

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(PRINCIPAL BENCH), NEW DELHI**

**Application No. 65/2012 (T<sub>HC</sub>)**

**9<sup>TH</sup> MAY, 2013**

**CORAM:**

- 1. Hon'ble Shri Justice V.R. Kingaonkar  
(Judicial Member)**
- 2. Hon'ble Dr. P.C. Mishra  
(Expert Member)**
- 3. Hon'ble Shri Ranjan Chatterjee  
(Expert Member)**
- 4. Hon'ble Shri Bikram Singh Sajwan  
(Expert Member)**

**B E T W E E N:**

1. Sureshbhai Keshavbhai Waghvankar,  
Age : 40 years, Occ : Idol Making,  
R/o Hanuman Bhagda, Valsad;
2. Jayantibhai Babubhai Thorat  
Age : 41 years, Occ : Idol Making,  
R/o 97, Madhusadhan Raw House,  
Near Astik School, Godavara Surat
3. Zaverbhai Devrajbhai Prajapati,  
Age : 49 years, Occ : Idol Making,  
R/o 83, Nandanvan Society,  
Crozway Road, Singanpur Char Rasta, Surat.
4. Hiteshbhai Chimanbhai Patel,  
Age : 30 years, Occ : Idol Making,  
R/o Bazar Street, Chikhli, Dist. Navsari
5. Sanjivkumar Pritamsinh Prajapati,  
Age : 35 years, Occ : Idol Making,  
R/o Reliance Nagar, Amroli, Dist. Surat.

6. Gulab Chhotubhai Delkar  
Age : 51 years, Occ : Idol Making,  
R/o Bilpudi Kumbaar Falia,  
Tq. Dharampur, Dist. Valsad.
7. Hitesh Hasmukhbhai Photawala,  
Age : 38 years, Occ : Idol Making,  
R/o Mota Bazar, Char Rasta, Valsad.
8. Ketan Mahendrabhai Photawala,  
Age : 34years, Occ : Idol Making,  
R/o Mota Bazzar Char Rasta, Valsad.
9. Mukeshbhai Uttambhai Lad,  
Age : 50 years, Occ : Idol Making,  
R/o Santi Electric, High School,  
Shoping Centre, Tq. Chikhli, Dist. Navsari.
10. Bhikhubhai Mangoobhai Prajapati,  
Age : 50 years, Occ : Idol Making,  
R/o Ndar Sona Darsan, National Highway,  
Killapari, Dist. Valsad.
11. Prakash Magan Bhai Dhimmer,  
Age : 40 years, Occ : Idol Making,  
Hani Tharmocol Decoration,  
Opp. Gandhi Sadan, Station Road, Bilimora.
12. Ankit Harish Bhai Photowala,  
Age : 30 years, Occ : Idol Making,  
Plot No. 33/A/1, Pramukh Darshan-2,  
Atul Road, Vaishiar, Valsad.
13. Suresh Budhya Bhai Patel  
Age : 30 years, Occ : Idol Making,  
Zarana Park, Behind  
Opp. Dayalajiwadi, Bhavani Temple  
Manshi Kung Society  
A 1/Albrama Road, Valsad.
14. Sanjay Bhai Kishan Bhai Patel,  
Age : 28 years, Occ : Idol Making,  
In Bharati Talkes,  
Kambilpore, Navsari.

....Applicants

**A N D**

1. The State of Gujarat  
through Additional Chief Secretary  
Home Dept. Sachivalaya,  
Gandhi Nagar.
2. The General Administration Department,  
Through Chief Secretary,  
Sachivalaya Gandhi Nagar.
3. Inspector General,  
Gujarat State.
4. Forest & Environment Department,  
Through Principal Secretary,  
Sachivalaya Gandhi Nagar.
5. Gujarat Pollution Control Board,  
Through Chairman G.P.C.B.  
Gandhi Nagar.
6. Central Pollution Control Board,  
Ministry of Environment & Forest,  
Through Chairman C.P.C.B.  
Parivesh Bhavan, East Arjunnagar,  
Delhi – 110032.

.....Respondents

**(Advocates appeared: Mr. Prasanna N. Kutti, Advocate for Applicants; Mr. S. Panda, Advocate for Mrs. Hemantika Wahi, Adv. for Respondents No. 1 to 5, Mr. Rajkumar along with Ms. Jatinder Kaur, Advocates for Respondent No. 6)**

## J U D G M E N T

1. This application is filed by a group of idol manufacturers and artisans, under Section 14 and 16 of the National Green Tribunal Act, 2010. Originally, they had filed a Writ Petition bearing SCA No. 8406/2012 in the High Court of Gujarat at Ahmedabad. By that petition they had challenged directions dated 23.1.2012, issued by Principal Secretary, Forest and Environment Department, Sachivalaya, Gandhi Nagar (Respondent No. 4) as well as guidelines dated 18.06.2010, issued by Central Pollution Control Board (for short, CPCB) (Respondent No. 6). The CPCB issued guidelines dated 18.06.2010, regulating procedure for immersion of idols in order to upkeep the environment and ecosystems. The said guidelines have been issued in response to certain observations of the Hon'ble High Court of Bombay in PIL bearing WP (C) No. 1325 of 2003 (Janhit Manch Vs. State of Maharashtra and others). Taking clue from the said guidelines of the CPCB, the communication dated 23.01.2012 was issued by the Respondent No. 4.

2. The applicants are aggrieved mainly due to the implied ban put on making of idols of Hindu Gods and Goddesses by using Plaster of Paris (for short, PoP). Though the applicants also challenged some other parts of the communication dated 23.01.2012, including the manner in which the idols shall be painted, yet during the course of

arguments, learned Counsel for the Applicants gave up the other challenges and restricted the argument only to the extent of challenge to the prohibition imposed on use of PoP as material for making Lord Ganesh idols. In short, the basic challenge is to the prohibitory directions in respect of use of PoP for manufacturing/making of Ganesh idols.

3. In the wake of Judgment delivered by the Hon'ble High Court of Bombay in the writ petition No. 1325/2003 (Janhit Manch Vs the State of Maharashtra & Ors.) the CPCB drew the guidelines dated 18.06.2010. The Hon'ble High Court of Bombay, in fact, did not give any finding about the use of PoP nor gave any specific direction. While disposing of said writ petition, however, certain observations, which are obiter, were made, that may be quoted as below:

*“we expect that the Central Government will consider laying down of guidelines for immersion of idols and would also consider related matters with regard to pollution of water bodies. Both the Union Government as well as the State Government shall consider it expeditiously because the time lost involving the pollution might prove dangerous for environment of the country in long run”*

4. It will be useful to see the first two guidelines shown in the communication dated 18.06.2010 issued by the CPCB and the first two guidelines shown in the communication



dated 23.01.2012 issued by the Forest and Environment Department of the State of Gujarat. This comparison will indicate as to how the Forest and Environment Department of Gujarat, instead of following similar CPCB guidelines, issued the prohibitory directions.

The first two guidelines mentioned in communication dated 18.06.2010 issued by the CPCB are as follows:-

- (i) *“ Idols should be made from natural materials as described in the holy scripts. Use of traditional clay for idol making rather than baked clay, plaster of paris, etc. may be encouraged, allowed and promoted.*
- (ii) *Painting of idols should be discouraged. In case idols are to be painted, water soluble and nontoxic natural dyes should be used. Use of toxic and non-biodegradable chemical dyes for painting idols should be strictly prohibited.”*

The first two guidelines mentioned in communication dated 23.01.2012 issued by the Forest and Environment Department of Gujarat vide communication dated 23.01.2012 are as follows:-

1. *“ Idols should be made from natural materials as described in the holy scripts. Idols should be made of traditional clay and not from use of baked clay, plaster of paris.*

2. *Painting of idols may only be done from water soluble and nontoxic natural dyes. Use of toxic and non-biodegradable chemical dyes for painting idols is strictly prohibited.*

(emphasis supplied by us)

5. Briefly stated, the case of the applicants is that they are making/sculpting idols of gods and goddesses, including Lord Ganesh, among others, since many years in the State of Gujarat. The idols are manufactured by using PoP. The use of PoP for manufacturing of Ganesh idols has not been prohibited in the State of Maharashtra or in any other nearby States. The PoP is extracted from Gypsum rock and comprises of Calcium and Sulphate. One noted research institute, by name, Srishti Eco-Research Institute at Pune (SERI) has conducted scientific study on use of PoP with reference to immersion of the idols made from PoP. The scientific report has revealed that although PoP is not easily soluble in water, yet it has no poisonous effect. It has been further found that due to flow of water, the PoP made idols are carried away. The study made by the institute (SERI) indicated that use of PoP does not cause any serious adverse effect on the Environment. The Pollution level of the river/lake almost remains unchanged in spite of immersion of PoP made idols. The PoP made idols are comparatively convenient for transportation. The guidelines of the Respondent No. 6 (CPCB) indicate that instead of POP, use of natural clay should be encouraged.

However, the impugned communication issued by the Respondent No. 4 goes a step ahead and practically imposes a ban on use of PoP for manufacturing/making of idols.

6. According to the applicants, use of clay for making the idols is impracticable. For, not only are the clay idols unaffordable to the common man, but extraction of clay from river bed or places of earth would cause relatively more harm to the Environment than the present practice of PoP made idols. Moreover, making of clay idols require excessive manual work. There is also difficulty in transportation thereof. The Applicants further allege that they were not given opportunity of hearing before imposing the ban. They have a fundamental right to deal in trading/manufacturing of PoP idols. Their fundamental right cannot be trampled with by issuing such prohibitory orders. They are concerned only with manufacturing and selling of PoP made idols. The local authorities may take appropriate steps to monitor the immersion process by preparing artificial tanks during the festival periods. The Applicants and those who are dependent on the business of manufacturing of PoP made idols will be deprived of their right to livelihood if the impugned directions are not quashed. The impugned directions issued by the Respondent No. 4 are arbitrary and discriminatory in nature. Consequently, as a group, they knocked at the doors of Hon'ble High Court of Gujarat by filing SCA No. 8406 of 2012.



7. In view of the judgment of the Apex Court in W.P. (C) 50/1998 titled “Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India & Ors”, the said Writ Petition was transferred to this Tribunal. The Writ Petition has been converted into form of an application, as per the National Green Tribunal (Practice and Procedure) Rules, 2011.

8. The CPCB stated that the Respondent No. 4 has issued directions under Section 5 of Environment (Protection) Act, 1986. The guidelines issued by the CPCB have been treated as basis for issuance of directions in question. The CPCB alleged that study of impact of immersion during Dussehra festival in river Hoogli was carried out. The said study report indicated that there was depletion in dissolved oxygen content in river Hoogli after immersions of idols during festivals days. Guidelines issued by the CPCB are based on various scientific studies conducted by the authorities. The guidelines have been issued in order to ensure protection of environment. The CPCB further came out with a case that the Respondent No. 4 has the power to issue directions under Section 24 of the Water Act, 1974. It further stated that the State Pollution Control Board has the power under Section 25 of the Water Act, 1974, to ensure that discharge from industries shall comply with the prescribed directions and norms. The CPCB, therefore, sought dismissal of the application.

9. No reply affidavit has been separately filed by Respondent No. 4 or any other Respondent.

10. We have heard Learned Counsel for the parties in *extenso*. We have gone through the relevant documents and material placed on record. We have duly considered the case laws cited by the parties.

11. The two issues which arise in this matter are thus:

- (i) Whether the Forest and Environment Department of the State of Gujarat is competent to issue the impugned direction so as to place implied restrictions on use of Plaster of Paris (PoP) for manufacturing / making of idols of Hindu Gods and Goddesses?
- (ii) Whether the direction issued by Respondent No. 4, imposing the ban on making of idols by using PoP as base material is otherwise legal and proper ?

12. Mr. Kutti, Learned Counsel for the Applicants would submit that the directions cannot be issued by the Respondent No. 4, under Section 5 of the Environment (Protection) Act, 1986, because such power is available only to the Central Government. He argued that the guidelines issued by the Respondent No 6 (CPCB), with a view to sensitise the public and monitor the water quality, cannot be the basis to ban use of PoP for making the idols. He further argued that the Respondent No. 4 exceeded the limits of its legal authority while issuing the relevant communication dated 23rd January,

2012. He pointed out that the Hon'ble High Court of Bombay in PIL WP (c) 1325 of 2003 (Janhit Manch Vs State of Maharashtra) only expressed that guidelines should be laid down by the Central Government. He contended that such guidelines have no force of law. He further argued that the applicants were not heard before imposing the ban and as such the impugned communication is bad in law due to violation of principles of natural justice. He submitted that use of PoP is made elsewhere in the medical field, fixing of false ceiling etc. as it was not found to be a hazardous substance. He contended that the applicants are aggrieved by the FIRs filed against them. He further argued that the right of the applicants to carry on trade is protected under Article 304 of the Constitution of India and the same is being trampled with vide the impugned communication. Hence, he urged to quash the impugned communication to the extent of implied ban on use of PoP for making Idols.

13. *Per Contra*, Mr. S. Panda and Mr. Rajesh Kumar, Learned Counsel appearing for the contesting respondents argued that the impugned communication is legal and proper. They submitted that the right to carry on trade is subject to reasonable restrictions. They argued, therefore, that the applicants have no right to carry on any kind of trade/business which is not in the interest of the public at large. They submitted that the impugned communication is issued in view of the suggestions of the High Court of Bombay.

They contended that internal studies on the impact of PoP had been done by the MoEF/CPCB. Therefore, the guidelines are issued. They further contended that Section 18 of the Water Act, 1974, read with Article 162 of the Constitution of India, empowers the GPCB as well as CPCB to formulate action plan including issuance of guidelines. Hence, they urged to dismiss the application.

14. We shall now proceed to deal with both the issues sequentially.

**Re: Issue No. (i):**

**Whether the Environment Ministry of State of Gujarat is competent to issue impugned direction so as to place implied restriction on use of Plaster of Paris (PoP) for manufacturing / making of Ganesh idols?**

15. At the threshold, let it be noted that the impugned communication dated 23.01.2012 purports to show that it has been issued under Section 5 of the Environment (Protection) Act, 1986. It also clearly shows that the same has been issued by the Principal Secretary of Forest Department, Government of Gujarat. The communication reproduced the background which gave rise to issuance of such directions. The relevant part of the communication may be reproduced in order to clarify the intention and purport of the impugned communication.

*“And whereas the CPCB guidelines if followed scrupulously by the entire concerned can address the issue of pollution due to immersion of idols into water bodies.*

*Now in view of the above you are hereby directed under Section 5 of the Environment (Protection) Act, 1986 to ensure that the following directions are complied with by all the concerned.*

*1. Idols should be made from natural materials as described in the holy scripts. Idols should be made of traditional clay & not from use of baked clay, plaster of paris.”*

16. From extracted portion indicated above, it is explicit that the Principal Secretary of Forest and Environment Department assumed the Authority to issue such direction as per Section 5 of the Environment (Protection) Act, 1986. Maybe, it has been so assumed because of the guidelines issued under Section 5 of the Environment (Protection) Act, 1986 by the Central Pollution Control Board (CPCB) (Respondent No. 6) vide communication dated 18.06.2010. It is necessary to examine whether the Principal Secretary of Forest and Environment Department, State of Gujarat, has the power to issue directions under section 5 of the Environment (Protection) Act, 1986.

17. Mr. P.N. Kutti, Learned Counsel for the Applicants would submit that there is no power available to the Principal Secretary of the Forest and Environment Department, State of



Gujarat to prohibit manufacturing of PoP idols. He invited our attention to section 2 (b) of the Environment (Protection) Act, 1986 as well as section 5 (1) of the Environment (Protection) Rules, 1986. On the other hand, learned Counsel Mr. S. Panda appearing for the Respondents No. 1 to 5 contended that mere wrong quoting of section 5 of the Environment (Protection) Act, 1986 does not invalidate the impugned notification. He would submit that the Forest and Environment Department of the State of Gujarat has ample power derived from the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short, "Water Act"). He further argued that the impugned communication is based upon the guidelines issued by the Central Government, and, therefore, it is part of the same environmental action plan. He contended that the impugned communication, in any way, cannot be derogatory to the letters and spirit of the Environment (Protection) Act, 1986.

18. The guidelines dated 18.06.2010, no doubt, are issued under section 5 of the Environment (Protection) Act, 1986 by the CPCB (R-6) in order to regulate the process for immersion of idols during the festival periods. That communication, however, clearly goes to show that the CPCB has issued the guidelines which may be followed by the State authorities and all concerned to prepare action plan and strategies to avoid environmental degradation in general and water pollution, in particular. The guidelines issued by the

CPCB cannot be equated with statutory directions, rules or regulations. The guidelines only indicate what precautionary measures need be taken by the State authorities and all concerned to avoid water pollution during festival days. The first guideline is to the effect that making of idols by using natural clay should be encouraged. This guideline is not, in fact, of prohibitory nature. In our opinion, it is rather of recommendatory or advisory nature. What appears from the impugned direction no. 1 stated in the communication dated 23.01.2012 issued by the State Government of Gujarat is that impliedly restrictions are put on manufacturing of the idols by using PoP. The other directions are indicative of safety measures to be followed in order to alleviate water pollution caused due to synthetic colours applied to the PoP idols. The immersion of flowers, puja materials, etc., are additional factors which cause water pollution, and hence need to be regulated.

19. Before we proceed to examine the rival contentions, of the parties, we deem it proper to refer to the preambles of the two Acts, namely, the Environment (Protection) Act, 1986 and Water Act, 1974.

(1) Preamble of the Environment (Protection) Act, 1986 (29 of 1986) is as follows:

*“An Act to provide for the protection and improvement of environment and for matters connected therewith.*

*Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;*

*And whereas it is considered necessary further to implement the decisions aforesaid insofar as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;”*

Preamble of the Water (Prevention and Control of Pollution) Act, 1974 (Act No. 6 of 1974) is as under:-

*“An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.*

*Whereas it is expedient to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution and for conferring on*

*and assigning to such Boards powers and functions relating thereto;*

*And whereas Parliament has no power to make laws for the States with respect to any of the matters aforesaid except as provided in Articles 249 and 250 of the Constitution;*

*And whereas in pursuance of Clause (1) of Article 252 of the Constitution resolutions have been passed by all the Houses of the Legislatures of the State of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect that the matters aforesaid should be regulated in those States by Parliament by law;”*

20. A fair reading of both the preambles would make it clear that the Environment (Protection) Act, 1986 has been enacted to provide for the protection and improvement of the environment and for matters connected therewith, and the Water Act was enacted to provide for the prevention, control and abatement of water pollution. It transpires that with a view to carrying out the aforesaid purposes, creation of State Boards is envisaged under provisions of the Water Act. The prevention and control of water pollution in the State is the subject within the domain of the State Pollution Control Board. In our opinion, unless there is a special provision under the Water Act to issue directions under section 5 of the

Environment (Protection) Act, 1986 by the State Government, no such power can be usurped by the latter.

21. For ready reference, section 5 of the Environment (Protection) Act, 1986 may be reproduced as follows:-

*“Section 5 Power to give directions: - Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.*

*Explanation – For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct –*

*(a) the closure, prohibition or regulation of any industry, operation or process; or*

*(b) stoppage or regulation of the supply of electricity or water or any other service.”*

22. Upon plain reading of section 5, it is amply clear that the power to give directions is available only to the Central Government in order to perform its functions under the Environment (Protection) Act, 1986. In other words, the power to issue directions under section 5 cannot be exercised



by the State Government under the Environment (Protection) Act, 1986.

23. At this juncture, definition of the expression “Environment Pollutant” may be considered. Section 2(b) of the Environment (Protection) Act, 1986 defines “Environment Pollutant” as any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to the environment. Therefore, even for the purpose of putting total embargo on use of PoP for making of idols, it is necessary for the Central Government to first determine whether the PoP is an “Environment Pollutant”. Guidelines issued by the CPCB (R-6) do not indicate any finding of the CPCB that PoP is an environment pollutant. We need not undertake such exercise by ourselves for the simple reason that it is within the domain of the CPCB or the State Pollution Control Board (SPCB), as the case may be, to conduct scientific study and determine whether the PoP is an environmental pollutant. Still, however, we may mention here that the PoP is calcium sulphate hemihydrate :  $(\text{CaSO}_4, \text{H}_2\text{O})$  derived from gypsum. A calcium sulphate dihydrate  $(\text{CaSO}_4, 2 \text{H}_2\text{O})$ , by firing the mineral at relatively low temperature and then reducing it to powder is PoP. PoP when mixed with water sets within few minutes. The setting of PoP takes place with expansion and its surface becomes smooth. Due to this property, PoP is used in moulds. PoP is used in paper, soap and ceramic industries. It is used for wrapping part of body for treatment of fractured bone in

order to immobilize the same. PoP is not easily soluble in water. It gradually goes to bed of the river or ponds after immersing the idols or any other article made there from. It has potential to make the water alkaline, if it is excessively deposited at the pond or river bed or in the well. The excessive deposition of such PoP may, therefore, harm aquatic life as well as natural flow of pure water. However, these are not our findings at present. These are the observations which, *prima facie*, are culled out from certain study papers which have been placed on record.

24. Now, the pertinent question is whether the Forest and Environment Department of the State of Gujarat could have legally placed blanket embargo on use of PoP for making of idols notwithstanding the fact that no such restriction was clamped under the guidelines issued by the CPCB. In our opinion, such prohibition or restrictions may be imposed only by the Central Government in the exercise of its power under section 5 of the Environment (Protection) Act, 1986. The power to give such directions is available to the Central Government, irrespective of anything contained in any other law with a rider that it shall be in consonance with the provisions of the Environment (Protection) Act, 1986. The opening words of section 5 i.e. “notwithstanding anything contained in any other law but subject to the provisions of this Act” are indicative of the legislative intent. The provision commences with “non-obstante clause”. The Central

Government, therefore, has adequate powers to issue the directions in order to protect the environment and alleviate degradation thereof.

25. Coming to the Environment (Protection) Rules, 1986, it may be stated that Rule 3 deals with authority of the CPCB to prescribe standards of emission or discharge of environmental pollutants as specified in schedule (I) to (IV). Rule 4 deals with manner in which any direction may be issued under section 5 of the Environment (Protection) Act, 1986. Rule 5 (1) empowers the Central Government to prohibit location of industries and carrying of all the processes and operations in different areas. The Central Government is required to consider the maximum allowable limits of concentration of environment pollutants including noise, for an area. Thus, the Central Government is required to consider various factors before issuing notification under section 5 Environment (Protection) Act, 1986.

26. All said and done, the Forest and Environment Department of State Government cannot issue such directions under section 5 Environment (Protection) Act, 1986. Though, it may be required to follow such directions issued by the Central Government. It need not be reiterated that the notification dated 18.06.2010 issued by the CPCB is only in the form of guidelines. The Forest and Environment Department of Gujarat had no power to place embargo on use of PoP for making of idols under section 5 of the Environment

(Protection) Act, 1986. In our opinion, the impugned communication dated 23.01.2012 is not simply an exercise done by mis-quoting of section 5 of the Environment (Protection) Act.

27. In “Rao Shiv Bahadur Singh vs. State of U.P.” (A.I.R. 1984 S.C. 322); “Deep Chand vs. State of Rajasthan” (A.I.R. 1961 S.C. 1527) and “State of U.P. vs. Singhara Sing” (AIR 1964 SC 358) the Apex Court upheld the ratio of Judgment handed down by the Privy Council in case of “Nazir Ahemed vs. King Emperor” (A.I.R. 1936 P.C. 253). The Privy Council held in the given case that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

28. We are not impressed with the arguments of the Learned Counsel for the Respondents to say that the impugned communication dated 23.01.2012 is issued simply by quoting wrong section of the Environment (Protection) Act, 1986, though, the authority meant to exercise the powers under the Water Act. It is well settled that if anything is required to be done in a particular manner under the specific provisions of the enactment then it has to be done in that manner itself. It goes without saying that if something is done in the manner which is not provided for under the enactment, the same is without legal authority and as such would become illegal.

29. On behalf of the Respondents, the Learned Counsel further invited our attention to observations in case of “V. Elangovan vs. The Home Secretary, State of Tamil Nadu and Ors.” W.P. No. 25586/2004 along with other batch of Writ Petitions. A copy of the Judgment given by Hon’ble High Court of Judicature at Madras is placed on record. That was a PIL in which directions in the nature of writ were sought against the State Authorities to issue permission to organizations to carry large sized PoP Ganesh idols and other idols made of any other chemicals and immersing thereof in sea, river and other water sources in the State of Tamil Nadu. Perusal of the above referred Judgment reveals that the Pollution Control Board had formed an Expert Committee which came to the conclusion that traditional clay idols should be permitted to make Ganesh/Vinayagar idols. The Division Bench, however, did not decide about correctness of such finding /conclusion of the Expert Committee. The Division Bench of Hon’ble Madras High Court, specifically observed as follows:

*“We do not propose to go into this question at this hour replacing the opinion of the Committee with our opinion based on the untested contention of the interveners to allow Vinayagar idols that are made of Plaster of Paris to be immersed in the sea.”*

30. We are of the opinion that the above referred Judgment of the of the Hon’ble High Court of Madras has not



laid down any ratio in the context of the issue whether the PoP idols can be branded as “Environment Pollutant” within the meaning of section 2(b) of the Environment (Protection) Act, 1986. The reliance on the above Authority is, therefore, misplaced.

31. Cumulative effect of the foregoing discussion is that the impugned communication issued by the Respondent No. 4 to the extent of ban on PoP made idols is without legal authority in as much as such direction could not be issued under section 5 of the Environment (Protection) Act, 1986. Thus, the said direction is arbitrary and liable to be quashed. We accordingly record our finding on issue no. (i) in the “negative”.

**Re: Issue no. (ii):**

**“Whether the impugned communication dated 23.01.2012 issued by the Respondent No. 4 is otherwise unsustainable to the extent of banning use of PoP for making/manufacturing of Ganesh idols?”**

32. For the sake of arguments, we may assume that the Forest and Environment Department of the State of Gujarat issued the impugned direction in the exercise of the powers under the Water Act. Whether the State Department of Forest and Environment can exercise such power under the Water Act is an ancillary question that will have to be now addressed. The preamble of the Water Act, 1974 which is

quoted earlier, provides key to decipher the Legislative intent in pursuance of which the enactment has been brought into force. The intention of the Legislature is to empower the PCBs for the prevention and control of water pollution by conferring and assigning such Boards, powers and functions regarding thereof and for matters connected therewith. The preamble itself shows that the Parliament has no powers to make laws for the State with respect any of the matters pertaining to prevention and control of water pollution, except as provided in Articles No. 249 and 250 of the Constitution. Therefore, as a result of resolutions passed by all the Houses of the Legislatures of the States including that of Gujarat, the Water Act has been enacted in pursuance of clause no. (1) of Article 252 of the Constitution. Obviously, the main intention of the Water Act is to establish State Pollution Control Boards (SPCB) for prevention and control of water pollution and to confer the powers and functions on the PCBs to carry out functions in the context of prevention and control of water pollution. Thus, the preamble itself shows that Water Act has been enacted to establish the SPCBs for the specific purpose enumerated in the Act. Section 4 of the Water Act envisages constitution of the SPCBs. The State Government is required to appoint the Chairman and other Members of the Pollution Control Board by means of notification published in an official gazette. The powers and functions of the SPCBs are stated in section 17 of the Water Act.

33. The Learned Counsel for the Respondents would submit that section 24 of the Water Act may be invoked in order to prohibit using of streams or wells for disposal of polluting matter. It is worthy to be noted that section 24 will be attracted when any person would cause poisonous, noxious or polluting matter to enter into any stream or well or sewer or on land. The provision may be invoked only if such polluting matter is specified in accordance with the relevant standards as laid down by the SPCB. It is nobody's case that Gujarat PCB has laid down any particular standards of PoP so as to stamp the same as "polluting matter" or "poisonous substance".

34. In our opinion, if the Water Act is minutely examined, at the most, appropriate direction can be given by the GPCB under section 33 - A of the Water Act. For, the GPCB has power under section 30 of the Water Act to carry out certain works including passing of any order under section 17(1)(l)(I). The SPCB has power under section 17 (1)(a) of the Water Act to prepare a plan or a comprehensive programme for the prevention and control or abatement of pollution of streams and wells in the state and to ensure the execution thereof.

(Emphasis supplied by us)

35. These provisions are required to be duly considered along with definition of the word “pollution” as used under section 2(e) of the Water Act. Section 2 (e) reads as follows:

“Section 2. Definitions. –

(a)XXXXXXXXXXXXXXXXXXXX

(b)XXXXXXXXXXXXXXXXXXXX

(c)XXXXXXXXXXXXXXXXXXXX

(d)XXXXXXXXXXXXXXXXXXXX

(e) “pollution” means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;”

(Emphasis supplied by us)

36. We are not called upon to give final opinion whether PoP made idols cause pollution of water after the immersion thereof. Still, however, prima facie, it appears that even in order to alleviate likelihood of nuisance on account of large number of immersion of PoP idols in river/sea or ponds, etc., it may be an act covered by definition of word “pollution” within the meaning of section 2(e) of the Water Act. It follows,

therefore, that the GPCB may exercise the power to give directions under section 33 - A of the Water Act. Of course, these observations have been made in order to demonstrate that the power is available to the GPCB and as well as to the State Government under section 18(b) of the said act.

37. Mr. P.N. Kutti, Learned Counsel for the Applicants heavily relied upon certain observations in case of “Mohan Bhai Yashwant Bhai Khandekar and 90 Petitioners & Ors. vs. State of Gujarat and 4 Respondents” (C.A. No. 6750 of 2011). We have carefully gone through the said judgment rendered by the Learned Single Judge of the Hon’ble High Court of Gujarat at Ahmadabad. The Petitioner therein had challenged the notification dated 16.07.2011 issued by the Commissioner of Police, Surat city under provision of section 144 of the Criminal Procedure Code, 1973. The Learned Single Judge quashed the notification dated 16.07.2011 mainly on the ground that in exercise of powers under section 144 of the Criminal Procedure Code there must be circumstances which may indicate that an urgent situation has arisen, of a nature demanding invocation of speedy remedy.

38. Be that as it may, the observations of the Learned Single Judge in the same Judgment, as reflected from paragraphs 22, 23 and 25, would make it amply clear that the Hon’ble High Court of Gujarat expected that the malady requires to be tackled at the source, must be addressed as environment and water pollution cause, for permanent



solution and not by way of temporary measures such as the issuance of notification under section 144 of the Criminal Procedure Code. The Learned Single Judge observed:

“In the instant case, the cause is right but the remedy is not correct one”

39. It is but natural to infer that even according to the Learned Single Judge the cause i.e. the prevention of water pollution due to immersion of PoP made idols was right but the temporary measures adopted by issuance of notification under section 144 of the Criminal Procedure Code was improper. In this view of the matter, the case law cited by the Learned Counsel, Mr. Kutti is of no assistance to the Applicants.

40. It may be mentioned that Learned Counsel for the Respondents urged to invoke “precautionary principle” and therefore, to dismiss the Application. The Counsel relied upon certain observations in “Research Foundation for Science Technology and Natural Resources Policy vs. UoI & Anr. (2005) 10 SCC 510. The Apex Court expounded the precautionary principle in the context of different facts and circumstances. The Apex Court held that precautionary principle of sustainable development provides for taking precaution against specific environmental hazard by avoiding or reducing environmental risks before specific harms are experienced. The case of “P.K. Palanisamy vs. N. Arumgrham & Anr.” (2009)

9 SCC 173 was relied upon by the Counsel for the Respondents in support of the argument that only because a wrong provision was mentioned by the party, it would not be a ground to nullify the order. We have already observed earlier that this is not a case of mere wrong mentioning of the provision in the impugned order. In our opinion, the State of Gujarat over stepped by restricting the use of PoP for making/manufacturing of idols. Thus, condition no. (1) in the impugned communication is no short of over-stepping of powers by the State Forest and Environment Department of Gujarat without backup of any legal authority as such. The Learned Counsel for the Respondents also referred to “T Ramakrishana Rao vs. Principal Secretary to Govt. of Andhra Pradesh” (2001 to 2005) ALD 299. We do not find any parallels in the facts of that case and present case. Had there been scientific study and tangible material to infer that PoP is harmful to health or causes water pollution and the Notification was under the Water Act, the legal effect of such ban might have been viewed differently.

41. Considering the entire gamut of arguments and the legal position, we have no hesitation in holding that impugned communication dated 23.01.2012 issued by the Respondent No 4 is liable to be quashed to the extent of condition no. (1) thereof. Accordingly, for non-compliance with due procedure under the Water Act, we record our finding on the issue no. (ii) in the “negative”.

42. The communication dated 18.06.2010 issued by the CPCB is in the form of guidelines and the challenge to said communication is given up during course of the arguments. Hence, to that extent the Application must fail.

43. Incidentally, we may mention here that immersion of idols must not diminish obeisance for the Gods/Goddesses. One who has seen mutilated PoP idols resurging on surface of the sea water, after the high-tide is over, will not forget the pathetic sight and plight of the PoP idols, which were at the centre of worshipping/Pandals before a few hours prior to the immersion thereof. The sight of such mutilated idols, some of them having broken hands, some of them having partly beheaded bodies, some of them having loss of legs, etc. give serious jolt to the religious sentiments of the prudent spectators.

We do not see any reason why the idols of Gods/Goddesses should not have sanctity and due respect even after the immersion. We mean to say, the aftermath of the immersion should not result into colossal disrespect to the idols of Gods and Goddesses on account of adoption of improper immersion process. One cannot be oblivious of the fact that when head of a soldier is found chopped at the hands of the enemy, the public sentiments are seriously hurt. And, it is a justified reaction as well as most natural reaction of the citizens. It does not stand to reason, therefore, that religious sentiments also will not be hurt to see the beheaded or

otherwise mutilated idols of Gods /Goddesses which come on surface of the water at the shore of the sea, ponds or other water bodies as a result of backlash or reverse water waives. Needless to say, therefore, that it would be in the interest of the public to avoid the hurting of religious sentiments by regulating immersion process and use of the PoP for making/manufacturing of idols of Gods/Goddesses.

44. Before parting with the present matter, we may observe that the use of PoP for making/manufacturing of not only Ganesh idols, but also any other idols or articles made of PoP which are traditionally immersed in rivers, ponds, sea, or other water bodies deserve reasonable restrictions. It is also necessary to strike a proper balance while imposing such restrictions. We do not think it proper to pre-determine the nature of restrictions and impose our views on the competent authority. However, we deem it proper to give certain directions to the SPCBs in general and to the GPCB in particular, for preventing water pollution.

45. In the result, the Application is partly allowed. The impugned communication dated 23.01.2012 is quashed to the extent of condition no. 1 stated therein i.e. which restricts use of PoP for manufacturing/making of idols. The other prayer pertaining to challenge to the guidelines dated 18.06.2010 stands dismissed. Other conditions no. 2 to 12 shown in the impugned direction of the Govt. Of Gujarat are kept intact till

further directions issued by GPCB or State Government or CPCB.

46. We direct the GPCB and all the other Pollution Control Boards which are covered by the Water Act to undertake scientific study of the impact of PoP made idols on immersion thereof, in relation to water quality of rivers, ponds, sea, or other sources and examine whether it is an environment pollutant.

47. We also direct the said PCBs to examine whether the immersion of PoP made idols, in fact, cause nuisance, though the PoP by itself may not be a water pollutant. After conducting such scientific study by appointing an Expert Committee, the Pollution Control Board or the Central Government or the State Government may issue appropriate directions in accordance with the powers available under section 33 - A of the Water Act or any other provisions under the Water Act or any other Act, in order to control water pollution or to avoid the nuisance caused on account of immersion of the PoP made idols.

48. Since the Ganesh festival and other festivals are in the offing, it is desirable that the Gujarat PCB as well as the other PCBs should complete the exercise mentioned above within a period of three (3) months and thereafter the SPCB or Government may issue the necessary directions, if so deemed



proper, under provisions of the Water Act or any other Act, as may be permissible and deemed proper.

49. We expect that the Pollution Control Boards or the Government would also decide and set out norms/benchmark for the heights of PoP idols which are to be ultimately immersed, in accordance with the nature of the immersion places, even though PoP is not found to be an “environment pollutant”. For example, the idols to be immersed into sea water may not be of more than 8 – 10 ft. height and the idols to be immersed in ponds may not be of more than 5 ft. height, so on and so forth. So also, the local bodies may be required to create artificial ponds, in the absence of appropriate water resources like ponds, lakes, etc. for temporary purpose of immersion of PoP idols.

50. A copy of the Judgment be immediately made available to the CPCB and MoEF through their Counsel. The Counsel shall inform the MoEF/CPCB to circulate copies of the Judgment to all the concerned Authorities/PCBs of States to act upon the above directions/recommendations within the timeframe given above. The compliance shall be reported to the Registry of this Tribunal by all PCBs/CPCB/Forest and Environment Department of the Central Government as well as the State Governments within two (2) weeks after the scheduled period of three (3) months. They may also be made aware of the adverse consequences on account of non-compliance of the directions which may entail in accordance

with section 26 or section 28 of the National Green Tribunal Act, 2010.

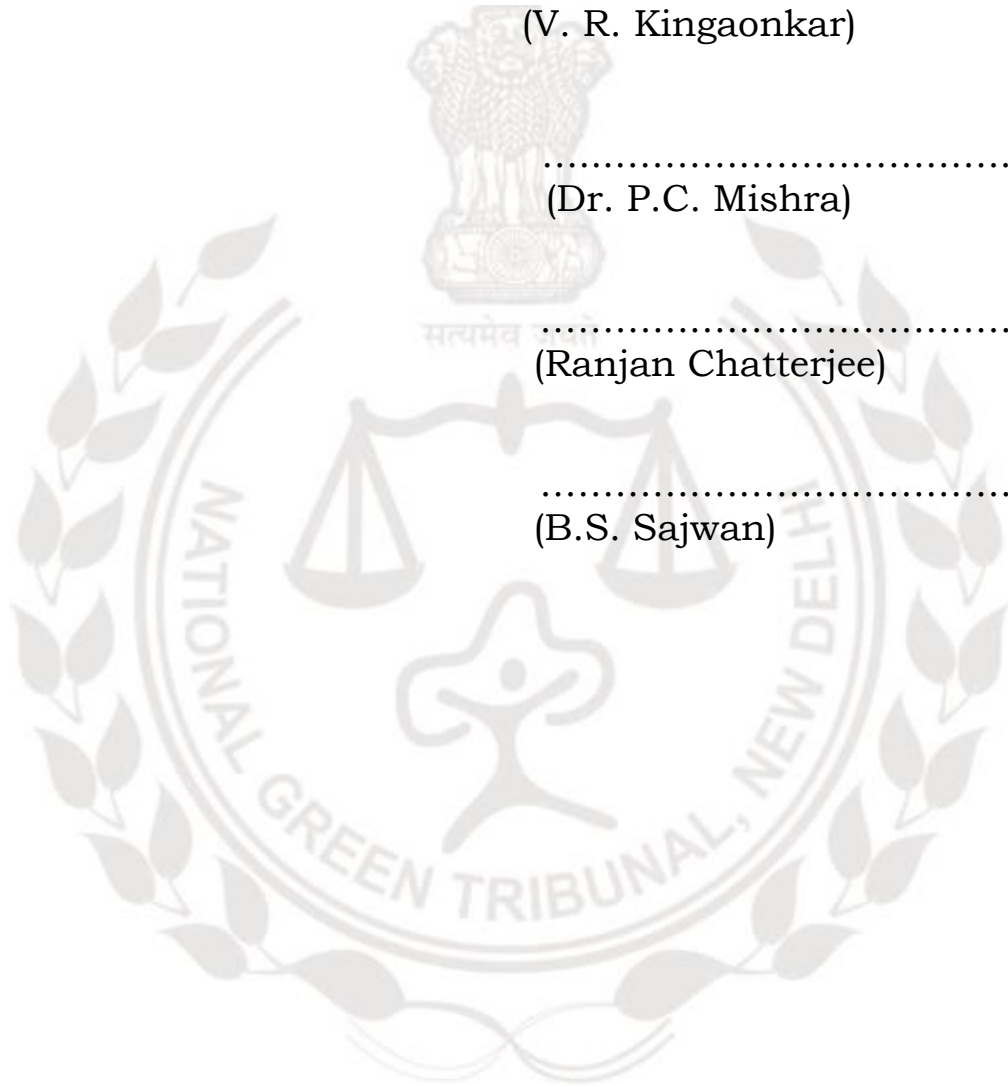
The Application is accordingly disposed of with no order as to costs.

....., JM  
(V. R. Kingaonkar)

....., EM  
(Dr. P.C. Mishra)

....., EM  
(Ranjan Chatterjee)

....., EM  
(B.S. Sajwan)



NGT