

In the High Court of Jucicature of Andhra Pradesh at Hyderabad

T. Ramakrishna Rao

v.

Hyderabad Urban Development Authority

Writ Petition No. 36929 of 1998

20.7.2001 dd.

S.B. Sinha C.J. & S.R. Nayak J.

Judgement:

1. Sri T.Ramakrishna Rao, a learned member of the A.P. High Court Bar addressed a letter dated 13.12.1998 to the Hon'ble the Acting Chief Justice of this Court and also to the Hon'ble Chairman, Legal Services Authority, High Court of Andhra Pradesh, Hyderabad. It reads-

"It has been reported by Sri T.Sunil Reddy, in the Indian Express Supplement dated 28.11.1998 under the caption "A victim of urbanization" that Durgam Cheruvu at Jubilee Hills has been named in the INTECH award this year for its natural beauty and scenic surroundings situated amidst the famous deccan rock formation. Durgam Cheruvu once served as the main source of drinking water for Golkonda Fort and the Government plans to use its beautiful environs to promote tourist activity in the State. While innumerable colonies sprang up in and around the lake's vicinity, letting out their sewage into natural water body and the construction activity in the surrounding areas is destroying the rock formation. The environmentalists fear that most of the sewage from even the Hi-tech city will be delivered into the lake. "If the officials concerned failed to check the flow of all types of effluents into the lake Durgam Cheruvu will become another Hussain Sagar lake" as stated by Sri K.Purushotham Reddy, Convenor of Citizens against Pollution (CAP). According to him taking up catchment area sanitation project is a solution to arrest the flow of sewage waste into the lake. If the Government allows construction activity in and around water body, it is difficult to stop effluents from entering the lakes.

2. The Honorary Secretary of the Society for reservation of Environment and Quality of Life, P.Anuradha Reddy also opposed the idea of setting up of STP to treat the effluents entering Durgam Cheruvu." The Hyderabad Urban Development Authority Vice

Chairman said that permission was granted to builders at Madhapur area only after they laid underground drainage system. The Metropolitan Water Supply and Sewerage Board Director said that efforts were on to set up a STP at Durgam Cheruvu.

3. The aforesaid report of Indian Express portrays the environmental degradation and damage to the ecology of the Durgam Cheruvu lake due to the growing urbanisation around the lake. Therefore, it is the duty of the State to preserve and protect the environment of Durgam Cheruvu lake from the ecological imbalance and degradation of environment as per the judgments of the Supreme Court reported in 1996(3) Supreme page 741 and also to protect the rights of citizens under Arts. 21 and Art.51-A(G) of the Constitution of India and the Environmental Protection Act, 1986.

4. Hence, I humbly request that the aforesaid Indian Express Report dated 28.11.1998 may be taken up as a writ petition by the Hon'ble Court.

5. It is, therefore, further prayed that the Hon'ble Court may be pleased to issue appropriate directions to the 1) Hyderabad Urban Development Authority, 2) Metropolitan Water Supply and Sewerage Board, Hyderabad and 3) Secretary, Department of Forest and Environment, Government of A.P., for preservation and ecology of Durgam Cheruvu lake.

Sd/- T.Ramakrishna Rao

Advocate (Legal Aid Counsel) High Court of A.P."

6. This letter was treated as a taken-up Writ Petition. On the basis of the allegations contained in the above letter of Sri T. Ramakrishna Rao and the directions sought by him from this Court, the Registry framed the following prayer-

"For the reasons stated in the Petition dt. 13.12.1998, this Hon'ble Court may be pleased to issue an order, direction or a writ, more particularly one in the nature of Writ of Mandamus calling for records and remarks from the respondents herein and connected to (a) letting out the sewerage into the natural water body of Durgam Cheruvu at Jubilee Hills, Hyderabad by the people of innumerable colonies which came up in and around the lake vicinity; and (b) unhindered construction activity in the surrounding area of the said Durgam Cheruvu from the ecological imbalance and degradation of environment; and to pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

7. Initially only the Chairman, Hyderabad Urban Development Authority, Hyderabad; the Chairman, Metropolitan Water Supply and Sewerage Board, Hyderabad and the Secretary to Government, Department of Forest and Environment, Government of Andhra Pradesh, Hyderabad, were impleaded as respondents 1 to 3 respectively. However, subsequently, A.P. Pollution Control Board, Hyderabad was impleaded as respondent No.4 by an order of the Court dated 1.10.1999 and Serilingam Municipality, Serilingampalli, represented by its Commissioner was impleaded as respondent No.5 by

an order of the Court dated 5.10.1999. Although all the respondents are served with notice, none of the respondents have filed any counter-affidavit. It is also relevant to notice that this Court, while issuing notice before admission on 5.1.1999 itself, had directed the respondents "to submit the reports about the steps taken by them to prevent the tank known as 'Durgam Cheruvu' from being polluted". The Court further directed that "the reports to be submitted by the respondents should contain the details of the number of permissions so far granted by the respondents for construction of the buildings in the vicinity of the above tank". Only at a belated stage and that too as repeatedly directed by this Court, the A.P. Pollution Control Board, Hyderabad, the 4th respondent herein, submitted a report to the Court, through its Member-Secretary. It reads-

"REPORT ON THE TAKEN UP PETITION W.P.NO. 36929/98 FILED BY SRI T.RAMAKRISHNA RAO REGARDING DURGAM CHERUVU.

8. The Durgam Cheruvu lake is located in the Sy. No. 45 to 61, 363 full part of 62, 64 which falls in Madhapur (v) Sy. No.44, 67 & 8 part of 5 & 73 comes under Raidurg (v) and Sy. No. 49, 50 of village Guttala, Begumpet. A copy of the lay out map of the lake and its surroundings is enclosed. The Durgam Cheruvu lake is surrounded by Madhapur (v) on West-South by Raidurg (v) on east by Guttala Begumpet (v) and north again by Madhapur (v).

The Board officials have inspected and reported that the lake has two inlets and one outlet. The two in lets, one from Madhapur (v) and other from Jubilee Hills, joins the lake from the North and North-East side. These inlets mostly carry domestic effluents into the lake from the upstream residential areas. The outlet of the lake is located at the south side of the bund.

9. The APIIC has earmarked some land for setting up computer technology 'parks' at Madhapur (v) and this site is located on the upstream side of the lake. A number of residential colonies are coming up on the upstream side of the lake in addition to the already existing colonies.

10. There are no polluting industries existing in the catchment area of the lake except one leather tanning unit i.e., Hyderabad Tanneries Ltd., (LIDCAP) is situated 1 KM away from the lake bund on the south side on the down stream of the lake. This unit is not fully operational, extending facilities to other industries on job work basis. However, the effluent does not join the lake and flows away from the lake as the location is downstream side of the bund of the cheruvu and a little distance away from the side of the highway towards Lingampally.

11. The A.P. Tourism Department has started boating activity to attract tourists, but activities like washing of clothes, cattle washings and fishing were also observed. The A.P. Pollution Control Board has collected water samples from the lake at the inlet, periphery and midstream. The analysis reports indicates that all the parameters are within the permissible limits (reports enclosed). The Board officials are monitoring the lake regularly to assess water quality of lake.

12. In view of the above, no polluting industries shall be allowed to come up in the vicinity of catchment area of Durgam Cheruvu by the A.P. Pollution Control Board. The Serilingampalli Municipality may also be directed not to permit any more residential colonies and take necessary measures to avoid the discharge of sewage from the nearby colonies or the cheruvu so as to protect the quality of tank water. HMWS & SB may be directed to provide collection of sewage and treatment systems for the existing colonies located upstream of Durgam Cheruvu, preventing the flow of raw domestic effluents into the Durgam Cheruvu tank.

Sd/- xx Member Secretary."

13. Before we proceed further, we should record our total disappointment and displeasure on the attitude of the respondent-public authorities as regards their response to this taken-up writ petition, a Public Interest Litigation (hereinafter referred to as PIL, for brevity). The issue raised in the writ petition is of vital importance to the public at large and if the allegations made by the petitioner are true, it is a very serious matter where the State and the concerned State authorities and also the concerned statutory authorities cannot assume the role of a silent spectator, but they are required to apply their mind seriously to the problem and take every permissible and possible step to prevent further pollution and degradation of the renowned lake and to pursue other necessary steps to cleanse the already polluted tank. Such a public duty of the respondents flows from the provisions of Article 21 of the Constitution of India and the State owes a duty in that regard to the residents in the vicinity of the 'Durgam Cheruvu' lake.

14. The Supreme Court in *Bandua Mukti Morcha v. Union of India*¹ observed-

"We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a caviling 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 realization of the constitutional objectives."

15. As often said and reiterated by the Constitutional Courts, the State and the State authorities cannot treat a PIL as an adversarial litigation and on the other hand, the State, the State authorities and the statutory authorities should treat the PIL as an opportunity for them to introspect their actions and inactions and if they find that there is some lapse or wrong-doing on their part, then, to pursue corrective measures to undo public harm, mischief or nuisance without any loss of time. It is most unfortunate that though this writ petition was filed in the year 1998 and notice was ordered to the respondents on 5.1.1999, none of the respondent-authorities except the Andhra Pradesh Pollution Control Board, thought it appropriate to respond to the Rule Nisi and come forward with their statements to appraise the Court whether they have discharged/are discharging their statutory obligation. This status of affair undoubtedly indicates the total indifference on the part of the respondent-authorities, and also badly reflects on the efficacy and credibility of the respondent authorities in protecting the environment and ecology.

16. The petition of Sri T.Ramakrishna Rao, is based on an article under the caption "A Victim of Urbanisation" written by Sri T.Sunil Reddy which was published in the issue of Indian Express dated 28.11.1998. The status report of Durgam Cheruvu as reflected in the above article, to put it briefly, states that though the Durgam Cheruvu situated at Jubilee Hills has been named by the International Trust for Art and Cultural Heritage (INTECH) for award for its natural beauty and scenic surroundings, it complains that innumerable human colonies which came up in and around the lake's vicinity are letting out their sewage into the natural waterbody of the lake. It also complains that there has been unhindered construction activity in and around the lake thereby destroying the priceless rock formations. It further complains that a storm water drain constructed by the Hyderabad Urban Development Authority (HUDA) has been turned into sewage line. It is further stated that environmental groups such as Citizens against Pollution (CAP); Society for Prevention of Environment and Quality (SPEQL) have cautioned and warned against pollution of Durgam Cheruvu and they have suggested certain measures such as setting up of Sewage Treatment Plant (STP) and taking up catchment area sanitation project to arrest the flow of sewage waste into the lake and stop the construction activities in and around the lake. The allegations made in the news report and the letter of the learned petitioner Advocate are not denied by the respondents 1 to 3 and 5 at all. The Andhra Pradesh Pollution Control Board (APPCB), the 4th respondent has also not filed any counter affidavit. The report submitted by it cannot be equated to a responsible and accountable pleading in the form of a sworn affidavit. Be that as it may, even this report is vague and devoid of necessary particulars and details. However, this report also in a way supports the allegations of the petitioner. Even according to this report, (i) the lake Durgam Cheruvu has two inlets and one outlet and these two inlets mostly carry domestic effluents into the lake from the upstream residential areas; (ii) the APIIC has earmarked some land in the vicinity of the lake for setting up a Computer Technology Park; (iii) a number of new residential colonies are coming up on the upstream side of the lake; (iv) there is a polluting industry, i.e., Hyderabad Tanneries Limited (LIDCAP), a leather tanning unit which is situated only 1 km away from the lake bund on the south side, though it is stated that the effluent discharged from the industry - leather tanning unit

does not join the lake and flows away from the lake as the location is down stream side of the bund of the Durgam Cheruvu; (v) the Andhra Pradesh Tourism Department has started many activities to attract tourists; and (vi) the activities like washing of clothes, washing of cattle and indiscriminate fishing are going on. The Pollution Control Board itself in its report has sought for certain directions from this Court. In the premise of its findings noted above, the Pollution Control Board itself has undertaken in the report not to permit polluting industries to come up in the vicinity or catchment area of Durgam Cheruvu. The Pollution Control Board has also suggested that a direction to the Hyderabad Metropolitan Water Supply and Sewerage Board, the 2nd respondent herein to provide collection of sewage and treatment systems for the existing colonies located upstream of Durgam Cheruvu and for preventing the flow of raw domestic effluents into the Durgam Cheruvu and a further direction to Serilingampally Municipality, the 5th respondent herein not to permit any more residential colonies and to take necessary steps and measures to prevent the discharge of sewerage from the nearby colonies which exist in and around the Durgam Cheruvu in order to protect the quality of the tank water be issued. It is relevant to notice that leather tanning industry is one of the twenty highly polluting industries which have been notified by the Central Government as falling within the purview of industrial licensing.

16. Earth has been described as "a jewel in space" but that jewel is passing through various catastrophic problems such as lifeless rivers, land sterilized by humans, carbon dioxide and other gases in the air resulting in climate change, deserts expand, the deforestation, diminution of forest wealth, disorderly and rapid growth of cities, custom built slums, abject poverty and affluent life styles of world's one fifth population of the developed countries. It is said that the Black Sea is on the verge of a catastrophe as all life could disappear from it due to chemical poisoning. Our own Ganga - the cradle of India's civilization has become one of the highly polluted rivers in the world threatening human lives around. Many beautiful rivers which nourished and nurtured many human civilizations have become sewers endangering the oceans. Alarming deforestation is consuming reservoirs of centuries in a short time, soil erosion and peat depletion are exhausting reservoirs of millennia at a rapid pace. Environment and its protection are the subject assuming international dimensions. The world is shrinking. Any event in any part of the world having its impact on environment by way of pollution or protection has its ramifications in every other part of the world. The anxiety world over is displayed by including one or other aspect of environment in international conventions and conferences recognizing the negative impact of the pollution of air, water and environment. Showing keen concern on the growing problems of environmental pollution, the United Nations convened an International Conference on the Human Environment at Stockholm in 1972 which is popularly known as "Stockholm Conference". This conference has become a significant event in the world because an international dialogue on the protection of the environment began with the convening of that conference. The proclamation adopted by the Stockholm Conference which took place at Stockholm from June 5 to 16, 1972 and in which the Indian delegation led by the Prime Minister of India took a leading role, reads -

"1. Man is both creature and moulder of his environment which gives him physical

sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet, a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the manmade, are essential to his well being and to the enjoyment of basic human rights - even the right to life itself.

2. The protection and improvement of the human environment is a major issue which affects the well being of peoples and economic development throughout the world : it is the urgent desire of the peoples of the whole world and the duty of all Governments.

3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life, wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of manmade harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances of the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the manmade environment; particularly in the living and working environment.

17. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build in collaboration with nature a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development.

18. To achieve this, environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and National Governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International cooperation is also needed in order to raise resources to support the developing countries carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the

common international realm, will require extensive cooperation among nations and action by international organizations in the common interest. The conference calls upon the Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity".

19. The proclamation also contained certain common convictions of the participant nations and made certain recommendations on development and environment. The common convictions stated include the conviction that the discharge of toxic substances or of other substances and the release of heat in such quantities or concentrations as to exceed the capacity of environment to render them harmless must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems, that States shall take all possible steps to prevent pollution of the seas so that hazards to human health, harm to living resources and marine life, damage to the amenities or interference with other legitimate uses of seas is avoided, that the environmental policies would enhance and not adversely affect the present and future development potential of developing countries, that science and technology as part of their contributions to economic and social development must be applied with identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind, that States have the responsibility to ensure that activities of exploitation of their own resources within their jurisdiction are controlled and do not cause damage to the environment of other States or areas beyond the limit of national jurisdiction, that it will be essential in all cases to consider the systems of values prevailing in each country and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost and that man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. These are only some of the statements of principles proclaimed by the Stockholm Conference.

20. The Stockholm conference and the proclamation adopted by it had influenced tremendously both the law-givers and law-courts in this country prompting them to regulate and arrest the use and exploitation of the earth and its nature by using legislative and legal devices. The concern for an integrated environment in the context of planning for economic development was explicitly articulated in the Fourth Five Year Plan, 1969-1974, which attracted attention to environmental issues. The Long-term Perspective, which is the heading given to Chapter 2 of the Plan States:

"It is an obligation of each generation to maintain the productive capacity of land, air, water and wild life in a manner which leaves its successors some choice in the creation of a healthy environment. The physical environment is a dynamic complex and interconnected system in which any action in one part affects others. There is also the inter-dependence of living things and their relationships with land, air and water. Planning for harmonious development recognizes this unity of nature and man. Such planning is possible only on the basis of a comprehensive appraisal of environmental issues, particularly economic and ecological. There are instances in which timely, specialized advice on environmental aspects could have helped in project design and in averting subsequent adverse effects on the environment, leading to loss of invested

resources. It is necessary, therefore, to introduce the environmental aspect into our planning and development. Along with effective conservation and rational use of natural resources, protection and improvement of human environment is vital for national well-being".

21. In order to provide a point in the structure of the Government where environmental aspects could receive the deserved attention in an integrated manner, the National Committee on Environmental Planning and Coordination (NCEPC) was established in February 1972. The Constitution of India had initially no direct provision for environmental protection, but with the inspiration had from the Stockholm Conference and the increasing awareness of the environmental crisis in other Countries, the Constitution was amended in order to insert direct provisions for protection of the environment. The Constitution (Forty-Second Amendment) Act, 1976 undertook that task and put such direct provision, first in the Part IV dealing with the Directive Principles for State Policy; and, second, in the Part IV-A dealing with the Fundamental Duties of the Citizens. The Article inserted in the Directive Principles, was Article 48-A. It states : "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Article 51-A, Clause (g) in Part IV-A of the Constitution provides : It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The Constitution has thus made a double provision, first in giving a Directive to the State for the protection and improvement of the environment, and second, in enjoining upon every citizen to help in the preservation of natural environment.

22. Protection of the environment is not only the duty of the citizens but also the obligation of the State and its all other organs including the Courts. The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution of India. It is therefore, as held by this Court speaking through P.A.Choudary, J, in *T.Damodar Rao and others vs. Special Officer, Municipal Corporation of Hyderabad*², the legitimate duty of the Courts as the enforcing organs of the constitutional objectives to forbid all actions of the State and the citizens from upsetting the ecological and environmental balance. In *Virender Gaur vs. State of Haryana*³, the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution. It is trite to state that hygienic environment is an integral facet of the right to healthy life and it would not be possible to live with human dignity without a humane and healthy environment. In *Consumer Education & Research Centre vs. Union of India*⁴, *Kirloskar Brothers Ltd. vs. Employees' State Insurance Corporation*⁵, the Supreme Court held that right to health and medical care is a fundamental right under Article 21 read with Article 39(e), 41 and 43. In *Subhash Kumar vs. State of Bihar*⁶, the Supreme Court held that right to pollution-free water and air is an enforceable fundamental right guaranteed under Article 21. Similarly in

Shantistar Builders vs. Narayan Khimalal Totame⁷, the Supreme Court opined that the right to decent environment is covered by the right guaranteed under Article 21. Further, in Mehta, M.C. vs. Union of India⁸, Rural Litigation and Entitlement Kendra vs. State of U.P.,⁹ Subhash Kumar vs. State of Bihar (supra 5), the Supreme Court imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of life and dignity and for elimination of water and air pollution. It is also relevant to notice as per the judgment of the Supreme Court in Vincent Panikurlangara vs. Union of India¹⁰, Unnikrishnan, J.P. vs. State of A.P.¹¹, the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

23. As pointed out supra, the Stockholm Conference had inspired the Indian Parliament to introduce Article 48-A in the Directive Principles and Article 51-A(g) in Part IV-A of the Constitution dealing with fundamental duties of the citizens. Similarly, the Stockholm Conference inspired the Indian Parliament to enact the statutes such as The Water (Prevention and Control of Pollution) Act, 1974, The water (Prevention and Control of Pollution) Cess Act, 1977, The Air (Prevention and Control of Pollution) Act, 1981, The Forest Conservation Act, 1980 and The Environment (Protection) Act, 1986, to protect the lives, the nature and its environment. The Statement of Objects and Reasons laid while introducing the Bill of the Environment (Protection) Act, 1986 reads:

"I. Statement of Objects and Reasons :

(1) Concern over the state of environment has grown, the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India participated in the Conference and strongly voiced the environment concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

(2) Although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazard are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are adequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to

emergency situations threatening the environment.

(3) In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, create an authority or authorities with advocate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

(4) The Bill seeks to achieve the above objects."

24. The untraversed allegations made in the petition and the status report submitted by the Andhra Pradesh Pollution Control Board through its Secretary undoubtedly indicate that water pollutants, chemical pollutants and air pollutants are at play to degrade the water quality of the Durgam Cheruvu lake and cause harm and injury to the residents who live in the vicinity of the Durgam Cheruvu. Water pollution is the introduction into land or ocean, river, lake or tank waters of chemical, physical or biological material that degrades the quality of water. This process ranges from simple addition of dissolved or suspended solids to discharge of the most insidious toxic pollutants such as pesticides, heavy metals, and bioaccumulative chemical compounds that persist and pervade the environment. The water pollutants are of two kinds - Conventional and Non-conventional. The Conventional pollutants which are sometimes termed as classical pollutants are generally associated with the direct input of waste products, mainly human. Rapid urbanization and rapid population increase have produced sewage problems because treatment facilities have not kept pace with need. Untreated and partially treated sewage from municipal waste water- systems and septic tanks in unsewered areas contribute significant quantities of nutrients, suspended solids, dissolved solids, oil, metals such as arsenic, mercury, chromium, lead, iron and manganese and biodegradable organic carbon to the water environment. It is stated that conventional pollutants may cause myriad of water pollution problems. Excess suspended solids block out energy from the Sun and thus affect the carbon dioxide-oxygen conversion process, which is vital to the maintenance of the biological food chain. Also, high concentrations of suspended solids silt up rivers and navigational channels, necessitating frequent dredging. Excess dissolved solids make the water undesirable for drinking and for crop irrigation. It is also scientifically well established that although essential to the aquatic habitat, nutrients such as nitrogen and phosphorus may also cause overfertilisation and accelerate the natural aging process called eutrophication of lakes and this acceleration in turn produces an overgrowth of aquatic vegetation, massive algal blooms, and an overall shift in the biologic community - from low productivity with many diverse species to high productivity with large numbers of a few species of a less desirable nature. Bacterial action oxidizes biodegradable organic carbon and consumes dissolved oxygen in water. It is stated that in extreme cases where the organic-carbon loading is high, oxygen consumption may lead to an oxygen depression; less than 2mg/l (compared with 5 to 7 mg/l for a healthy system) is sufficient to cause a fish kill and seriously to disrupt the growth of associated organisms.

25. The non-conventional pollutants include dissolved and particulate forms of metals, both toxic and non-toxic, and degradable and persistent organic carbon compounds discharged into water as a by-product of industry or as an integral part of marketable products. Non-conventional pollutants vary from biologically inert materials such as clay and iron residues to the most toxic and insidious materials such as halogenated hydrocarbons like DDT, kepone, mirex, and polychlorinated biphenyls - PCB. These pollutants, it is stated, may produce damage ranging from acute biological effects like complete sterilization of stretches of waterways to chronic sublethal effects that may go undetected for years. It is realized that the chronic low-level pollutants are proving to be the most difficult to correct and abate because of their ubiquitous nature and chemical stability. Conventional pollutants can be readily treated and abated with the construction of adequate wastewater-treatment facilities whereas non-conventional pollution abatement is certainly a more serious and elusive problem unless the concerned State authorities and statutory authorities impose stringent effluent-discharge limits on the industrial plants that discharge water into waterways. Such effort should be started and aided by the regulatory agencies which now require that new products or chemicals be examined prior to marketing for potential acute and chronic effects on the biological community. In this case, both conventional and non-conventional water pollutants seem to flow into the waterbody of Durgam Cheruvu through the two existing inlets. Therefore, it becomes necessary to issue appropriate directions to prevent both conventional and non-conventional water pollutants from reaching the water-bed of the Durgam Cheruvu lake in order to prevent further degradation and pollution of the lake water.

26. Chemical pollutants are substances that enter the environment through industrial, agricultural or other human-generated processes and pose a hazard to human, plant, and animal health and life. Generally speaking, it can be said that any manufactured substance present in excess can be considered a pollutant. Major classes of chemical pollutants are - heavy metals, aromatic hydrocarbons, organic solvents, organo-halogen compounds, dioxin, arsenic, which is a by-product of zinc, copper, and lead smelters, fluorosis, sulphites and other wastes, asbestos. In the present case, there is every possibility of the two inlets carrying domestic effluents and other wastes into the Durgam Cheruvu lake from the upstream residential areas carrying chemical pollutants also, apart from the chemical effluents discharged from the Leather tanning unit existing in the catchment area of the lake.

27. It is said that the air pollution is the accumulation in the atmosphere of substances that, in sufficient concentrations, endanger human health or produce other measured effects on living matter or other materials. Among the major sources of air pollution are power and heat generation, the burning of solid wastes, industrial processes, and , especially, transportation. The six major types of pollutants are carbonmonoxide, hydrocarbons, nitrogen oxides, particulates, sulfur dioxide, and photochemical oxidants. Air pollution is a multi-source, widespread that occurs in the air of towns and cities.

28. In the premise of the established facts and the relevant principles of Environmental

Law, the next question for the Court to consider is how to protect the renowned Durgam Cheruvu lake and in that direction what should be the appropriate directions that may be issued to the respondent-public and statutory authorities. Protection of the Environment is not only the duty of the citizens, but also the obligation of the State and its all other organs including the Courts. Environmental Law and the Courts' role in protecting the environment and ecology should succeed in unshackling the man's right to life and personal liberty from the clutches of common law theory of individual ownership and Laissez Faire self-help doctrine. Examining the matter from the above point of view, it will be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed. The slow poisoning of the nature and environment in any form should be regarded as amounting to violation of Article 21 of the Constitution. In that view of the matter, it becomes necessary for the Constitutional Courts to enforce the citizens guaranteed rights under Article 21 of the Constitution of India against the State and State authorities and the concerned statutory authorities and to forbid all actions of those authorities from upsetting the ecological and environmental balance.

29. It is said that water covers about 70% of the earth's surface. It is present in varying amounts in the atmosphere. Water is essential to life, which began in the oceans. Water is also humanity's most precious natural resource. The advent of desalination technology has made sea water, which accounts for 97% of the total water on earth, available for use as fresh water. Most of the living tissue of man is made up of water; it constitutes about 92% of blood plasma, about 80% of muscle tissue, about 60% of red blood cells, and over half of most other tissues. It is an important component as well of the tissues of most other living things. Chemically, water is a compound of hydrogen and oxygen. It is a good solvent for many substances, especially ionic and polar compounds; it is ionizing and itself ionizes to give a low concentration of hydroxide and hydrogen ions. It is thus also a better conductor of electricity than most pure liquids. Water is a polar molecule and shows anomalies due to hydrogen bonding, including contraction when heated from 0°C to 4°C (32°F to 39.2°F). Formed when hydrogen or volatile hydrides are burned in oxygen, water oxidizes reactive metals to their ions and reduces fluorine and chlorine. It converts basic oxides to hydroxides and acidic oxides to oxy-acids. Water serves both as a heat-transfer medium (eg., ice for cooling and steam for heating) and as temperature regulator for the water in lakes and oceans helps regulate the climate. Therefore, it is trite to state that the water is the most essential liquid on Earth without which the mankind and other beings cannot survive.

30. The problem of pollution of rivers and other water courses has assumed considerable importance and urgency in the past as well as in recent years as a result of the growth of industries and the increasing tendency to urbanization. The Government of India had set up a Committee in 1962 to draw a draft enactment for the prevention of water pollution. The Committee so constituted went into the problem of pollution of water courses and submitted the report. The report of the Committee was circulated to the State Governments and also considered by the Central Council of Local Self-Government in 1963. This Council resolved that single law regarding measures to deal with water

pollution control; both at the Central and the State levels may be enacted by the Union Parliament. Accordingly a draft bill was prepared and put up for consideration at a joint session of the Central Council of Local Self-Government and the Fifth Conference of the State Ministers of Town and Country Planning held in 1965. The bill was drafted and the Water (Prevention and Control of Pollution) Act, 1974 was enacted. The said Act provides for establishment at the Centre as well as in the States, Central Pollution Control Board and State Pollution Control Boards with necessary complement of technical and administrative staff and to confer on them such powers as are necessary to deal effectively with the problem of water pollution in the country. It also provides penalties for contravention of the provisions of the Act. The Act also establishes Central and State water testing laboratories to enable the Boards to assess the extent of pollution, lay down standards and establish guilt or default.

31. As aforesaid, pollution in Durgam Cheruvu lake is established. Unfortunately, in this case, we do not have the aid and assistance from the respondent-authorities, except the 4th respondent, in the decision-making. It is now well settled by a catena of decisions of the Apex court - in *A.P.S.K. Sangh v. Union of India*¹²; *Chaitanya v. State of Karnataka*¹³ to cite a few, that the High Court can also entertain PIL cases under Art. 226 of the Constitution not only to enforce the Fundamental Rights guaranteed to persons and citizens in Part III of the Constitution, but also to restrain the Executive from evading the public interest. It is also beyond any cavil of doubt, by reason of several decisions of the Supreme court and of this Court, that the burden to prove would be upon the polluters, in the instant case, the respondent-authorities, to show that any developmental activity in and around Durgam Cheruvu lake that may be undertaken by them, could be a sustainable one.

32. The objective behind this PIL is to stop the pollution of the renowned Durgam Cheruvu lake and in that direction, the petitioner has sought for certain directions from this Court to the respondent-authorities who are charged with statutory duties to protect and safeguard the environment. At the same time, we are quite conscious of the fact that the necessity to preserve the ecology and environment should not hamper economic and other developments in the community. At times, it was thought that development and ecology cannot go together. The said old thinking that development and ecology cannot go together is no longer true or acceptable. The answer is sustainable development. Development of industries, as quite often said and reiterated by the Apex Court itself, is essential for the economy of the country, but at the same time, it is pertinent to note that the environment and the eco system have to be protected, otherwise, all beings on the earth would perish in course of time. Therefore, it becomes imperative for a modern society to strike a balance between ecology and development. It is trite that developmental activities would undoubtedly generate pollutants, which in turn pollute the environment. Extent of pollution will then be a matter of degree only. Looking from that angle, pollution of the environment at least to some extent becomes necessary evil so long as the modern States indulge in developmental activities. Indulgence is unavoidable. In that view of the matter, what should at least be achieved is that the pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystems as held by the Apex Court in *M.C. Mehta v. Union*

of India¹⁴(Taj Mahal case). The Supreme Court in Indian Council for Enviro-legal action v. Union of India¹⁵ was pleased to observe-

"... While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

33. The Supreme Court dealing with the power/jurisdiction, rather duty of the Courts in preventing environmental degradation, had to say the following in Indian Council for Enviro-legal Action v. Union of India ¹⁶ -

"With rapid industrialization taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement, of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the Courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement agencies to implement the law".

34. In the light of the established facts in this case and keeping in our mind the principles of Environmental Law and also the constraints exercised by the constitutional Courts in issuing directions to the public authorities to protect and safeguard the environment in PILs, we think it appropriate and reasonable to issue the following directions to the respondent-authorities:

(i) The A.P. Pollution Control Board, Hyderabad, the 4th respondent herein, is directed not to allow the following 20 highly polluting industries which have been notified by the Central Government as falling within the purview of Industrial Licensing, to come up within the vicinity or catchment area of Durgam Cheruvu lake, viz., (1) Primary

metallurgical industries, viz., zinc, lead, copper, aluminum and steel, (2) Paper, pulp and newsprint, (3) Pesticides and insecticides, (4) Refineries, (5) Paints, (6) Dyes, (7) Leather tanning, (8) Rayon, (9) Sodium/Potassium Cyanide, (10) Fertilizers, (11) Basic drugs, (12) Foundry, (13) Storage batteries (Lead acid type), (14) Acid and alkalies, (15) Plastics, (16) Rubber-Synthetic, (17) Cement, (18) Asbestos, (19) Fermentation industry, (20) Electro plating industry and ensure that no pollutants/effluents, chemical or otherwise, discharged from the existing leather tanning industry, i.e., Hyderabad Tanneries Limited (LIDCAP) reach or percolate into the waterbody or upstream of the Durgam Cheruvu lake.

(ii) The Metropolitan Water Supply and Sewage Board, Hyderabad, the 2nd respondent herein, is directed to provide collection of sewage and treatment systems for the existing colonies in the vicinity of the upstream of Durgam Cheruvu lake in order to prevent flow of domestic and other forms of effluents into the Durgam Cheruvu lake.

(iii) The Commissioner, Serilingampalli Municipality, Serilingampalli, the 5th respondent herein, is directed not to permit any more residential colonies in the vicinity or catchment area of Durgam Cheruvu lake to come up and take immediate and necessary measures to prevent the discharge of sewage from the nearby colonies into the lake so as to protect the quality of the water in the lake;

(iv) The respondent authorities, in general, are directed to discharge their respective duties and functions under the Environment (Protection) Act, 1986, Air (Prevention, control of pollution) Act, 1981, Water (Prevention, Control of Pollution) Act, 1974 and the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 strictly in accordance with the provisions of those statutes.

(v) It is further directed that it is open to the petitioner or any affected person to seek appropriate further directions from this Court in the event of the respondents violating any of the above directions.

(vi) Let a copy of this order be transmitted to the Chief Secretary to the Government of Andhra Pradesh, Hyderabad for information and to monitor the functions and duties of the respondent-authorities in protecting the environment of the Durgam Cheruvu lake wherever such monitoring is permissible in law.

The writ petition is disposed of in terms of the above directions with no order as to costs.