

Case Analysis: MC MEHTA (Taj Trapezium Matter) V. UNION OF INDIA

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Citation:- (1997) 2 SCC 353

INTRODUCTION:-

The Taj Mahal in Agra is one of the most beautiful monuments on the earth. It was built by the Mughal ruler Shah Jahan in memory of his deceased wife Mumtaz Mahal. It is built entirely of white marble and was declared as a UNESCO World Heritage Site in 1983. It attracts scores of tourists from all over the world. But now the monument has developed a yellowish tinge (and in some areas ugly brown and black spots) owing to the increased levels of pollution around the area. The main pollutant was sulphur dioxide released by the industries which later on reacted with rain water to give acid rain. Suspended Particulate Matter (SPM) was also one of the culprits. This case is commonly referred to as '*Taj Trapezium Case*'. The 'Taj Trapezium Zone' (TTZ) referred to by the court is a 10,400 sq.km trapezium-shaped area covering the five districts of the Agra

region. The TTZ comprises over 40 protected monuments including three World Heritage Sites — the Taj Mahal, Agra Fort and Fatehpur Sikri.

“In early 1984, M.C. Mehta, a public interest attorney, visited the Taj Mahal for the first time. He saw that the famed monument’s marble had turned yellow and was pitted as a result of pollutants from nearby industries. This spurred Mehta to file his first environmental case in the Supreme Court of India.”

FACTS:-

- In this case a petition was filed the threat to the deteriorating beauty of Taj Mahal to invoke the Air (Prevention And Control Of Pollution) Act 1981 and Water (Prevention And Control Of Pollution) Act 1974 and Environmental Protection Act 1986 for the purpose of relocation of 292 factories to prevent emission by coke or coal consuming factories having a damage effect on taj living in the taj trapezium zone, and further to direct them to change into natural gas as industrial fuel.
- According to the petitioner the foundaries, chemical/ hazardous industries and the refinery at Mathura were the major sources to damage to the Taj. The sulphur dioxide emitted by Mathura refinery and other industries when combined with oxygen with the aid of oxygen in the atmosphere formed sulphuric acid called acid rain which has a corroding effect on the gleaming white marble. Industry/ Refinery emissions, brick kilns, vehicular traffic and generator set were all responsible for polluting the ambient air around the Taj Trapezium Zone.
- In this case Four NEERI Reports, Two Varadharajan Reports and Several Reports by the State Pollutant Control Board were presented. After examining all the reports and taking into the consideration other material on the record, the court has no hesitation in holding

that the industries in TTZ were active contributor to the pollution in the said area.

- Principle applied here are-
- **Sustainable development**– the object behind this litigation is to stop the pollution while encouraging the development of the industries because development of industry is essential for economy but at the same time environment has to be protected.
- **Precautionary principle**– the pollution created as a consequence of development so the state must anticipate, prevent and attack the harm caused to the environment.
- **Polluter pays principle**– the court interpreted the principle in order to mean that the absolute liability to harm the environment is not only to compensate the victims of pollution but also for restoring the cost of environmental degradation.
- Article referred in this case of Constitution Of India are Article 21, 48A, 49.

ISSUES:-

- The Mathura Oil Refinery and other nearby industries pushed into atmosphere pollutants that contain oxides of sulphur and nitrogen which causes acid rain.
- The deposition of SPM on the Shimmering White Marble Of Taj Mahal imparts yellow tinge to the marble surface and causes marble cancer.
- Taj's discolouration which was mainly caused by equally deposition of dust particles and carbonaceous particles such as black and brown carbon which is light absorbing organic carbon.

JUDGEMENT:-

The court on 11th of April, 1994 after hearing learned counsel for the parties, passed the order indicating that the industries situated in Agra be

relocated out of TTZ. All these decisions were taken on the basis of reports given by NEERI. The Ministry of Environment was also asked to examine this aspect and appoint an expert authority (from India or abroad) to undertake the survey of the Taj Trapezium Environmental Area and make report regarding the source of pollution in the area and the measures to be adopted to control the same. The Ministry asked an expert committee under Dr. S. Varadharajan to do the job.

Meanwhile the Indian Oil Corporation also agreed to the use of natural gas as an alternate fuel. The report said that once natural gas is brought to Mathura there would be no difficulty in providing the same to the other industries in TTZ and outside TTZ. It was suggested that a 10 inch diameter, 13 km long pipeline could deliver the natural gas to the refinery as well as the other industries and was scheduled to be completed by December, 1996. The court on 14th of March, 1996 directed the GAIL, Indian Oil Corporation and the U.P. State Industrial Development Corporation to indicate the industrial areas outside the TTZ which would be connected with the gas supply network so the industries which are not in a position to get gas connections or which are otherwise polluting may have to be relocated outside TTZ.

On 12th of September, 1996, the court passed the orders regarding the safety measures to be taken during the construction and operation of the gas net-work whereas on the other side The exact number of air polluting industries which were to be shifted was found out. Suggestions were also taken from the concerned industries. Although the Board had placed on record list of 510 industries which are responsible for air pollution but they

confined this order only to 292 industries located and operating in Agra. The industries operating in TTZ which were given gas connection. The whole purpose is to stop air pollution by banishing coke/coal from TTZ.

The final judgment in this case was given on 30th of December 1996 and the bench consisted of **Justice Kuldip Singh and Justice Faizan Uddin**. The court was of the view that The Taj Mahal is a masterpiece and has international reputation. It is also an important source of revenue to the country because of the huge tourist attraction it commanded. So, its beauty could not be compromised. The following guidelines are:-

(1) The industries (292 listed) shall approach/apply to the GAIL before February 15, 1997 for grant of industrial gas-connection.

(2) The industries which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation (UPSIDC)/Government before February 28, 1997 for allotment of alternative plots in the industrial estates outside TTZ.

(3) The GAIL shall take final decision in respect of all the applications for grant of gas connections by March 31, 1997 and communicate the allotment letters to the individual industries.

(4) Those industries which neither apply for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal

in the TTZ with effect from April 30, 1997. Supply of coke/coal to these industries shall be stopped.

(5) The GAIL shall commence supply of gas to the industries by June 30, 1997. As soon as the gas supply to an industry commences, the supply of coke/coal to the said industry shall be stopped with immediate effect.

(6) The Corporation/Government shall finally decide and allot alternative plots, before March 31, 1997, to the industries which are seeking relocation.

(7) The relocating industries shall set up their respective units in the new industrial estates outside TTZ. The relocating industries shall not function and operate in TTZ beyond December 31, 1997. The closure by December 31, 1997 is unconditional and irrespective of the fact whether the new unit outside TTZ is completely set up or not.

(8) The Deputy Commissioner, Agra and the Superintendent (Police), Agra shall effect the closure of all the industries on December 31, 1997 which are to be relocated by that date as directed by court.

(9) The U.P. State Government/Corporation shall render all assistance to the industries in the process of relocation. The allotment of plots, construction of factory buildings, etc. and issuance of any license/permissions, etc., shall be expedited and granted on priority basis.

(10) In order to facilitate shifting of industries from TTZ, the State Government and all other authorities shall set up unified single agency consisting of all the departments concerned to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up by the U.P.State Government within one month. The Registry shall communicate this direction separately to the Chief Secretary, Secretary (Industries) and Chairman/Managing director, UPSIDC along with a copy of the judgment, no further time shall be allowed to set up the single window facility.

(11) The State Government shall frame a scheme for the use of the land which would become available on account of shifting/relocation of the industries before June 30, 1997. The State Government may seek guidance in this respect from the order of the court.

(12) The shifting industries on the relocation in the new industrial estates shall be given incentives in terms of the provisions of the Agra Master Plan and also the incentives which are normally extended to new industries in new industrial estates.

(13) The workmen employed in the above-mentioned 292 industries shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year's wages as 'shifting bonus' to help them settle at the new location. The said bonus shall be paid before January 31, 1998.

(d) The workmen employed in the industries who do not intend to relocate/obtain natural gas and opt for closure, shall be deemed to have been retrenched by May 31, 1997, provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act. These workmen shall also be paid, in addition, six years' wages as additional compensation.

(e) The compensation payable to the workmen in terms of this judgment shall be paid by the management within two months of the retrenchment.

(f) The gratuity amount payable to any workman shall be paid in addition.

With this court has also stopped the operation of all the brick kilns in the TTZ with effect from August 15, 1996 this would be a useful step to eliminate the pollution caused by fly-ash. This Court is separately monitoring the following issues for controlling air pollution in TTZ by:-

(a) The setting up of 50 bed hospital and two mobile dispensaries by the Mathura Refinery to provide medical aid to the people living in the surrounding areas.

(b) Construction of Agra bypass to divert all the traffic which passes through the city. Under directions of this Court, 24 kms' stretch of the bypass shall be completed by the end of December 1996 (Court order dated April 10, 1996).

(d) Additional amount of Rs. 99.54 crores sanctioned by the Planning Commission to be utilized by the State Government for the construction of electricity supply projects to ensure 100 per cent uninterrupted electricity in the TTZ. This is necessary to stop the operation of generating sets which are major source of air pollution in the TTZ.

(e) The construction of Gokul Barrage, water supply work of Gokul Barrage, roads around Gokul Barrage, Agra Barrage and water supply of Agra Barrage, have also been undertaken on a time schedule basis to supply drinking water to the residents of Agra and to bring life into river Yamuna which is next to the Taj.

(f) Green belt as recommended by NEERI has been set up around Taj. Pursuant to continuous monitoring of this Court, the Green Belt has become a reality.

(g) This Court suggested to the Planning Commission to consider sanctioning separate allocation for the city of Agra and the creation of

separate cell under the control of Central Government to safeguard and preserve the Taj, the city of Agra and other national heritage monuments in the TT.

(h) All emporia and shops functioning within the Taj premises have been directed to be closed.

(i) Directions have been issued to the Government of India to decide the issue, pertaining to declaration of Agra as heritage city within two months.

Apart from this constitutional mandate are also there to protect and improve the environment. The relevant enactments for this purpose are:

The Water (prevention and Control of pollution) Act, 1974

The Air (Prevention and Control of Pollution) Act, 1981

The Environment protection Act, 1986.

Whereas 292 factories were ordered to change-over to the natural gas as an industrial-fuel. The industries which were not in a position to obtain gas connections for any reason were ordered to stop functioning with the aid of coke/coal in the TTZ and relocate themselves as per the directions given by the court.

Thus the court gave its orders based on the “Precautionary Principle” and “Polluter Pays Principle” as was defined in Vellore Citizens Welfare Forum v. Union of India. The court was of the view

that “the precautionary principle” and “The polluter Pays” principle are essential features of “Sustainable Development”

CASE COMMENT

As through this judgement there is reduction in the level of Suspended Particulate Matter which is one of the major pollutants causing discolouration of the Taj Mahal as well as respiratory problems in human has been lowered between 1991-1994 due to the closure of 212 coal based industrial units and shifting of thermal plant in 1993 but after 1994 there was a steady increase in the emissions from the Mathura oil refinery, use of diesel based generators during power cuts and vehicles according to the Uttar Pradesh Pollution Control Board which was neither taken into consideration by the plaintiff nor by court in its order.

With this the order was only extended to 292 industries out of the 510, whose names were put forward by the pollution control board in the court. However the rest of the industries also contributed to the pollution in some way or the other resulting in the yellowing of the marble but the court not consider all the aspect and relocated only those industries who refuse to accept natural gas as an alternative fuel or to whom it is not available due to some technical defect. According to me all 510 industries should be taken into consideration and all the industries should have been relocated as it would eliminate total pollution as compared to only small reduction in the pollution level as by relocating only limited industries.

Taj Mahal is known as Crown of the World and more than two million tourists visit taj mahal every year so while preserving it the country is destroying it on the other hand our judicial system is also creating the damage by deteriorating the atmosphere while scrutinizing the situation and given judgement instead of this prompt decision should be given by the court while spreading the pollution for three more years because the objective was to stop the pollution not to encourage the development of industry.

Further the judgment only talks of coke and coal as the pollutants, there is not much emphasis on the pollution caused by the brick kilns, chemical industries, bangle and glass factories, excessive traffic on the roads of Agra and the waste being thrown by the road side shops and restaurants. It's does not talk about restoring the quality of water of Yamuna because the monument rests on huge wooden slabs placed inside the deep wells that need perennial water. It is built on a riverbank and wells were dug up 50 meters above the riverbed to form its base. It is feared that the monument could suffer serious structural damage if Yamuna becomes waterless.

There is no mentioning of the harm caused to the workers working in the factory and other ordinary citizen who losing their life by causing harm to their lungs due the pollution and also failed to restore the original quality of the marble, only prevention and control of pollution finds its place in the judgment. No pollution standard was given by the court for the industries whether they are allowed to use coke and coal in the relocated areas or not and concept of compensation is ignored by the court.

However we can say that the judgement is incomplete thus the judgement is not effective for the nature as described above.