

Legal Intervention

Legal Intervention Main objective is to approach courts for environmental issues in non implementation of environmental laws and to follow up the implementation of judgements / directions / guidelines pertaining to the environment/pollution by Hon'ble High Court as well as Supreme Court and aware the people about it. During working information regarding environmental law and policy loopholes were gathered. Needs were felt for Public Interest Litigation for following.

1 SCA 9618/2004 - Kharicut canal Three case SCA 9618/2004, SCA 8531/2005, SCA 4690/2005 are clubbed in this matter and matter is going on with Gujarat High Court.

2 SCA 12858/2004 reg utilization of fund under Post facto environmental clearance

1. SCA 9618/2004 - Kharicut canal There was landmark judgement on kharicut canal pollution in SCA 770/1995 by Gujarat High Court. Some of the order of judgement are not implemented even after 10 years of judgement. So after some field observation and meeting with stakeholders Paryavaran Mitra wrote a letter to Chief Justice of Gujarat High Court on 28 June 2004. on basis of letter and newspaper report Chief Justice admitted Suo Moto in August 2004 vide no. SCA 9618/2004. Later Paryavaran Mitra joined as a party in that case. To identify the real situation of Khari River and Kharicut canal pollution, Viksat has formed industry core group under Sabarmati stakeholders' forum to resolve the pollution problem in Kharicut canal and Khari River. The members of this core group had visited the Kharicut canal on 23 April 2004 to find the illegal discharge point in the canal and surrounding villages of Vatva to assess the pollution problems. Mr. Mahesh Pandya was one of the members who had taken part in the visit. Meeting with Shri Pravinbhai Patel, petitioner of SCA 770/1995 -a writ of mandamus, prohibition etc for prevention of water pollution in Kharicut canal, Khari River at Navagam was held on 30 April 2004 for discussing how the amount of the fund would be used for the Socio-Economic upliftment of the Kalambandhi villages of Dist: Kheda and Mehmdavad which is deposited with Department of Environment & Forest, Govt. of Gujarat as per High Court direction. On 18 June 2004 meeting with Pravinbhai Patel and Paryavaran Mitra team and two students of Gujarat Vidyapith had been arranged again to discuss the problems of pollution in Kharicut river and canal. On 28 June 2004, a letter was written to the Chief Justice of High Court of Gujarat to draw attention towards violation of certain orders of SCA 770/1995 of Pravinbhai Patel Vs State of Gujarat. In the same application the field visit report of Viksat and newspaper clippings were attached. On this basis Hon'ble High Court of Gujarat had admitted suomoto. Later on Paryavaranmitra had became one of the party to assist the Hon'ble High Court on 30 August 2004. Paryavarnmita had submitted an affidavit before 2nd November 2004, in Hon'ble High Court of Gujarat to draw attention of the court regarding the wide spread pollution in Kharicut canal. On 22 December 2004 Hon'ble High court has directed Ahmedabad Municipal Corporation to file an affidavit in the said case before 12 January 2005 and merge this case with other case in High Court of same line vide SCA no. 4618/2004 of local farmers affected by Kharicut pollution. Ahmedabad Municipal Corporation had filed an affidavit and further hearing of the case would be held on 02 February 2005. Now the case is pending in High Court of Gujarat. For similar cause local farmer association also filed application vide no. SCA 4690/2005 in February 2005. In May 2005, Division bench of Hon'ble Justice M. S. Shah and Justice D.H. Vaghela of Gujarat High Court had admitted Suo moto application in Kharicut canal pollution case again vides no. SCA 8531/2005. The hearing of SCA 8531/2005 was scheduled on 21 June 2005. During that hearing court postponed the hearing on 19 July 2005. Paryavaran Mitra joined as a party in this application. During the intermediate hearing of the petition which was held on 19 July 2005, on behalf of Paryavaran mitra Ms. Shailja Pillai was present. She requested the Hon'ble court to get merged all petitions. So three petitions SCA 9618/2004, SCA 4690/2005 and SCA 8531/2005 were merged. Moreover, at the end of hearing Hon'ble high court directed Paryavaranmitra to file affidavit within three weeks from the date of hearing. Paryavaran mitra had filed affidavit within stipulated time. On 24 & 25 November 2005 hearing on Kharicut canal pollution was held for whole two day in court of Justice D. H. Vaghela & Justice D. N. Patel. After hearing interim order was passed on 25 November 2005. It was stated in the order that Gujarat Pollution Control Board is failed in its duty to control pollution in Kharicut canal. All concerned authority had completely ignored this issue. It is better to appoint an agency other than Gujarat Pollution Control Board to monitor the pollution. It was requested to Ministry of Env. & Forest to send their representative to assist in this issue. Also court had appointed three advocate to appoint a committee to look after all issues related Kharicut canal pollution. Hearing of Kharicut canal pollution case was scheduled on 23 December 2005 but postponed on 11 February 2006. Due to interim order of Gujarat High Court dated 25/11/2005, GPCB had issued closure order to 650 industrial units of Vatva area to repair Kharicut canal. Paryavaran Mitra condemns the step of GPCB of issuance of closure to each unit in GIDC Vatva. It alleges that the step was taken only due to show that GPCB is active for pollution control. GPCB had also filed affidavit in High Court showing tabular form of status of industries related to Kharicut canal.

2. SCA 12858/2004 reg utilization of fund under Post facto environmental clearance Paryavaranmitra had filed a Public Interest Litigation (SCA No. 12858 of 2004, Centre for Social Justice (Paryavaranmitra) V/s Union of India & Others.) in case of utilization of fund under Post facto environmental clearance for Eco-development and community welfare measures. The said fund and its action plan have to be submitted by the defaulter units in state pollution control board as per circular of Ministry of Forest & Environment - New Delhi of 14th May, 2002. Paryavaranmitra had written several representation to various state and central government department and panchayat regarding deposition of this fund and its utilization. Paryavaranmitra also suggested government to constitute a local level committee for proper utilization of this fund. But state government replied that it is under jurisdiction of central government. Paryavaranmitra had also approached Ministry of Environment & Forest in this regard but there was no reply from Ministry. Finally Paryavaranmitra filed Public Interest Litigation in the Hon'ble High Court of Gujarat vide SCA no. 12858/2004. Division bench of Chief Justice Bhavani Singh and Justice H. K. Rathod of Hon'ble High Court of Gujarat has passed an oral order and stayed on use of Eco fund collected from industries by Gujarat Pollution Control Board. Order states " Subject to hearing the other side, Eco fund in terms of circular don dated 14 may 2002 be not utilised till further order." Paryavaranmitra had informed about the order of the stay of Eco-fund to Ministry of Forest and Environment -New Delhi,

Govt. of Gujarat-Gandhinagar and Gujarat Pollution Control Board, Gandhinagar.