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Techno Science Issues in Water Pollution Litigations: The Supreme Court Approach

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Introduction:

The Court's capability to handle techno science issues have been called into question, with allegation that the judiciary is increasingly unable to manage scientific and technological problems. The difficulty in interpreting the Enviro-techno-science matter is not a unique phenomenon confined to India alone. This difficulty is also felt in the scientifically advanced countries. Even in the USA, the position is not different. In view of the difficulties arising in such cases, it led to constitution of the Carnegic Commission of Science and Technology in 1993 in the United States of America to undertake a study of the problems of science and technology in judicial decision-making.

The position in India is not different from USA The most complicated problems are of the mass data, complexity of law fact issue, absence of formal legal research to analyse those data and absence of any statistics on similar points relating to the environmental pollution. Justice Krishna Iyer, echoing the same view, has pointed out that the judiciary does not have the equipment of laboratory studies when confronted with large-scale lawlessness in the field of environmental pollution and industrial production¹. Ever since the judiciary was confronted with the environmental litigations, the courts have been struggling to decide upon the matters relating to scientific nuances of environment. "Uncertainty, resulting from inadequate data, ignorance and indeterminacy, is an inherent part of science²." Uncertainty becomes a problem when scientific knowledge is institutionalised in policy making or used as basis for decision making by agencies and courts. Scientist may refine, modify or discard variables or models when more informations are available; whereas the Courts depend on the then existing scientific knowledge³. In



this scenario the opinion of scientific and technical experts in the administration of water justice has become an essential part of decision-making process.

In this regard the Supreme Court of India has taken a lead to fill up this gap by appointing commissions and committees. In doing so, it took help of a juristic technique. Broadly speaking, judicial innovation was required to: (1) secure detailed facts since the petitioners information was usually sketchy; (2) receive expert testimony in cases involving complex social or scientific technical issues; and (3) ensure the continuous supervision of prospective judicial orders⁴.

Coming to receiving expert testimony in cases involving complex scientific or technical issue; a difficulty often faced by the court is the lack of access to information. To construct a complete framework of facts, a judge often requires the concerned official to furnish detailed and comprehensive affidavits. Some times where a swift or impartial assessment of the facts is needed and the official machinery is slow or biased then an affidavit may not be helpful. In such cases, the court appoints commissions to gather facts and data⁵. The power to appoint committees or

commissions is an inherent power of the Supreme Court⁶.

The court has appointed District Judges⁷, journalists⁸, lawyers⁹, mental health professionals¹⁰, bureaucrats¹¹ and other expert



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bodies¹² as commissioners. Further in pollution cases, the Supreme Court frequently relied on the reports of the National Environment Engineering Research Institute, Nagpur (NEERI)¹³ and the Central Pollution Control Board¹⁴ (CPCB). Several techniques have been evolved to manage the litigation process in complex cases involving scores of parties. For example, the court may dissuade industry from filing pleadings in the court registry and instead require the polluter to file affidavits before the Pollution Control Board¹⁵ and appoint *amicus curiae*¹⁶ to peruse, analyse and collect the material filed by various respondents and appoint commissions to inspect the situation in the field¹⁷. The commission/committees have also been appointed to propose remedial measure/relief and monitor its implementation¹⁸. The use of commission/committee has enabled the court to verify the facts brought to the notice of the courts by the parties.

Such involvement of experts raises many questions: What are the techniques evolved by the Court to manage the complex techno-scientific litigation process? How for the courts depended on the experts in judicial making? What were the institutions or experts who were must sought of? Whose help as an expert had been taken? Whether the court relied on any Government owned institutions or sought assistance from eminent person in the desired field or constituted committee(s)/commission(s) consisting of eminent persons and scientists drawn from leading institutions of the country? Did it make any distinction in committees appointed by the Court Government and parties? How far the experts were having expertise in the concerned field involved in the litigation? Whether the court allowed the Government/petitioner to constitute their own committees and to submit their report to the court? Whether the committees/commissions have been able to deliver "water justice" to victims of water pollution? How court reacted to these assistance provided by "experts" in the relevant field?



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It may be pointed out that the Supreme Court in the *Oleum Gas Leak case*¹⁹ advocated for a neutral scientific expert as "an essential input to inform judicial decision making"²⁰. In this regard the Court directed the Government of India to set up an Ecological Science Research Group, consisting of independent professionally competent expert in different branches of science and technology that would act as "information bank" for the Court and also to the government department. The Supreme Court also pointed out that cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources were coming up for adjudication and these cases involved assessment evaluation of scientific and technical data, and, therefore, there was an urgent need of the involvement of experts in the administration of justice²¹. But, the question remains unresolved. We have reached to zero position from where the Court started. The question remains: how and who will

identify a “neutral expert”? In this connection, it may be relevant to note that in 1986, Dr. Upendra Baxi, suggested to the Chief Justice of India to establish a special cell on Science and Technology in the Supreme Court itself, where scientists would interpret scientific evidence for the judges to enable resolution of disputes. He had also suggested for a refresher course for at least the Appellate Judges on problems of science and technology, which appear frequently²². Unfortunately, these two suggestions have still to receive attention of the Chief Justice of India. These are some of the questions, which are examined in the following pages:

1. Committee Appointed By The Government

In the *Kanpur Tanneries case*²³, the Supreme Court relied on expert evidence to know the extent and consequences of pollution of the river Ganga. It may be recalled that the Supreme Court in this case considered the report of two committees, one constituted by the Directorate General of Technical Development, Govt. of India, in 1986 and a study report of sub-committee on effluent disposal, constituted by the Development Council for leather and leather good industries in 1989. The Court quoted the passage from the report of aforesaid committees to indicate that the leather industry was one of the water polluting industries in the State of U.P. Besides this, it also used the recommendation of the committee to emphasise the necessity of primary and secondary



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treatment plants to treat the trade effluents discharged by polluting industries.

In the instant case, the Court considered the report of a committee constituted by the Government vide Urban Development Department (Ganga Cell) dated 12-3-1996. The Committee consisted of representative of U.P. Jal Nigam, Coordinator, representative of Nagar Mahapalika, representative of U.P. Pollution Control Board and two representatives of tanneries. One finds here a wider participation of different representatives in the deliberations of the committee. A more environmental democratic approach is visible in this case. It is in view of the deliberations of the committee that the Court could administered water justice. The Government appointed another committee under the chairmanship of justice H. Suresh, a retired Judge of the Bombay High Court, along with A. Sreenivasan, Joint Director of Fisheries (retd) Dr. A.G.K. Menon, and Ichthyologist, Mr V. Karuppan, IAS (retd.). Dr. M. Arunachalam, Lecturer, Centre for Environmental Sciences, Manommaniam Simdaraur University, Tamil Nadu and Dr. K. Dax Shinamorthy, a medical surgeon constituted the expert committee, hereinafter referred as “Suresh Committee”. The Suresh Committee visited various villages in Tamil Nadu and Pondicherry and gave its findings based on the evidence collected by the Committee. The Suresh Committee produced a very detailed and exhaustive report indicating the impacts under different heads. The Supreme Court took judicial notice of the report relating to the functioning of shrimp culture industries in India²⁴.

In the *Indian Council for Enviro-Legal Action case*²⁵, a committee headed by Mr. B.B. Vohra was set up by the Government in response to the need for examining the issues relating to development of tourism and hotel industry in coastal areas and to regulate the fragile coastal ecology. The committee also included three environmentalist members. The Supreme Court had quoted extensively from the report of Vohra Committee to justify its verdict in the instant case²⁶.

In the *Intellectual Forum Tirupathi case*²⁷, the set of facts in the instant case is related to the preservation and restoration of two historical tanks in the State of Andhra Pradesh. The tanks are called "Avilala Tank" and "Peruru Tank" which are situated in suburbs of Tirupathi Town, a world renowned popular pilgrims centre having everyday in flow of tourists between one lakh to two lakhs. In the present case, the Supreme Court directed the Secretary, Ministry of Water Resources, Government of India, to constitute a committee of experts for the purpose of submitting a report on the question whether the two tanks or either of them can be utilised for water harvesting. The Expert Committee submitted its report. A careful perusal of the report would clearly reveal that the Committee had given its suggestion only after taking into account various possibility in recharging the ground water level. The Supreme Court took cognizance of the report and cautioned that it was not proper to caste a doubt on the report submitted by the said Committee²⁸.

In pursuance of the report submitted by the Expert Committee, the Supreme Court pointed out that "under the present circumstances, the Courts should do the most it can to safeguards the two tanks in question. However, due to the persistent developmental activities over a long time, the Court remarked that much of the natural resources had been lost which could hardly be ratified by the Court²⁹.

2. Committee Appointed By The Court

In the *Kanpur Tanneries case*, the Supreme Court by its order dated 2-3-1990 appointed a committee of experts to visit Kanpur for inspection of treatment plants alleged to have been set-up by a number of tanneries. This order was passed with a view to ascertain the correctness of facts. The Supreme Court took into consideration the points highlighted in the report and recorded its appreciation for the commendable work done by the members of the committee. The Court acknowledged that their report had been of great assistance to the Court in dealing with vexed problem³⁰. Recognising the services of the members of the committee, the Supreme Court ordered polluting industries to pay rupees forty thousand to members of the committee against the

expenditure incurred in connection with the work entrusted to them by the Court. It is submitted that this judicial gesture will go a long way to encourage the experts to provide meaningful assistance to the Court as and when called for.

Then comes the cases, where the courts asked other authorities or institutions to constitute expert committees. For example, in the *Calcutta Tanneries case*³¹ the Supreme Court in its order dated 24-9-1993 directed the West Bengal Pollution Control Board (WBPCB) to examine the possibility of setting up of common effluent treatment plant for the Calcutta Tanneries in four areas. The owner of about 208 tanneries situated in Tangra got prepared their project from KROFTA Engineering Ltd., Chandigarh for setting up of a common effluent treatment plant. In order to get more scientific inputs, the Supreme Court by its order dated 5-9-1995 asked Dr. P. Khanna, Director of the NEERI to appoint a team of experts to visit the spot and examine the project prepared by KROFTA. NEERI submitted its report dated 30-9-1995. The report indicated that a four member team inspected the existing sites of tanneries clusters and found that the proposed scheme were neither scientifically sound nor could be

constructed on the existing locations without interfering with normal life in the above-mentioned area. The Supreme Court accepted the findings of NEERI and made the reports of NEERI and WBPCB, as a part and parcel of its judgment in the instant case.

In *Indian Council for Enviro-Legal Action v. Union of India*³², the Supreme Court relied on the reports of experts not only from the Ministry of Environment and Forests but also from the State Pollution Control Board and from NEERI, to determine whether the waste left behind by the chemical industries had an adverse impact on land, underground water and health of the villagers and to fix liability on such rogue industries for the damage caused. In response to the notice issued by the Supreme Court, the Ministry of Environment and Forests, Government of India quoted the survey report carried out by the leading non-governmental organisation, Centre for Science and Environment. The report stated that setting up highly polluting industries in critical ground water areas was essentially ill conceived. The report of Rajasthan Pollution Control Board stated that polluting industries had deliberately spread the hazardous material/sludge all over the place, which had only heightened the problem of its removal. The court also directed the Ministry of Environment and Forest (MOEF), Government of India to depute its experts immediately to inspect the area. The experts submitted



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their report and presented a highly disturbing picture regarding sludge, percolation and its content. It is on the basis of the reports that the Supreme Court termed these industries as "rogue" industry. It was also reported that the ground water was also contaminated. The Supreme Court also referred to the report submitted by NEERI on the subject of "Restoration of Environment quality of the affected area surrounding Bichhri Village due to past waste disposal activities". Recognising the technical competence and reputation of NEERI as an expert body on the subject, it quoted extensively from its report. The report suggested that compensation should be paid under two heads viz. (a) for the loss due to damage; and (b) towards the cost of restoration of environmental quality³³.

In the *Tamil Nadu Tanneries case*³⁴, the Supreme Court directed NEERI, to send a team of experts to examine, in particular, the feasibility of setting up of Common Effluent Treatment Plant (CETPS) for the cluster of tanneries situated in different places in State of Tamil Nadu where the work of setting up of CETP had not yet started and also to inspect existing CETPs where the construction work had been in progress. The NEERI submitted its report with various recommendations to be followed by abovementioned units. On the basis of this report, the Supreme Court directed all the tanneries in the five districts of Tamil Nadu to be closed down with an immediate effect.

In the instant case, the Supreme Court utilised the technical expertise of the Tamil Nadu pollution Control Board (TNPCB) to assess facts about pollution as well as the extent of compliance made by the polluting tanneries to the order of the Court. On the basis of Board's report, the Supreme Court reached to the conclusion that tanneries were not listening to various orders passed by the court from time to time³⁵.

In the *S. Jagannath case*³⁶, the attention of the Supreme Court was drawn towards the, "Shrimp Culture Industry", which was causing water pollution. In the instant case, the Supreme Court directed the NEERI, through its director to appoint an investigative team to visit coastal areas of the State of Andhra Pradesh and Tamil Nadu and submit its report to the court regarding the various farms, which had been

set-up in the said area. The court also asked NEERI to suggest remedial measures in this regard. Pursuant to the directions of the Supreme Court to the NEERI, a 13-member team of scientists led by Dr. A.S. Bali and


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Dr. S.K. Kaul inspected the shrimp farms situated on the ecologically fragile coastal areas in the States of Andhra Pradesh and Tamil Nadu. Another 19-member team led by Dr. A.S. Bali and S.N. Kaul inspected the shrimp farms situated on the ecologically fragile coastal areas in State of West Bengal, Orissa, Kerala, Karnataka, Goa, Maharashtra and Gujarat³⁷.

The two reports of NEERI, submitted by aforesaid teams clearly indicated that due to commercial aquaculture farming, there was considerable degradation of the mangrove ecosystems, depletion of casuarina plantation pollution of potable waters, reduction in fish catch, and blockage of direct approach to seashore. The ground water had got contaminated due to seepage of impounded water from the aquaculture farms. Highly polluted effluents were discharged by the shrimp farms into the sea and on the sea coast. The NEERI reports indicated that effluents discharged by the farms at various places were in excess of prescribed standards³⁸. These serious concern of the committee were paid due attention by the Supreme Court.

The Supreme Court also took into account three reports of experts to arrive to certain conclusions. These experts were Mukul Sharma, Dr. P. Sanjee Raj and Dr. Vandana Shiva. The focus of these reports was contamination of potable water in the vicinity of Shrimp farms. Expressing its concern, the Supreme Court pointed out that three reports presented a rather depressing scenario of the Shrimp Industry³⁹. Further, the Court substantiated its findings by quoting a published report, titled as "Some Ecological and Social Implications of Commercial Shrimp Farming in Asia" prepared by Solon Barraclong and Andrea Finger Stich. The said report was result of a study conducted by the United Nations Research Institute for Social development in Collaboration with World Wide Fund for Nature hereinafter referred to as the UN Report⁴⁰.

In *Bhavani River Sakthi Sugars Ltd., In re*⁴¹, the discharge of objectionable effluents from distillery into Bhavani River and adjoining areas was subject-matter under examination by the Supreme Court. In the instant case, the Supreme Court directed the NEERI to conduct inspection of the industry and to submit a report to the Court disclosing

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whether pollution control devices had been fixed by the industry and proper step had been taken to control the pollution in accordance with the Act or not. Further, the Court also directed NEERI to inspect the surrounding area with a view to assess damage, caused due to discharge of effluents and to indicate the cost of restitution. It required the NEERI to submit its report within a fixed period. Pursuant to directions issued by the Supreme Court, the NEERI submitted two reports. The Court perused those reports. Since the petition was remanded to high Courts for disposal by the Supreme Court, it directed the High Court to consider those reports and suggestions made therein while passing orders thereto. It may be noted that the Supreme Court also requested the NEERI to give its opinion on technical matters regarding the viability

of the industry to the High Court.

In the *Badkhal and Suraj Kund Lakes case*⁴², environmentalist and senior lawyer, Mr. M.C. Mehta of the Supreme Court, filed a public interest litigation to protect Badkhal and Suraj Kund lakes from mining operations and construction activity in vicinity of the aforesaid lakes. The Supreme Court asked the NEERI to investigate the aforesaid matter and report back to the Court. The NEERI submitted its report indicating surroundings, geological features, land use and soil types and archeological significance of the areas surrounding lakes. The report of the NEERI is worth quoting:

Suraj Kund Lake impounds water from the rain and natural springs Badkhal Lake is an impoundment formed due to construction of an earthen dam. The catchment areas of these lakes are shown in figure attached with the report. The land use and soil types are, as explained in the report show that Badkhal Lake and Suraj Kund are monsoon fed water bodies. It may also cause disturbance to the aquifers, which are source of ground water. The hydrology of the area may also be disturbed⁴³.

There were two expert opinions on the record, one by the CPCB and the other by the NEERI. The Supreme Court made it clear that these "two reports" leave no doubt on our mind that large-scale construction activity in vicinity of the two lakes was bound to cause adverse impact on local ecology. It is submitted that these two reports helped the Court to arrive at the conclusion that now onwards, no construction of any type should be permitted, in the area outside the green belt up to one km from the Suraj Kund and the Badkhal lakes. One can say that the Court used



expert opinion to balance the scale between environment and development.

In *D.K. Joshi v. State*⁴⁴, the petitioner an inhabitant of Agra town, filed a writ petition alleging that the supply of drinking water in Agra was extremely polluted and it was unhealthy for human consumption. The Supreme Court, after a perusal of affidavit, found that the authorities had not taken adequate steps to prevent and control water pollution. And, therefore, NEERI was called upon to submit a report. The report submitted by the NEERI indicated the long-term measures, which could be taken in relation to supply of drinking water as well as sewage and drainage system, and disposal of solid wastes in the city of Agra⁴⁵. It is submitted that involvement of the Supreme Court in minute administrative detail by using its inherent power has been described as creeping jurisdiction⁴⁶ in which the courts have found it proper to become embroiled in their search of justice⁴⁷.

3. Appointment of An Advocate As Commissioner

In the *Ajay Singh Rawat (Dr.) case*⁴⁸, the Supreme Court entertained a public interest petition, seeking intervention of the court to save Nainital's lake (the hill station) from degradation. After having gone through the petition, the Court appointed a Commissioner for local inspection and asked him to submit the report to the Court. The District Judge, Nainital was directed to appoint an advocate of that court as Commissioner. The District Judge appointed an advocate as a commissioner to inspect the town and report on the grievances. The advocate, Commissioner, inspected the place and submitted its report to the Court. The observation of the Supreme Court supported the petitioner's case in following words:

A perusal of that report shows that on local inspection, it was found that the lake has turned dark green with an oily surface and is now full of dirt, human faces, horse dung, paper polythene bags and all sorts of other waste. Most of the sewer



lines, which leak open into it. The Commissioner also found that wherever the drains open at the shores of the lake, big heaps of rubble used in construction of building are collected and these materials ultimately settle down on the shores of the lake thereby reducing the length, depth and width of the lake besides polluting the water to a great extent. It has been mentioned in the report that ecologists feel that if nothing was done to prevent this salutation then the lake will dry up⁴⁹.

The commissioner also made certain recommendations. Accepting the recommendations, the Supreme Court urged the authorities to constitute a monitoring committee to implement remedial measures such as preventing sewage from entering the lake, maintaining the drains and restricting lakeshore construction. The Court also recommended that two or three men of public, having interest like the petitioner in the matter, might be co-opted in the committee. The committee might hold its meeting, to start with, every month, and then every two months⁵⁰.

4. Involvement of the Appellate Authority

The *M.V. Nayudu case*⁵¹, is an unique case in this regard, where an expert committee was constituted by the Hyderabad Metropolitan Water Supply and Sewerage Board to provide the status report of pollution of water of the two lakes namely. Himayat Sagar and Osman Sagar, supplying water to twin cities of Hyderabad and Secundrabad. It was on the basis of the interim report of the committee that the Government of Andhra Pradesh prohibited various development processes within the radius of 10 km of these lakes.

In the present case, the Supreme Court, realising this to be a case of techno-science matter referred two issues to the National Environment Appellate Authority for its investigation and opinion: One, the pollution potentiality of the proposed industrial process; and two, its impact on the Himayat Sagar and Osman Sagar lakes. The said authority comprised of a retired Judge of the Supreme Court and members having technical expertise in environmental matters.

According to Prof. Jariwala⁵², "an interesting aspect of this case is that even though the judiciary, felt considerable difficulties in balancing the conflicting interests, involving highly technological and



scientific problems yet, the Division Bench, consisting of Majumdar and Jagannadha Rao, JJ. decided to go ahead at some length" in this complicated and complex area. The complicated balancing of the industrial process, it may pointed out, included on the one hand adverse effect on the environment, if the process was permitted; and on the other, if it was not allowed, it would upset the economic growth.

In the instant case, the Division Bench raised an important question, "whether the Supreme Court, while dealing with environmental matters under Article 32 or Article 136 or High Courts under Article 226, could refer the matter in dispute to the National Environment Appellate Authority for investigation and opinion". Citing the stand of the Court in the *Paramjit Kaur case*⁵³, the Supreme Court answered the question in affirmative. The Court took the stand that "no new jurisdiction was conferred rather, it shall act in aid of this court". And, therefore, the Court held that, "such a procedure, in our opinion, is as perfectly within the bounds of law⁵⁴". The reasons used by the Court

included that the matter involved in environmental litigation was of a scientific and technological nature, which could be handled by the above authority, having both judicial and technical members. Further, the Court noted, "these matters sometimes required day-to-day hearing". Further that no new jurisdiction was conferred as such the procedure followed in this case was valid. Having regard to the workload of the Court, it was not possible for the court to give urgent decisions. And lastly, the Court felt the need for an alternative procedure, which could be expeditious and scientifically adequate⁵⁵.

The decision of the Supreme Court in the instant case has attracted criticism on the following grounds:

- (1) Firstly, in the past, the Court took help of scientific and technical experts to understand the niceties of complex and complicated scientific and technical problems and issues. It handed down judgments/orders in the various fields⁵⁶. It has been suggested that the court should have decided the matter itself rather than delegating the process to the "appellate authority".
- (2) Secondly, the Authority mentioned above was a statutory authority created under the aforesaid Act. Section 11 of the Act



had clearly demarcated its jurisdiction to hear appeal in case of any grievance against any order granting environmental clearance. The present section had not given any power contemplated in this case nor it had any residuary clause to include such jurisdiction. Thus, the Act nowhere had conferred on the Authority any advisory jurisdiction⁵⁷.

It may be pointed out that the Supreme Court has the inherent power in this regard. But the question remains: Can appellate authority, without the authority under the Act, exercise the advisory jurisdiction?

5. Appointment Of Individual Experts

In the *M.V. Nayudu case*⁵⁸, the Court called for a further report on the question assuming that the project in question was a hazardous one, whether its location at the spot in question, if subjected to certain safeguards, could be treated to be permissible in accordance with requirements of this case. For this purpose, the Court appointed Dr. Paul Ratnasamy, Head of the National Chemical Laboratory, Pune with a request to go to the spot, inspect the site and then consider as to whether conditions prescribed by the technical committee of the appellant Board and any further safeguards and conditions could be sufficient to permit the commissioning of the project in question. The Court asked also Dr. Paul to take assistance of the National Geological Survey of India to make his report comprehensive. Dr. Paul was asked to send his report to the said authority to enable it to submit its supplementary report. The Supreme Court also requested "appellate authority" to examine the report of aforesaid expert and after hearing the parties and permitting them to cross examine the expert, the "authority" should submit its supplementary report to the Court⁵⁹.

The Court, not being satisfied with the report produced by "appellate authority" in association with Dr. Paul, Head of National Chemical Laboratory, Pune, further appointed Prof. D.N. Bhowmick, Head of the Department, Chemical Technology, University of Bombay, to give his reports as to whether conditions prescribed by the technical committee of the Board and any other safeguards and conditions could be sufficient to permit the commissioning of the project at location in question. The Court directed Prof. Bhowmick to visit and inspect the

spot. Besides this, the Court provided assistance of National Geophysical Research Institute of India, Hyderabad to Prof. Bhowmick so that he could make a comprehensive report. Further, the Court directed that report might be filed directly in the Court after which parties would be at liberty to file their objections and matter would be heard thereafter⁶⁰. The report, it may be pointed out, provided much needed assistance to the Court to decide the vexed issues relating to science and technology. And for this reason the Supreme Court acknowledged the excellent reports submitted by these expert bodies. Appreciating the work done by these experts, the Court said:

The amount of hard work done by these three bodies is commendable. But for these experts' reports, it would have been very difficult for this court to resolve the complicated scientific issues involved in this case⁶¹.

This case throws light on court's selection of the best expert. The Court asked the expert to submit the report directly to the Court to save time and provide confidence in the expert. Further the Court did not go with ex parte but conferred opportunity to the parties to take the report into cognizance and could make objection, if any, on the conclusions in the report, a democratic way in the administration of environmental justice.

Further the instant case, the Court asked the A.P. Pollution Control Board to pay the expenses incurred by these bodies in connection with preparation of these reports. This judicial gesture will provide incentive to other experts to do justice with the job assigned by the Court.

In the *Kanpur Tanneries case*, the Supreme Court also took into cognizance a technical paper of Dr. A.K. Alagarswami, Director, Central Institute of Brackish Water Aquaculture Madras, titled "the current status of aquaculture in India, the present phase of development and future potential", (hereinafter called Alagarswami Report) in a workshop organised by the Food and Agricultural organisation (FAO), an organ of the UNO It was published as an annexure to the workshop by FAO⁶². The Supreme Court, while pronouncing the judgment in the aforesaid case, quoted the Alagarswami Report extensively.

6. Committee Appointed By The Petitioner/Respondents

Indeed, individual experts, expert bodies have become an integral part of environment justice delivery system. However, there is a likelihood of abuse or misuse of the "expert advice" by the vested interests to meet their own end. This apprehension becomes visible in the *Goa Foundation case*⁶³. The appeal by the Goa Foundation was directed against the judgment of the Bombay High Court, dismissing the writ petition filed by the appellant objecting to construction of hotel and sea beach resort in Goa's coastal area.

The appellant Dr. Claude Alvares placed the report of the National Institute of Oceanography before the Supreme Court, which was obtained during the pendency of the appeal. The appellant contended that in view of aforesaid authentic documents, it would be appropriate to remit the matter to Union Government for reconsideration. It may be pointed out that neither the Court nor the Union Government had asked for

the report from the National Institute of Oceanography. The report had been obtained by the Secretary of Goa Foundation, Goa while the matter was pending in the Court. Goa Foundation wrote a letter to the Director of National Institute of Oceanography, asking some clarification and comments in relation to the said institute. Dr. Antonio Mascarenhas and Dr. Kalidas Sawkar who wrote the said report, were members of Goa State Committee held for the said purpose. They never objected the aforesaid approved plan. The Supreme Court emphasised the fact that the present report of the National Institute of Oceanography, if read with letter of Goa Foundation, unequivocally indicated that the Goa Foundation had obtained this report just to nullify the environmental clearance, granted by the Department of Environment and Forests⁶⁴. The Supreme Court speaking through Justice Banerjee, observed that:

It is rather unfortunate that such a state of affairs did take place and happenings have involved two very noted scientists of western India as also of the country⁶⁵.



It may be pointed out that in case of expert of the parties he will sing in a tune of the person who hires him and it is for this he is paid. Thus, the Court must be careful in adopting the report prepared on behalf of the parties.

Concluding Observations

The question as to what action constitutes water pollution can not be fixed in any straight jacket. It will depend on case to case, circumstance to circumstance and application of minute tests laid down by the scientists and technocrats. In this complex situation, the approach of the Supreme Court deserves appreciation in that, the Court instead of shirking its responsibility on the shoulders of others, fought the battle and could come to certain conclusion. The experts, appointed by the Government and the Supreme Court, have helped the Court to resolve the disputes. Their opinions were taken full cognizance by the Court. At time their recommendations became a part of the orders/judgment of the Court. For such contributions, the Court not only appreciated their services, but, also compensated them for the services rendered.

It may be pointed out that there were, in many cases, committee after committee which clearly indicates that the Court was not satisfied. Further, such business takes time of the Court and thus delay the administration of environmental justice, as happened in the *M.V. Nayudu case*. This requires a serious handling by the Court.

In the committees, one thing has not drawn attention towards the constitution of committees by the delegated authorities. The concern and selection of experts by the delegated authority cannot match with such constitution by the parent authority. And, therefore, it is suggested in matter of environment, such approach be discouraged. There were individual experts and expert institutions involved in this job. In all of them, the NEERI stands fall whose services were taken by the Supreme Court time and again. Thus, NEERI deserve praise for their note worthy help. Does it not point towards a direction suggesting the Constitution of a Scientific and Technical Research Cell initially in the Supreme Court and gradually in the High Courts? The experts employed by the parties had a partitioned view. And, therefore, the Court must be cautions in adapting the report. Any casual approach may result in a gross injustice to environment and also to judicial justice. Is not time ripe to bring to the day light what justice Bhagwati suggested in the *Oleium Gas Leak case*, to have a separate "Environment Court"?

So what comes out? The Supreme Court has, in the complexities of techno-science issues, made an easy landing, an important contribution. However, at time the Court borrowed and incorporate their

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report and recommendation in its orders/judgments which can reflect court's incompetency and incapacity to independently handle and decide the environmental litigation. The Court must avoid this and apply its own mind.

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1. V.R. Krishna Iyer, *Our Courts on Trial*, 1987, 64.
 2. Brian Wyne, "Uncertainty and Environmental Learning" *Global Environmental Change*, 1992, 111.
 3. Barton, "The Status of Precautionary Principle in Australia". *22 Harvard Environmental Law Review*, 1998, 509, 510-511.
 4. Shyam Divan and Rosencranz, *Environmental Law and Policy in India: Cases, Materials and Statutes*, 2001, 143.
 5. Shyam Divan and Rosencranz, *Environmental Law and Policy in India: Cases, Materials and Statutes*, 2001, 143.
 6. The power to appoint commissioners in matters of civil nature is found in Order 26 Civil Procedure Code (CPC) and Order 46, Supreme Court rules. It may noted that Article 32 read with Article 142 is wide enough to permit such course of action in any matter before the Supreme Court.
 7. A District Judge was appointed in *Kamaladevi Chattopadhyay v. State of Punjab*, (1985) 1 SCC 41 : 1985 SCC (Cri) 37 to report on the women and children in Ludhiana Jails.
 8. Krishna Mahajan of Indian express was appointed Commissioner along with Upendra Baxi, Law Professor in *Gulshan v. Zila Parishad*, 1987 Supp SCC 619.
 9. V.C. Mahajan and R.K. Jain were appointed Commissioners in *Gaurav Jain v. Union of India*, 1990 Supp SCC 709.
 10. Dr. Srinivas Murthy, Professor of Psychiatry and Dr. Amita Dhanda, Assistant Professor of Law were appointed commissioners to visit jails in West Bengal and report on mentally ill held there.
 11. Dr. L. Mishra, Joint Secretary, Government of India, was appointed Commissioner in *Bandhuwa Mukti Morcha v. Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389 : A.I.R. 1984 SC 802.
 12. For example See. *Committees after Committees appointed in Rural Litigation Entitlement Kendra v. State of U.P.*, (1985) 2 SCC 431 : A.I.R. 1985 SC 652 : (1985) 3 SCC 614 : 1986 Supp SCC 517 : A.I.R. 1985 SC 1259 : 1986 Supp SCC 517 : A.I.R. 1987 SC 359.
 13. *S. Jagannath v. Union of India*, (1997) 2 SCC 87.
 14. *M.C. Mehta v. Union of India*, (1997) 7 SCC 522.
 15. *Anil Kumar Karnwal v. State of U.P.*, 1996 (3) Scale 8.
 16. A friend of the Court. See, *Bhavani River-Sakthi Sugar Ltd., In re*, (1998) 6 SCC 335.
 17. Shyam Divan and Armin Rosen Cranz *Environmental Law and Policy in India: Cases, Materials and Statutes*, 144, (2001).
 18. See generally, *S. Jagannath v. Union of India*, (1997) 2 SCC 87. *Bhavani River Sakthi Sugar Ltd., In re*, (1998) 6 SCC 335.
 19. *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : A.I.R. 1987 SC 965.

20. *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : A.I.R. 1987 SC 965 at 981.
21. *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : A.I.R. 1987 SC 965.
22. Upendra Baxi, "Environmental Justice: A Movement in Its Infancy", *The Hindu Survey of the Environment*, 1991, 168.
23. *M.C. Mehta v. Union of India*, (1987) 4 SCC 463 : A.I.R. 1988 SC 1037.
24. *S. Jagannath v. Union of India*, (1997) 2 SCC 87, 130-31
25. *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281.
26. Besides water pollution cases, the Supreme Court has also relied on the reports of commissions/committees appointed by the Appropriate Government in other areas For *Research Foundation for Science and Technology & Ecology v. Ministry of Agriculture*, (1999) 1 SCC 655, *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664 : A.I.R. 2000 SC 3751, *N.D. Jayal v. Union of India* (Tehri Dam Project), (2004) 9 SCC 362 : A.I.R. 2004 SC 867; *Research Foundation for Science v. Union of India*, (2005) 13 SCC 186; *Research Foundation for Science v. Union of India*, (2006) 3 SCC 549.
27. *Intellectual Forum v. State of A.P.*, (2006) 3 SCC 549 : A.I.R. 2006 SC 1350, See also, *Susetha v. State of Tamil Nadu*, (2006) 6 SCC 543.
28. *Intellectual Forum v. State of A.P.*, (2006) 3 SCC 549 : A.I.R. 2006 SC 1350, 1356.
29. *Intellectual Forum v. State of A.P.*, (2006) 3 SCC 549 : A.I.R. 2006 SC 1350, 1366.
30. *M.C. Mehta v. Union of India*, SCALE (PIL) 212, 1981-97
31. *M.C. Mehta v. Union of India*, (1997) 2 SCC 411.
32. (1996) 3 SCC 212 : A.I.R. 1996 SC 1446.
33. *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 : AIR 1996 SC 446 at 1461
34. *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715, 2720.
35. *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715, 2720 at 2718
36. *S. Jagannath v. Union of India*, (1997) 2 SCC 87.
37. *S. Jagannath v. Union of India*, (1997) 2 SCC 87 at 106.
38. *S. Jagannath v. Union of India*, (1997) 2 SCC 87, 126.
39. *S. Jagannath v. Union of India*, (1997) 2 SCC 87 at 132.
40. *S. Jagannath v. Union of India*, (1997) 2 SCC 87, 137
41. *Sugarcane G and S Sugars Shareholders Assn. v. T.N. Pollution Control Board*, AIR 1998 SC 2614, See also, *Bhavani River-Sakthi Sugars Ltd., In re*, (1998) 2 SCC 601 : (1998) 6 SCC 335.
42. *M.C. Mehta v. Union of India*, (1996) 8 SCC 462; *M.C. Mehta v. Union of India*, (1997) 3 SCC 715.
43. *M.C. Mehta v. Union of India*, (1997) 3 SCC 715 at 718.
44. (1999) 9 SCC 578.
45. *DK. Joshi v. State of U.P.*, (1999) 9 SCC 578 at 182.
46. Upendra Baxi described "creeping jurisdiction" as the gradual take over of the direction of administration in a particular arena from the executive. See Upendra Baxi, "Taking suffering seriously: Social Action Litigation in the Supreme Court of India", *Delhi Law Review*, Vol. 8 and 9, 106 (1979-1980).
47. G.L. Peiris, "Public Interest Litigation in Indian Subcontinent: Current Dimensions", *International and Comparative Law Quarterly* (Vol. 40), 75 (1991).
48. *Ajay Singh Rawat (Dr.) v. Union of India*, (1995) 3 SCC 266.
49. *Ajay Singh Rawat (Dr.) v. Union of India*, (1995) 3 SCC 266 at 268.

- ⁵⁰. *Ajay Singh Rawat (Dr.) v. Union of India*, (1995) 3 SCC 266 at 270.
- ⁵¹. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718.
- ⁵². C.M. Jariwala, "Complex Enviro-Techno Science Issues: The Judicial Directions" 42 *JILI*, 2000, 29-39.
- ⁵³. *Paramjit Kaur v. State of Punjab*, (1999) 2 SCC 131.
- ⁵⁴. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, 741.
- ⁵⁵. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718 at 739
- ⁵⁶. See for example, *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212, *Ashok (Dr.) v. Union of India*, (1997) 5 SCC 10 : A.I.R. 1997 SC 2298 (Chemical pollution).
- ⁵⁷. C.M. Jariwala, "Complex Enviro-Techno Science Issues: The Judicial Directions", 42 *JILI*, 29 (2000), See also, T.K. Naveen "Use of Social Science Evidence in Constitutional Courts: Concerns for Judicial Process in India" 48 *JILI*, 2006, 78.
- ⁵⁸. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718.
- ⁵⁹. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718 at 355.
- ⁶⁰. Order dated 5-5-2000, *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (2001) 2 SCC 86; For conflicting opinion of experts, See also, *M.C. Mehta v. Union of India*, (1997) 2 SCC 353 : A.I.R. 1997 SC 734, *M.C. Mehta v. Union of India*, (2004) 5 SCC 139 (Taj Case).
- ⁶¹. *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) 2 SCC 62, 86.
- ⁶². *Intellectual Forum v. State of A.P.*, (2006) 3 SCC 549 : A.I.R. 2006 SC 1350, See also, *Susetha v. State of Tamil Nadu*, (2006) 6 SCC 543.
- ⁶³. *Goa Foundation Goa v. Diksha Holdings (P) Ltd.*, (2001) 2 SCC 97.
- ⁶⁴. (2001) 2 SCC 97, 106, For disparity in reports or wrong advice or reports; See generally, *BSES Ltd. v. Union of India*, A.I.R. 2001 Bom 128. *Maneka Gandhi v. Union Territory of Delhi*, AIR 1994 Del. 294; *Consumer Education & Research Society v. Union of India*, (2000) 2 SCC 599 : A.I.R. 2000 SC 975; *Ganesh Wood Product v. State of H.P.*, (1995) 6 SCC 363 : A.I.R. 1996 SC 149.
- ⁶⁵. *Goa Foundation Goa v. Diksha Holdings (P) Ltd.*, (2001) 2 SCC 97 at 113 Total reliance on reports of experts also leads to miscarriage of justice. See generally, *ARC Cement Ltd. v. Appellate Authority for Industrial and Financial Construction*, AIR 1998 Del. 359.

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