

## Case Commentary

### *Vellore citizen forum vs Union of India*

#### **Introduction**

Tanneries in India are one of the main manufacturing industries. The shoe has a leather and the leather is laden with explanation, poor working conditions and hazardous chemical impacting the mental and physical health of marginalised communities, especially Dalit community who are forced to work under such conditions in a poor wage, that barely pays the bill. *Vellore citizen forum* is one of those cases of the 90s which provided a substantive ground to make polluters accountable. The socio economic impact of the judgment is unbeknown to us. But, the major issue was pertinent to have a nuanced approach towards environmental protection. I am going to address the issues raised during the case and how the Indian judiciary provided a framework for the same.

#### **Background**

The petition in Supreme court filed under Article 32 of the Indian constitution against the tanneries in larger numbers and the manufacturing industries affecting the lives and health of people around the district. The tanneries were engaged in using toxic substances and chemicals during the process. The people of the district were dependent on the Palar river for drinking and other activities. The chemical substance released in the river Palar resulted in the deterioration of health of the communities dependent on the only source of water. Tamil Nadu Agricultural Research center in their report mentioned that around 35, 000 hectares of agricultural, arable land was polluted and contaminated. This leather industry was the major exporter back in the 90s, and the contributor in the foreign exchange market. It was the most skeptical post liberalization period where the Indian economy was at the nascent stage. And a crucial question raised, was whether industrial development and economy at the pretext of human life. While it looks self-evident, such a question must not be raised in the first place. Therefore, the question of the law was, whether the right to safe drinking water can be backed by statutory law, and what is at stake in the absence of any concrete solution. The second question was of the deliberate attempt to ignore the regular guidelines by the state and central authorities. The Industry was obligated to use equipment in order to control the contamination and to minimize it according to the prudent understanding. *Tamil Nadu Pollution control Board* and the Union government ordered the manufacturing industry, but the order was of no significance as such.

## Analysis

Development and environment binary has always been contentious, even after the advent of sustainable development as a concept to be incorporated in the discourse. But, Vellore was the landmark judgment and the pioneer of introducing the middle path, rather the most acceptable notion of prevention and preservation simultaneously. The Polluter pays principle, intergenerational equity, precautionary principle among others. The apex court gave the direction which was later proved to be the floodlight in the legal jurisprudence. The court relied on International laws and domestic laws for the polluter pays principle and the precautionary, taking insights from the Rio declaration and the Brundtland report, which also signifies the adherence to the directive principles of state policy in matters of International laws. Sustainable development albeit the definition has been quite ambiguous in matters to ecology and development, but it was now imperative to come out of the archaic principles of depending on 'whims and fancies' of the state and corporations. Article 48, 51a and 51g, of the directive principles of the state policy were mentioned in detail and how the state should provide a standard and adequate life and healthy environment to the citizens. The precautionary principle states that

*"In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to protect the environment ."*<sup>1</sup>

The precautionary principle is based on the conjured up risks, where the intervention is seemingly difficult. The apex court referred to case laws to rely on such as *Indian Council for Enviro-Legal Action v. Union of India and Others*. The case was filed by an NGO on behalf of the citizen, moving away from the locus standi pre requisite, the NGO contended that the government authorities didn't put a hold on the chemical polluting industries. The Supreme court intervened and for the restoration of the damage. The court referred to Article 21, and the legal jurisprudence for incorporation of citizen's right to a healthy environment was held to be the customary principle enshrined in the constitution. The main contention in the vellore citizen forum was 'the reliance on export.'

The court said, *"No matter how much the leather industry affects the Indian economy, they have no right to operate in a way that destroys, degrades, harms or threatens the health."* The sustainable development in the stockholm convention in 1972, was significant to annihilate the traditional approach of ecology and development, and the conundrum was resolved by international laws and the legal terminologies.

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<sup>1</sup> Approach of Indian Judiciary towards Sustainable Development in India Dr.Vijeta S.Singh

Vellore citizen forum is necessary to propel the sense of how the environment should be looked at. The court with the help of precedents, made central authorities accountable for the ignorance on their part. Hon'ble Justice Kuldip Singh, explained the need to consider polluter pays principle and the precautionary principles into the municipal laws, as that would help in giving direction to the concerned authorities in future and before the inauguration of projects where such contention would possibly arise. The court referred to the *MC Mehta vs UOI* for the explanation of sustainable development. In this case, the order was passed to prevent the environmental degradation in Haryana. The court held that no construction would take place within 1 km of the radius, to preserve the Surajkund and Badkhal Lakes.<sup>2</sup> The precautionary principle reflected in the environmental impact assessment. The environmental impact assessment gives a floodlight vision or the overview of the situation. Whether, and what preventive measures are to be taken care of before the implementation of the final project. Also, what mitigating factors are to be adopted for the utility of the resources, and who are the stakeholders which are to be taken into consideration. In my opinion, the precautionary principle is more pertinent and structured than the polluter pays principle. The court went into detail and laid emphasis on the precautionary principle, however in the vellore forum case, this was not applicable. But the final judgment provided a direction to the state and central authorities to come out of 'traditional' approaches.

## Conclusion

Lavanya Rajamani has noted in her analysis of the right to environment, that there is an element of scientific uncertainty. But, she doesn't dwell further into the level of uncertainty and what does she mean by that, and how can we look into that uncertainty. In my opinion, the element of scientific uncertainty refers to the mitigating factors which can be measured and which are beyond the level of human control. Which also suggests that precautionary principle has its own limitations beyond which it can't function and it is unreasonable to think the unthinkable. But, vellore judgment passed in 1996, after five years of rigorous discussion. Since then anthropocentric risk crossed the scientific understanding and things are not clear as to how the terminologies would adapt in such contexts. And the beautiful hold on decisions are more stronger than the 90s, to an extent of passing without impact assessment, this inevitability was expected, therefore, it is required to make it more stringent for the better control and prevention for the environment and the citizens who are bearing the brunt of constant degradations and decay.

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<sup>2</sup>NALSAR Law Review ' Precautionary Principle as an effective judicial role in the prevention and control of water pollution by Aruna B Venkat