
CASE ANALYSIS: A.P. POLLUTION CONTROL BOARD V. PROF. M.V. NAYUDU (RETD.) AND OTHERS (1999 (2) SCC 718)

Princess Chopra, B.A. L.LB (Hons.), Institute of Legal Studies and Research, GLA
University, Mathura

Divya Saraswat, B.A. L.LB (Hons.), Institute of Legal Studies and Research, GLA
University, Mathura

CITATION	1999 (2) SCC 718; AIR 1999 SUPREME COURT 812
DATE	27 JANUARY 1999
COURT NAME	SUPREME COURT OF INDIA
PLAINTIFF/APPELLANT/PETITIONER	ANDHRA PRADESH POLLUTION CONTROL BOARD (APPELLANT)
DEFENDANT/RESPONDENT.	PROF. M.V. NAYUDU (RETD.) & OTHERS (RESPONDENT)
BENCH	JUSTICE S.B. MAJMUDAR JUSTICE M. JAGANNADHA

INTRODUCTION

This case pertains to the Article 21 of the Indian Constitution, which provides all with the right to life and liberty¹. It has also been extended by the Apex Court in *Virender Gaur v. State of Haryana*² to include the right to a clean environment as a significant part of the fundamental right to life and liberty under Article 21 of the Constitution of India³. This case arose because of a conflict over the establishment of a hazardous industry in a sensitive area with crucial water resources. The judgement was delivered on 27 January 1999, by the Supreme Court

¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

² (1995) 2 SCC 577

³ Priyanshi Jain, "From Clean Air to Climate Justice: The Expanding Canvas of Environmental Rights in India," Manupatra Articles (2 July 2024).

bench including Justice S.B. Majmudar and Justice M. Jagannadha Rao. The case examines the balance between environmental protection and infrastructural development⁴. It also investigates how decisions should be made in environmental cases, considering the limited scientific and technical knowledge of the judges⁵. This case revolves around the protection of Himayat Sagar and Osman Sagar lakes, which provide drinking water to the twin cities of Secunderabad and Hyderabad, from a potentially polluting castor oil derivatives industry. The Court examined the role of courts in technical environmental matters and whether the permission for setup of an industry in proximity of crucial drinking water resources was justified⁶. It also scrutinized into the orders passed by the A.P Pollution Control Board and the National Environmental Appellate Authority.

FACTS OF THE CASE

1. In early 1994, the Interim Report Of The Expert Committee constituted by the Hyderabad Metropolitan Water Supply and Sewerage Board, the Municipal Administration and Urban Development, Government of Andhra Pradesh, issued government orders which prohibited various types of development within a 10 km radius of the Himayat Sagar and Osman Sagar Lakes, to maintain the quality of these reservoirs which supply drinking water to Secunderabad and Hyderabad.
2. In 1996, the Government of Andhra Pradesh issued a letter of intent for the establishment of an industry to produce BSS grade castor oil and glycerine with the relaxation of locational restrictions. The issuance of license was subject to some conditions. One of such conditions was the obtainment of a No Objection Certificate (NOC) from the Andhra Pradesh Pollution Control Board.
3. When the Respondent Company applied to the Appellant board for the NOC, the application of the industry was rejected on grounds that the proposed site was within the 10 km radius of the reservoirs. While the Gram Panchayat approved the plans of the respondent, the Commissionerate of Industries rejected the location and directed the selection of an alternate site.

⁴ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

⁵ *Lafarge Umiam Mining Pvt. Ltd. v. Union of India*, (2011) 7 SCC 338.

⁶ *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.)*, (1999) 2 SCC 718 (India)

4. In April 1997, the Respondent company approached the appellant board again for the clearance to set up the unit. The Board replied with the description of the potential pollution that could be caused by the industry through discharge, run-off, or emissions. Thus, the application of the respondent was rejected.
5. The letter of rejection by the appellant forced the respondent to approach the National Environmental Appellate Authority for approval. The respondent filed affidavits by eminent technologists and scientists, who claimed that the respondent had eco-friendly technologies and inventions for the new unit, which would not harm the environment.
6. The Appellate Authority held that the industry is “not a polluting industry”. It also held that the categorization of polluting industries was not applicable to the areas of Himayat Sagar and Osman Sagar lakes. The Authority directed the appellant to give its consent for the establishment of the industry.
7. When the appellant did not comply with the orders of the appellate authority, the respondent approached the High Court, where a division bench criticized the appellant for its “double standards” and upheld the order of the appellate authority. The High Court found the nature of the case “too technical” and held that it could not sit in appeal over the present case.

ISSUES OF THE CASE

The petition raised the following critical questions of law:

1. Whether the order passed by the appellant in 1997, rejecting the clearance on grounds of high pollution potential for setting up the unit, was valid.
2. Whether the order passed by the appellate authority in 1998, which ruled that the categorisation of polluting industries did not apply to the disputed area, was valid.
3. Whether the orders passed by the Andhra Pradesh government, which granted the respondent exemption in the 10% radius rule, were valid.
4. Whether the High Court could have removed itself from the appeal because the case was “highly technical”.

APPELLANT'S ARGUMENTS

The appellant, represented by the Additional Solicitor General, R.N. Trivedi, raised the following arguments in the courts to support the plea to reject the setting up of an industry with potential environmental impact:

1. The appellant relied on the GOM No. 192 of 1994 issued by the Government of Andhra Pradesh, which prohibits various types of developments within 10 km radius of the Himayat Sagar and Osman Sagar Lakes. This order was issued to maintain and monitor the quality of water in these reservoirs.
2. The Himayat Sagar and Osman Sagar Lakes supply drinking water to the twin cities of Hyderabad and Secunderabad. Even the slightest contamination in the water of these reservoirs could pose a threat to their population⁷.
3. The appellant strongly relied on the precautionary principle⁸, as applied by the Supreme Court in *Vellore Citizens' Welfare Forum v. Union of India*⁹. It argued that in cases of scientific uncertainty where the judiciary lacks technical or scientific knowledge, preventive measures should be taken to ensure the minimum negative impact on the environment.
4. The appellant contended that the respondent did not comply with the conditions imposed by the Government of India on the issuance of license. The government imposed the necessary condition that the setting up of the industry was subject to obtaining a certificate from the state pollution control board (appellant). But the appellant argued that they commenced the civil works and construction for the industry without approval from the pollution control board.

RESPONDENT'S ARGUMENTS

The respondent in the case, represented by their counsel Shri M.N. Rao, advanced the following arguments to support their plea of setting up the industry:

⁷ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

⁸ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

⁹ (1996) 5 SCC 647

1. The respondent argued that the proposed unit for manufacturing castor oil derivatives was not a heavily polluting industry. The nature of the activity was not hazardous and did not fall within the red category of industries, which cause significant environmental degradation.
2. The respondent strongly relied on the affidavit filed by retired scientist, Prof. M. Shantappa. He stated that the respondent had adopted the latest eco-friendly technology¹⁰ to prevent pollution. Moreover, in his report, he also stated that the respondent had employed the latest technology from IICT Hyderabad, a premier institute for chemical technology. The said institute also issued a certificate, confirming that the contended industry will not discharge any acidic effluents and the by-products are collected by mechanical processes and are saleable.
3. The respondent argued that the conditions imposed by the Technical Committee on the company at its meeting in July 1997 were complied with.
4. The Managing Director of the company filed an affidavit explaining all the details of the technology employed in the new unit. He highlighted that the new technology was ecologically safe and ensured that it did not cause any negative impact on the environment.

RELEVANT PROVISIONS

1. Article 32 of the Indian Constitution

Article 32 grants every individual the right to move to the Supreme Court for the enforcement of their fundamental rights¹¹. The Supreme Court has affirmed the right to a clean environment, air and water in the case of *Subhash Kumar v. State of Bihar*¹² and allows litigation for the enforcement of this right.

2. Article 136 of the Indian Constitution

Article 136 empowers the Supreme Court to grant special leave to appeal against any

¹⁰ *Enviro-Legal Action*, supra note 8

¹¹ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

¹² 1991 (1) SCC 598

judgement or order passed by any court or tribunal. In the present case, it enables the appellant to challenge the decision of the appellant authority and the High Court.

3. Article 21 of the Indian Constitution

Article 21 of the Indian Constitution provides all persons with the right to life and personal liberty¹³. This case reinforced that the right provided under this article does not merely provide for animal existence, rather it includes a dignified life in a healthy environment.

4. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974

Section 25 mandates that prior consent of the state pollution control board be obtained for the establishment of any industry. In this case, the appellant argued that the respondent did not obtain such approval before establishing the factory.

5. Section 28 of the Water (Prevention and Control of Pollution) Act, 1974

Section 28 provides the right to appeal against the decision of the pollution control board. In the present case, the respondent invoked this statutory provision to challenge the rejection of his application by the appellant.

6. Section 3(3) of the Environmental Protection Act, 1986

Section 3(3) empowers the central government to constitute authorities for expert decision-making in environmental matters. The Supreme Court, in this case, indirectly suggested the establishment of expert bodies to handle complex scientific and technical issues.

JUDGEMENT

The Apex Court, after analysing all the aspects of the case, delivered the following judgement:

The Supreme Court allowed the appellant's appeal. The orders by the appellate authority and the High Court were set aside on grounds of unsustainability. The findings of the appellate authority that the industry was "not polluting" were held erroneous as it lacked scientific or technical evidence. The Court upheld the decision of the appellant

¹³ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

to deny permission for setting up of the industry. The Supreme Court observed that decisions in environmental and technical cases must rely on expert scientific opinion rather than limited knowledge¹⁴. The Court also highlighted the need for specialized environmental courts that combine both scientific and legal expertise. The Court criticized the decision of the High Court for refusing to examine the matter on grounds of technicality of the case. The Court observed that the courts cannot avoid their constitutional duties in such cases. The Supreme Court observed that the protection of drinking water sources is of “paramount importance”, as it directly affects the Right to Life and Liberty, guaranteed under Article 21 of the Constitution¹⁵.

A) RATIO DECIDENDI

The Court referred to the changes made to the precautionary principle and the reversal of the burden of proof in the case of *Vellore Citizens Welfare Forum v. Union of India*¹⁶. The Supreme Court established these legal principles as an integral and binding part of Indian Environmental law. The Court held that when the courts face scientific uncertainty regarding environmental impact, authorities must adopt a preventive approach to deter potentially harmful activities. The Court held that in environmental matters, the burden of proof shifts to the industry, which must prove that the intended activity does not produce environmentally harmful results. The industry must produce scientific and technical evidence, rather than mere affidavits or assertions, to support its plea. The Supreme Court held that in cases of conflict between environmental protection and development, the protection of the environment must be prioritized, especially when critical resources like drinking water are involved¹⁷. To reach a decision in such cases, the Court should rely on scientific and expert evidence.

B) OBITER DICTA

The Court emphasised the need for innovations in environmental technologies, which are safer and more sustainable. The Court highlighted the existing gap in the Indian judiciary between law and science. It emphasized the need for more scientifically

¹⁴ *Lafarge Umiam Mining*, supra note 5

¹⁵ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

¹⁶ 1996 (5) SCC 647

¹⁷ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

informed and trained judges, for effective environmental adjudication¹⁸. The Supreme Court strongly emphasized the need for amendments in environmental laws and institutional reforms in the central and state pollution control boards, and other authorities dealing with environment and pollution.

CRITICAL ANALYSIS

The judgement by the Supreme Court in the case of A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) (1999) turned out to be a landmark case in the history of environmental jurisprudence in India. The Supreme Court addressed the struggle between environmental protection and development. It appropriately prioritized environmental concerns due to the irreversible nature of the ecological damage. The Court clearly highlighted the prioritization of sustainable development, and its guidance in future decisions. However, a structured framework is necessary for the consistent application of environmental principles.

The Supreme Court's judgement in this case possessed various strengths and merits, which promoted environmental protection and constitutional principles. The Court recognised the limitations faced by the judiciary in scientific and technical environmental matters. The Court adopted a solution-based approach in this case and indirectly encouraged the establishment of specialized environmental tribunals. This case also expanded the scope of Article 21 of the Indian Constitution by including the right to safe and clean drinking water. Many environmental and legal principles that find a place in international law were held to be binding in the Indian legal system as well in this case. Principles such as the Assimilative Capacity Principle were replaced with updated and needed principles, such as the Precautionary Principle.

Despite the contribution of the case in the progression of environmental adjudication in India, this judgement raises some serious concerns and limitations that require critical examination. The judgement in this case overly relies on the Precautionary Principle¹⁹. Such an approach and strict application of the principle may discourage development. This case raises serious concerns about the interference of the judicial bodies in expert regulatory bodies²⁰. The complete reversal of the burden of proof on the industries may be practically difficult. Proving

¹⁸ *Lafarge Umiam Mining*, supra note 5

¹⁹ *Narmada Bachao*, supra note 4

²⁰ *Lafarge Umiam Mining*, supra note 5

complete absence of environmental harm is scientifically challenging. The judgment does not clearly define the scope and applicability of the Precautionary Principle. Lack of clear guidelines may lead to inconsistency²¹. The decision by the Supreme Court may be ecologically safe, but it may result in slow industrial growth in a developing region, where economic opportunities are scarce and crucial.

Overall, the judgement reflects a careful attempt by the Supreme Court of India to protect the environment from irreversible damage, along with a critical examination of complex legal and technical issues. The decision might raise certain concerns regarding judicial intervention and unclear instructions, but it still marks an important step towards balancing environmental interests with developmental needs.

CONCLUSION

The decision in *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.)* (1999) marks a significant milestone in the development of Indian Environmental Law. It reinforces the importance of scientific and technical expertise in such matters. The Supreme Court addressed the concerns related to the right to clean and safe drinking water by bringing it under the purview of Article 21 of the Indian Constitution. The judgement strongly focused on protecting environment and public health from the damage caused by industries, but it also raised questions about the right balance between development and ecological safety. Nevertheless, the case contributes significantly to the development of Indian Environmental Law, and it continues to shape a more cautious and rights-oriented approach in decision-making.

²¹ P. Leelakrishnan, *Environmental Law in India* (LexisNexis, 2019).