Himachal Pradesh High Court
Baldev Singh And Ors. vs State Of H.P. And Ors. on 27 July, 2006
Equivalent citations: 2006 (3) ShimLC 135
Author: D Gupta
Bench: V Gupta, D Gupta
JUDGMENT

Deepak Gupta, J.

1. This writ petition under Article 226 of the Constitution of India has been filed in the public interest by some residents of villages Batamandi and Ganguwala questioning the legality and propriety of the expansion of the existing fermentation plant of respondent No. 4 at Ganguwala for manufacture of bulk drugs and setting up of a new formulation plant at Batamandi by respondent No. 4 M/s. Ranbaxy Laboratories Limited. The challenge is on various grounds. According to the petitioners, the respondents have violated various provisions of law. It is also alleged that the respondent No. 4 has not only violated the law but has started the construction without any legal and valid permission. According to the petitioners in case the plant is set up it shall cause huge amount of pollution leading to environmental degradation. During the course of the proceedings some Gram Panchayats of the area were permitted to join as interveners in the matter. When the petition was initially taken up for admission on 21st July, 2004 this Court had directed the respondent No. 5 i.e. the Deputy Commissioner, District Sirmaur to ensure that no unauthorized construction activity is carried on by respondent No. 4. The order dated 21.7.2004 reads as follows:

Notice to respondent No. 4. Notice be given dasti to the writ petitioners for effecting personal service upon respondent No. 4 and for filing affidavit of service on the next date.

Replies may be filed in four weeks from today. In the meanwhile, we direct respondent No. 5 to ensure that if respondent No. 4 is carrying on with any construction activity at Batamandi, Tehsil Paonta Sahib, District Sirmaur, H.P. in contravention of any law, Rule or Regulation on the subject, after satisfying himself that the said construction activity is being carried out in contravention of any such law, Rule or Regulation on the subject, he shall ensure that such construction activity is stopped forthwith and with immediate effect. Such satisfaction shall be recorded in writing and communicated to respondent No. 4 and once it is done, respondent No. 4 shall stop the construction immediately and forthwith.

2. Thereafter, the Deputy Commissioner, District Sirmour, swung into action. He filed an affidavit dated 20th August, 2004 before the Court in which it was stated that the respondent No. 4 had started the construction activity without obtaining necessary permission and in violation of Section 39 of the H.P. Town and Country Planning Act, 1977 (hereinafter referred to as the TCP Act). Accordingly the Deputy Commissioner ordered the stoppage of further construction. On 24.2.2005 the matter was listed before the Court and keeping in view the affidavit filed by the Deputy Commissioner the respondents were directed to maintain status quo with regard to the expansion of the plant of respondent No. 4 at Ganguwala.

The respondent No. 4 is the main contesting respondent and it filed reply submitting that writ has not been filed in the public interest. Respondent No. 4 claims that it had obtained all necessary permissions for setting up a new formulation project at Batamandi and for expansion of the fermentation plant at Ganguwala and that the said two plants were not causing any environmental degradation.

3. The matter was then heard in detail on a number of days. On 1.4.2005 with the consent of the parties and in fact on the asking of all the parties this Court set up a Committee consisting of Mr. Subhash Chander Negi, Principal Secretary PW & Industries, Mr. Avay Shukla, Principal Secretary Education and Mr. Sanjeev Gupta, Secretary Science & Technology and Information Technology. Mr. Sanjeev Gupta was directed to act as Member Secretary of the Committee. The Committee was empowered to co-opt 3 to 5 members who are experts in the concerned fields. The broad terms of reference on which the Committee was directed to give its

report are as follows:

Broad Terms of Reference for the Committee:

A. The Committee shall go into all questions relating to the legality, propriety and correctness of the setting up of the aforesaid two units and inter alia would enquire, find out and report whether in setting up these units any laws relating to the acquisition/ transfer /alienation/possession of land in any manner have been violated or not violated and if violated to what effect. The Committee shall also enquire, inspect, find out and report if the setting up of these units in any manner violates any ecological or environmental norms or laws. If any of such laws or norms are violated and/or setting up of these units is likely to cause any damage to the ecology or environment, would there be any remedies available for ensuring that devices are installed to stop the damage to ecology and environment. Similarly the Committee shall also find out and repot as to whether the setting up of these units or the expected/anticipated functioning of these Units ultimately will in any manner cause any pollution to land, soil and water in the area and if there is likelihood of any such pollution being caused, what would be the remedial measures to stop pollution and whether the units have already adopted those remedial measures or not, and if not, how should the units be ordered to adopt those remedial measures. Similarly, the Committee shall also enquire, find out and report whether the setting up of these units or their expected/anticipated functioning ultimately has any potential of creating nuisance in the area adversely affecting the lives of the people living in the area.

B. The Committee shall also in the course of its enquiry find out and report whether locating these units at the existing locations in any manner violates any development plans formulated by the State Government or any laws, rules or regulations or the industrial policy of the State and if there is any such violation, the effect thereof.

4. The Committee was directed to ensure that the experts are co-opted within two weeks and thereafter regular meetings of the Committee are held. The Committee was further directed to physically inspect the location, sites and areas. All authorities were required to give necessary assistance to the Committee. The Committee was also directed to hold 2 to 3 public hearings with a view to ascertaining the views of the public as well as respondent No. 4 M/s. Ranbaxy Laboratories.

5. Vide the same order of 1.4.2005 the earlier restraint orders were vacated but with a clear rider that all the construction/installation work shall be at the risk and responsibility of respondent No. 4.

6. The petitioners and all the respondents including the proponents M/s. Ranbaxy Laboratories were associated with the hearings of the Committee. The Committee sought certain directions from this Court from time to time. Extensions of time to furnish the report was sought by the Committee and the report was finally filed in the Court on 10th January, 2006. After the report was filed this Court gave time to the parties to file their responses to the report. The opposing sides were given time to file their counters to these responses and thereafter the matter was heard.

7. Some facts which need to be noticed at the very outset are that respondent No. 4 M/s. Ranbaxy Laboratories since 1992/1993 is running a fermentation plant at Ganguwala having a manufacturing capacity of 8 tonnes per annum (TPA). The respondent No. 4 is presently manufacturing STATIN drugs which are cholesterol lowering agents in the said plant. The two drugs being manufactured in the plant are Lovastatin and Pravastatin. The capacity after expansion is to be increased from 8 TPA to 120 TPA. At Batamandi only a formulation plant is being set up. In a formulation plant no drugs are manufactured. Different drugs are combined and formulated in tablet or capsule form.

8. Ms. Jyotsna Rewal Dua, learned Counsel for the petitioners has raised various issues. According to her the matter needs consideration from three different aspects. She submits that there have been many serious violations which needs to be looked into under these three heads; i.e. (i) legal issues, (ii) procedural issues,

and (iii) environmental issues.

9. Under the heading of the legal issues she submits that in setting up the factory, the respondents have:

(i) violated the Development Plan of Paonta Sahib;

(ii) violated the land laws especially the H.P. Tenancy and Land Reforms Act, 1972 and H.P. Ceiling on Land Holdings Act, 1972;

(iii) violated the Zoning Atlas; and

(iv) violated other miscellaneous Acts such as Factories Act, Explosive Act etc.

10. On procedural issues, Counsel for the petitioners argued that no proper Environment Impact Assessment report (EIA report) has been prepared by M/s. Ranbaxy and both the Committee and Ranbaxy Laboratories have wrongly interpreted the notification of the Ministry of Environment and Forest and guidelines issued. She submits that the rapid EIA could not be made the basis for granting clearance and that the respondents have not followed the proper procedure in granting clearance for the setting up/expansion of the plants.

11. Under the head of Environmental Issues, one of the main issues raised is with regard to the withdrawal of ground water by respondent No. 4 M/s. Ranbaxy Laboratories for the two plants and the effect of this withdrawal on the availability of ground water to the villagers. Ms. Jyotsna Rewal Dua also argued that the effluent of the plant is highly toxic and will have great adverse effect on the river Yamuna on the banks of which the plant of respondent No. 4 is situate. It is also submitted that even as per the report of the Committee there is bound to be emission of Dioxin and Furans which are two deadly gases. She submits that the plant if permitted to be set up will cause massive pollution affecting the health of the residents of the area.

12. On the other hand Sh. H.S. Matewal, learned senior Counsel appearing for respondent No. 4 candidly admits that though there have been some violations as pointed out by the Committee, the respondent No. 4 has complied with suggestions of the Committee in letter and spirit. He also submits that the respondent No. 4 has remedied all the shortcomings pointed out by the Committee. He urges that as recommended by the Committee the construction of the plant should be permitted to carry on. He further submits that as per the notification issued under the Central Excise Act and the Industrial Policy of 2004 as notified by the Government of Himachal Pradesh the land on which the construction is going on forms part of that area which has been identified for setting up and expansion of Industries with a view to giving them excise benefits and boost industrialization in Himachal Pradesh. He submits that the Factory has been properly sited. With regard to the environmental issues he urged that the respondent No. 4 is a responsible Industry and shall take all steps recommended by the Committee to ensure that pollution is brought within permissible limits. He however has objections to some of the recommendations of the Committee especially with regard to the recommendation of the Committee that even in the formulation plant at Batamandi the respondent No. 4 should install a Reverse Osmosis Plant and he also objects to the recommendation of the Committee directing respondent No. 4 to set up a Medical Institution and provide employment to local people etc. According to him these recommendations are beyond the scope of the reference made by this Court.

13. We now proceed to deal with the various contentions separately.

VIOLATION OF DEVELOPMENT PLAN:

14. It is contended on behalf of the petitioners that the Development Plan of Paonta Sahib has been notified under the TCP Act on 28.12.1998. In the Development Plan it is mentioned that industry is an employment generating activity and boosts economic activities but there is a caveat added thereto that the siting of the industries should be done with utmost care and caution. Specific reference has been made to the plant of M/s.

Ranbaxy Laboratories at Ganguwala in this plan.

15. The observations with regard to Ranbaxy Laboratories in the Development Plan in Chapter-3 are as follows:

3. Ranbaxy laboratories at Ganguwala has been well-established. There appears no justification of questioning its location so far as this unit meticulously adheres to the measurement for pollution control. So is the case with mini-cement plants at Patti Natha Singh though there is dire necessity of having sufficient plantation and green foliage all around these plants.

16. The relevant observations in the development plan with regard to the setting up of the industry in the region of Paonta Sahib area are as follows:

5.7. Industry:....

3. Paonta valley has rich agricultural land in it. It is not at all adviseable to create industries at the cost of agricultural production like rice, basmati, sugarcane, wheat etc. It is, therefore, suggested that while allowing any industrial unit in future, this single factor should be given utmost importance. It is also imperative to identify a suitable chunk of land in the trans Giri area for locating industrial units based on lime products.

5. Ranbaxy laboratories at Ganguwala, M/s. Satya Shree Cement plus M/s. Jagdambay Chemicals at Bhungarni, M/s. Gill Chemicals at Haripur Tohana and Himalayan International Ltd. at Shubhkhera are some of the units located in various directions around Paonta Sahib town. All such units have come up with the permission of State Government though in a highly irrational and illogical manner vis-a-vis a unified land-use policy. In a majority of these cases the local population have raised hue and cry at the level of environmental haz(sic) being generated by them. Therefore, it is suggested that:

(a) No further expansion in terms of area or capacity should be permitted in respect of these units.

(b) Adequate plantation in and around such units should be insisted upon. Only such species of trees as can create an effective buffer should be planted or grown.

(c) Strict adherence to pollution control norms should be ensured in respect of these units.

If any of the units in question fail to fulfil the above-mentioned requirements, these should be ordered to shift out of their present locations.

(Emphasis supplied)

Ms. Jyotsna Rewal Dua, contends that in view of the clear stipulation in the development plan no expansion of the plant of respondent No. 4 at Ganguwala could have been permitted especially an expansion of 15 times from 8 TPA to 120 TPA. She also submits that no authority has the power to relax the provisions of the development plan. According to her the lands have been purchased after the land use was frozen.

17. On the other hand M/s. Ranbaxy Laboratories have submitted that the expansion of the plant was envisaged even when the original plant was set up and the requirement for land is included in the essentiality certificate dated 17.12.1992. According to the respondent No. 4 no lands other than those mentioned in the essentiality certificate have been purchased for expansion of the plant at Ganguwala.

18. The Committee has dealt with this matter in detail and has noted that an application for permission to purchase the land was filed under Section 118 of the Tenancy Act on 26.8.1996 and the permission was finally obtained on 29.6.2001 and sale deed was registered on 20.11.2003. Admittedly the Paonta Sahib

planning area was notified on 28.6.1986 and the existing land use was frozen on 29.9.1993. After this date permission for change in land use and construction became a mandatory requirement. The relevant observations of the Committee are as follows:

Since para 5.7(5)(a) of Chapter 5 of this Development Plan enunciates that no further expansion in terms of area or capacity should be permitted in respect of M/s. Ranbaxy Laboratories Limited, permission accorded by the State Government under Section 118 of Tenancy and Land Reforms Act, 1975 on 29.6.2001 (and subsequent sale deeds and mutations) with respect to land measuring 29-07 bighas runs contrary to the aforesaid provisions of the Development Plan. Permission under the Tenancy & Land Reforms Act does not imply automatic exemption from other legal provisions including the Development Plan for Paonta Sahib.

The Committee then considered the contentions of respondent No. 4 and observed, thus:

Therefore, even though permission for purchase of land by the State Government and Registration of Sale Deed was done after promulgation of Development Plan of Paonta Sahib, there does not appear to be a deliberate intention to circumvent the provisions of Development Plan, since various agencies of the State Government had accorded approval for purchase of the land for industrial use. However, the permission under Section 118 of Tenancy & Land Reforms Act (and actual sale transactions) was certainly accorded after notification of Development Plan and actual sale took place thereafter.

19. In our opinion, the land could not have been said to be purchased in the year 1992. Under the Tenancy Act as it existed at the relevant time a non-agriculturist could not purchase land without express permission from the State Government. The cart cannot be put before the horse. Prior permission is a pre-requisite sine qua non for the purchase of the land and, therefore, it cannot be said that the land had been purchased in the year 1992. This would amount to circumventing the provisions of the Act. The lands were purchased after the land use was frozen in 1993. Therefore, we are of the opinion that there is clear cut violation of the Development Plan of Paonta Sahib. It is clear that the authorities were totally remiss in the discharge of their duties.

20. The Development Plan is prepared under the provisions of the TCP Act. The recommendations in the Development Plan are based on an indepth study conducted by qualified persons after inviting suggestions and objections by the public. It is unfortunate that neither the State Government nor any of its functionaries took note of the fact that in the Development Plan it had been specifically mentioned that no further expansion in terms of the area or capacity should be permitted in favour of M/s. Ranbaxy Laboratories. The contention made on behalf of the respondent No. 4 is that the Development Plan is based on macro analysis and does not relate to each particular industry. The answer to this argument lies in the Development Plan itself wherein with specific reference to the plant of M/s. Ranbaxy Laboratories it is unequivocally mentioned that this plant should not be allowed to increase its capacity or area. Obviously the area which was referred to in this Development Plan which was notified on 28.12.1998 was the area which was legally and validly held by the respondent on the said date. The possession of any land taken on the basis of agreement to sell for which permission had not yet been received from the State Government would not form part of such area.

21. It is contended on behalf of the respondent No. 4 that the Director, Town and Country Planning was competent to give any relaxation from the Development Plan. However, as observed by the Committee the power of giving relaxation is only with regard to Zoning and Sub Divisions. The Committee observed at page 29 as follows:

Therefore, M/s. Ranbaxy Laboratories Limited should have applied to the State Government for relaxation from observations contained in Chapter 4 and Chapter 5. Since exemption from provision of Chapter 4 and Chapter 5 of the Development Plan of Paonta Sahib has not been obtained so far, a violation of Section 38 of the Himachal Pradesh Town and Country Planning Act, 1977 has been prima facie committed. It is pertinent to mention here that development plan of an area is notified under statutory provisions contained in Chapter IV of the Himachal Pradesh Town & Country Planning Act, 1977.

22. We are in agreement with the clear cut finding of the Committee that there has been violation of the Development Plan of the area. Whether, the State Government can grant relaxation and permission to respondent No. 4 in exercise of its powers under Section 38 of the TCP Act in relaxation in the Development Plan, is a question we need not go into at this stage. From the material on record it is clear that as on date there is no order of any authority whatsoever relaxing the provisions of the Development Plan. As such we hold that the plant is being set up in total violation of the Development Plan for Paonta Sahib.

EFFECT OF GOVERNMENT OF INDIA NOTIFICATIONS:

23. Sh. H.S. Matewal, learned Counsel for the respondent No. 4 has laid great emphasis on the various notifications issued by the Central and State Governments declaring the area in which the two plants are situated to be Industrial area. It is submitted that the Government of India has granted excise exemptions to notified areas and the land on which the two disputed plants are to be expanded/set-up form part of the areas specifically notified in this behalf. We are unable to accept the argument of Sh. Matewal. No doubt that the lands on which the plants are being set up form part of the area notified for industrial purposes. The essence of the notification is that industries set up on such land will be entitled to avail of certain tax benefits/tax holiday for a specified period. The purpose is to give up a fillip to the industry in the backward State of Himachal Pradesh. However, this notification does not in any way detract from or diminish the requirements of various environmental and development requirements under other legal provisions. It may be true that an industry can be set up on this land but what is the type of industry which can be set-up will have to be decided on the parameters laid down in the development plan, Zoning Atlas, the effect of the industry on the environment etc.

VIOLATION OF LAND LAWS:

24. The contention on behalf of the petitioner is that whatever land was required by respondent No. 4 for its fermentation unit which was commissioned by it in 1993 was available with it at that time. The land use in Paonta area was frozen in the year 1993 i.e. to say that thereafter no change of user of land could be made. However, the respondent No. 4 went on purchasing lands and the State Government without any application of mind has granted retrospective permission approving the said purchases in the year 2001. It is contended on behalf of the petitioners that there is a total mockery of law inasmuch as the respondent No. 4 itself states that it has been purchasing land without the permission of the State Government. The respondent No. 4 relies upon an essentiality certificate dated 17.11.1992 and contends that in this essentiality certificate all the lands have been mentioned. The relevant portion of essentiality certificate reads as follows:

SR No. 537 DATED: 17.12. 1992

ESSENTIALITY CERTIFICATE

This is to certify that additional private Land measuring 217 Bighas 15 Biswas in Addition to 211 Bighas 5 Biswas as detailed below situated in village Kedarpur, Ganguwala and Bhatawali near Paonta Sahib, Distt. Sirmour, H.P. is also required by M/S. Ranbaxy Laboratories Ltd., for the setting up of their projects for the manufacture of Bulk Durgs and Drug intermediates. The land is recommended for purchase by this company subject to the condition that if this land is not utilized for the above mentioned purpose within a period of two years or further such period not exceeding one year from the date of issue of permission as may be granted by the Government. Failing which this Essentiality Certificate will be deemed to be withdrawn and the Government shall have the right to allot it to another party on the payment as recorded in the conveyance deeds. This Essentiality Certificate further subject to the condition that company will furnish all the revenue papers of this land and sale deed agreements entered into with the land owners to the Deputy Commissioner, Sirmour, while applying for permission to purchase the land under intimation to the undersigned.

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Sd/-

Director of Indust

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Himachal Prades

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25. No doubt it is true that the essentiality certificate did provide that additional private land measuring 217 bighas and 15 biswas in addition to 211 bighas 5 biswas already held by it was required by M/s. Ranbaxy Laboratories for setting up their project. However, this essentiality certificate also provided that if this land was not utilized within a period of two years which could be extended by one year at the most i.e. latest by 17.12.1995 the essentiality certificate will be deemed to be withdrawn. The observations of the Committee in this regard have already been extracted hereinabove and it has been found that the sale deeds were in fact executed much after 17.12.1995. It is clear that the revenue authorities never applied their mind while granting permission to the respondent No. 4 under Section 118 of the H.P. Tenancy and Land Reforms Act. The essentiality certificate was not valid after 1995. However, since the power is vested with the State Government to permit a non-Himachali/non-agriculturist to purchase land and this permission has been granted and the respondent No. 4 has spent huge amount on the purchase of the land on the basis of permission granted to it we do not propose to interfere in this matter.

26. It is also contended that the purchases made are in excess of the ceiling limit provided in the H.P. Ceiling on Land Holdings Act. We need not to go into this question since it is for the State Government to decide whether an industry should be exempted from the ceiling laws or not.

VIOLATION OF T.C.P.

27. The violations pointed out by the petitioners with regard to the TCP Act relate to the non-compliance with the development plan which has already been dealt with above. It is also contended that since the construction is in total violation of the law and the provisions of the development plan and the TCP Act the Committee should not have recommended the compounding of the illegal construction. After 29.9.1993 it was mandatory to seek permission under the TCP Act for change of land use. As far as the building of the fermentation unit at Ganguwala is concerned that came into existence prior to the said date. Thus, no approval of any change of land use is required as far as the existing units are concerned. However, permission was and is required for the change in land use of the land acquired after 29.9.1993. No such permission has been obtained. Admittedly the construction at the site was started in an unauthorized manner. Permissions have been applied for and obtained after the filing of the present writ petition in respect of the formulation plan at Batamandi and expansion of the fermentation plant at Ganguwala. In our view though there is prima facie violation of the TCP Act the same can be compounded by the appropriate authorities under the TCP Act since requisite permission have now been granted.

VIOLATION OF FACTORIES ACT:

28. On the allegations made by the petitioners the Committee has reached a finding that the State Government was bound to comply with the mandatory provisions of the Factories Act and grant approval for the setting up of the factory after obtaining the recommendations of a Site Appraisal Committee in terms of Section 41 (A) of the Factories Act. There is no doubt that the bulk drug fermentation plant at Ganguwala is a plant which comes within the ambit of hazardous process as defined in Section 2 (CB) of the Factories Act. The Committee has made the following pertinent observations in this behalf:

Therefore, M/s. Ranbaxy Laboratories Ltd. should have obtained approval of the State Government for site appraisal as required under Section 41-A of the Act ibid. Construction of this Plant without complying with this statutory requirement is a patent illegality.

29. It has further been observed that no Site Appraisal has been done as required under the said Act with regard to the plant at Ganguwala. It was only when the matter was pending before the Committee that respondent No. 4 filed an application for site appraisal. The Committee has comes to the conclusion that there is a clear violation of the provisions of the Factories Act. No action has been taken under the provisions of the Factories Act. The respondent No. 4 is clearly guilty of having started construction in total violation of the Factories Act without obtaining clearance from the Site Appraisal Committee. No such approval/ recommendation of the Site Appraisal Committee has been obtained till date and, therefore, the further construction cannot be allowed to continue till requisite permission is obtained.

VIOLATION OF THE EXPLOSIVES ACT:

30. As far as the violation of the Explosive Act is concerned we feel that this violation was only technical in nature as held by the Committee since the same tanks were to be used for the expanded plant also, for which permission had already been obtained. There is no serious violation of the Explosives Act.

VIOLATION OF ZONING ATLAS:

31. The contention of the petitioners is that the Zoning Atlas has been violated since the same prohibits the setting up of a bulk drug unit in Paonta Sahib. The Central Pollution Control Board has prepared a Zoning Atlas for siting industry. The relevant portion of the Zoning Atlas for Sirmaur District of Himachal Pradesh has been filed as Annexure P-15 by the petitioners. The objectives of preparing Zoning Atlas for siting of industries are; (i) to zone and classify the environment in a District; (ii) to identify locations for siting of industries; and (iii) to identify industries suitable to the identified sites.

32. It has been made clear that the Zoning Atlas considers only environmental aspects and does not consider the economic aspects. In the Zoning Atlas itself it has been mentioned that the maps in the Atlas have been prepared @ the scale of 1 : 2,50,000 and therefore micro level details have not been considered. Para 1.4 of the Zoning Atlas reads as follows:

The maps of the Atlas are prepared in 1:2,50,000 scale (1 cm = 2.5 km.) which means that micro-level details cannot be considered. It is also time consuming and expensive to carry out studies at regional level in a more detailed scale. The present study will prove to be a rapid assessment and for identification of actual plots for industrial siting, detailed EIA has to be carried out according to the sites at micro level. For identification of industrial estates in the District, detailed studies are to be taken up.

33. In the Zoning Atlas it has been clearly mentioned in Table 5.3 that Ranbaxy Laboratories is an air polluting industry having A-l potential for air pollution. In the same document it is mentioned that effect of a high air polluting industry (A-l category) can be felt up to 5 k.ms. It is further provided that for such industries including Pharmaceuticals (excluding formulation) there should he a 2 km. buffer to sensitive zones such as forests monument, scenic area, religious places etc. and at least 25 kms. buffer to sensitive zones such as National Parks, Sanctuaries etc. The entire District of Sirmaur has been termed as highly aerial sensitive area and, therefore, A-l Industries cannot be set-up in this area. With regard to water pollution again as per the Zoning Atlas the fermentation plant of the Ranbaxy Laboratory has been held to have potential of water pollution of the category of W-l i.e. very high impact potential. The highest risk areas for water potential are on the river banks of Markanda, Bata and Yamuna rivers where the Zoning Atlas advises that no water polluting industries should be sited.

34. The Committee after going through the rival contentions of the parties has come to the conclusion that since the Zoning Atlas is based on a macro analysis and not on micro analysis it can only be used as a guide and the Zoning Atlas cannot solely be used for recommending the siting or non-siting of an industry in a particular area. We are in agreement with the overall assessment of the Committee that the Zoning Atlas having been prepared on a macro analysis cannot be solely used for coming to the conclusion whether a particular industry should be situated on a particular land or not. However, there can be no gainsaying the fact that the Zoning Atlas is a very important document and must be given due weightage. Since it is prepared on a large scale it may not be used to straightway reject or accept the proposal of an industry. However, the guidelines given in the Zoning Atlas must be looked into and one of the most important guidelines in the Zoning Atlas is that before an industry is set up micro level analysis must be done by preparation of a comprehensive Environment Impact Assessment (EIA). The other guidelines of the Zoning Atlas with regard to maintenance of buffer zone especially for reserve forests and sanctuaries etc. must be kept in mind while preparing EIA. As observed by the Committee at times it may not be feasible and practical to follow each and every guideline given in the Zoning Atlas. All these aspects must be taken into consideration when the EIA is prepared and only thereafter the site should be approved or rejected.

PREPARATION OF ENVIRONMENT IMPACT ASSESSMENT:

35. The arguments under this heading can be conveniently considered alongwith the violation of the Zoning Atlas which have been dealt with above.

36. The Zoning Atlas recognizes the importance of the EIA. Even the procedure prescribed for obtaining the consent of the concerned Pollution Board provides that the EIA and Environment Management Plan (EMP) must be submitted alongwith the application. When public hearings are held the EIA and the EMP both in English and Hindi should be made available to the public. The Ministry of Environment and Forests, Government of India has issued a notification dated 27.1.1994 in exercise of the powers vested in it under the provisions of the Environment Protection Act, 1986 and the Rules framed thereunder for Environmental Impact Assessment of Development Projects.

37. The relevant extracts of the Ministry of Environment and Forests Environment Impact Assessment Notification are as follows:

MINISTRY OF ENVIRONMENT AND FORESTS ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION

S.O. 60(E), dated 27.1.1994

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2. Requirements and procedure for seeking environmental clearance of projects:

I(a): Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time.

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III(a):The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorized by the Impact Assessment Agency in this regard.

(b) xxxxxxxxx

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

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SCHEDULE-I

(See paras 1 and 2)

LIST OF PROJECTS REQUIRING ENVIRONMENTAL CLEARANCE FROM THE CENTRAL GOVERNMENT

1 to 7. Xxxxxxxxxxxxxxx

8. Bulk drugs and pharmaceuticals.

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SCHEDULE IV

(See para 3, sub-paragraph (2) of Schedule-II)

PROCEDURE FOR PUBLIC HEARING

(1) Process of public hearing.-Whoever applies for environmental clearance of projects, shall submit to the concerned State Pollution Control Board twenty sets of the following documents namely:

(i) An executive summary containing the salient features of the project both in English as well as the local language along with Environmental Impact Assessment (EIA). However, for pipeline project, Environmental Impact Assessment report will not be required. But Environmental Management Plan including risk mitigation measures is required.

EXPLANATORY NOTE REGARDING THE IMPACT ASSESSMENT NOTIFICATION DATED 27TH JANUARY, 1994.

1 to 4. xxxxxxxxxxx

5. Requisite information required for site clearance/project clearance:

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(i) EIA/EMP report (20 copies);

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As a comprehensive EIA report will normally take at least one year for its preparation, project proponents may furnish Rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project. Comprehensive EIA report may be submitted later, if so asked for by the IAA.

The requirement of EIA can be dispensed with by the IAA, in case of projects which are unlikely to cause significant impacts on the environment. In such cases, the project proponent will have to furnish full justification for such exemption, for submission of EIA. Where such exemption is granted, project proponents may be asked to furnish such additional information as may be required.

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38. A perusal of the aforesaid extracts shows that when any person desires to undertake any new project or expand or modernize any existing industry he shall submit an application for permission to the Secretary, Ministry of Environment and Forests and the said application should be accompanied by a project report which shall inter alia include an environmental impact assessment report/environment management plan prepared in accordance with the guidelines issued by the Central Government from time to time.

39. Bulk drugs and pharmaceutical industries are required to submit such EIA report as they form part of Schedule-I of the notification. The Committee in its report has clearly come to the conclusion that no EIA has been prepared by respondent No. 4. An explanatory note dated 27.1.1994 has been issued by the Ministry of Environment and Forests wherein it is provided that since a comprehensive EIA report will take at least one year for its preparation, project proponents may furnish Rapid EIA report based on one season's data (other than monsoon) for examination of the project and that the comprehensive report may be submitted latter. The requirement of EIA can be dispensed with by the Impact Assessment Authority (IAA) in case of projects which are unlikely to cause significant impact on the environment (emphasis supplied). In such cases the Project proponent must fully justify the reasons for exemption from submitting an EIA.

40. In the present case the Rapid EIA is based not on the data collected in any one season but only on the basis of data collected in the month of November. The Committee has found that even where industry has been approved on the basis of Rapid EIA the said report had been prepared on the basis of 3 months data. The Committee observed as follows:

Though the Committee also could not lay its hand on any clear decision of either the Ministry of Environment and Forest, Government of India or of Central Pollution Control Board regarding minimum period for which existing quality of air, water etc. is to be monitored, yet it has been seen that in case of Rapid EIA studies conducted in similar industrial projects requiring environmental clearances under EIA Notification, at least 3 months data has been studied. Therefore, the Committee has concluded that the procedure followed by the M/s. Ranbaxy Laboratories Pvt. Ltd. in this regard is flawed and it was required to conduct an EIA for a period of 3 months.

41. We in fact do not approve of this observation of the Committee. The notification envisages that a comprehensive EIA report must be submitted based on one year's data. It is only in case the project is unlikely to cause significant impact on the environment that this requirement may be dispensed with. A project proponent must satisfy the IAA that a comprehensive EIA can be dispensed with in the peculiar facts and circumstances of the case.

42. It has come on record that the fermentation unit at Ganguwala is a hazardous industry involving high levels of air and water pollutions. The writ petition was filed as far back as on 14th July, 2004. The respondent No. 4 was aware about the filing of this writ petition immediately thereafter. Though more than one and a half years have elapsed the respondent No. 4 has still not prepared a Comprehensive EIA. In fact a

proper Rapid EIA based on three months data has also not been prepared or submitted till date, A surprising aspect of the matter is that a Comprehensive EIA appears to have been prepared in the year 1992. This is no longer relevant since the expansion is to take place more than 14 years thereafter and the very basis of the data would have changed during this period. In fact the earlier comprehensive EIA relates to the production of an entirely different compound (Cephalosporin) production whereof was limited to 8 TPA, Now what is to be manufactured is Statin drugs i.e. Lovastatin & Pravastatin and that too with a capacity of 120 TPA. In fact we observe with dismay that the Pollution Control Board has acted in a highly negligent manner in permitting the respondent No. 4 to manufacture Statin drugs without obtaining any EIA whatsoever.

43. Since there is no comprehensive EIA or a properly conducted Rapid EIA and no report of the Impact Assessment Authority, whether a comprehensive EIA is required or not we are of the opinion that there has been no compliance with the provisions of the EIA notification.

ENVIRONMENTAL ISSUES:

44. Arguments have been addressed at length on this extremely important and sensitive issue. On the one hand is the public need for medicines of the highest quality and on the other hand is the imperative need to maintain and preserve the environment. Human beings in the last century have exploited nature and natural resources in a haphazard manner and the damage being caused to the environment is irreversible. Natural resources created over thousands of years are extracted in days. Undoubtedly there is need for progress and development but it is also our duty to ensure that the environment is preserved. Both needs must be weighed on even scales to ensure that on the one hand development does take place but on the other hand necessary steps are taken to preserve and protect the environment.

45. According to the petitioners the damage to the environment is covered under various headings. The first objection is with regard to the amount of water being used by the respondent No. 4. It has been contended on behalf of the petitioners that in view of the large quantity of ground water being utilized by respondent No. 4 the public will suffer as the water table will fall and availability of water to the public will become less. At present for its existing fermentation plant at Ganguwala respondent No. 4 is extracting about 50,000 liters of ground water every day. When the proposed expansion takes place the respondent No. 4 will require approximately 8 lakh liters of water every day. Since the respondent No. 4 will extract the water from deep down and shall re-charge the ground water with contaminated water the water availability to the public will fall and the water shall also not be fit for drinking or agricultural use.

46. The stand of the respondent No. 4 is that though it will be initially requiring 1070 kilo liters of water per day for its plant at Ganguwala, it shall be re-cycling the treated water using reverse osmosis process and it shall be able to re-cycle 550 kilo liters of water and therefore in actual terms after the initial process takes place the requirement will only be 520 kilo liters per day. According to the respondent No. 4 efficiency of reverse osmosis is more than 80% by having two stages. 550 kilo liters of water will be re-cycled and 120 kilo liters of water will be used for land scape gardening. With regard to the plant at Batamandi the total withdrawal of water each day will only be 240 kilo liters and 110 kilo liters of the water after treatment in effluent treatment plant would be used for land scape gardening.

47. These points were considered by the Committee which requested the Central Ground Water Board to furnish its report on the following points after carrying out requisite studies:

(a) Will the extraction of water proposed at Village Ganguwala and Batamandi effect the water availability in the adjoining villages or not?

(b) Is there enough quantity of water available in the aquifer to meet the demand on a sustainable basis?

(c) Will the villagers and factory be tapping the same aquifer or different ones?

48. The Central Ground Water Board (CGWB) in response to the Committee's directions submitted its report dated 12.12.2005. According to the CGWB as per data available the water level fluctuation is not significant. Further the CGWB observed that the local people are tapping water from a aquifer with maximum depth of 21 meters (70 ft.) from ground level whereas the respondent No. 4 for their existing plant is tapping water from a semi confined aquifer through two tube wells having depth of 94.70 meters (310 ft.) and 101.25 meters (332.10 ft.). According to the CGWB no adverse effect has been noticed on the availability of water to the general public by the use of ground water by respondent No. 4. The CGWB has further recommended that the respondent No. 4 should only tap water at a depth of more than 60 meters (200 ft.) below ground level and that regular monitoring be done to monitor the water level. It has further recommended that rain water harvesting and water conservation system should be adopted and the minimum distance between two tube wells should be more than 500 meters.

49. The CGWB has also found that the ground water development in the area is 17.62% and falls in the safe category. The development level is very low and according to the CGWB even if respondent No. 4 takes more water to meet its needs after expansion and setting up a new plant the total withdrawal would only be an insignificant percentage of the total water resources in the valley. It has therefore come to the conclusion that the increase in ground water utilization will not have any adverse effect on the overall ground water scenario especially the shallow aquifer being used by the local population.

50. The Committee on the basis of the report of the CGWB has recommended that respondent No. 4 be permitted to draw water beyond the depth of 70 meters below ground level. It has further recommended that the distance between two tube wells should be at least 500 meters. The Committee has further ordered that regular monitoring should be done by the State Irrigation and Public Health Department and CGWB and that the specific observatory wells would be constructed and developed for this purpose at the costs by respondent No. 4. If any adverse impact on availability or quality of ground water is discovered which has resulted due to activities of respondent No. 4 it should be asked to take suitable remedial actions/measures. It has also recommended that the respondent No. 4 should install a Reverse Osmosis plant at the formulation plant at Baramandi also so that the water can be recycled.

51. Ms. Jyotsna Rewal Dua appearing for the petitioners contends that the report of the CGWB is based on obsolete data and barring Badripur village all the other villages from which data was collected are distant villages and not within the vicinity of the proposed plant. She submits that no site specific study has been undertaken by the CGWB. In fact the Committee also in its report has stated that no site specific Geo-hydrological studies were conducted by the CGWB till the date of filing of the report. She further submits that the logic given by the CGWB is absurd. Though aquifers may be different or at different depths but the source of recharge is common. Therefore, according to the petitioners withdrawal of water from a greater depth will affect the availability of water even in shallow aquifers. Some material in this regard has also been placed on record by the petitioners which is in the nature of comments on the CGWB observations. Ms. Dua also points out that whereas in para 4 of the report of the CGWB dated 12.12.2005 the replenishable ground water resource is mentioned as 69.24 million cubic meters, in the previous report given on 21.6.2004 to respondent No. 4 by the CGWB the annual replenishable water resource was shown as 29.544 million cubic meters. She submits that there is no material to show as to how the annual replenishable water source has more than doubled from 29.544 million cubic meters to 69.24 million cubic meters during this period. This matter has been dealt with by the Committee at pages 51 and 52 of its report in the following manner:

On the other hand, the Central Ground Water Board has informed the Committee that the earlier Report dated 21.6.2004 given to M/s. Ranbaxy was based on Ground Water Estimation Methodology GEC 1984 (updated for the assessment year 2002-03). This Report indicated the stage of ground water development in Paonta valley as 12.74% with annual replenishable resource of 33.858 MCM. The Regional Director, Central Ground Water Board has further informed that the Report dated 12.12.2005, submitted to the Committee contained different figures of 17.62% and 69.24 MCM based on GEC 1997 Methodology. This revised methodology was submitted to the Central Ground Water Board headquarters in the month of March, 2005. Final Report on

"Dynamic Ground Water Resources of India" including Ground Water Resources of Himachal Pradesh was issued by CGWB Headquarters vide letter No. 3-1/ Res/ CGWB/ M (SAM) /2005 dated 11.11.2005. Thus, the Central Ground Water Board could have rightfully used the revised methodology and supplied the related data only after 11.11.2005. In any case, proposed extraction of water at Batamandi and Ganguwala amounting to 0.2774 MCM per year is a very small percentage of even the lower figures of net ground water availability of 29.533 MCM. This observation holds good notwithstanding the fact that the CGWB had assessed the groundwater potential for an area of 150 square kilometers (approximately 12.25 Km x 12.25 km. assuming a square shape). Even if this area is linearly localized to a dimension of say 3 kms x 3 kms around the proposed Plants, the inference may not be much different. The Petitioners are, however, insisting on study of water availability locally in and around the two Plants as they feel that water availability is particularly low near these areas.

Ms. Jyotsna Rewal Dua further contends that in case the respondent No. 4 is permitted to withdraw more than 1000 kilo liters of water per day, after some years the water level will fall drastically and will cause an adverse impact on the environment. The petitioners have also challenged the figures given by respondent No. 4 and it is submitted that the figures given by them have been accepted by the Committee without any proper basis. She submits that in fact respondent No. 4 is not coming out with proper figures. Whereas before the Committee it was stated that 550 Kilo liters of water shall be used for re-cycling only but in their response filed in Court respondent No. 4 has stated that they can use this 550 KL of water either for re-cycling or for land scape gardening. She submits that if 670 KL of water is used for land scape gardening it will only lead to water logging and pollution and that the water requirement will then continue to remain 1070 KL per day.

52. The Committee in its report has come to the conclusion that in the fermentation plant at Ganguwala the amount of water to be discharged is so high and in such a small area that it would result in application of over one inch thick layer of water every day. It is obvious that this much water cannot be absorbed in the land 365 days a year. The Committee, therefore, recommended that if 550 KL of water is re-cycled then only 120 KL of water is required for land scape gardening and this amount would amount to application of about 1 cm of water per day on the entire land. The Committee felt that this amount of water can be absorbed into the ground. According to the committee the apprehension of the petitioners that this would result in water logging is not well-founded. The Committee also recommended that the respondent No. 4 should maintain better standards and water being dumped in the ground must conform to the standards mentioned in para 2.1.1 of Volume-II of the report submitted by the Committee.

53. In our opinion, the apprehension of the petitioners with regard to the depletion of the water table may not be based on a very sound footing. The CGWB is the Expert Body on the subject and according to it the ground water resources in the area are sufficient to meet the additional demand of respondent No. 4 even after expansion of the plant. The Committee has made some recommendations which we feel are just and proper. Mr. H.S. Matewal had strongly contended that the recommendation of the Committee that Reverse Osmosis Plant be installed at formulation plant at Batamandi is not justified since that plant will only use 240 kilo liters of water per day and there is no pollution in the formulation plant. We are unable to accept this contention. The total water to be used by respondent No. 4 in both the plants even as per its own estimation is 760 kilo liter. Therefore, efforts must be made to conserve and recycle the water so as to minimize the requirement of water. Keeping in view the huge requirement of water of respondent No. 4 in both the plants we feel that the recommendations of the Committee in this regard are justified.

TOXICITY OF EFFLUENT DISCHARGE:

54. The Committee in addition to getting the samples analysed from the Central Pollution Control Board and State Pollution Control Board also got the samples tested by three approved environmental laboratories duly recognized under the Environment Protection Act. The work of analysis of the samples was got done through:

1. National Productivity Council (NPC), Utpadakta Bhawan 5-6, Institutional Area, Lodhi Road, New Delhi.

2. Pollution Control Research Institute (PCRI) BHEL Haridwar.

3. Indian Toxicology Research Centre (IRTC) PB No. 80 Mahatma Gandhi Marg, Lucknow.

It would be pertinent to mention that the petitioners moved an application in this Court praying that they may be permitted to get the samples analyzed from some other laboratories. The Court directed that the petitioners could raise this prayer before the Committee. The Committee rejected the prayer of the petitioners. In our opinion no fault can be found in the selection of the three Laboratories by the Committee and no fault can be found in the methodology followed by the Committee in so far as the appointment of the Laboratories is concerned.

55. The committee requested these three Laboratories to carry out a number of tests. The representatives of the Central Pollution Control Board, National Productivity Council, Indian Toxicology Research Centre and the State Pollution Control Board gathered at Ganguwala on 24.9.2005. Since heavy rainfall had taken place the experts felt that there may be dilution caused by the rainfall and, therefore, representative samples were not collected on that date except grab samples of effluent from in-let and out-let of Effluent Treatment Plant. The samples were later collected as per the schedule in the Environment Protection Rules. The Committee reports that some of the Laboratories expressed technical limitations regarding conduct of certain tests like tests for Dioxin and Furans and Gas Chromatography test etc. The Committee directed the Laboratories to conduct only those tests for which they have facilities but should not delay the conducting of the tests.

56. While considering the reports of the various Laboratories the Committee has followed the Best Fit Mean method as is apparent from its observations from page 71 of the report, quoted below:

First of all, average value of all the readings (i.e. Mean) in respect of a particular parameter and location was computed.

Then Standard Deviation and Coefficient of Variation was found out.

If the Standard Deviation was high, the Outlier Value (i.e. one value which was entirely different from others) was eliminated on the closeness (precision) and consistency of the values for each parameter. Similarly, absurd values were also knocked off (e.g. a totally unrealistic value where calibration or other observation related errors could have been wrong or methodology of testing was entirely different). These Outliers have been shown in white colour on a block background.

Some of the input regarding methodology adopted were given orally by the representatives of the laboratories during the meeting held on 17.12.1005. These laboratories were requested to send their methodology and inferences in writing, but they have not responded so far.

Thereafter, average of the remaining values was considered as final value of the parameter and was termed as Best Fit Mean.

57. Ms. Jyotsna Rewal Dua, Counsel for the petitioners submits that the Committee erred in following this method and should have in fact followed the precautionary principle. She submits that in cases relating to environment issues the precautionary principle should be followed and if there is difference in values the potentially most dangerous values should be taken into consideration. In this behalf she has referred to the report of the ITRC Lucknow and submits that the report given by the ITRC should have been followed by the Committee. The Committee has taken the mean value and has discarded the outlier value i.e. a value which was entirely different from the mean value. Absurd values were also not taken into consideration. However, all the values are given in the tables forming part of the report. We have gone through the analysis both for the soil samples and the water samples. As far as the analysis of the water samples are concerned we find that except for COD and BOD the effluent collected meets all parameters in the analysis conducted by all the

laboratories. As far as COD is concerned, the ITRC has shown that the COD at final outlet was 354 MG/liter as against 50 MG per liter found by the Central Pollution Control Board, 72 MG per liter found by the State Pollution Control Board and 77 MG per liter found by the NPC. The ITRC found the BOD at outlet level at 62 MG per liter as against 9 MG per liter found by the Central Board, 1.2 MG per liter found by the State Pollution Board and 2.2. MG per liter found by the NPC. The standard limits for COD is 250 and for BOD is 30. There is a vast difference in the result of analysis of the various laboratories. The findings of the ITRC are totally different from the results of three other bodies. The analysis of the Central Pollution Board, State Pollution Board and NPC were similar. The results of the ITRC were so different that the Committee discarded them. We feel that the method adopted by the Committee in this behalf was correct. The Committee on the basis of the various analysis has come to the following conclusion:

It may be noticed from the above mentioned table that barring the values of BOD, COD, TDS, TSS, Phosphate, Nickel, Zinc, Lead and Nitrate reported by Industrial Toxicology Research Centre, Lucknow, and Chloride, Phosphate, sulphide, Sodium Absorption Ratio, Iron and zinc in case of National Productivity council; all other values are more or less in line (i.e. there is not much variation from each other). These extreme values have been eliminated by using the concept of 'outlier' as explained in Para 3.3. above.

58. Other than Nitrate all other chemicals for which standards were prescribed were within the prescribed limits. Though these recommendations and findings of the Committee have been challenged before us we find that the method adopted by the Committee is just and reasonable and therefore accept the recommendations of the Committee in this regard.

59. In the other cases where the outlier values have not been considered, whether of ITRC or of other Laboratories, they are still within the standard limits. We however fail to understand how there could be such a huge difference in the analysis of the various samples taken on the same day from the same spot. Therefore, we direct that some other approved environmental laboratories should also carry out the sampling and analysis at the time of preparation of EIA.

60. Reliance has been placed by the petitioners on the Bio Assay test done by People Scientific Institute (PSI). This test has not been done at the behest of the Committee and we cannot accept its report straightway. However, we do find that the Committee has not got conducted any Bio Assay test and has relied only upon the Bio monitoring done by the H.P. Pollution Control Board. Keeping in view the fact that the area in question is mainly a rice growing area where water from the river and the aquifers will be used for irrigation of such crops we do feel that some specific Bio Assay test should have been conducted to find out what is the effect of the effluent on the rice and other crops growing in the area. We, therefore, direct that the Bio Assay test be also conducted at the time of preparation of E.I.A.

SOLID WASTES:

61. Even as per respondent No. 4 a huge amount of hazardous solid wastes shall be produced every day. The respondent No. 4 has provided for 1355 sq.mts. of area which according to it is sufficient to store the said waste for a period of 7 years. The Committee in this regard has observed as follows:

The Committee is of the view that this area requirement needs to be revised based on the basis of actual density of salt from spray dryer and ash from incinerator. Moreover, 7 years is too short a period and the Proponents must make a plan for 20 years based on real densities and masses. Land availability should be shown according to the HPSEP & PCB. Incinerator capacity should be revised accordingly.

It has also made the following recommendations at page 129:

A noticeable percentage of Mercury in Primary Sludge and Arsenic in Incinerator Ash has been seen (though it is within limits). Therefore, prescribed method for disposal of ash and other hazardous solid wastes should

be strictly adhered to. Poly lined impervious tanks should be used for disposal of hazardous waste as per the schematic diagram given in para 2.1.0 of volume-I.

Sufficient area should be earmarked for disposal of solid waste in a perspective plan for 20 years based on real density levels of solids to be disposed of.

Capacity of Incinerator should be sufficient to take care of revised load.

62. We feel that the committee has properly considered this issue. The respondent No. 4 has submitted that the solid waste will be packed in a leak proof bag in the hazardous waste management dumping site at village Mazra near Baddi. We are not in agreement with this submission. Till date no such hazardous waste dumping site has been set up. Permission cannot be granted on the basis of some speculation that such a hazardous waste management dumping site may be set up in future. Even if there is a proposal to set up such a site a number of clearances shall be required before such a site is actually set up. We are in fact of the view that keeping in view the estimated life of the plant the respondent No. 4 must make a provision for disposing of the solid waste for a period of 35 years and not 20 years as recommended by the Committee.

AIR POLLUTION:

63. Though the Committee has dealt with the analysis of the Incinerator Stack in detail we find that not much has been said about the Air Pollution to be caused by the use of huge diesel generating sets to be used in spray drawing. This aspect of the matter needs to be considered in detail. The respondent No. 4 is directed to furnish details of the DG sets proposed to be used by it. Thereafter, the H.P. State Pollution Control Board as well as the Central Pollution Control Board shall submit their recommendations to the IAA with regard to the effect of such diesel generating sets on the air and how these can be minimized and brought within permissible limits. This aspect shall also be addressed in the comprehensive EIA.

INCINERATOR STACK:

64. The report of the Committee is indeed alarming as far as this aspect of the matter is concerned. The relevant observations of the Committee are as follows:

The stack emission monitoring led to an alarming finding. Total Dioxin and Furans (0.269 ng TEQ/Nm3) exceed the guideline limit of 0.1 ng TEQ/ Nm3. Particulate matter (142.8*mg/ Nm3) reading also is exceeding the limit of 50 mg/Nm3. It is pertinent to mention here that no standards have so far been prescribed for Dioxin and Furans under the Environment (Protection) Act, 1986. In fact, no facilities for testing these two parameters are available in the country. The Central Pollution control Board has issued guidelines in this regard and the same are under consideration of Ministry of Environment Forests for being notified under the Environment (Protection) Act.

65. The Government of India has still not laid down standards for Flue gas emission. Recommendations of the Central Pollution Control Board in regard to flue gas emission norms are as follows: ---------- ------

PARAMETER EMISSION STANDARD ---------- ------

Particulars 50 mg/Nm3 Standard refers to half hourly average v alue

HCL 50 mg/Nm3 Standard refers to half hourly average v alue

SO2 200 mg/Nm3 Standard refers to half hourly average v alue

CO 100 mg/Nm3 Standard refers to half hourly average v alue

Total Organic Carbon 20 mg/Nm3 Standard refers to half hourly average v alue

HF 4 mg/Nm3 Standard refers to half hourly average v alue

NOx(NO and NO2 400 mg/Nm3

Expressed as NO2

Total Dioxins and furans 0.1 ng TEQ/Nm3 Standard refers to 6-8 hours sampling. P lease

refer guidelines for 17 concerned congen

ers

for toxic equivalence value to arrive at

total

toxic equivalence.

Cd+Th+Their compounds 0.05 mg/Nm3 Standard refers to sampling time anywher e

between 30 minutes and 8 hours

Hg and its compounds 0.05 mg/Nm3 Standard refers to sampling time anywher e

between 30 minutes and 8 hours

Sb+As+Pb+Cr+Co+Cu+ 0.05 mg/Nm3 Anywhere between 30 minutes and 8 hours Mn+Ni+V+ their

compounds

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According to these proposed standards total Dioxin and Furans should not exceed 0.1 ng TEQ./NMQ. These two gases are highly toxic and Carcinogenic. The Committee also felt that keeping in view the highly toxic nature of the gases and their harmful effect on living beings the recommendations of the CPCB may be followed. Therefore, the Committee directed that these values be got tested through SGS Netherlands. The effect of Dioxin and Furans on living beings are very dangerous and the Committee has summarized them as follows:

Besides causing cancer, Dioxin and Furans [particularly 2,3,7,8 -tetrachlorodibenzo-para-dioxin (TCDD)], exposure to Dioxin may result in skin lesions, such as chlorine and patchy darkening of the skin, and altered liver function. Though there are nearly 30 different kinds of Dioxins, Dioxin name as such is normally referred to 3, 7, 8- tetrachlorodibenzo-para-dioxin (TCDD), which is the probably one of the most toxic manmade substances. Long-term exposure is linked to impairment of the immune system, the developing nervous system, the endocrine system and reproductive functions. A copy of the study done by the World Health Organization regarding ill effects of Dioxins on human health has been enclosed as Annexure-49, continuous exposure to Dioxin may also lead to increased heart disease and increased diabetes. Dioxins ability to cause birth defects (teratogenicity) has not been established in humans but studies in mice have shown that

dioxin and similar chemicals can produce congenital defects.

66. Keeping in view the effect of these gases and taking cognizance of the concern felt by the committee the H.P. State Environment Protection Control Board awoke from its deep slumber and issued directions on 23.12.2005 directing the respondent No. 4 to stop the operation of the incinerator with immediate effect till the incinerator is properly designed to control Dioxin and Furans. However, we fail to understand how this solves the problem. This only leads to an increase in the solid waste which in all likelihood is also highly toxic. If the incinerator does not work then the toxic waste will definitely increase.

67. The Committee has made the following recommendations with regard to Flue gases:

Presence of Dioxins and Furans in Emission Gases from the Incinerator is an area of serious concern as these are not only carcinogenic but also have numerous other health hazards to humans as well as to the animals directly and through the food chain. Though based on a suggestion from the Committee, the State Pollution Control Board has already directed closing down of the incineration process, yet M/s. Ranbaxy has to take immediate Steps to get a new Incinerator put in place after getting the same approved by the Central Pollution Control Board. Other remedial measures as suggested by the Committee in para 3.12 should also be resorted to so as to reduce Dioxin emissions. If Dioxin emissions still exceed the prescribed limits (i.e. if these are not caused by incomplete combustion alone and these are related to certain bio-chemical processes which result in Dioxin generation, which cannot be controlled by incineration), the entire environmental clearance and operation of the Fermentation Plant will need to be reviewed.

The Ministry of Environment and Forests, Government of India should immediately notify the standards regarding flue gases (particularly Dioxins and Furans), which are currently in the form of CPCB guidelines.

Occupational health surveillance should be carried out periodically.

68. In our considered view, keeping in view the toxicity of the gases being emitted and their highly adverse effect on all living beings we feel that proposal for expansion of the fermentation plant needs to be reviewed. In our considered opinion it would not be proper to set up a plant of such huge capacity after making a huge investment and after some years order the plant to be closed down because it does not comply with the emission norms. It is the duty of respondent No. 4 before setting up the plant, to come out with a clear-cut proposal based on scientific data which can clearly demonstrate that the incinerator which it will use will reduce the emissions of Dioxins and Furans and other gases within the recommended limits. This cannot be left to be done at a later stage. From the entire proposal of the Committee as well as the response of the respondent No. 4 we find that with regard to Dioxin and Furans the solution given is that a new incinerator has been designed to ensure that the emission remains within the proposed limit. However, no material based on empirical research has been placed on record to show that the erection of this new incinerator will actually lead to reduction of Dioxin and Furans and to what extent. This aspect shall also be dealt with in the Comprehensive EIA.

69. The Committee has made a summary of its recommendations and conclusions in Chapter-IV of Volume-II of its report. We have already considered all the issues raised in detail above. In view of our aforesaid discussion after examining the matter in detail we give our issuewise findings and directions in the following terms:

DEVELOPMENT PLAN:

70. We find that the Development plan has been violated. In our opinion this is not a technical violation. Further we are not in agreement with the Committee that because the essentiality certificate had been given by the Director of Industries in the year 1992, therefore, there was no deliberate violation of the land laws. As held by us above the development plan clearly provides that the Ranbaxy Plant could not be permitted to be

expanded. Permission to expand the plant cannot be accorded without taking into consideration the earlier development plan. Even if the authorities feel that there is to be some relaxation or deviation from the development plan then strong reasons must be given in support of this view. This aspect must be dealt with while preparing the comprehensive EIA.

LAND LAWS:

71. With regard to the violation of the land laws we are of the view that though the same have been violated in letter and spirit but it is within the domain of the State Government if it so desires to condone the violations.

TCP:

72. We have come to the conclusion that the TCP Act has been violated but the violations are not so serious and the competent authority may consider the plea of the respondent No. 4 to compound the violations.

EXPLOSIVES ACT:

73. In view of our above discussion we are of the view that there is no serious violations of the Explosives Act. However, we accept the recommendations of the Committee that the respondent No. 4 should obtain no objection certificate from the concerned authority before setting up the plant.

FACTORIES ACT:

74. There is no doubt that the respondent No. 4 has violated the provisions of Section 41-A read with Sections 6 and 7 of the Factories Act especially with regard to the fermentation plant at Ganguwala. Therefore, the respondent No. 4 be dealt with strictly in accordance with the provisions of the Factories Act.

ZONING ATLAS:

75. Though we agree with the recommendations of the Committee that the Zoning Atlas is a useful tool based on macro level plan for siting of Industry, we are not in agreement with the Committee that the Zoning Atlas is only in the nature of internal guidelines and is not a legally enforceable document. The Zoning Atlas gives an overall view based on study in the area of the nature of type of Industries which can be set up in a particular areas. No doubt the Zoning Atlas may not be used for industry specific or site specific purposes but the guidelines given in the Zoning Atlas must be considered when any Industry is being setup. We, therefore, direct that the guidelines given in the Zoning Atlas shall be taken into consideration while preparing the EIA.

EIA:

76. In our view the EIA notification is a very important notification and in the present case the same has been violated in letter and spirit. The only EIA till date is for manufacture of Cephalosporins. In our considered view before respondent No. 4 is permitted to set-up the plant it must get prepared a comprehensive EIA as well as Environment Management Plan. These two documents will take into consideration the recommendations made in the Development Plan and also various guidelines issued in the Zoning Atlas. These documents would also show as to whether the guidelines are being complied with or not. In case the guidelines are being violated then there should be a recommendation whether they should be relaxed or not and if any guidelines are to be relaxed the reasons therefor. The EIA shall also necessarily give the effect of environmental pollution and the remedial measures to be taken by the respondent No. 4. In our view no industry can be set up without a proper EIA. It is for the Impact Assessment Authority and not for the Proponent of the Industry to decide whether a comprehensive EIA should be prepared or the Rapid EIA is sufficient to meet the needs of the Industry. Till this comprehensive EIA is filed and approved by the Impact Assessment Authority no further construction can be permitted to take place. We further direct that at the time

of preparation of EIA and EMP further sampling of and analysis of all types of effluent discharge (air, water and solid) shall be done through at least three approved Environmental Laboratories. Bio Assay test shall also be carried out to show what is the effect of effluent on the living creatures in the rivers as well as the crops being grown in the area.

PCB GUIDELINES:

77. The Committee in Clause 4.3 of Chapter-IV has recommended that the guidelines published by the State Pollution Control Board are unrealistic in the context of State of Himachal Pradesh. We see no reason to accept this recommendation of the Committee at this stage. We also find that the Committee found that no specific reserved forest or sanctuary has been specifically named by the petitioner. Even if the petitioners had not named such specific forest or sanctuary this fact could have easily been ascertained by the Committee from the maps or record. In any event we feel that the comprehensive EIA shall also take the PCB guidelines into consideration.

IMPACT ON WATER TABLE:

78. We accept the report of the Committee that the availability of water in the area is sufficient to meet the additional requirements of respondent No. 4. We also accept the recommendations of the Committee that two stages reverse osmosis plant with at least 80% efficiency should be used in the fermentation plant at Ganguwala to reduce the water utilized by the respondent No. 4 to 520 kilo liters per day. Respondent No. 4 shall use the treated water only for this purpose of recycling and not for any other purposes. We also accept the report of the Committee that such reverse osmosis plant be installed in the formulation plant at Batamandi also.

SOIL CHARACTERISTICS & INDUSTRIAL EFFLUENT AND WASTER WATER:

79. We accept the recommendations of the Committee with regard to the Soil Characteristics in para 4.8. We also accept the recommendations of the Committee in para 4.9 with regard to treatment of Industrial Effluent and Waste Water.

DISPOSAL OF SOLID WASTES:

80. We direct that in case the plaint is permitted to be set up, respondent No. 4 shall ensure that adequate provision is made for disposing of the solid wastes for a period of 35 years.

AIR POLLUTION:

81. In view of the detailed discussion above, we feel that until it is ensured that the presence of Dioxin and Furans in the flue gases emitted from the incinerator is reduced to levels below the limits recommended by the Central Pollution Control Board the plant cannot be permitted to be set up. In the EIA this matter shall be specifically dealt with and on the basis of clear-cut scientific data it will be shown how the emission of dioxin and furans will be brought within the said limits. We further direct the respondent No. 3 to consider the report of the Committee, the recommendations of the Central Pollution Control Board and to immediately and within 8 weeks from today to lay down the prescribed norms for such gases. After the EIA and EMP are filed by the Plant proponent respondent No. 4, public hearings shall be held as recommended by the Committee. In case the deviation from the development plan is approved by the competent authority and after consideration of the EIA and EMP if the Impact Assessment Authority also feels that the plant of respondent No. 4 should be permitted to set up, then in that eventuality the respondent No. 4 shall comply with the recommendations of the Committee made in paras 4.7, 4.9, 4.10 and 4.11.

SOCIAL ISSUES:

82. With regard to the recommendations in Clause 4.12 i.e. Social Issues we feel that the recommendations made in this paragraph are beyond the scope of the reference made by this Court to the Committee. These may form part of the EMP but this Court cannot accept these recommendations or issue any direction in this behalf.

MONITORING MECHANISM:

83. Recommendation in para 4.13 with regard to Monitoring Mechanism is accepted.

84. In view of the above, we are of the view that the expansion of the fermentation plant at Ganguwala cannot be permitted to go on until a comprehensive EIA and EMP is prepared and the same is taken into consideration by the various authorities before granting requisite permissions for setting up of the plant. The respondent No. 4 shall forthwith stop further construction or expansion of the fermentation plant at Ganguwala and shall not resume the construction thereof till it obtains all requisite permissions in the light of the directions issued above. As far as the formulation plant at Batamandi is concerned we feel that it will not cause any major pollution and the same can be set up subject to the directions given specifically with regard to the said plant.

85. The Committee has submitted a very comprehensive report and has dealt with all the matters in detail. This Court places on record its appreciation for the work done by the members of the Committee and experts associated therewith.

86. The writ petition is disposed of in the light of the aforesaid directions. No costs.