

Welcome Students. Today, we are discussing the subject Legal Research and Methodology for B.A.LL.B program. We are discussing the judgment in the case of **Vellore Citizen Welfare Forum Versus Union of India and others ( AIR 1996 SC 2715)**

The general outline of the topic :

- The Parties to the Proceeding
- Facts of the case
- Procedural history,
- Issues which are raised in this case,
- Principles and the provisions of the law involved,
- The judgment.

The students will be able to understand :

- To read the judgment and identify its components.
- Will analyze the judgment and understand the concept of Sustainable Development and the Politics, Polluter's Pay Principle and the Precautionary Principle.
- Understand the concept of Constitutional and Statutory provisions of law dealing with the protection, control and prevention of pollution of environment.

**The parties to the proceedings** are:

Vellore Citizens Welfare Forum is the Petitioner in the present petition filed the Petition against Union of India and others which are the respondents here.

**The procedural history of the Case:**

The present case pertains to the Public Interest Litigation filed by the Petitioner before the Honorable Supreme Court under Article 32 of the Constitution of India. Invoking the writ jurisdiction of the Supreme Court, this public interest litigation is filed by the petitioner.

The bench before whom the judgment was heard comprised of Kuldeep Singh J. and Faizan Uddin J. and K. Venkataswami J. The decision on this judgment was passed on 28th August 1996.

### **The facts of the case :**

The tanneries and other industries in the State of Tamil Nadu discharged untreated effluents into agricultural fields, road sides, water ways and open lands.

The said untreated effluents finally discharged into River Palar, a source of potable water to the residents of the area.

The consequence of the discharge of the untreated effluents into the River Palar were

- Non availability of Potable water to the residents of the area.
- Environmental degradation in the area
- 35000 ha of agricultural land became either partially or totally unfit for cultivation.
- 350 wells out of 457 wells in 13 villages were polluted

### **Initiatives of the Government of State of Tamil Nadu and Tamil Nadu Pollution Control Board**

- Alternate arrangements for supply of drinking water
- Direction to set up common effluent treatment plants for a cluster of industries or to setup individual pollution control devices.
- Substantial subsidy for the construction of common effluent treatment plants (CETPS)

### **Observations on Action Taken by Tanneries**

- Inspection done by NEERI, Board and the Central Pollution Control
- Seven Operation CETPS are not functioning to its satisfaction
- Out of 30 CETPS for tannery clusters
  - ❖ 7 are operational
  - ❖ 10 are under construction and
  - ❖ 13 are proposed

Tanneries have failed to control pollution generated by them.

One of the factors which need to be considered in this particular judgment is the Leather Industry in India. Tamil Nadu is the leading exporter of the Finished leather. It generates foreign exchange for the country. It provides employment avenues.

The issue before the Supreme Court was whether the tanneries, the foreign exchange earner, should be allowed to operate in the State of Tamil Nadu, notwithstanding the impact of the said industry on the environment and on the residents of the adjoining areas.

Considering the fact that the tanneries bring foreign exchange, a source of employment and the Supreme Court should allow the operation of the tanneries in the state of Tamil Nadu or because it is impacting the environment or is impacting the residents of the adjoining areas, it should for closure of the tanneries.

The principle considered by the court in this particular case was the concept of Sustainable Development.

The concept of Sustainable Development is one of the customary international law. It recognizes two principle i.e. Precautionary principles and Polluter's Pay Principle.

What do you understand by Sustainable development?

Development of the country along with balancing the ecology of the environment so the measures should be taken to ensure that the damage caused to the environment because of the developmental activities should be balanced.

The precautionary principle means the State and the Central government should undertake measures for the protection, preservation and prevention of the environmental pollution. Polluter's Pay Principle means one who is causing damage to the environment is liable to pay to make good losses and also has to pay for the reversing the ecology.

**Indian Council for Enviro-Legal Action vs. Union of India (1996) AIR SCW 1069**

wherein it had recognized that if any activity is hazardous or dangerous and he's causing damage, then in such a case, they are liable to pay compensation, he has to make the good the loss because of the activity done by him. The provisions of the law considered by the court in this particular judgment were Article 21, Article 47, Article 48, Article 51 and Article 21 deals with Right to Life and Personal Liberty and Right to life includes a right live in a healthy and a clean environment.

**Article 47, 48 and 51A :**

The duty of the state is to ensure that the health of the people is protected. They are provided with the proper environment. And there is no destruction caused to the environment. The statutory provisions in addition to these constitutional provisions under Article 47, 48 and 51A are various statutes which are laid down by the legislative bodies namely the Water (Prevention and Control) Pollution Act 1974, the Air (Prevention and Control) Pollution Act 1981 and the Environment Protection Act 1986. All these statutes aimed for the protection of the environment. The Water Act aims for protection against the pollution of Water, the Air Act against pollution of the Air and the Environment Protection Act, 1986, basically provides for setting up of the bodies/ authorities for ensuring compliance with regard to protection of environment.

Therefore, the Precautionary Principle and the Polluter's Pay Principle are the part of the environmental law of the country and also accepted as a part of the customary international law.

Section 3(3) of the Environment Protection Act 1986 lays the onus on the Central Government to constitute an authority for the protection of the environment, but in the present case, the Central Government had failed to constitute an authority in terms of Section 3(3) of the Environment Protection Act 1986.

The cases referred by the court were

- Gramophone's Company case AIR 1984 SC 667
- Joly George Varghese's case AIR 1980 SC 470
- Addl. Distt. Magistrate Jabalpur v. Shivakant Shukla AIR 1976 SC 1207

Rule of Customary International law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. Therefore it means that it recognizes the same as the customary international law, if it is not against municipal law to be used by the courts of the law of that respective country since the polluters pay principle and the precautionary principle are not contrary to the municipal law, that is, the Water Act, the Air Act and the Environment Protection Act and the Constitution itself.

The orders and directions issued by the Supreme Court is

- Constitution of an authority under Sec.3(3) of the Environment (Protection) Act,1986.
- Implementation of the “Precautionary Principle” and the “Polluters Pays Principle”.
- Compensation recovered from the Polluters shall be utilised for the purpose of reversing the ecology and for payment of individuals affected by pollution.
- Closure of Industries in case of evasion/refusal to pay compensation
- Setting up of necessary pollution control device and also liable for past pollution.
- Fine of Rs.10000 on all tanneries in North Arcot, Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R.
- Formulation of schemes in consultation with NEERI, Central Board by the authority
- Suspension of closure orders in respect of all the tanneries in the five districts of North Arcot,Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R.
- Setting up CETPs or Individual Pollution Control Devices on or before November 30,1996 and to obtain the consent to operate from the Board
- Closure of all tanneries and other industries in the State of Tamil Nadu who fail to obtain the consent / Consent is refused , to operate with effect from December 1996.
- No new industry shall be permitted to set up within the prohibited areas
- Standards regarding total dissolved solids (TDS) by the Board and approved by NEERI should be followed by all the tanneries and other industries in the State of Tamil Nadu.
- Special Bench “green bench” to be constituted by the Chief Justice of Madras High Court to deal with the present case and also other environment matters.
- Rs.50000/- to be paid to Mr.M.C.Mehta as appreciation for his efforts to protect the environment.