Delhi High Court at New Dehli

M/s.Enkay Plastics Pvt. Ltd.

v.

Union of India & Others

Writ Petition No. 3238 of 2000

dd. 16-11-2000

Arun Kumar, A.K. Sikri JJ.

Judgement:

1. This batch of 14 writ petitions, all filed under Article 226 of the Constitution of India, raises common question. All the petitioners are having their manufacturing units within the limits of National Capital Territory of Delhi and all these units are manufacturing Urea Formaldehyde Powder. By impugned order dated 7th June,2000. Delhi Pollution Control Committee (for short `DPCC') has treated these units under 'H' category as per Master Plan 2001 and following the orders of Supreme Court passed in IA.22/94 in Writ Petition (Civil) No.4677 of 1985 entitled M.C.Mehta Vs. Union of India and others, JT 1996 (6) SC 129, passed directions under Section 31A of Air (Prevention and Control of Pollution) Act,1981 read with Rule 20(6) of Air Rules,1983 directing these petitioners to close down their units with immediate effect. In order to effectuate this direction, other consequential directions are given to Delhi Vidyut Board and Delhi Jal Board for disconnection of electricity/power supply/cancel the permission of Diesel Generator Set, if any, and disconnection of water supply respectively. It is also directed that the concerned Sub-Divisional Magistrate shall ensure effective closure of the units with immediate effect. Since all the petitioners are manufacturing Urea Formaldehyde Powder which is placed in 'H' category and since all these petitioners were served with same directions, as mentioned above, albeit, vide separate impugned orders dated 7th June,2000, these petitions were heard together and are being disposed of by this common judgment. For the sake of convenience, facts of CWP.No.3238 of 2000 only are stated as it is an admitted case of the parties that the question raised in these writ petitions arise under similar factual background. As per the averments made in CWP.No.3238 of 2000, petitioner is a limited company incorporated under the Indian Companies Act. It is a small scale unit manufacturing Urea Formaldehyde Moulding Powder (for short `U.F.Moulding Powder') and is operating for the last more than 10 years. Apart from

dealing with the various provisions of the Air (Prevention and Control of Pollution) Act,1981 (for short `the Act') the petition gives historical background leading to the closure of about thousand manufacturing units operating in Delhi by the orders of Supreme Court in the case of M.C.Mehta Vs. Union of India and others CWP.No.4677/85 which were creating pollution. In the order dated 6th September,1996 passed in I.A.22/94 in the said petition, it is revealed that individual notices to show cause were given by DPCC to 884 units in Delhi as to why they be not declared as category H(a) or H9BB industries under the Master Plan. After considering the objections, DPCC categorised 532 units as 'H' category. On this basis Supreme Court directed closure of these units which fell under `H' category. Complete list of all the units to whom show cause notices were given was filed before the Supreme Court. As per this list an industry manufacturing U.F.Moulding Powder was categorised as 'F'. Therefore, they escaped the closure orders. They, accordingly, continued to function. However, notice dated 5th March,1999 was received by the petitioner from DPCC stating that activity of the petitioner falls in 'H' category. It was a notice under Section 31A of the Act and by this notice petitioner was granted an opportunity to represent as to why its unit should not be directed to be closed down as 'H' category industry as per Master Plan of Delhi 2001. Petitioner submitted its reply dated 17th March,1999 refuting all the allegations made in the notice and referring to proceedings before the Supreme Court in M.C.Mehta case (Supra) wherein as per affidavit filed on behalf of Central Pollution Control Board (for short `CPCB'), U.F.Moulding Powder was categorised as 'F'. The process by which U.F.Moulding Powder is manufactured was stated in detail contending that it was not hazardous at all. It was also stated that DPCC was confusing between manufacturing of U.F.Moulding Powder and manufacturing of formaldehyde and it is the latter which may be dangerous, fire hazardous or noxious activity but not the manufacturing of U.F.Moulding Powder. Nothing happened for more than one year after the aforesaid reply submitted by the petitioner. However, respondent ultimately sent order dated 7th June,2000 giving directions under Section 31A of the Act thereby directing the petitioner to close down its unit with immediate effect. The petitioner also states that earlier show cause notice dated 17th April,1998 was served upon the petitioner alleging that pollution control device in the premises of the petitioner was inadequate and, therefore, an explanation was sought. This, according to the petitioner shows that the petitioner unit was not treated as falling under category 'H' and it was only to provide pollution control devices in the premises which the petitioner did and informed DPCC vide reply dated 29th April,1998. Thereafter DPCC modified its directions dated 23rd June,1998 which were also complied with and the compliance was informed by the petitioner to DPCC vide letter dated 13th August,1998. Notwithstanding, DPCC again with malafide intentions gave another show case notice dated 2nd September,1998 and this compelled the petitioner to file appeal under Section 31(1) of the Act before the Appellate Authority. After hearing, Appellate Authority passed orders dated 29th June,1999 whereby DPCC was directed to carry out the inspection of the premises of the petitioner and report to the Appellate Authority within a period of 30 days. (The exercise which was to be undertaken by the DPCC was stipulated in the order in the following words

"Keeping in view the facts of the case and that the appellant's unit had got the air pollution control devices installed at the unit, it would be appropriate if a joint team consisting of the officials from Central Pollution Control Board and Delhi Pollution Control Committee is deputed to carry out inspection/monitoring of the appellant unit and examine whether the activities/processes involved in manufacturing of Urea Formaldehyde Moulding Powder falls in 'H' category of industries. The team shall also be at liberty to collect and analyse sample, if so required, to determine the categorisation of the industry. The team shall submit a report to the Appellate Authority within a period of 30 days from the issue of this order".)

2. It is alleged in the petition that after passing the aforesaid order DPCC never inspected the premises of the petitioner and instead passed impugned order dated 7th June,2000 in violation of the orders of the Appellate Authority. Accordingly, impugned order is challenged on the ground of mala fide also.

3. One of the principal ground raised by the petitioner is that the respondents are confusing between manufacturing of U.F.Moulding Powder with the manufacturing of formaldehyde. It is stated that petitioner is not manufacturing formaldehyde but U.F.Moulding Powder. It is the manufacturing of formaldehyde which is prohibited in the National Capital Territory of Delhi and is hazardous activity. While making U.F.Moulding Powder petitioner is only using concentration of formaldehyde which is termed as formaline. This use for making something like plastic powder is not prohibited. Formaline is 30-37% solution of formaldehyde in water. Formaldehyde is a gas with irritating smell, but is soluble in water. Formaldehyde is hazardous. However, formaline is a liquid with only 30 to 37% concentration of formaldehyde gas dissolved in water and it has not been categorized as hazardous in any classification, rules and regulations. In common parlance, some times the term formaldehyde is used for formaline. However, the fact is that in manufacturing of UF moulding powder, the basic chemicals which are used are formaline and urea. Both these chemicals are not hazardous and are not categorised as hazardous items. Neither the names of these two chemicals find mention in the list of hazardous and toxic chemicals. The manufacturing process of UF moulding powder involves the process of dissolving the urea in water and formaline in an open mixture at the room temperature to form slurry. This slurry is mixed with paper pulp at a room temperature in a Kneader mixture for 15-30 minutes. The dough formed in this case is transferred to dryers and dried at 40-50 degree Celsius. Later the dried dough is pulverized using a hammer mill to get powder. The next stage is to change this powder to a fine powder using ball mills. The fine powder is then mixed again with water in an open pot to form homogeneous grain with higher density suitable for moulding. Finally, the grains are grained to fine grains using grinder and the formaldehyde moulding powder is formed. The powder which is made is despatched to moulding manufacturing units where it is compressed in the moulds of different sizes at a temperature of 120 to 150 degree Celsius to set the matter to different shapes mainly electrical switches etc. This powder has no fire or toxic nature and is otherwise a very good fire and electrical resistance, and therefore, it is most suitable for electrical switches. Reference in this regard is also made to "A dictionary of Science" by 'E.B.UVAROV AND D.R.

CHAMPMAN', and published by The English Language Book Society and Penguin Books which defines Formaldehyde and Formaline as under "FORMALDEHYDE. HCHO. A gas with an irritating smell, very soluble in water. 40% solution is known as formalin. Made by the oxidation of methanol. Used in the manufacture of plastics and dyes, in the textile industry, in medicine, and as a disinfectant. FORMALIN. A 40% solution of formaldehyde, used as a disinfectant."

4. It is also submitted that as per the manufacture, storage and import of hazardous chemical rules, 1989, Schedule-III, Part-1, the concentration of formaldehyde uptil 90% is permitted. Therefore, even the raw material which is used by the petitioner is not hazardous.

It is also stated that formaldehyde is commonly used in several activities like
i) it is used in hospital for preserving the dead bodies, cleanliness, plastering etc.
ii) Milk industry to preserve milk.
iii) Agricultural industry.
(iv) In sweets as a preservative.
(v) In plastic industry as raw material.
(vi) In Fire proofing.
(vii) In textile mills.
(viii) In cosmetics.

5. On the basis of aforesaid averments in the writ petition petitioner is challenging the impugned closure order dated 7th June,2000 rasing various grounds. Similar contentions are raised in all other petitions. It may be stated at this stage itself that although in the writ petitions, the petitioners are challenging the vires of Section 31A of the Act and Notification No.S.O.198 (E) dated 15th March,1991 whereby powers have been delegated by CPCB to DPCC, but these reliefs were not pressed at the time of arguments. During arguments petitioners mainly confined their arguments to the validity of closure order dated 7th June,2000 on the following grounds:

1. The impugned closure order dated 7th June,2000 is violative of the principles of natural justice and also of the fundamental rights of the petitioner.

2. The impugned closure order is arbitrary, malafide, and is a colourable exercise of the powers vested with the authorities and is also a glaring example of abuse of powers.

3. The industry which was categorised as 'F' throughout, has all of a sudden, been categorized as 'H' in spite of reports of the experts to the contrary. There cannot be more glaring examples of mala fide, abuse of power and ulterior motives. Petitioner has relied upon the reports of Delhi College of Engineering as well as IIT as per which the manufacturing of activity of U.F. Moulding Powder should fall in category 'F' and not 'H'.

DPCC (Respondent No.2) and CPCB (Respondent No.3) have filed their separate counter-affidavits denying and refuting various allegations made by the petitioner in the writ petition. Insofar as affidavit of DPCC is concerned, it mentions that the unit of petitioner is categorised under 'H' category as per the categorisation done by CPCB. Communication dated 28th April,2000 was received from CPCB in this respect. However, the maintainability of the writ petition is also challenged on the ground that there is alternate remedy of appeal provided to the petitioner which petitioner should exhaust before approaching the High Court under Article 226 of the Constitution of India and that petitioner should have approached Supreme Court and could not file this writ petition in view of observations made by Supreme Court in M.C.Mehta case (supra) reported in JT 1996 (6) SC 129 and in particular paragraph-12 thereof. While stating the background under which categorisation of the petitioner unit was done, it is mentioned in the counter-affidavit that Sh.R.K.Goyal, Member Secretary, DPCC had written vide communication dated 16th November, 1998 to the Member Secretary, CPCB pointing out that a large number of Units had been found to be operating in various parts of Delhi engaged in the manufacturing of Urea Formaldehyde Powder and that a complaint was also received against these Units that these Units should be treated as hazardous and noxious as per Master Plan of Delhi 2001. It was also pointed out that while undertaking the categorisation of more than 1 lakh industries by the respondent No.2, one such Unit was categorised under Group `F' but it seemed that the manufacturing process of the said Unit is similar to resins which have been put in group `H' of the Master Plan. In view of the same, it was requested vide the said communication that the matter may be examined and the respondent No.2 should be guided as to whether the said Units should be categorised under Group H(a) so that necessary action may be initiated as per Law. The said communication was replied vide reply dated 14th December, 1998 by the Director(ESS) of the CPCB that since raw materials used in such industries were hazardous chemicals, it was advised that all such Units should be categorised under H-Category. It was also stated in the said communication that one such Unit i.e. M/s Bindal Plastics was closed down in November 1996 under the orders of Hon'ble Supreme Court as H-Category Unit. Thereafter the respondent No.2 received a communication dated 10th May, 1999 from the CPCB wherein the CPCB intimated the respondent No.2 that the contents and representations of the UF Moulding Powder Manufacturers Association had been considered and the Central Board is of the opinion that phenol formaldehyde resin manufacturing and urea formaldehyde resin manufacturing(using phenol and/or formaldehyde as starting raw materials which are hazardous) should continue to remain under `H(a)- Category' as per the provisions of MPD-2001. Thereafter the respondent No.3 again reiterated that the categorisation of Urea Formaldehyde Powder manufacturing Units was to be categorised under H-Category.

6. It is also explained that the list filed before the Supreme Court wherein units manufacturing U.F.Moulding Powder was categorised as 'F' was not final. In fact it was on going process and even the Supreme Court had observed that process of identification of 'H' category industry for relocation was to continue. After indepth study of manufacturing process, CPCB had given 'H' categorisation and proper

opportunity was given to the petitioner before this categorisation and before passing directions under Section 31A of the Act for closure of petitioner unit.

7. CPCB filed counter-affidavit dated 7th August,2000 in which it is, inter alia, mentioned that the unit of the petitioner falls under H(a) category since resin formation takes place. It is mentioned that Formaldehyde is listed at Sr.No.285 under Schedule 1,Part II of the Manufacture Storage and Import of Hazardous Chemicals Rules,1989 (as amended to date) vide notification No.SO 57-E, dated 19th January,2000. The manufacturing of resin falls under broad category of 'Organic Chemical Industry under group H(a) of the Master Plan for Delhi (MPD-2001). The operation of the industries falling under H group is prohibited within Union Territory of Delhi since January,1994.

8. Since the classification of the petitioner unit under category 'H' has been done by CPCB and it was not stated in the counter-affidavit as to what was the basis for said categorisation and whether there was any material before the CPCB on the basis of which, CPCB enumerated the petitioners' units as 'H', CPCB was directed to file additional affidavit. Another affidavit dated 10th September,2000, was, accordingly, filed by CPCB giving the background material and other details. A reading of this affidavit would reveal the following averments

1. DPCC had originally categorised some of the petitioners as 'H' category industries as per Master Plan 2001. However, M/s.Kohinoor Polymers Pvt.Ltd., one of the petitioners herein made representation against the same mentioning that wood pulp, marble, mica, asbestos powder, white wood floor, Zinc striated and steam (for which they have a baby boiler), are used in the manufacturing process. On this representation the category of this industry was changed from 'H' to 'F'. However, when later it was found that petitioner was in fact a U.F. Powder manufacturing unit and is using urea and formaldehyde as starting raw materials, CPCB changed the category from 'F' to 'H'.

2. That the category was changed keeping in view of: i) chemical nature of raw material used, intermediate products and final product manufactured and whether these pose hazard at any stage; ii)input and output of chemicals, their material balance and state (i.e. solid, liquid or gas); iii) manufacturing process used and sequence of use of ingredient chemicals, their concentration, toxicity; and iv) emissions during manufacturing process, their nature, concentration and characteristics etc.

3. World Health Organisation (WHO) has come out with publications 'Health and Safety Guide' for the chemicals which are hazardous to safeguard the public health. The title page of WHO booklet :Formaldehyde Health and Safety Guide, (No.57, 1991). As brought out in the WHO booklet Formaldehyde, a highly water soluble gaseous substance, is commercially available in form of about 37% aqueous solution (W/v) for use in various purposes. The raw material, formalin/formal (aqueous solution of Formaldehyde) is colourless hazardous liquid with pungent odour. Its vapours are irritant to eyes causing tear formation and irritating to respiratory tract causing

coughing and difficulty in breathing, even if present in concentration much below the threshold limit. Exposure to formaldehyde may cause asthmatic bronchitis, cough, dryness of mouth and throat, upper respiratory complaint, headache and eye irritation. Formaldehyde vapours pose occupational hazard as formaldehyde vapours irritate the mucous membrane, cause allergies and have potentially carcinogenic properties. The workers working in the manufacturing unit should not be exposed to formaldehyde vapours at more than 1.2 mg/m3 (1ppm) for 30 min. UF powder manufacture generates formaldehyde vapours at work place and surrounding air from mixing section, drying section and pulverizing section, which are liable to release continuously in ambientenvironment. Formaldehyde vapours above 0.1 ppm in ambient air are considered hazardous. Inspite of efficient emission collection and scrubbing system available at the UF manufacturing units, the formaldehyde vapours find their way into the ambient environment and pose hazard to surrounding environment. Formalin is highly combustible. Formaldehyde decomposes into methanol and carbondioxide at 150 degree Celsius which further aggravate the hazard in the event of fire.

4. It is submitted that in simple term what is being done by the petitioner is that aqueous Formaldehyde (commercially known as formalin or formal) is mixed with urea resulting in formation of monomethylolurea as a first step through methylolation or hydroxymethylolation process then in subsequent steps the condensation of monomer units takes place in form of dimer, Dimethylolurea, a polymer chain (amino resin), along with liberation of water. The subsequent steps of the reaction are usually referred to as methylene bridge formation, partial polymerization, resinification or simple cure. The polymer in form of viscous substance is formed when the reaction is nearly 60% complete. After partial polymerization (upto 60% completion of reaction), the leftover unstabilized Formaldehyde is passed as vapour emissions or in the kneaded product, thus the chances of generation of Formaldehyde vapours in the work environment of manufacturing units are quite high and pose grave risk. Further, the mixing of formaldehyde with urea in open vessel is highly hazardous facilitating high concentration of hazardous Formaldehyde vapour formation, which is not taken into consideration in both the per pro reports.
It is mentioned that scrubbers are installed at UF Manufacturing unit to deal with the emissions from driers, but in case of low efficiency of scrubbers or their non-functioning due to some reasons like electric failure, mechanical fault etc, the emissions of Formaldehyde vapours will be highly hazardous for surrounding environment.
Respondent No.2, however, referred the matter to Delhi College of Engineering which recommended the categorisation under 'F' category. This report was duly considered by CPCB and after critically reviewing the same it was rejected. Reasons for the same are filed by CPCB as Annexures R-5 and R-6 to the affidavit.

5. Petitioners had approached on their own the Indian Institute of Technology. The report submitted by I.I.T. was also critically reviewed but rejected as per the detailed comments given in Annexures R-5 and R-7 to the additional affidavit.

It may be mentioned at this stage that petitioner has filed reply to this additional affidavit and attempt is made to controvert the averments made in the additional affidavit of CPCB. It is also sought to allege that there are contradictions in the documents filed by CPCB. It is again sought to be highlighted that the classification of the unit of the petitioner which is manufacturing UF Moulding Powder should be in category 'F' and not 'H'.

The aforesaid detailed discussion of the respective cases as putforth by the parties brings forth the following questions which need determination in these writ petitions

1. Whether the writ petition is not maintainable in view of alternate remedy available to the petitioners?

2. Whether the petitioners should approach Supreme Court directly in view of observations made in the case of M.C.Mehta Vs. Union of India and others JT 1996 (6) SC 129?

3. Whether impugned order dated 7th June,2000 is violative of principles of Natural Justice?

4. Whether impugned order dated 7th June,2000 is arbitrary, result of colourable exercise of power and malafide?

5. Whether the categorisation of UF Moulding Powder manufacturing units as 'H' is proper and valid or they should have been classified in 'F' category?

We now proceed to deal with these questions in the order they are formulated above Point No.1. - Alternate remedy Admittedly impugned order dated 7th June,2000 is passed by the DPCC under Section 31A of the Act. By this order direction is given to the petitioner to close down its unit forthwith as it falls under category 'H' and such unit is not to be operated within National Capital Territory of Delhi as per orders of the Supreme Court in M.C.Mehta case (Supra). Section 31 of the Act provides for remedy of appeal and sub-Section(1) thereof reads as under; Section 31.Appeals.-(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

6. The forum of appeal is provided against an order made by the said Board (DPCC) in this case. Appeal lies to Appellate Authority constituted under the Act. It was not disputed by Shri Ravinder Sethi, learned senior counsel appearing for the

petitioners that the appeal is maintainable against the order passed under Section 31A of the Act. However, it was contended that notwithstanding alternate remedy of appeal provided under the statute, there was no absolute bar in entertaining writ petition under Article 226 of the Constitution of India particularly when the argument of the petitioner was that the action of the State Authority was malafide, violative of principles of Natural Justice and also where vires of the Act has been challenged. In support of this submission, reliance was placed on the following judgments

1. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 1.

2. Ram and Shyam Company Vs. State of Haryana and others AIR 1985 SC 1147.

3. M/s.Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar AIR 1969 SC 556.

4. Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya Sitapur (U.P.) and others AIR 1987 SC 2186.

5. State of U.P. and others Vs. M/s.Indian Hume Pipe Co.Ltd. AIR 1977 SC 1132.

6. State of West Bengal Vs. North Adjai Coal Co.Ltd. 1971 (1) SCC 309.

7. Om Prakash Vs. The State of Haryana & Ors. Unreported Judgments (S.C.) 1970 Vol.2 481.

7. Attempt was also made to argue that the petitioners had earlier approached Appellate Authority which had, by order dated 29th June,1999, directed fresh investigation in the matter with further direction that report of such investigation be submitted to the Appellate Authority. However, without undertaking this exercise, the respondents had in a contemptuous manner ordered closure of petitioners units and, therefore, no useful purpose would have been served in relegating the petitioners to the remedy of appeal.

8. We may state that the Act provides complete machinery including the forum of appeal against the order passed by the said Board. Therefore, normally, it would have been appropriate for the petitioners to approach Appellate Authority and exhaust the remedy of appeal before approaching this Court under Article 226 of the Constitution of India. No doubt vires of some of the provisions of Section 31A of the Act have been challenged in the writ petition, as noticed above. This was not pressed at the time of the arguments. Of course, strenuous plea was made by learned senior counsel appearing for the petitioners that the impugned order was mala fide, violative of principles of Natural Justice and also in violation of order dated 29th June,1999 of the Appellate Authority. Although we shall deal with this contention on merits at the appropriate stage and no doubt as per the judgments referred to by the counsel for

the petitioner writ petition can be entertained if violation of the Principles of Natural Justice is alleged, still in normal course the remedy of appeal should be exhausted. Such averments can be taken even before the Appellate Authority which can deal with such arguments while deciding the appeal. However, as in some of these writ petitions Rule D.B. had been issued, as also that the matter was argued at length on number of dates covering the entire gamut of controversy, we have thought it proper to decide the matter on merits rather than relegating the petitioner to remedy of appeal at this stage. However, it is being done in view of the aforesaid peculiar circumstances and it is clarified that by adopting this course, this Court by no means is laying down the rule that the writ petition under Article 226 of the Constitution of India would be entertained in all such cases without exhausting the remedy of appeal.

Point No.2.

9. In submitting that the petitioner should approach Supreme Court instead of filing the present writ petition, learned counsel for DPCC referred to the following observations made in the case of M.C.Mehta Vs. Union of India and others JT 1996(6)) SC 129 (Paragraph-12) "We make it clear that the categorisation made by the Board shall be final subject to modification by this Court".

However, on the other hand it was submitted by learned Sr.counsel for the petitioner that the aforesaid observations cannot be read in isolation but should be read along with preceding passages which would unfold real context in which the observations in paragraph-12 were made. For this purpose he took us to paras 8 to 11 of the judgment. We find force in the submission of the petitioners on this aspect. While dealing with the categorisation of industries, the Court mentioned in para-8 of the order that it was monitoring the said matter since January,1995 and order passed on 24th March,1995 is quoted in para-8 to show that even in March-April,1995 polluting industries were approached through individual notices, public notices in newspapers through Doordarshan and All India Radio and were asked to relocate themselves. In para-10, the Court has referred to the order dated May 8,1995 whereby further opportunity was given to those industries who had not filed objections pursuant to earlier individual and public notices. Thereafter reference is made to subsequent orders in that para and subsequent paras in order to demonstrate that proper opportunities were given to those industries, which were proposed to be categorised 'H', for raising their objections to said categorisation. The discussion in these paras further shows that those industries which were finally categorised as 'H' were told in clear terms that they could not operate in Delhi and must relocate to NCR. It is in this context in para-12, order dated November 15,1995 is quoted and it is mentioned that the categorisation which had been made by the Board would be final and could be modified only by Supreme Court. Therefore, the observations on which reliance is placed by learned counsel for DPCC related to categorisation which was made by the Board at that time and the report submitted before the Supreme Court. The units of the petitioners in fact, as per the said report, fell in category 'F'. Therefore, it is not the petitioners who are seeking modification of the said categorisation. Rather the categorisation is changed by the Board. In fact if this argument of the DPCC is to be accepted it is the Board

which should have approached the Supreme Court as the Board has changed the categorisation.

10. However, suffice it to state here that by making the aforesaid observations Supreme Court never meant that in case Board changes the categorisation of any industry and the industry is aggrieved against the same, it has to approach the Apex Court only and cannot file writ petition under Article 226 of the Constitution of India. It hardly needs to be emphasised that Article 226 of the Constitution gives substantive right to the petitioners to seek appropriate Writ or Order if it is aggrieved against the said action and unless there was a categorical, unambiguous and explicit direction of the Supreme Court stipulating that such matters would be entertained only by Supreme Court, the petitioners cannot be denied their right to have access to the remedy provided under Article 226 of the Constitution of India. In fact in a recent judgment of the Apex Court itself dealing with the matter of air pollution in the case of A.P.Pollution Control Board Vs. Prof.M.V.Nayudu (Retd.) And others reported in 1999(2)SCC 718, the Supreme Court has held that powers of High Court and Supreme Court are similar (see paras 56-57 of the judgment). Therefore, we do not agree with the submission of the DPCC that the petitioners remedy is before Supreme Court only. In fact this argument of the DPCC runs counter to its first argument wherein it is conceded that the petitioner could approach Appellate Authority by filing appeal under Section 31 of the Act. If the observations in para-12 of M.C.Mehta case (supra) are no bar to the remedy of appeal, it is not understood as to how these observations can be a bar for the petitioner to approach this Court in Article 226 of the Constitution of India. Consequently this objection of the DPCC is hereby rejected.

Point No.3 - Natural Justice.

11. While advancing the contention that impugned order dated 7th June,2000 is passed in violation of Principles of Natural Justice and without giving due opportunity to the petitioners, the principle submissions of Shri Ravinder Sethi, learned Sr.Counsel were to the following effect

a) No show cause notice was issued to the petitioners and all of a sudden, the closure order was made.

b) The petitioner is running its industry and is earning his livelihood; therefore, it is submitted that the closure order in this fashion is violative of Article 19 of the Constitution of India.

c) The order of closure is a non-speaking order. It does not show any basis for coming to the conclusion that the industry is Schedule 'H' industry. It does not show any process of reasoning by which the said conclusion has been reached.

12. As far as submission regarding passing of the closure order without show cause notice is concerned, it is based on the allegations that the petitioner's unit was earlier categorised as 'F' as per the list filed before the Hon'ble Supreme Court in M.C.Mehta case (supra) wherein it is specifically stated that unit manufacturing U.F. Moulding Powder would fall in category 'H'. Further treating the petitioner's unit under category

'F' the petitioner was asked to comply with certain directions by order dated 26th March,1998 which were complied with. Another show cause notice dated 25th January,1999 was issued directing the petitioner to comply with certain more directions which were also complied with. Thereafter, show cause notice dated 24th February,1999 was issued on the presumption that the raw material used by the petitioner industry was hazardous chemical and, therefore, the unit fell under 'Ha' category and opportunity to represent was given as to why it should not be directed to be closed down as 'H' category as per MPD-2001. The petitioner submitted detailed reply dated 17th March,1999 but nothing happened thereafter and all of a sudden impugned order dated 7th June,2000 was passed and, therefore, the said order, according to the petitioner, is without show cause notice and issued all of a sudden.

13. This contention of the petitioner does not appear to be valid once facts are placed in a proper perspective. As per the petitioner's own showing, notice dated 5th March,1999 under Section 31A of the Act had been issued. This notice, inter alia, stipulates as under "And whereas the Competent Authority after consideration of all factual and circumstances has come to the conclusion that your unit falls under Ha category and in pursuance of the provisions of the Master Plan of Delhi-2001 and the order dated 8.7.96 passed by the Hon'ble Supreme Court of India you cannot be permitted to function in Delhi and are to be re-located/shifted outside N.C.T. of Delhi. Now, therefore, the Competent Authority under the exercise of powers conferred on it, grants you as an opportunity to represent as to why your unit should not be directed to be closed down as 'H' category industry as per M.P.D.2001. Your reply should reach this office within 15 days of service of this notice failing which it shall be presumed that you have nothing to say in this regard".

14. Thus before directing closure by impugned order, show cause notice in fact was given granting opportunity to the petitioner to represent against the proposed closure. In reply the petitioner could state and in fact it was stated that their unit did not fall under `H' category industry. Detailed reply dated 17th March,1999 was submitted and in that reply petitioner explained the process of manufacturing of U.F. Moulding Powder and tried to distinguish it from manufacturing of formaldehyde on the basis of which case set up by the petitioner was that the unit of the petitioner was not hazardous and, therefore, should not be classified as 'H' category industry. In the counter-affidavit filed on behalf of DPCC it has given the background under which these units were categorised as 'H' category units. This background is already noted above while discussing the counter-affidavit of DPCC. It is also mentioned therein that DPCC had received communication dated 10th May,1999 from CPCB wherein CPCB intimated DPCC that contents and representations of U.F.Moulding Powder Manufacturers' Association had been considered and Central Board was of the opinion that phenol formaldehyde resin manufacturing and urea formaldehyde resin manufacturing (using phenol and/or formaldehyde as starting raw materials which are hazardous) should continue to remain under `H(a)- Category' as per the provisions of MPD-2001. Thereafter the respondent No.3 again reiterated that the categorisation of Urea Formaldehyde Powder manufacturing Units was to be categorised under H-Category. It is only thereafter that impugned order dated 7th

June,2000 came to be passed. The aforesaid factual details clearly point out that not only show cause notice was given to the petitioners, their reply was solicited, which was also considered by the CPCB. Thus substantial compliance of the Principle of Natural Justice has been made while passing impugned order dated 7th June,2000. The petitioners cannot claim any prejudice being caused to them inasmuch as their view point was duly considered by the respondents before passing the impugned order.

15. There is no force in the argument of the petitioners that the closure order is violative of Article 19 of the Constitution of India. The right to carry on trade or profession guaranteed under Article 19 of the Constitution of India is subject to reasonable restrictions which can be statutorily imposed by the Parliament. The direction to close down the industry which is creating air pollution cannot be treated as violative of Article 19 of the Constitution as it is in larger public interest that such industries do not continue to function in thickly populated places which cause air pollution and thereby endanger the health and life of the public at large.

16. We are also not inclined to accept the submission of the petitioners that the order of closure is a non-speaking order. The impugned order records that the petitioners are engaged in manufacturing of UF Powder and causing air pollution. It also mentions that categorisation of its activity was referred to various institutions for expert comments and as per the expert comments received from institution, which were forwarded to CPCB for review, CPCB has categorised UF Powder Manufacturing activity under `H' activity. It further states that in view of this categorisation and the directions contained in orders dated 8th July,1996, 6th September,1996 and 19th December,1996 passed by Hon'ble Supreme Court of India in IA.22/94 in Writ Petition (Civil) No.4677 of 1985 entitled M.C.Mehta Vs. Union of India and others (Supra) such `H' group industries are to be relocated / shifted to any other industrial estate out of NCT of Delhi and shall close down and stop functioning in NCT of Delhi. On the basis of this reasoning that directions to close down the units are contained in the impugned order. As would be noticed later, while discussing Points 4 and 5, the respondents have been able to demonstrate that there was sufficient material available with them on record to support the aforesaid reasoning and conclusions. (Refer:(1) Systopic Laboratories (Pvt.)Ltd. Vs. Dr.Prem Gupta and others 1994 Supp (1) Supreme Court Cases 160 (2) State of Madras Vs. V.G.Row AIR 1952 SC 196 (3) Narender Kumar Vs. Union of India AIR 1960 SC 430). Point Nos.4 & 5 - Re: Categorisation

17. The main basis on which the argument regarding mala fides and colourable exercise of power is built is that the closure orders were made on the basis of the reports obtained from experts. Admittedly, even the copies of the report obtained from the experts were not supplied to the petitioner. It was only during the course of the hearing when repeated demands were made by the petitioner, this Hon'ble Court directed the respondents to supply the copies of the reports. Accordingly, the reports were supplied and it was revealed that the experts have very clearly categorized the unit of the petitioner as 'F'. DPCC and CPCB, in abuse of the powers vested in them, sat over the reports of the experts and have formed their own opinion, which

is neither supported by the opinion of the experts, nor by the literature on the subject.

18. As far as point No.5 relating to categorisation is concerned, the main submission of learned senior counsel for the petitioner was that earlier on all other occasions, the industry of the petitioner was considered under 'F' and it was not the case of the respondents that it falls under 'H' category. Reference was made to the earlier notice dated 17th April,1998 wherein the petitioner was asked to take necessary precautions. Necessary precautions were taken and the DPCC was informed vide reply dated 29th April,1998 and 13th August,1998. Accordingly, modified directions were issued by the DPCC on 23rd June,1998, and this aspect is not in dispute. However, DPCC again issued a show cause notice dated 2nd September,1998. This notice of 2nd September,1998 culminated into passing of an order by the appellate authority on June 29, 1999. In the said order, the Appellate Authority clearly directed the respondent DPCC and CPCB to inspect the premises and give its report. The petitioner's unit was not inspected and with mala fide intentions, the above closure orders were made. It was also sought to be argued that during the pendency of the appeal, another notice dated 5th March,1999 was issued. The said notice was duly replied vide reply dated 17th March,1999. Respondent was satisfied with the said reply. It was never countered, or rebutted.

19. Since both these points numbers 4 and 5 are inter-connected, they are taken up for discussion together. It would be seen that while alleging malafides or abuse of powers on the part of respondents, the gravamen of the charge/allegation is that the respondents have ignored the expert opinion of Delhi College of Engineering and I.I.T. Naturally, these reports are also relied upon to advance the argument that the units of the petitioners should fall under 'F' category and decision of the respondents in treating these units in 'H' category is improper. It is for this reason, we say that both these points are inter-connected.

20. Before dealing with these contentions on merits, let us first scan through the relevant provisions. The purpose because of which this Act was passed, hardly needs any emphasis. It may be, however, stressed that the Air(Prevention and Control of Pollution) Act, 1981, has important constitutional implications, with an international background. The Act drew its inspiration from the proclamation adopted by the United Nations Conference on the Human Environment held at Stockholm, from 5th to 16th June, 1972, in which our country was also represented. The preamble to the Air(Prevention and Control of Pollution) Act, 1981, contains a formal presentation of the fact and includes that the decisions so taken were " to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution". The preamble also records that "it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution".

21. The Air(Prevention and Control of Pollution) Act, 1981 (14 of 1981), is a specialised legislative measure, meant to take one facet of environmental pollution. It was enacted with following main objectives

(a) to provide for the prevention, control and abatement of air pollution;
(b) to provide for the establishment of Central and State Boards, with a view to implement the aforesaid purpose;
(c) to provide for conferring on such Boards powers and assigning to such Boards functions relating thereto; and
(d) for matters connected therewith. We may also reproduce here the statement of objects and reasons appended to the Bill, when introduced in the Parliament, before it was passed by both Houses of Parliament and received the assent of President of India on 29th March,1981 and came into force on 16th May,1981 and become the Act of Parliament. This is how Statement of Objects and Reasons reads as under

STATEMENT OF OBJECTS AND REASONS

1. With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are also densely populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, have confirmed that the cities of Calcutta, Bombay, Delhi, etc., are facing the impact of air pollution on a steadily increasing level.

2. The presence in air, beyond certain limits, of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incinerations, etc., has a detrimental effect on the health of the people as also on animal life, vegetation and property.

3. In the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The Government has decided to implement these decisions of the said conference in so far as they relate to the preservation of the quality of air and control of air pollution.

4. It is felt that there should be an integrated approach for tackling environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under the Water(Prevention and Control of Pollution) Act, 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution and of a State Board for the Prevention and Control of Air Pollution in the Union Territories. It is also proposed that the State Boards constituted under the said Act will also perform the functions of State Boards in respect of prevention, control and

abatement of air pollution. However, in those States in which State Boards for the Prevention and Control of Water Pollution have not been constituted under that Act, separate State Boards for the Prevention and Control of Air Pollution are proposed to be constituted.

22. It is clear from the above background under which the Act was passed that the main objective was to provide for prevention, control and abatement of air pollution. It was felt that with the increasing industrialisation and the tendency of majority of the industries to congregate in areas which are already heavily industrialised and densely populated, the problem of air pollution had begun to be felt in the country. It was more in cities like Calcutta, Bombay and Delhi which are facing the impact of air pollution on a steadily increasing level. It is common knowledge that notwithstanding the enactment of such type of legislation, the level of air pollution increased tremendously in city like Delhi. Various petitions in the nature of `Public Interest Litigation' were filed in the Apex Court, notably among them by environmentalist Advocate Mr.M.C.Mehta, Supreme Court had to intervene and pass directions from time to time for relocation of such industries, which were creating air pollution, out of Delhi and in other parts of NCR.

23. Be that as it may, in order to achieve the objective of prevention, control and abatement of air pollution, the Act provides for establishment of Central and State Boards and assigns them specific functions. As per Section-3 of the Act, CPCB constituted under the Water (Prevention and Control of Pollution) Act,1974 is to exercise the powers and perform the function of the CPCB for prevention and control of air pollution under the Act. Section-16 of the Act enumerates the functions of the CPCB. Sub-Section-1 of Section-16 which is general in nature incorporates that the main function of CPCB would be to improve the quality of air and to prevent control or abate air pollution in the country. Sub-Section-2 of Section-16 lays down particular function in Clauses (a) to (j) thereof for the purposes of performing its function. Sub-Section-3 of Section-16 enjoins upon CPCB to establish or recognise a laboratory or laboratories. Chapter-IV which is comprised of Sections 19 to 31A deals with prevention and control of air pollution. Various powers are given to the Central and State Boards for this purpose. Section 31A which was introduced by Act 47 of 1987 w.e.f. 1st April,1988 CPCB gives power to the Board to issue any directions in writing to any person, officer or authority, and such person, officer or authority is bound to comply with such direction. Explanation to Section 31A specifically mentions that this power includes direction to close down any industry, operation or process.

24. In view of the aforesaid scheme of the Act, it is not disputed that it is the power of the respondents to declare that particular industrial units are causing air pollution or hazardous, if it is so found. It was also not disputed that under Section 31A of the Act direction could be given to close down the petitioner's unit if the respondents are satisfied that their units are causing air pollution. However, the contention of the petitioner is that the power is exercised mala fide and it was the case of abuse of the power, inasmuch as according to the petitioner its unit is not creating any air pollution

and should have been categorised as `F' and further that there was no basis for categorisation its unit as 'H'.

25. In order to appreciate the aforesaid arguments, what is to be examined is as to whether there was any material before the respondents on the basis of which industry of the petitioner is put in 'H' category and the decision is based on relevant material. As already observed above, it is CPCB which has categorised the industry of the petitioner as 'H'. In the counter-affidavit of DPCC it has been stated that Sh.R.K.Goyal, Member Secretary, DPCC had written vide communication dated 16th November, 1998 to the Member Secretary, CPCB pointing out that a large number of Units had been found to be operating in various parts of Delhi engaged in the manufacturing of Urea Formaldehyde Powder and that a complaint was also received against these Units that these Units should be treated as hazardous and noxious as per Master Plan of Delhi 2001. It was also pointed out that while categorisation of more than 1 lakh industries by the respondent No.2, one such Unit was categorised under Group `F' but it seemed that the manufacturing process of the said Unit seemed that the UF Powder is similar to resins which have been put in group `H' of the Master Plan. In view of the same, it was requested vide the said communication that the matter may be examined and the respondent No.2 should be guided as to whether the said Units should be categorised under Group H(a) so that necessary action may be initiated as per Law. The said communication was replied vide reply dated 14th December, 1998 by the Director(ESS) of the CPCB that since raw materials used in such industries were hazardous chemicals, it was advised that all such Units should be categorised under H-Category. It was also stated in the said communication that one such Unit i.e. M/s Bindal Plastics was closed down in November 1996 under the orders of Hon'ble Supreme Court as H-Category Unit. Thereafter the respondent No.2 received a communication dated 10th May, 1999 from the CPCB wherein the CPCB intimated the respondent No.2 that the contents and representations of the UF Moulding Powder Manufacturers Association had been considered and the Central Board is of the opinion that phenol formaldehyde resin manufacturing and urea formaldehyde resin manufacturing(using phenol and/or formaldehyde as starting raw materials which are hazardous) should continue to remain under `H(a)- Category' as per the provisions of MPD-2001. Thereafter the respondent No.3 again reiterated that the categorisation of Urea Formaldehyde Powder manufacturing Units was to be categorised under H-Category. Insofar as CPCB is concerned, it has placed material on the basis of which CPCB categorised the petitioner unit as 'H'. The gist of the additional affidavit is already highlighted above. It is stated by CPCB that the category was changed keeping in view of:

i) chemical nature of raw material used, intermediate products and final product manufactured and whether these pose hazard at any stage;

ii)input and output of chemicals, their material balance and state (i.e. solid, liquid or gas);

iii) manufacturing process used and sequence of use of ingredient chemicals, their concentration, toxicity; and iv) emissions during manufacturing process, their nature, concentration and characteristics etc.

26. Reference is also made to the publications of World Health Organisation entitled "Health and Safety Guide" which includes its booklet on "Formaldehyde Health and Safety Guide (No.57, 1991) as per which even manufacturing of UF Moulding Powder is highly hazardous for surrounding environment. CPCB consists of officials who are experts in their filed. As per the provisions of the Act, it is the respondents and in particular CPCB which is to decide such issues as to which industry is causing air pollution. It is the duty of the respondents to control the air pollution and for that purpose respondents are empowered to issue necessary direction under Section 31A of the Act. Once it is found that the action of the respondents is based on relevant material on record and it is not the case of non-application of mind or where irrelevant considerations have crept in decision making process, the Court would not interfere with such a decision. Along with the additional affidavit dated 10th September,2000, CPCB has filed Annexure-R-4 which is brief note on Resin, Types of Resin, Environment and Health Implications from Urea Formaldehyde Powder Manufacturing Units. After dealing with the aspect of manufacturing of U.F.Moulding Powder in detail, last paragraph states in the following words as to how categorisation of U.F.Powder Manufacturing Unit under 'H' category was done. It would be apposite to quote this para at this stage Categorization of UF Powder Manufacturing units The categorisation of industries is generally based on following aspects Chemical nature of raw material used, intermediate products and final product manufactured and whether these pose hazard at any stage. Input and output of chemicals, their material balance and state , i.e. solid, liquid or gas. Manufacturing process used and sequence of use of ingredient chemicals; their concentration; toxicity etc. Emissions generated their nature, concentration and characteristics. Based on the hazardous nature of raw material (Formalin) used at the UF manufacturing units; the process undertaken in which amino resin formation takes place due to low degree of polymerization; the environmental implication and health hazards leading to the risk of cancer from continuous generation and release of formaldehyde vapours inspite of air pollution control system; the potential risk of high formaldehyde emissions from the units, which are vented out in work place air as well as atmosphere and potential risk of fire hazards from the units, all the formaldehyde powder manufacturing units are categorized under `H' category.

27. CPCB has also filed Annexures R-8 to R-10, the noting of relevant file(s) which led to the categorisation of petitioner industry under 'Ha' category as per MPD-2001. These documents show that the matter was examined at the highest level by the Committee of as many as six officers who are experts in their filed. Power of Judicial Review

28. The legislature, under the Act in question has conferred power on the respondents to issue directions for closure of a particular industry which according to the respondents is

causing air pollution. Admittedly, while conferring such a power on the Boards, the Courts have not been given power to hear appeal against the decision of the Board. It can, therefore, be safely said that legislature has placed its trust in the judgment and wisdom of the respondents. Therefore, while exercising the power of judicial review over such a decision, this Court is not sitting in appeal against the decision of the respondents. Judicial review of such a decision is available on limited grounds. While on the one hand Court is not sitting on appeal over the decision making authority, it has to preserve democratic values of rule of law. From this angle Court is to ensure that the authority who has taken the decision acts within the bounds of law and its power. Over a period of time grounds have been evolved on which judicial review of administrative action is permissible. The administrative decision can be interfered with if it lacks in fairness or is mala fide, it is ultravires, or abuse of power or colourable exercise of power and passed for improper purpose or it is based on irrelevant considerations or relevant material is not taken into consideration. Once the court is satisfied that a particular decision taken was within the power of the authority and it is not an abuse of such power and has not been taken with improper motive and is based on relevant material, it is not within the purview of a Court to substitute its own decision over the decision of the appropriate authority as if sitting in appeal. Way back in the year 1964 this is what the Supreme Court had observed on this point in the case of Partap Singh Vs. State of Punjab AIR 1964 SC 72 (at page-83) in the following words "The Court is not an appellate forum where the correctness of the order of the Government can be canvassed and, indeed, it has no jurisdiction to substitute its own view...for the entirety of the power, jurisdiction and discretion...is vested by law in the Government".

29. Similarly, in Asif Hameed vs.Jammu & Kashmir AIR 1989 SC 1899, the Supreme Court enumerated the power of judicial review of administrative action in the following words (at page 1906) "While exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers".

30. Thus judicial review is not an appeal from a decision but a review of the manner in which decision was made. The purpose of judicial review is to ensure that an individual receives fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the Court. We may emphasise here that the statute provides statutory appeal against the impugned order but not only petitioners did not invoke the same and chose to file these writ petitions but emphasised that the writ petitions should be entertained on merits without relegating the petitioners to the Appellate Authority. This aspect has been discussed in detail while discussing Point No.1 above. The petitioners have, therefore, chosen this forum knowing fully well the limitations attached to it.

31. In these cases we do not find any procedural infirmity or impropriety on the part of respondents in taking the impugned decision. At this stage, we would also like to reject the contention of the petitioners that the impugned order passed is in violation of order dated 29th June,1999 passed by the Appellate Authority. Appellate Authority had directed the respondents to inspect the premises and submit its report. The argument was that without doing this exercise, with mala fide intentions, closure orders are passed. It may be mentioned that in that case appeal was filed against order dated 25th January,1999 wherein DPCC had stated that the petitioner had not submitted compliance report of the measures which respondents had directed the petitioner to take. Therefore, subject matter of that appeal did not relate to categorisation of the industry as 'H'. Show cause notice for this purpose was issued on 24th February,1999 after passing the order dated 25th January,1999 which was impugned in the aforesaid appeal. Order dated 25th January,1999 impugned in the aforesaid appeal, therefore, related to the installation of air pollution devices, compliance of which was sought by the respondents at that time. As far as categorisation is concerned, this is a different aspect altogether not at all related to the case in appeal originated on the basis of order dated 25th January,1999. The exercise of categorisation or recategorisation was initiated much after order dated 25th January,1999 impugned in the aforesaid appeal i.e. by show cause notice dated 24th February,1999 and culminated in passing impugned order dated 7th June,2000. When the order dated 29th June,1999 was passed in the earlier appeal, matter was still at a show cause stage and it was not a subject matter of the appeal. Therefore, any direction given in that case regarding categorisation was beyond the scope of the appeal and without jurisdiction.

32. Mr.Ravinder Sethi, learned senior counsel appearing for the petitioner had heavily relied upon the reports said to be of the Delhi College of Engineering and the Indian Institute of Technology in support of his contention that the categorisation of petitioner industry has to be under 'F' category. Suffice it to state that CPCB is not bound by these reports. It is the case of CPCB that these reports were duly considered by CPCB and after critically reviewing the same, these reports were rejected. Table-1 of Annexure R-5 to the additional affidavit contains perspicacious & subtle review of report of Delhi College of Engineering where CPCB has given its comments to the various statements contained in different paragraphs of the report, controverting and challenging the correctness of such statements. One may also underscore the fact that it is `one man' report. Similar exercise is done in Table-2 of Annexure R-5 insofar as report of Indian Institute of Technology is concerned. Annexure R-7 also contains the comments on the report submitted by Indian Institute of Technology. As already pointed out above, this Court has neither the expertise nor any machinery to adjudge the veracity of the claim of the petitioner that their industry should fall under category 'F' or that of the respondents stand categorising the unit in 'H' category. Even the power of judicial review is limited and circumscribed by the principles enumerated above. It is discernible that there was due application of mind on the part of respondents and their decision is based on relevant material on record which is manifest of the foundation on which the decision

rests. This translucent and vitreous material coupled with the fact that under the Act it is the statutory function and power of the respondents to do such categorisation and issue appropriate direction leaves no scope for further scrutiny or analysis of the matter. This Court is not supposed to adjudicate upon the correctness of the reports or the respective claims. At the cost of repetition, it may be observed that not only the petitioner's view point was duly considered by the CPCB, even the reports of IIT and Delhi College of Engineering were duly considered. Critical review did not find favour with CPCB and CPCB has given its detailed reasons for doing so.

33. By now it is also well settled that the matters which are to be decided by experts, are to be left for them to decide and once such expert bodies take decisions in technical and scientific matters, it is not for the Court to interfere with the evaluation made by these expert bodies. In fact the argument which is advanced by the petitioners on the basis of the reports of Delhi College of Engineering and IIT was precisely the argument raised before Supreme Court and was considered by the Supreme Court in the case of Systopic Laboratories (Pvt.)Ltd. Vs. Dr.Prem Gupta and others 1994 Supp (1) Supreme Court Cases 160 and other connected petitions reported in the said judgment. That was a case where validity of the notification issued by the Government of India prohibiting completely the manufacture and sale of fixed dose combination of corticosteroids with any other drug for internal use was challenged. In the said notification it was stated that Central Government was satisfied that long term use of steroids in fixed dose combinations for treatment of asthma is likely to involve risk to human beings and such formulations do not have therapeutic justification and further that it was necessary and expedient in public interest to prohibit the manufacture and sale of the said drugs. On behalf of the petitioners, scientific data in the form of published papers in the various medical journals had been filed to show that fixed dose combination of a corticosteroid and an antihistamine is highly beneficial for the treatment of asthma. Relying upon such studies, it was sought to be argued that the decision of the Central Government in prohibiting the manufacture and sale of the drug in question was not proper. While rejecting the contention of the petitioners, the Court observed as under "Having considered the submissions made by the learned counsel for the petitioners and the learned Additional Solicitor General in this regard, we must express our inability to make an assessment about the relative merits of the various studies and reports which have been placed before us. Such an evaluation is required to be done by the Central Government while exercising its powers under Section 26-A of the Act on the basis of expert advice and the Act makes provision for obtaining such advice through the Board and the Drugs Consultative Committee (DCC)".

34. The Court also brushed aside the argument of the petitioners that the material sought to be produced by the petitioners although submitted before the sub-Committee of the Drugs Consultative Committee (DCC) as well as Expert Committee set up by it, there was no proper consideration of the same by the experts as well as the DCC and the Board. The Court, in the process, perused the minutes of the meeting of the Board, the sub-Committee of the DCC as well as Expert Committee which revealed that the material that was submitted on behalf of the manufacturers of the

Drugs in question was examined by the members and, therefore, it could not be held that there had been no proper consideration for the said material by the Expert Committee or the sub-Committee of the DCC. As already mentioned above, this exercise has been undertaken by the respondents in the instant case as well.

35. We started discussion on this aspect by referring to the objective with which the Act in question was enacted and noticed that the main objective of legislation was to provide for the prevention, control and abatement of air pollution. Therefore, one has to give purposive interpretation to such statutes so as to foster and subserve the objectives with which such legislations are passed and, therefore, once the Court is satisfied that the respondents have undertaken a bona fide exercise and formed an opinion based on some studies that the units of the petitioners are causing air pollution, this Court should not interfere with such a decision taken by the respondents. In A.P.Pollution Control Board Vs. Prof.M.V.Nayudu (Retd.) And others (supra) the Supreme Court has emphasised that environmental concerns are of equal importance as human rights concerns as both are to be traced to Article 21 which deals with the fundamental right to life and liberty. While environmental aspects concerns "life", human rights aspects concerns "liberty".

36. The end result of this discussion is that these petitions are without any merit and, therefore, warrant dismissal. All these petitions are, accordingly, dismissed with costs of Rs.5000/- each. 50% of this cost shall be deposited by the petitioners with DPCC and 50% with CPCB. Rule D.B. issued in these petitions is hereby discharged.