directed to be shifted away from the populated area and road sites.

(37) Despite the fact that the Supreme Court issued directions and the respondent-State had itself issued the notifications no positive step appears to have been taken for shifting of the stone crushers from the sites where they are presently located. The omission on the part of the respondents-authorities appears to have prompted the present petitioner to move this Court for the issuance of appropriate directions for preservation of the health of the citizens of the area and to secure free polluted atmosphere for the inhabitants of the village. The official-respondents have themselves admitted that upon complaint made, the matter was pending with them but no effective orders so far have been passed. It has also been conceded that the licenses earlier granted for yearly basis have not been renewed in favour of the private respondents. The official-respondents, therefore, appear to have failed in the performance of their duties cast upon them by the Apex Court while issuing the directions in *M. C. Mehta's case* (supra) and under the provisions of Environment (Prevention) Act, the rules framed thereunder, and the notifications Annexure P1 and Annexure P2 thereunder. The omission, even if not wilful, cannot be ignored by the Court while dealing with the fundamental rights of the citizen which provide them amongst others to live in pollution free area and atmosphere as held by Apex Court in *Subhash Kumar* v. *State of Bihar and others* (13).

(38) Learned counsel appearing for the respondents, however, submitted that the issuance of the directions for shifting of the business of the private respondents would amount to put restrictions on their fundamental rights to carry on business and trade according to their choice. The argument, though attractive on the face of it, is without any substance. The enjoyment of fundamental rights is subject to reasonable limitations. One can enjoy his right to carry on business and trade according to his wishes and desires till the

(13) A.I.R. 1991 S.C. 420.

time such enjoyment does not interfere with the lives and property of others. In a developing society like ours, a balance has to be maintained with ecology and environment on the one hand and industrial growth on the other, paramount being the service of the society and protection of the lives of the citizens. Only for the purpose of profit making, the private respondents cannot be permitted to adopt means and resort to methods which are irritable, irrational and uncontrolled resulting in health hazard to the citizen as noticed by the Project Entitled Health Effects of Environment Pollution Committee. The Government is required and infact has actually decided, to protect and save the lives of the citizens of the area by issuance of appropriate notifications directing shifting of the stone crushers away from the populated area. The Supreme Court in *Rural Litigation and Entitlement Kendra and others* v. *State of Uttar Pradesh and others* (14), took note of consciousness for environment protection which is of recent origin. It also referred to the United Nations Conference on World Environment held in Stockholm in June, 1972 and follow-up action thereafter.

(39) Dealing with the ecological imbalance, Administrative action involving environmental problems, Directive Principles and fundamental duty and industrial growth despite exploitation of the natural resources the Supreme Court in *Sachidanand Pandey and another* v. *The State of West Bengal and others* (15), held as under :—

> "Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48-A of the Constitution, the 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 Art. 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

(14) A.I.R. 1987 S.C. 359.
(15) A.I.R. 1987 S.C. 1109.

> 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 go further but how much further must depend on the circumstances of the cases."

(40) The Supreme Court also referred to the circumstances under which the Court was expected to interfere for the purpose of providing pollution free atmosphere by keeping in mind the circumstances of the case before it. It was held that if the State Administration omits to take action or if its action actuated by consideration which are irrelevant, the Court may interfere in order to prevent likelihood of prejudice to the public.

(41) Shri B. D. Sardana, Member Secretary, Haryana State Pollution Control Board in his affidavit dated 6th December, 1994 has admitted that the instructions issued by the State Government were sent to the Regional Officer, Gurgaon for reverification of the sites of the stone crushers which were exempted from shifting. He has further submitted that in view of the abovesaid instructions, the Regional Officer, Gurgaon had revealed that the distance of stone crushers from the village *abadi* was less than 1 kilometer. After receipt of the abovesaid report from the Regional Officer, Gurgaon the matter was referred to the Government,—*vide* letter dated 24th May, 1994 giving all the facts. Under these circumstances, the matter is pending before the Government for taking further decision.". The respondent-Government has not assigned or disclosed any reason for not taking effective steps in pursuance of its notifications issued and receipt of report referred by Shri B. D. Sardana in his affidavit. While dealing with the rights of the citizen, we cannot ignore the report of the Project Entitled Health Effects of Environment Pollution due to Stone Crushers in Haryana State Annexure P3. The Committee consisting of eminent scientists have opined that due to stone crushing a lot of thick dust is generated polluting the environment. Visible dust contained particles more than 50 u in diameter, which settle down in the house and pharynx. Smaller particles of 5—10 u size remain suspended in air and are inhaled deeper which are deposited in tracheobronchial tree and lung percenchyma and may induce fibrosis. They have further opined that such a process causes lung function impairment and debility which may also reactive the old tubercular foci in the lungs. The committee have noted the problems faced in the populated area and concluded that lung are the major organs affected by the air pollution because of the direct contact of the respiratory

tract with outside atmosphere. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Exposure to many of the occupational and environmental pollutants can precipitate and/or aggrevate asthma. Organic matter/dusts can also cause other allergic reactions producing allergic alveolitis. Inorganic dusts may get deposited in the lungs and produce fibrosis. This produces respiratory disability and decreased work efficiency. While anthracosic is common in coal miners, silicosis occurs in those exposed to the silica dust namely the workers involved in mining, pottery work and sand blasting. Explosure to dust may lower the lung defences and clearing mechanism, resulting in infections particularly tuberclosis. Some such occupational exposures may cause lung cancer as well.

(42) In view of this grave situation brought to our notice we cannot remain silent spectator particularly when the State has shown inaction in the matter and failed to perform their statutory obligations. The respondents themselves have not taken any step in shifting their business despite issuance of the directions to them by appropriate Authority and non-renewal of licenses in their favour for carrying on the business of stone crushers. The respondent-State appears to have not taken any action against private respondents who have been operating stone crushers, even without the grant of licence. The grant of license in favour of some of the respondents did not confer any absolute right upon them to carry out the business at the places which were declared not safe for the said business. The issuance of a license has been held to be a fresh grant every year. The licensee is under an obligation to comply with such directions and conditions which are imposed at the time of renewal of the license as per provisions of law.

(42) The reliance of the learned counsel for the respondents upon *M. C. Mehta* v. *Union of India and others* (16), does not in any way help them or persuade us to dismiss the petition on the ground that as the petitioner had not approached the respondents before coming to this Court, his petition was required to be dismissed. In that case the Court observed that the protection and improvement of health environment was major issue which affected well-being of the people and economic development throughout the world. It was

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(16) A.I.R. 1988 S.C. 1087.

the urgent desire of the people of whole world and duties of all the governments. The Court further found that "we see around us growing evidence of man-made harm in many regions of the earth; dangerous level of pollution in water, air, earth and living being; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment; particularly in the living and working environment.". In that case, the Court held that to achieve the goal of free and unpolluted environment, this environmental goal would demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. It was expected by the Court that individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, would shape the world environment of the future. Whereever, it is found that atmosphere and environment was being polluted, the Court would not hesitate to issue appropriate directions for preservation of pollution free atmosphere. In the light of the aforesaid judgments and facts of the case, it cannot be said that the action, sought to be taken against the private respondents on the basis of expert report, referred here-in-above, is not in public interest. Similarly reliance of the learned counsel for the respondnts on *M. C. Mehta and another* v. *Union of India and others* (17), is also misplaced inasmuch as in that case the Apex Court has no where held that in the absence of a report of expert committees by the Government, no relief can be granted in a petition filed in public interest. Otherwise on facts, as noted earlier in the case, references have been made to the report of the experts Committee (Annexure P3).

(43) It is thus established that the petitioner has *bonafidely* filed the present petition for the grant of appropriate relief on the basis of the directions issued by the Supreme Court, the mandate of the Environment (Protection) Act and the notifications issued thereunder. It is further established that despite issuance of the directions and mandate of law, respondents No. 1 and 2 have failed to perform their duties. It is proved that private respondents are carrying on the business of stone crushers in the areas which have been held to be prohibited area and have failed to shift their business to the areas specified for that purpose as detailed in Annexure P5. The business carried on by the private respondents is also proved to

(17) (1986) 2 S.C. Cases 176.

be health hazard requiring immediate preventive measures to be adopted. If the stone crushers located near the village *abadi* are not directed to be immediately shifted to safer places there is immediate apprehension and danger to the life of the inhabitants of the area.

(44) As the petitioner himself is alleged to be beneficiary on account of shifting of the stone crushers, appropriate directions are required to be issued to allay such apprehension. On behalf of the petitioner, it has been argued that he does not want to be benefited by proposed shifting of stone crushers to the areas specified for the purpose where he is shown to be owning land measuring 13 acres. In view of peculiar facts and circumstances of the case, we have opted to out some restrictions upon the acquisition and transfer of the land of the petitioner to the private respondents or other stone crushers. We have been persuaded to put such restrictions mainly being influenced by the fact that this petition has been treated as a petition in public interest and that the petitioner himself had not prayed for any preferential treatment. No law bars the Court to restrain the respondents from utilising such areas and lands which are specifically referred to or declared as such by the Court for the purposes of achieving the desired objective.

(45) During arguments, it was brought to our notice that such stone crushers are also located near highways and around populated area in the State of Punjab, and Himachal Pradesh as well. It was submitted that despite the judgment of the Supreme Court in *M. C. Mehta's case* (supra), the Government of Punjab have not taken any step for safeguarding the life and health of the citizens living near such places where stone crushers are located. It would be appreciated if the Government of Punjab takes appropriate measures for removal of health hazards in the form of stone crushers if located near highways or populated areas. Even though we have no jurisdiction with respect to stone crushers located in the State of Himachal Pradesh, we wish our desire be conveyed to the appropriate authorities in that State as well for taking appropriate measures for removal of health hazards in order to protect the life and health of the citizens of that State and persons passing through the highways within that State. It is again worthwhile mentioning that the dust created by the stone crushers located in the State of Himachal Pradesh has been alleged to be causing breathing problems for the inhabitants of the States of Punjab and Haryana as most of such stone crushers are located on the borders of these States.

(46) 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 shifting 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 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 stone 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 crushers 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 concelled. 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 if the person having judicial 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 ;

(47) The petitioner who has claimed to be public spirited person and has invoked the jurisdiction of this Court in public interest for removal of health hazard, life rescue of the area, is held entitled to costs which are assessed at Rs. 10,500 to be share by private respondents at the rate of Rs. 500 each. We have been persuaded to award such costs in view of the fact that the petitioner has been directed not to sell his land admittedly located in the identified zone, to the private respondents for any purpose or for the purpose of installing stone crushers.

J.S.T.

Before Hon'ble G. S. Singhvi & T.H.B. Chalapathi, JJ.

RAJNI BALA,—*Petitioner.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 10089 *of* 1995

25th July, 1995

Constitution of India, 1950—*Arts.* 14 & 16—Ad hoc *appointment*—*Termination of services of teachers appointed for fixed period even though post not abolished nor regularly selected person available*—*Such termination of services violative of articles* 14 & 16.

Held, that in view of the principles laid down by the Supreme Court, we are of the opinion that where an *ad hoc* or temporary appointment is made after consideration of the candidature of all eligible persons in accordance with the equality clause, the action of the employer in limiting the appointment unto a particular date with a stipulation of automatic termination of service, even though the post is not abolished and a regularly selected person is not available, will have to be treated as wholly arbitrary, irrational.