BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

.....

APPEAL No. 2 of 2014

In the matter of :

Vijay Singh
s/o Sh. Hari Chand
r/o Village Mau,
P.O. Lokra, Tehsil Pataudi,
District Gurgaon (Haryana) .....Appellant

Versus

1. Balaji Grit Udyog (Unit- I and Unit –II),
   Village Mau, Tehsil Pataudi, District Gurgaon
   Represented through Shri Rohtash Yadav.
   Gurgaon-123003

2. Haryana State Pollution Control Board,
   Sector-6
   Panchkula -124505

3. Haryana State Pollution Control Board,
   Regional Officer,
   Manesar (South) , Gurgaon- 122052

.....Respondents

Counsel for Appellant:
Mr. Manoj Swarup, Mr. Utsav Sidhu, Mr. Karan Koopup Advocates.

Counsel for Respondents:
Mr. Mahabir Singh, Sr. Advocate, Mr. Ram Naresh Yadav and Mr Gagandeep Sharma , Mr. Alok Nayak and Mr. Nikhil Goel Advocates for Respondent No.1.
Mr. Narender Hooda, Sr. Advocate , Mr. D.P. Singh and Mr. Vineet Malik Advocates for Respondent Nos.2 and 3.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Dr. P. Jyothimani (Judicial Member)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. G.K. Pandey (Expert Member)
Hon'ble Prof. Dr. P.C. Mishra (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)

Dated: 25th April , 2014

JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER):

1. The Appellant in the present appeal was the original complainant before the Haryana State Pollution Control Board (HSPCB) and the Respondent No. 3 before the Appellate Authority. He has filed the present appeal before this Tribunal against the order of the Appellate Authority dated 20.12.2013 under Section 31-B of the Air (Prevention and Control of Pollution) Act 1981 and Section 35-B of the Water (Prevention and Control of Pollution) Act 1974.

2. The Impugned order of the Appellate Authority was passed in the appeal filed by respondent no. 1, the project proponent, under Section 28 of the Water (Prevention and Control of Pollution) Act 1974 and Section 31 of the Air (Prevention and Control of Pollution) Act 1981. By such appeal he challenged the order of the HSPCB dated 31.03.2013, in and by which the State Pollution Control Board (SPCB) has refused to grant consent to operate the unit of the respondent no. 1 for the year 2013 and 2014 under both the above said Acts, on the ground that the unit has not complied with the siting parameters stipulated in the Haryana State notification dated 18.12.1997. This was pointed out by the Joint Inspection Report of the Regional Officer, Gurgaon (South), Executive Engineer (Public Health) and Tehsildar, Pataudi dated 18.03.2013. The said order of the SPCB was reversed by the Appellate Authority on appeal filed by the project proponent, thereby granting consent to operate for both unit I and unit II

of the stone crushing units of the respondent no. 1 in the area of V. Mau Tehsil, Pataudi situated in Killa No. 9/15 and 10/2-11 respectively.

3. The short facts which are relevant and lead to the filing of the present appeal are as follows:

The respondent no. 1 is stated to have established two (2) units of stone crushing as small scale unit no. I and II in the area of V. Mau Tehsil Pataudi, after obtaining provisional No Objection Certificate (NOC)/ Consent to Establish dated 20.05.2002 and 8.07.2009 respectively from the SPCB as unit I and II. The appellant along with two (2) others have opposed the said NOC dated 20.05.2002 issued for unit I by filing C.W.P. No. 10333 of 2012 in the High Court of Punjab and Haryana. The High Court in the order dated 28.08.2012, having found that the appellant has filed the said petition without making any proper representation or complaint against the NOC, and has straight away approached the High Court, has permitted the appellant to withdraw the said Writ Petition with liberty to approach the SPCB by making a detailed representation within 15 days from the date of receipt of the copy of the order and directing the SPCB to consider the same and pass orders within 3 months thereafter by providing an opportunity of hearing to the parties. It is stated that consequently when the appellant approached the Board, it sought a spot inspection report under the direction of Deputy Commissioner, Gurgaon and a report was filed by team of officers consisting of Regional Officer, Gurgaon (South), Executive Engineer (Public Health) Pataudi and Tehsildar, Pataudi dated 18.03.2013. In the said report it is stated that while in respect of all other criteria, the units are conforming to the same, there was no conformation relating to the aerial distance from outer periphery of revenue Phirni of village Dharapur to the highest node of the conveyor belt of crushers in respect of both the units of respondent no. 1 which was stated to be 975.36 mts while the requirement as per the notification of the Government is 1–0 km. Apart from that, the distance

of the source of approved water supply of 20kl capacity in village Dharapur to the crusher units of the respondent no. 1 is 980 mts while the requirement as per the notification is 1-5 km. They were indicated as item no. 7 and 11 in the spot inspection report as the only deficiencies. It was based on the said report, the SPCB has passed order dated 31.03.2013 as stated above refusing to grant consent to operate for the year 2013-2014.

4. Challenging the said order, an appeal was filed by respondent no. 1, the project proponent, before the Appellate Authority. It was contended that the siting criteria are in accordance with the notification of the Government and that there was an approved water supply scheme for more than 20 kl capacity in village Dharapur directly from the pumping stations through closed pipeline having 7.5 hp motors each without any water storage reservoir or tank at a distance of 1045 mts and 1205 mts respectively from the two crushing units. Its further case was that the inspection report dated 18.03.2013 which states in handwriting about Patwari's report, based on which the finding is stated to have been given does not disclose the said report, eventhough such report of the Patwari was not called for to prepare the inspection report and the team ought to have physically inspected. The respondent no. 1 has also relied upon a note of Tehsildar Pataudi, prepared subsequently namely on 27.05.2013 wherein it is stated that the said Tehsildar Pataudi has appointed a Local Commissioner who was himself a retired Tehsildar and who measured the aerial distance on 21.05.2013 in the presence of Panches of Dharapur and it was found that the distance from West Phirni to Killa No. 9/15 was 3331 feet (1015.54 mts) and to killa No. 28/20 as 3630 feet (1106.7 mts) from North West of Phirni and therefore they are within the required parameters.

5. It was also the case of the respondent no. 1 before the Appellate Authority that by a subsequent inspection report dated 25.10.2013 submitted to the

Chairman of the SPCB, it was found that the siting parameters as well as the water supplied distance was within the limit prescribed in the notification and therefore, the refusal order dated 31.03.2013 issued by the SPCB based on the inspection report dated 18.03.2013 is not in accordance with law. That apart it was contended that the refusal order came to be passed without any notice or giving opportunity to the project proponent.

6. *Per Contra,* it was the contention of the appellant who was impleaded as a party during the pendency of the appeal before the Appellate Authority, that the distance of the unit from water pump station is less than 1500 mts and aerial distance from the Phirni is 975.36 mts as found in the report dated 18.03.2013 and therefore the project proponent has not complied with the notification regarding the siting criteria. The SPCB, however, in its reply has submitted before the Appellate Authority that as per its letter dated 6.06.2013, a new report from the Local Commissioner appointed by Tehsildar Pataudi, show that the distance of village periphery from the highest node of the stone crusher situated in Killa No. 9/15 was 1150.28 mts which is more than the requirement of the notification dated 18.12.1997.

7. The learned Appellate Authority after going through the records and hearing the argument of the parties, has allowed the appeal filed by respondent no. 1, setting aside the refusal order issued by the SPCB dated 31.03.2013. For arriving at such conclusion in the impugned order, the learned Appellate Authority has relied upon the subsequent reports dated 9.04.2013, 23.05.2013 and 27.05.2013. The learned Appellate Authority has also considered another report sent by SDO (C), Pataudi, to the Deputy Commissioner, Gurgaon dated 25.10.2013, on a measurement taken as per the representation made by the appellant in accordance with the direction of the High Court of Punjab and Haryana. The said measurement was conducted by the surveyor of HUDA, in the presence of the appellant as well as the project proponent apart from the officials of

the Board wherein it was found that from the highest node of conveyor belt having a height of 32 feet up to South Eastern corner of village Dharapur, the distance was found to be 1011.45 mts, which is well within the siting criteria laid down by the notification. The learned Appellate Authority took note of the contentious issues that there have been two different reports, one the spot inspection report dated 31.03.2013 and the other report taken subsequently which of course show that respondent no. 1, project proponent complies with the requirements of the notification. The learned Appellate Authority has chosen to follow the later reports dated 27.05.2013 and 25.10.2013 while holding that the said spot inspection report dated 31.03.2013 is very much questionable as the distance was not measured by the team of officers but simply mentions the report of Patwari who was admittedly not present and his report was also not appended. It has also been found that the distance of the crusher unit I of respondent no. 1 has been verified after due measurement by use of sophisticated survey instrument wherein it was found that the distance was 1011.45 mts and the same is comparable with the distance criteria found by the Local Commissioner as 1015.55 mts, and the variation between the two are very negligible. Accordingly the learned Appellate Authority has held that the finding in serial no. 7 of the spot inspection report dated 18.03.2013 is unsustainable.

8. In so far as it relates to the finding of the spot inspection report dated 18.03.2013 in respect of serial no. 11, about the distance between the unit and the water supply, the Appellate Authority has taken note of the undisputable fact as found in the affidavit filed by the officials of SPCB before the Hon'ble High Court dated 14.05.2013 that the water supply is through pipeline without any open reservoir and therefore, there is no possibility for any water contamination. It was ultimately held that even in respect of the serial no. 11, of the spot inspection report dated 18.03.2013 the finding is not sustainable and ultimately the Appellate Authority has set aside the refusal order of the SPCB dated 31.03.2013

and consequently held that unit no. I and II of the respondent no. 1 are deemed to be granted consent.

9. It is against the said findings of the learned Appellate Authority, the appellant has filed the above said appeal, contending *inter-alia,* that the authorised report of the spot inspection dated 18.03.2013 is clearly against the project proponent and the same cannot be ignored since it was prepared based on the Patwari's report who is Government Official. He would further submit that the reliance based by the learned Appellate Authority on the subsequent reports are not sustainable not only because those were unauthorized, but even those reports, especially the reports dated 9.04.2013 and 23.05.2013 show that in respect of the wind breaking walls of both the units, they are not in conformity with the notification. The report dated 9.04.2013 also shows that separate energy metre for water supply pumped for sprinklers relating to unit no. I has been installed and the consumption of water shows only 2400 units from the inception of the unit in 2002 which cannot be believed. He further submits that the respondent no. 1 has been running the unit in violation of the notification dated 18.12.1997 and that the required number of trees have not been planted, that the subsequent reports dated 27.05.2013 and 25.10.2013 have not taken the proper aerial measurements to the effect that the conveyor belts were not placed in a manner that it was away from the nearest village Ababi, outer periphery of the village Phirni and therefore, the same cannot be technically correct; that by virtue of the subsequent notification of the Government dated 28.02.2007, the village Mau has been declared as a "controlled area" and therefore the project proponent ought to have obtained change of land user certificate, and that the Appellate Authority has not considered all the issues in their proper perspective, apart from many other grounds.

10. Respondent no. 1 the project proponent, in the reply, while denying all the allegations raised by the appellant, by way of preliminary objection, has stated that unit no. I which was established in 2002 and unit no. II

established in 2009 have obtained the Consent to Establish and the Committee of the SPCB found that the siting parameters for the installation of stone crusher were in accordance with notification issued by the Government; that even in the year 2003 the appellant has approached the High Court by filing Civil Writ Petition no. 17433 of 2003 on the same ground of non- compliance of siting parameters and that was dismissed on 15.12.2004 and ultimately a Special Leave Petition filed before the Hon'ble Apex Court against the Judgment of the High Court also came to be dismissed on 9.11.2010; that the units have been obtaining Consent to Operate regularly in all years including the year 2012 and 2013; that the appellant has again approached the High Court by filing C.W.P. No. 10333 of 2012 challenging the NOC issued in 2002 for unit I, which was permitted to be withdrawn by the High Court with liberty to the appellant to approach the SPCB by filing detailed representation relating to the objections raised against the NOC within a period of 15 days of the receipt of the order and thereafter the SPCB to consider and pass speaking orders within a period of 3 months providing opportunity of hearing to the parties, by the order dated 28.08.2012. However, without giving any opportunity to the project proponent the SPCB has abruptly refused to give consent in the order dated 31.03.2013; that the refusal was purely based on the spot inspection report dated 18.03.2013 which only relies upon a Patwari's report and not actually on physically verifying the stone crusher especially when such Patwari report itself has not been furnished; that there cannot be the same distance between two Killa No's in respect of unit I and II and that itself makes the spot inspection report dated 18.03.2013 as invalid; that the water supply is based through direct pumping without any storage or reservoir facility and there are two different stations having pumping capacity of 7.5 hp, in panchayat land of village Dharapur and it is a tube well based water supply through pipelines without any overhead tank operation, reservoir and open water supply; that it is because of the persistent malafide efforts of the appellant,

the running of both the units eventhough are in conformity with all standards under air quality and water quality without causing any pollution, is sought to be interfered with. Therefore, it is the case of respondent no. 1 project proponent that the order of the SPCB in refusing to grant Consent to Operate in spite of the meticulous compliance of all pollution norms in conformity with the notification dated 18.12.1997 is unsustainable and therefore, the finding of the learned Appellate Authority is perfectly in accordance with law and need not be interfered with.

11. The SPCB in its reply has specifically stated that in respect of the units the water supplied in the sprinklers system is through pipeline connected to a water tank. It is also admitted in the reply that as per the notification dated 18.12.1997, the latest verification of siting parameters of the distance of stone crushers by SDM Pataudi received by the Deputy Commissioner, Gurgaon in the letter dated 30.10.2013, the minimum distance in the highest node of the stone crusher at Killa No. 9/15 of village Mau Tehsil Pataudi District Gurgaon, from outer Phirni of village Dharapur is 1011.45 mts.

12. It is the contention of the learned Counsel appearing for the appellant Mr. Manoj Swarup before us, that while the spot inspection report dated 18.03.2013 received at the instance by the SPCB and another report dated 9.04.2013 ought to have been treated as statutory reports, and therefore rejecting the said reports by the Appellate Authority is not correct. He would also submit that strangely the Appellate Authority has relied upon the other two reports which are submitted later, dated 27.05.2013 and 25.10.2013 and prepared at the instance of the project proponent which speak only about the distance criteria and therefore, the decision of the learned Appellate Authority in the impugned order is liable to be set aside. According to him, there is no valid and acceptable reason for reversing the findings of the SPCB. He would also submit that the further statutory report dated 9.04.2013 makes it clear that in respect of wind breaking walls on all the three sides, the area are short of requirement as per the

notification and that aspect has not been considered by the learned Appellate Authority. Further, as per the said report, the plantation is also not in accordance with notification. He has also made strenuous efforts to contend that apart from item no. 7 and 11 of the spot inspection report dated 18.03.2013, the other requirements which are stated to have been complied as per the said report are not really complied with. To be precise, according to him, while the statement made in the spot inspection report dated 18.03.2013 regarding item no. 7 and 11 are correct, the findings of report in respect of the other criteria are incorrect and have not been complied with, by the project proponent.

13. In respect of the reports relied upon by the learned Appellate Authority dated 27.05.2013 and 25.10.2013 apart from stating that they are the private reports which cannot be relied upon, it is the submission of the learned counsel for appellant that the units have been operating without Consent to Operate even though NOC has been obtained in the year 2002 for unit no. I. It is his submission that while under Section 21 of the Air (Prevention and Control of Pollution) Act 1981, the project proponent must have obtained previous consent for the year 2012-2013, the order dated 16.08.2012 cannot be treated as an order of Consent to Operate since it contains various conditions. He would also submit that by virtue of the notification dated 28.02.2007 the area wherein units are situated are covered as “controlled area” and therefore, there is a change of land user and in that view of the matter also the units are not entitled to operate and this aspect has not been considered by the Appellate Authority. It is also his submission that even in respect of the report dated 25.10.2013, the aerial measurement has not been taken properly. The measurement which has been taken at point no. 4 cannot be said to be accurate unless it is taken in point no. 1 or 3 which is the nearest point to the village. Therefore, according to him even the unauthorised report dated 25.10.2013 is not accurate.

14. *By way of reply,* the learned Senior Counsel appearing for the project proponent, respondent no. 1, Mr. Mahabir Singh would contend that the entire appeal is devoid of merit and liable to be dismissed on the ground that the conduct of the appellant is purely malafide and the appeal is a culmination of the total private enimity which appellant has developed against respondent no. 1 who is the purchaser of the property wherein units are situated, in the year 1980 from the other cosharers of the appellant. He also submitted that immediately after 1980 when the property was purchased, the appellant has filed a suit for pre-emption in the year 1981 which came to be dismissed and the appeal filed against such decree also dismissed apart from the second appeal which was dismissed by the High Court in 1997. It is his submission that thereafter in the year 2000, respondent no. 1 has taken steps for obtaining consent and in fact, on 20.05.2002 a provisional NOC was granted. The said NOC was revoked according to the learned Senior Counsel on 10.12.2002 at the instance of the appellant on the ground that the establishment of the unit will damage crops. He would also submit that the SPCB, on 25.06.2003 has constituted a Committee to ascertain about the said allegation and based on the Committees report the SPCB, on 30.07.2003 has revoked the withdrawal order of NOC. It is his contention that thereafter, the appellant has approached the High Court by filing a Public Interest Litigation in C.W.P. No. 14733 of 2003 and that came to be dismissed on 15.12.2004 against which the appellant has approached the Hon'ble Supreme Court and the Civil Appeal no. 1019 of 2007 was also dismissed on 9.11.2010 however, making it clear that if there are any other issue which survive, liberty was granted as per the right available in law.

15. In the meantime, the project proponent has applied for expansion of its project in 2009 and permission was granted by the District Level Clearance Committee in the meeting held on 26.03.2008 and ultimately by an order dated 8.07.2009 the SPCB has issued NOC/Consent to Establish in respect of Unit no. II and according to the learned Senior

Counsel, the appellant has never challenged the said NOC in respect of unit II. It is on the basis of certain information obtained under Right to Information Act, the appellant again moved the Hon'ble High Court by filing C.W.P. 10333 of 2012 challenging the NOC granted on 20.05.2002 which was disposed of by the Hon'ble High Court on 28.08.2012 permitting the appellant to make representation to SPCB who shall pass orders within 3 months after providing opportunity to the parties. Pursuant to the same the appellant has submitted the certificate copy of the order passed by the Hon'ble High Court dated 28.08.2012 to the SPCB along with his letter dated 18.09.2012. According to the learned Senior Counsel, even in the representation dated 18.09.2012 enclosing the order of the Hon'ble High Court, it was pertaining to the NOC dated 20.05.2002 in respect of unit no. I and there was no representation at all. He would also submit that in so far as it relates to the spot inspection report dated 18.03.2013 there is some inclusion in pen which states "as per Patwari Report". In the absence of such report one cannot come to a conclusion that the spot inspection report has got any legal validity and there was no physical spot inspection at all. It was in those circumstances the subsequent reports filed dated 27.05.2013 and 25.10.2013 based on physical inspection conducted by authorities was relied upon by the learned Appellate Authority, which cannot be said to be improper or illegal. According to him, the above said reports are not unauthorised but they were made at the instance of the SPCB and the responsible officers of the Board and other officers including the appellant have participated. It is his further submission that when units no. I and II are situated in different Khasra numbers it cannot be said that both are of same distance. In that way also the spot inspection report dated 18.03.2013 which was the basis for refusal to grant permission is unreliable and the learned Appellate Authority has correctly refused to rely upon the same.

16. The learned Senior Counsel would submit that even under the said spot inspection report dated 18.03.2013 it pertains to only 2 deficiencies which

were the reasons for refusal to grant permission and therefore, it is not open to the appellant to traverse beyond the said grounds especially while challenging the order of the Appellate Authority. He would submit that the measurement taken as per the report dated 25.10.2013 is with a scientific mechanism and therefore, the decision of the learned Appellate Authority in relying upon the same is the most proper one and there is nothing improper or illegal and no question relating to the environmental issue arise for consideration in this case.

17. The learned Senior Counsel would finally submit that this being a case of blackmailing attitude by the appellant continuously and successfully preventing the project proponent for years together, the appellant should be dealt with strictly with an exemplary cost. To substantiate his contention that Public Interest Litigation are not meant for settling private disputes, he would rely upon various decisions of the Hon'ble Supreme Court reported in, (2014) 1 SCC 161, (2011) 5SCC 484, (2007) 14 SCC 281, (2006) 6 SCC 180, (2005) 5 SCC 136 and (2005) 1 SCC 590.

18. Having heard learned Counsel appearing for the appellant as well as the learned Senior Counsel appearing for the project proponent apart from the Counsel appearing for the SPCB in detail and perused the impugned order of the learned Appellate Authority, pondered over the entire records we have given our anxious thought to the issue involved in this case, namely, as to whether the impugned order of the Appellate Authority assailed in this appeal is sustainable in law or liable to be interfered with ?

19. As stated above, this statutory appeal has been filed by respondent no. 1 before the Appellate Authority, against the order passed under the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981. It is not in dispute that respondent no. 1 herein who is the project proponent has started his stone crushing unit in Village Mau Tehsil, Pataudi District Gurgaon, Haryana in Killa No. 9/15 for which the HSPCB has given its provisional NOC/ Consent to Establish on 20.05.2002. The NOC granted shows that the unit will obtain consent

from the Board and that will ensure to comply with all the provisions contained in the notification of the Government dated 18.12.1997.

20. It is pertinent to note at the outset, that the Government of Haryana, by virtue of the powers conferred on it, under Section 5 of the Environment (Protection) Act 1986 and the Environment (Protection) Rules Act 1986 and various Government orders passed from time to time, has issued a notification dated 18.12.1997 containing various directions and guidelines for stone crushing units to be established in the State which relate to siting criteria norms, identification of zones and availability of sites and procedure for establishment and operation in the identified zones etc. While Schedule I of the notification contains norms for siting of stone crushers, Schedule II contains directions regarding emission norms and Pollution Control measures which are required to be adhered to.

21. The said NOC granted for unit I which is the principal unit of respondent no.1 dated 20.05.2002 came to be revoked by the SPCB on 10.12.2002 on the ground that it affects crops of the nearby villagers in respect of which complaint stated to have been received in the District Grievance Committee meeting held on 17.10.2002. It is seen that by a consequent order of the SPCB dated 11.02.2013 the unit was ordered to be closed, disconnecting electricity supply. Thereafter it appears that on a representation from project proponent to the effect that the complaint has been made by some of the disgruntled villagers due to their personal animosity and 80 acres of land surrounding the stone crusher belong to the family of the project proponent and that all the SPCB measures have been complied with by the unit, and at the instance of the SPCB, the Deputy Commissioner, Gurgaon has constituted a Committee on 30.06.2003 consisting of the Regional Officer, Haryana SPCB, Gurgaon, Tehsildar Pataudi, Gurgaon and the BDO, Gurgaon. The Committee is stated to have made inspection of the unit of the project proponent on 25.07.2003 and submitted a report stating that the unit adheres to all the siting parameters as per the notification of the Government dated 18.12.1997and if proper devices are

installed by the project proponent and duly monitored by the SPCB, damages to the crops can be avoided. It is seen that it was based on the said finding of the Committee, the Deputy Commissioner, Gurgaon in his communication dated 30.07.2003 has requested the Regional Officer SPCB, Gurgaon that there is no hindrance in allowing respondent no. 1 unit to run on experimental basis for a period of 6 months. It is stated by respondent no. 1 in the affidavit that thereafter the unit has been granted Consent to Operate regularly from the Board from time to time. Even though this is not seriously in dispute, on record it is seen that the HSPCB has given its consent on 22.11.2006 in no HSPCB/ Air consent /2006/2798 for the period from 1.04.2006 to 31.03.2007. Again the consent was renewed under the Air Act for the period 1.04.2007 to 31.03.2008. Likewise for the period from 1.04.2008 to 31.03.2009 the Board has given consent under the Air Act in the order dated 30.07.2008. This has continued from 2009 onwards in so far as it relates to unit no. I, which is the principal unit started by the project proponent in 2002.

22. It was in the year 2009, respondent no. 1 has applied for expansion of its unit in the same location in Killa No. 10/2-11 as unit no. II. The District Level Clearance Committee of the SPCB in the meeting held on 23.06.2008 has decided to grant NOC in respect of the said unit II.

    Accordingly, the Regional Officer of SPCB in the order dated 8.07.2009 has granted Consent to Establish in respect of unit no. II and in respect of unit no. I Consent to Operate had been continued as stated above.

23. In the meantime, there are certain undisputed litigations initiated by the appellant before the Hon'ble High Court of Punjab and Haryana. The appellant along with others has filed C.W.P. No. 17433 of 2003, challenging the communication of the Deputy Commissioner, Gurgaon to the Regional Officer SPCB dated 30.07.2003 and the consequential order of the SPCB dated 20.08.2003 suspending the earlier order of closure thereby permitting the unit no. I of the project proponent to operate and also for a direction to close down this stone crusher unit, contending that

the statutory and mandatory parameters for installation of the unit to prevent pollution has not been adhered to. The said writ petition was filed as a Public Interest Litigation. A reference was also made about the NOC granted to the unit by the Board on 20.05.2002. In that Writ Petition the State of Haryana has specifically stated that as per the notification of the Government dated 18.12.1997 the minimum distance required from the village Abadi for installation of crusher unit as fixed in Schedule I of the notification as 1 km to be measured as the crow flies from the highest node of the crusher conveyor belt to the outer periphery of the Lal Dora and as per the latest report of the revenue authorities was complied and in fact the distance in respect of the unit no. I of the project proponent was about 1680 mts which is more than the required distance. It is seen in the elaborate Judgment of the Hon'ble High Court of Punjab and Haryana dated 15.12.2004 that the appellant and other writ petitioners have not come to the Court with clean hands and the appellant and his father has filed a suit for pre-emption in respect of the land in which respondent no. 1 unit is situated having purchased by its partners from the family members of the appellant and the said suit was dismissed and the second appeal filed against the said judgment was pending. In addition to that it is seen that the Hon'ble High Court by an order dated 4.05.2004 has directed the State Government to appraise the factual position regarding the houses as well as the distance from the stone crusher unit.

24. The Judgment shows that the Regional Officer of the Board, Gurgaon in the affidavit dated 13.03.2004 has clearly stated not only that the residential houses are not part of village Abadi but that the stone crusher of respondent no. 1 meets all the siting parameters as per the notification dated 18.12.1997. In respect of the distance of 1 km from the revenue Phirni of the village the Hon'ble High Court has ultimately concluded in the Judgment rendered in the above Writ Petition as follows :

> "13. It has not been disputed before us that so far as validity of the siting parameters, as incorporated in the above mentioned

notification dated 18.12.1997 (Annexure R-1(1), including the requirement of distance of one kilometre from the revenue phirni of the village to the crusher unit, is concerned, has already been upheld by a Division Bench of this Court in C.W.P. No. 19010 of 1995 (Fatia Mohammed and others V. State of Haryana & others). The controversy, thus, stands scaled down to the limited issue as to how the distance of one kilometre, referred to above, is required to be measured".

25. Then while concluding about the measurement of one kilometre and as to how the same is to be effected reading in conjunction with the note appended to Schedule I, the Hon'ble High Court has in catagoric term held as follows:

"15. In the light of the guiding principles laid down by this Court in Ishwar Singh's case (supra) and on a minute reading of the Schedule- I of the Government notification, we are satisfied that what is being contended on behalf of the respondents is legally and factually correct. It would be seen from Schedule I that minimum distances of different lengths are prescribed for different categories of locations. In the case of distance from the "nearest town abadi", it is 1-5 kilometres. The distance required from the "nearest tourist complex" is again 1-5 kilometres whereas from a "forest land" it is 1-0 kilometre. The distance required from the metropolitan city is 5-0 kilometres whereas from a District Headquarter, it should be 3 kilometres. It cannot be disputed that Note 1 below Schedule I is a key to facilitate the measurement process in relation to any of the items listed in Schedule I. Note 1 is not meant for item 7 alone which pertains to measurement of distance from the "nearest village abadi". Though the language of Note 1 appears to be not happily worded, however, it has to be interpreted- firstly, to achieve the object of Schedule I and secondly in a manner that there is no inconformity between Schedule I and the Note 1 appended thereto. If the interpretation sought to be given by

the Petitioners is taken to its logical end, namely, requirement of measurement of the distance from the "nearest village abadi" only, in our view, there was no necessity of appending Note 1 below Schedule I. Note 1 intends to supplement the vacuum, if any, in various clauses of Schedule I. It is with this primary object that an alternative mode is also provided in the Note-1 that wherever there is no revenue phirni or lal dora, then the distance of village Abadi be measured from the periphery of the feature concerned. In a village where there exists a revenue phirni and/or Lal Dora, the distance of one kilometre in terms of Item No. 7 has to be measured from such revenue phirni or the Lal Dora as the case may be".

Ultimately while dismissing the Writ Petition filed by the appellant and others the High Court has made a significant remark which is as follows:

"17. It cannot be overlooked that while pollution-free environment is a component of right to life and liberty enshrined in Article 21 of our Constitution which is an extremely important and sacrosanct fundamental right, the installation and running of industrial units, subject to their fulfilling all the conditions of environmental laws, is equally important for the overall growth of the nation. The Courts, therefore, are required to keep both the aspects in view to strike a balance between such competing claims. In the facts and circumstances of this case and keeping in view the observations made above, we are of the view that the interpretation and/or understanding of Schedule I read with Note 1 thereto of the Notification dated 18.12.1997 (Annexure R-1/1) as made by the Respondents is neither arbitrary nor absurd. It also does not defeat the object for which the siting parameters have been laid down".

18. We, thus, find no merit in this Petition which is accordingly dismissed but without making any order as to costs".

26. Having not satisfied with such catagoric and unimpeachable finding by the Hon'ble High Court, the appellant has approached the Hon'ble Apex Court in Civil Appeal No. 1019/297 and the Hon'ble Apex Court while finding no merit in the appeal and dismissing the same has passed the following order:

> "The High Court after elaborate consideration of the matter found that the Unit established by the Respondent no. 5 is not located within the prohibited distance as provided for in Schedule I read with Note 1 of the notification dated 18th December, 1997 issued by the State Government of Haryana. We are not inclined to interfere with the finding of the fact so arrived at by the High Court that the houses where the appellants claim to be residing do not fall within the Abadi Deh of the village.
>
> It is needless to observe that this was the only question raised and considered by the High Court. We make it clear that if there are any other issues that survive and require consideration, the appellants are at liberty to avail such remedy as may be available to them in law in which event, the matter shall be considered on its own merits uninfluenced by the dismissal of this appeal.
>
> We find no merit in this appeal and the appeal is accordingly dismissed".

27. It is seen that respondent no. 1 project proponent has obtained Consent to Operate in respect of its unit II for the year 2012-2013 from the SPCB subject to various conditions, both general as well as special as contained in the order dated 16.08.2012. Incidentally, the distance criteria in respect of the units on fact have attained finality by the catagoric finding of the Hon'ble Supreme Court.

28. The appellant has filed another Writ Petition in C.W.P. No. 10333 of 2012 in the Hon'ble High Court of Punjab and Haryana at Chandigarh to quash the NOC granted in respect of the unit no. I of respondent no.1 project proponent dated 20.05.2002 stated supra for operation of stone crusher.

It has to be noted that the appellant has chosen to file the said Writ Petition in 2012 challenging the NOC granted on 20.05.2002, after lapse of 10 years, apparently after exhausting all other remedies as stated above. However, taking note of the fact that the appellant has approached the Hon'ble High Court without making any representation against the NOC dated 20.05.2002, the Hon'ble High Court has permitted the appellant to withdraw the Writ Petition, however, with liberty to approach the SPCB to make a detailed representation within 15 days from the date of the receipt of the certified copy of the order and directed the SPCB to consider and decide the same in accordance with law by a speaking order within 3 months, after providing opportunity of hearing to the parties. The order of the Hon'ble High Court dated 28.08.2012 states as follows:

> "In view of the aforesaid fact, counsel for the petitioners is permitted to withdraw the Writ Petition with liberty to the petitioners to first approach the respondent No. 3 by filing a detailed representation in addition to P-13 raising objection for grant of no objection certificate to respondent No. 6. If such representation is filed within a period of 15 days from the date of receipt of certified copy of the order, the respondent No.3 will consider and decide the same in accordance with law by passing a speaking order within a period of three months after providing an opportunity of hearing to the parties".

29. Pursuant to such liberty granted by the Hon'ble High Court, the appellant in the letter dated 18.09.2012 addressed to the Chairman, HSPCB has forwarded a copy of the Judgment dated 28.08.2012 requesting the SPCB to consider and take necessary action. It appears that thereafter based on the spot inspection stated to have been conducted at the instance of the SPCB, by the Executive Engineer (Public Health), Regional Officer Gurgaon (South), and Tehsildar Pataudi, the SPCB has passed the order of refusal of consent dated 31.03.2013 both under Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act

1974 which was the subject matter of challenge before the learned Appellate Authority. Admittedly such orders of refusal of consent was passed without notice to the project proponent.

30. In the spot inspection report dated 18.03.2013, of the said Committee, while arriving at a conclusion that, the stone crusher is fulfilling the minimum distance from the nearest National Highway, minimum distance from the nearest State Highway, that the distance of nearest road from the project proponent crushers village Mau Tehsil Pataudi District Gurgaon " Killa No. 9/15 and 10/2-11 is 310 mts as per Patwari report, that the stone crusher is fulfilling distance from nearest Metropolitan Cities, that it is fulfilling the minimum distance from nearest District Headquarter, that it is fulfilling the minimum distance from the nearest town Abadi, that it is fulfilling the minimum distance from nearest Tourist Complex, it has however been stated in respect of item no. 7 and 11 as follows:

> "Item No. 7, the distance of outer periphery of revenue Phirni of Village Dharapur aerial distance to highest node of the conveyor belt of Shri Balaji Stone Crusher Village Mau Tehsil Pataudi District Gurgaon "Killa No. 9/15 , 10/2-11 is 975.36 meters as per Patwari report; item no. 11, the approved water supply of 20 kl capacity, Village Dharapur of Public Health Department to Shri Balaji Stone Crusher Village Mau Tehsil Pataudi District Gurgaon " Killa No. 9/15, 10/2-11 is 980 meters in presence of Shri M.C. Goyal (SDO) Sub divisional Officer, Public Health Pataudi and Shri Narender Singh (JEE)."

31. Therefore, it is clear that while both the units of the respondent no. 1 are in conformity with the criteria prescribed by the Government of Haryana in its notification dated 18.12.1997, the above said two (2) siting criteria's alone have not been conformed even as per the said spot inspection report. Regarding the distance of outer periphery of aerial distance of highest node of the conveyor belt it should be 1-0 km, the same is narrowly short in having 975.36 mts

and in respect of the siting criteria regarding water supply while as per notification, requirement is 1-5 km it is narrowly short as 980 mts even as per the spot inspection report dated 18.03.2013. These were the only two reasons for the SPCB to pass the orders of refusal to consent.

32. Learned Appellate Authority has opined that the said spot inspection report dated 18.03.2013 is very much questionable as the distance was not measured by a team of officers while it simply mentions about the report of Patwari who was not present and whose report has not been appended. Therefore, it was held that the report cannot be held to be a local commissioner report personally prepared after due verification by the Tehsildar in the presence of Village Sarpanch and Lamberdar.

33. The contention of the learned Counsel appearing for the appellant is that this spot inspection report dated 18.03.2013 is only the authorized report at the instance of the SPCB and therefore, any other subsequent reports cannot be taken into consideration is to be tested in the light of the contents of the spot inspection report dated 18.03.2013 itself. On a reference to the spot inspection report dated 18.03.2013, we are able to find that even in respect of item no. 7, which is one of the reasons for the SPCB to refuse to grant consent, the distance of outer periphery of revenue Phirni village to the highest node of the conveyor belt of the project proponent village is stated to be 975.36 mts while the remaining portion "as per Patwari report" is inserted in handwriting without containing any initial or signature of any authorized person. Therefore, it is incumbent on the part of SPCB which has relied upon the said spot inspection report dated 18.03.2013 to produce the Patwari report which is stated to have been the basis on which the distance in respect of item no. 7 was arrived at by the committee under spot inspection report or the spot inspection report itself should have annexed the Patwari's report in all fairness. Even otherwise, if the three (3) of the above said officers even at the instance of

the SPCB have arrived at such conclusion in respect of serial no. 7 enumerated above only based on Patwari report, it is apparent that the officers who have given the inspection report have not themselves verified the distance. In such circumstances the necessary conclusion in the normal circumstances could be only not base reliance on such truncated and doubtful report as correctly found by the learned Appellate Authority. Therefore, we see no reason to take any different view from that of the learned Appellate Authority under the impugned order in this regard.

34. Therefore, the learned Appellate Authority was left with no other option than relying upon the subsequent reports. The subsequent report dated 27.05.2013 stated to be prepared at the instance of the project proponent was based on an inspection conducted by Naib Tehsildar "Retired" Shri Naresh Chander who is stated to have conducted spot inspection on 21.05.2013 in the presence of Sarpanch Dharapur, Shri Moti Ram, Lamberdar and Others and another report stated to have been sent by SDO "C Pataudi" to Deputy Commissioner Gurgaon Vide letter dated 25.10.2013. The learned Appellate Authority has relied upon the latest report dated 25.10.2013 signed by SDO "C Pataudi" who has in clear terms stated the he has reached the spot as per the letter of the Deputy Commissioner, Gurgaon dated 11.07.2013. The Patwari of the area along with the revenue record and land measurement equipments, the Supervisor of Patwari of the Area and Naib Tehsildar, Pataudi along with Shri Deepak Kumar, Surveyor, HUDA Contactor of Rewari were present. That apart the report says that Shri Vijay Singh, the appellant as well as Shri Rohtash Yadav on behalf of project proponent and Shri Moti Ram, headman of village Mau and others were present. In the report he has clearly stated that in their presence the Theodolite Survey Machine was fixed on the spot at North Eastern corner of rectangle No. 9/15 and distance of South Eastern corner and the boundary village Dharapur was got measured by machine by surveyor Deepak from the node point of grid

conveyor which is 32 feet height and the distance has been shown to be 1011.44 mts.

35. The said report dated 25.10.2013 further states in catagoric terms that the same is in accordance with a representation made by the appellant as per the direction of the Hon'ble High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 10333 of 2012. Therefore, it is clear that on the representation sent by the appellant on 18.09.2012 the said spot inspection has been conducted and as contended by the learned Counsel appearing for the appellant, it can never be treated as an unauthorised report. Therefore, the finding given by the learned Appellate Authority in the impugned order stating that the aerial distance relating to item No. 7, in the spot inspection report dated 25.10.2013 is beyond the required distance criteria mentioned by the Government of Haryana in its notification dated 18.12.1997 cannot be said to be either perverse or illegal. Much is spoken about the way in which the mechanical measurement was taken by the Theodolite Survey Machine on the manner of fixing the boundary. When once the authority competent to deal with the sophisticated instrument has made measurement especially in the presence of the appellant as well as respondent no. 1 project proponent and has come to a conclusion on spot specified verification, it is not for this Tribunal to find fault with the topographical survey and substitute its own view. Even otherwise whether the point of measurement to be fixed at no. 4, 3, 2 or 1 for that matter, in our considered view is not going to change the distance factor as such especially when the required distance is 1 km as per the notification of the Government and the finding by the Authority competent is that more than the required distance is available. Even otherwise, the unreliable report dated 18.03.2013 itself shows the deficient distance is marginal. In any event, we are certain that the spot inspection report dated 18.03.2013 not supported by Patwari report cannot be relied upon. In such view of the matter, reliance based on the

report dated 25.10.2013 by the learned Appellate Authority has to be accepted and there is nothing for this Tribunal to interfere with its findings.

36. Even so far as it relates to the report dated 27.05.2013, relied upon by the learned Appellate Authority, it is not as if such inspection, stated to have been conducted on 21.05.2013, was conducted by an incompetent person. It appears that at the direction of the Tehsildar, Pataudi who has appointed a Local Commissioner who happened to be a retired Tehsildar of Jamalpur has conducted spot inspection. In his proceedings of spot inspection he has stated that the appellant and others were present on the spot. He has made demarcation of land by measuring with the chain with the help of flag poles by putting up flag pole on the Southern corner of the Eastern side of the uncultivable land of village Dharapur which came to 60 chains and 6 Karam and in the same way he has carried out measurement for the North Western corner of rectangle no. 28/20 which is adjoining the corner of the uncultivable land that is from the boundary of 28/20 from the North Western corner of village Dharapur up to the conveyors highest node point of crusher installed in village Mau. There is nothing on record to show that the appellant has objected to such method of measurement on the spot.

37. It is significant to note at this stage that in fact, the learned Appellate Authority has compared the reports of the two commission reports and found that between the two reports which are alleged to be unauthorised by the appellant there is very negligible variation of 0.4 per cent. In such view of the matter, we have no hesitation to hold that the finding of the learned Appellate Authority regarding item no. 7 of the spot inspection report dated 18.03.2013 is neither perverse nor illegal and there is absolute no reason for this Tribunal to interfere with the order of the learned Appellate Authority in this regard.

38. In so far as it relates the observation in serial no. 11 of the report dated 18.03.2013 which relates to the approved water supply of 20 kl capacity and distance, it has been found that undisputedly the water supply scheme is a piped supply without any open reservoir and water tank and therefore, there is no chance of water getting contaminated or polluted by fine stone particulate matter generated from crushers during crushing operations of the units. In fact the learned Appellate Authority has relied upon an affidavit dated 14.05.2013 filed by the Regional Officer of the HSPCB Gurgaon Region, South in C.W.P. No. 19634 of 2010 in the Hon'ble High Court of Punjab and Haryana stating that the tube well based water supply was not affected by the operation of the crushing unit. When such undisputed fact is before us, the reliance placed on the said serial no. 11 of the spot inspection report dated 18.03.2013 by the HSPCB to refuse to grant consent is absolutely unsustainable as correctly held by the learned Appellate Authority. Incidentally we have to refer about an obvious typographical error in the notification issued by the Haryana Government, dated 18.12.1997. In the Schedule I while stating about the norms for siting, the distance is stated, for example as 1-5, 1-0 etc. It must be obviously 1.5, 1.0 etc.

39. The historic events which are narrated above show in no uncertain terms, and makes one to necessarily conclude that the appellant has taken every opportunity to question the conduct of respondent no.1 project proponent at every stage taking advantage of certain observations made by the Hon'ble Judicial forum. Even though we are conscious that the appellant is not disentitled to take such action, we have no hesitation to come to a conclusion that the steps taken by the appellant has not been with *bona fide* intention. That apart there is no question of any environmental issue affecting the larger public interest that has been raised in this appeal. The appellant having taken shelter under spot inspection report dated 18.03.2013 which is not only truncated but also bald in our view has in

fact taken many other steps which are seen in the records filed by the appellant himself, that he has raised different sort of issues at different times and sought compliance regarding the units of respondent no. 1 on different grounds subsequent to the spot inspection report dated 18.03.2013, other than those two grounds mentioned in serial no. 7 and 11. He has started raising issue about the wind breaking walls, plantation of trees, metalled road etc. which were not the subject matter of the spot inspection report dated 18.03.2013 and made the officers of the Board to conduct inspection frequently and invited various reports at various times to make his grievance against respondent no. 1 alive for the reasons best known to him. When once it is admitted that Theodolite method of measurement is the most accurate method and both the units of respondent no. 1 were functioning with necessary compliance, the conduct of the appellant shows that he has carefully made the entire issue alive against respondent no. 1 from time immemorial under one pretext or the other which in our view cannot be termed better than the abuse of process of law. It is also informed to this Tribunal that the appellant has even filed a contempt application against respondent no. 1 and other official respondents for not considering his representation of the year 2012 based on an order passed in a Writ Petition dated 20.08.2012 in respect of the NOC granted 10 years before, namely 20.05.2002 and that contempt application came to be dismissed by the Hon'ble High Court on 10.07.2013. These are all the reasons which in our view are sufficient to hold that the appellant has not come to the Court with clean hands.

40. Looking into any angle we see no reason to interfere with the impugned order of the learned Appellate Authority and accordingly, we dismiss the appeal.

41. In so far as it relates to the conduct of a party in not approaching the Judicial forum with clean hands, the Hon'ble Apex Court in numerous cases has heavily come down against such conduct by imposing exemplary

cost. While decrying the abuse of Public Interest Litigation concept against the very public interest the same was held by the Hon'ble Apex Court in Central Electricity Supply Utility of Odisha VS Dhobei Sahoo and Ors reported in (2014)1 SCC 161. The Hon'ble Apex Court to support its view that Public Interest Litigation cannot be entertained if they are filed in confrontational mode, relied upon observation of Bhagwati J. in the Judgment reported in (1984) 3 SCC 161 as follows:

> "25. As advised at present, we may refer to certain authorities in the field in this regard. In *Bandhua Mukti Morcha v. Union of India* Bhagwati, J. (as His Lordship then was) had observed thus: (SCC p. 183, para 9)
>
> > "9…When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives."
>
> "26. ……
>
> "27. In Neetu v. State of Punjab, the Court has opined that it is shocking to note that courts are flooded with large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigation. Commenting on entertaining public interest litigations without being careful of the parameters by the High Courts the learned Judges observed as follows: (SCC p. 617, para 5)
>
> > "5.'16…Though the parameters of public interest litigations have been indicated by this Court in large

number of cases, yet unmindful of the real intentions and objectives, (High Courts) are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases.' (*Ashok Kumar Pandey case*, SCC p. 358, para 16)"

Thereafter, giving a note of caution, the Court stated:

"6.'12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens.' (*B. Singh case*, SCC p. 372, para 12)"

42. Again taking serious note of the filing of Public Interest Litigation by individuals for settling their personal scores the Hon'ble Apex Court in P. Seshadri v. S. Mangati Gopal Reddy and Ors. (2011) 5 SCC 484 has observed in the following paragraphs:

"18. The High Court has committed a serious error in permitting Respondent 1 to pursue the writ petition as a public interest litigation. The parameters within which public interest litigation can be entertained by this court and the High Court, have been laid down and reiterated by this Court in a series of cases. By now it ought to be plain and obvious that this Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies, having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at the threshold".

"21. This Court in *Neetu v. State of Punjab* emphasised the need to ensure that public interest litigation is not misused to unleash a private vendetta against any particular person. In SCC para 7, it is observed as follows: (SCC p. 619)

> "7. When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object".

"22. Similar observations had been made by this Court in *Ashok Kumar Pandey v. State of W.B.* We may reiterate here the observations made in SCC para 12 herein, which are as follows: (SCC p. 357)

> "12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, the Court must be careful to see that a body of persons or a member of the public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire

to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs".

"23. This Court again in *Divine Retreat Centre* reiterated that public interest litigation can only be entertained at the instance of bona fide litigants. It cannot be permitted to be used by unscrupulous litigants to disguise personal or individual grievances as public interest litigations. The facts placed on record in the present proceeding would clearly indicate that the appellant has not come to the Court with clean hands. He has failed to establish his credentials for moving the writ petition as public interest litigation. In our opinion, the High Court has failed to examine the matter, in its correct perspective. The writ petition was undoubtedly moved by motives other than what was stated in the writ petition. A perusal of the affidavit in support of the writ petition would clearly show that the writ petition had been filed by the petitioner at the instance of some other persons who are hiding behind the veil.

43. The concept of public interest litigation was discussed in depth by the Hon'ble Apex Court by holding that a petition styled as Public Interest Litigation which is a camouflage to foster the personal disputes is to be thrown out. It was Hon'ble *Dr. Arijit Pasayat and P. Sathasivam, JJ in* *Holicow Pictures Private Limited v. Premchandra Mishra and Ors.* reported in (2007) 14 SCC 281 the observation was made as follows:

"10.5. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be

'publicity interest litigation' or 'private interest litigation' or 'politics interest litigation' or the latest trend 'paise income litigation'. . . If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal v. H.S. Chowdhary* and *Kazi Lhendup Dorji v. CBI.* A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India and K.R. Srinivas v. R.M. Premchand*).

6. It is necessary to take note of the meaning of the expression 'public interest litigation'. In *Stroud's Judicial Dictionary,* Vol. 4 (4th Edn.), 'public interest' is defined thus:

> 'Public interest – (1) A matter of public or general interest "does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".'

7. In *Black's Law Dictionary* (6th Edn.) 'public interest' is defined as follows:

> 'Public interest – Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.'

8. In *Janata Dal case* this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, the Court has laid down as follows: (SCC p. 331)

> '53. The expression "litigation" means a 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 in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.'

9. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

> '62. Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.'

10. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

'98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.'

11. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

'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 grievance, deserves rejection at the threshold.'

12. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express out opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal

cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters- government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing 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 courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

13. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, the court must be careful to see that a body of persons or member of public, who approaches the court is

acting *bona fide* and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14. The Council for Public Interest Law set up by the Ford Foundation in USA defined 'public interest litigation' in its report of Public Interest Law, USA, 1976 as follows:

> 'Public interest law is the name that has recently been given to efforts providing legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.'

15. The court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see

that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public- spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono public, though they have no interest of the public or even of their own to protect.

16. The courts must do justice by promotion of good faith and prevent law from crafty invasions. The courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu and A.P. State Financial Corpn. V. GAR Re- Rolling Mill*s.) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Buddhi Kota Subbarao (Dr.) v. K. Parasaran.*) Today people rush to the courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in the courts and among the public.

17. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that the courts are flooded with a large number of so-called public interest litigations where only a minuscule percentage can legitimately be called as public interest litigation. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, the courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine case. It is also noticed that the petitions

are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

18. In *S.P. Gupta v. Union of India* it was emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest litigant. He has also left the following note of caution: (SCC p. 219, para 24)

> '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. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.'

19. In *State of H.P. v. Parent of a Student of Medical College* it has been said that the public interest litigation is a weapon which has to be used with great care and circumspection.

20. These aspects have been highlighted in *Ashok Kumar Pandey v. State of W.B.* and *B. Singh (Dr.) v. Union of India and Dattaraj Nathuji Thaware v. State of Maharashtra.*"

44. Hon'ble Justice Arijit Pasayat along with Hon'ble Justice S.H. Kapadia (Former Chief Justice of India), in his inimitable style has made it clear

that a litigant has no right to take away the Courts time and public money to get his score settled in the manner he wishes. That was in *Gurpal Singh VS State of Punjab and Ors.* reported in (2005) 5 SCC 136 which is as follows:

> "6. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu* and *A.P. State Financial Corpn. V. GAR Re- rolling Mills*.) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Buddhi Kota Subbarao (Dr.) v. K. Parasaran*.) Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public."

45. Again, stating in a sarcastic term that the said case is sad reflection and almost a black spot on the noble profession of law and black day for the black/ robed professional, if the allegations are found to be true, the learned Judges in *Dattaraj Nathuji Thaware v. State of Maharashtra and Ors.* reported in (2005) 1 SCC 590 have distinguished the Public Interest Litigation concept under administrative law with that of Private Interest Litigation, Politics Interest Litigation, Paise Income Litigation reiterating the observations made above in various cases.

46. The above referred cases are not only well instructive on the concept of Public Interest Litigation which is often abused and misused but throws light in the legal parlour that by permitting such fake litigations, the genuine litigants are side-lined virtually for want of time.

47. Applying the ruling of the Hon'ble Apex Court which are having binding precedential value, to the facts of the present case we are of the view that the present appeal is not only an abuse of process of law, but the entire conduct of the appellant deserves to be condemned.

48. Accordingly, we dismiss the Appeal with the cost of Rs.50,000/- (Fifty Thousand Only) to be paid to the legal aid fund of the NGT Bar Association within two weeks from the date of receipt of a copy of this order.

49. While parting with, we also feel it appropriate to make the following observation to be used as a guideline in future in respect of stone crushing units. The State Pollution Control Boards are directed to ensure that while Consent to Operate is given to any stone crusher, a condition should be stipulated that the unit will implement the pollution control measures as suggested in the Comprehensive Industry Document (Series COINDS/78/2007-08) brought out by the Central Pollution Control Board in February 2009.

50. Further, in view of the fact that by and large stone crushing units are bound to cause significant air pollution problems to the nearby residents and its adverse impact on environment are to be taken note of, therefore we direct all the State Pollution Control Boards and Pollution Control Committees of the Union Territories to strictly ensure while granting Consents to stone crushers that the pollution control measures and environmental safeguards as mentioned in the above referred Comprehensive Industry Document are scrupulously followed and same must be periodically monitored.

51. With the above observations, the appeal stands dismissed with cost as stated above. All Miscellaneous Applications stand closed.

Hon'ble Mr. Justice Dr. P.Jyothimani
Judicial Member

Hon'ble Mr. Justice M.S. Nambiar
Judicial Member

Hon'ble Dr. G.K. Pandey
Expert Member

Hon'ble Prof. Dr. P.C. Mishra
Expert Member

Hon'ble Prof. A.R. Yousuf
Expert Member

New Delhi,
25th April, 2014.