

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION NO.17 OF 2011**

Nicholas H. Almeida

....Petitioner

Versus

State of Maharashtra through its  
Chief Secretary & Ors.

....Respondents

Mr.G.R. Joshi with Mr. Vishal Kanade and Mr. Hemang Rayathatha i/b.  
RMG Law Associates for the Petitioner.

Mr.Ravi Kadam, Senior Advocate with Mr. Prashant Chavan, Shymali  
Gadre and Mr. C.M. Lokesh for the respondent No.5.

Mr. Nitin P. Deshpande, for respondent No.3.

Mrs. Vatsala Nair Singh, Secretary, Environment & Forest, Government  
of Maharashtra.

Mr. Milind Mhaiskar, Member Secretary, Maharashtra Pollution Control  
Board.

Mr. Hardik Shah, Member Secretary, Gujrat Pollution Control Board

Mr. Chhatarapati Shivaji, CEO, MIDC.

Dr. B.N. Patil, Director (Environment)

Mr. D.P. Devla, senior Law Officer, Maharashtra Pollution Control  
Board.

Dr.A.R. Supate, Principal Scientific Officer, Maharashtra Pollution  
Control Board.

Dr. Rakesh Kumar, Din, DEERI.

Mr. K.P. Nyati, CEO, Sustainable Mining Initiative.

Mr. Shailesh Patwari, Chairman, Naroda Environment Projects,  
Ahmedabad.

Mr. Smesh Bhosale, President – Mahad Manufacturers Association.

**CORAM: MOHIT S. SHAH, C.J. &**

**MRS.ROSHAN DALVI, J.**

**DATED : 01 March 2012.**

**P.C.**

The principal grievance in the PIL is that though the State Government has granted certain concessions in favour of the industries in the MIDC on the basis that MIDC Estates have CETPs which are

supposed to treat the industrial effluents, since the CETPs are not properly functional, the entire object of such concessions is defeated and that, therefore, new industries should not be permitted to be set up in such MIDC Estates.

2. We also find from the Exhibit -R-VIII at page 266 annexed to the affidavit in reply filed on behalf of the Maharashtra Pollution Control Board that by notification dated September 2, 2008 under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 Central Pollution Control Board has issued the following directions:-

“(1) To initiate monitoring programme for all CETPs at least every quarter and take follow up action against industries/CETPs not complying with the prescribed standards, and

(2) Not to permit expansion/establishment of the industrial units in the areas where the associated CETPs are not complying with the required standards and where such CETPs do not have adequate hydraulic load capacities, and

(3) To submit action taken report every quarter on (1) and (2) above within one month of every quarter to CPCB.”

3. Thereafter the Maharashtra Pollution Control Board has issued Circular dated 3 December 2011 giving the following directions:-

“Instead of considering grant of individual NOCs for the allotment of plot in each case, the MIDC can take suitable decision at the time of allotment of plot, on the basis of preliminary examination of the process and generation of wastes and an undertaking from the industry concerned that subject to the condition that the industries having zero discharge and/or using cleaner technologies, subject to the

achievement of stringent standards laid down in the consent order, which will be confirmed to the stream standards unless the disposal of treated effluent is on land for irrigation purpose or gardening and tree plantation or otherwise recycled/refused in the process itself can be permitted with the undertakings to achieve zero discharge and not to dispose of treated effluent to CETP till upgradation of CETPs and ETPs are completed as well as by imposing specific conditions that the effect in the allotment of plot and making it clear that in case of violation, the MIDC reserves its right to cancel the allotment and to take back the possession of the plot. Thereafter at the time of grant of consent to establish, the MPCB will ask the project proponent to submit a detailed proposal about the proposed expansion /modernization/ new industrial establishment ensuring that the above condition in respect of zero discharge/utilization of treated effluent and not to discharge it into CETP till upgradation is being completed. Henceforth, the MIDC will not refer the cases of allotment of plot unless in a particular case, it may require the guidance of the Maharashtra Pollution Control Board on account of implication of the process generating effluent and its disposal system.

The concerned Regional Officer and Sub-Regional Officer will ensure that the Board will continue its monitoring programme for all the CETPs at least every quarter and will take follow up action against the industries and the CETPs not complying with the standards.....”

4. Having heard Mr. Ravi Kadam, learned Counsel for Maharashtra Industrial Development Corporation (MIDC) with Mr. Chhatrapati Shivaji, Chief Executive Officer of MIDC, Mr. Saluja, learned A.G.P., with Mrs. Vatsala Nair Singh, Secretary, Environment and Forests and Mr. Nitin Deshpande, the learned counsel appearing for the Maharashtra Pollution Control Board (MPCB) with Mr. Milind Mhaikar, Member Secretary, MPCB and its officers, we are of the view

that before this Court issues any general directions about monitoring of the pollution levels in all MIDC Estates in the State of Maharashtra, as a pilot project, it is necessary to issue the following ad-interim directions, as far as MIDC Mahad is concerned:-

- (1) The Co-operative Society running CETP in MIDC Mahad shall ensure that the effluents being received from the chemical industries meet with the inlet norms for the CETP, so that after the treatment, the CETP is able to release the treated effluents within the permissible norms.
- (2) In case the Co-operative Society running CEPT finds that the effluents being sent by an individual industrial unit into the CETP inlet are carrying such high pollution load that CETP will not be in a position to treat the same for the purpose of meeting with the CETP outlet norms, the Co-operative Society shall discontinue receiving such effluents from the concerned individual industrial unit after giving prior notice and thereupon the concerned industrial unit shall stop all manufacturing activities.
- (3) For ensuring effective compliance with the above direction, MIDC and the Mahad Manufacturers Association shall make necessary arrangements for providing sumps for storing effluents being received from individual industries for the purpose of

treatment in the CETP. It is made clear that even before such sumps are provided, directions nos.(1) and (2) above may be given and shall be complied with by the concerned industrial unit.

- (4) Hereafter any industrial unit in MIDC, Mahad having its own effluent treatment plant shall not carry on any manufacturing activity whenever its effluent treatment plant is not functioning for any reason whatsoever, whether for maintenance, repairs or for any reason whatsoever.
- (5) Similarly, whenever the CETP is not functioning for any reason whatsoever, the Co-operative Society shall call upon its members to stop manufacturing activities and the manufacturers shall thereupon stop their manufacturing activities.
- (6) With effect from 1 April 2012 each industrial unit in MIDC, Mahad having its own effluent treatment plant shall have a separate electric meter for its effluent treatment plant.

5. MIDC and Mahad Manufacturers Association shall inform CETP Co-operative Society and all its members about the aforesaid directions.

6. Out of 9 industries which have recently been served with the closure orders, Shree Hari Chemicals Export Ltd., manufacturing H. Acid shall not be permitted to restart its manufacturing activities without obtaining prior permission of this Court.
7. As far as the other 8 industries served with the closure notices are concerned, they will not be permitted by MIDC and MPCB to restart manufacturing activities until they satisfy MPCB that they are in a position to control the pollution levels of treated effluents to such an extent that CETP in MIDC, Mahad is able to receive such effluents and treat them so as to discharge treated effluent within the permissible norms.
8. By 24 March 2012 the MPCB shall submit a report indicating the functioning of CETP in MIDC Mahad, on the basis of continuous daily monitoring of the CETP in the next three weeks.
9. The MPCB shall also submit a report indicating the functioning of the CETPs in other 15 MIDC Estates on the basis of monitoring done at least on weekly basis.
10. We note that the Secretary, Environment and Forest has stated in the affidavit dated 1 March 2012, inter alia, as under:-

“I further say that, if existing facilities such as CETP or pipelines for collection and disposal are not maintained properly to achieve the stipulated desired discharge standards, this provision of setting up of industries beyond 750 meter in A-II class will not be made applicable to MIDC”.

There is some debate on the above statement. It will be open to the parties to make submissions regarding the same at the next hearing.

11. Mr. Ravi Kadam, learned counsel for MIDC states that when the MIDC had levied compensation amounts from the polluting industries by way of infrastructure damage charge, the Mahad Manufacturers Association filed Civil Suit No.28 of 2008 in the Court of Civil Judge, Junior Division, Mahad and ad-interim stay orders have been passed by the trial Court in the said suit.

12. Since the President of the Mahad Manufacturers Association is present at the hearing today, after hearing the learned counsel for the MIDC as well as the President of the Mahad Manufacturers Association, in suo moto exercise of our jurisdiction under Article 227 of the Constitution, **we transfer the proceedings of Civil Suit No.28 of 2006 from the Court of Civil Judge, Junior Division, Mahad to this Court. Record and proceedings of the said suit shall be called for by the Registrar (Judicial) so as to reach this Court by 22 March 2012.**

13. The MIDC shall submit a report indicating compliance with the directions of 3 December 2011. This shall be done by 22 March 2012.

14. The learned Counsel for the MPCB requested that correction be made in the order dated 22 December 2011 as regards the statement made that the Chairman, MPCB had modified the order of closure. It is stated that the modification order was also passed by the

Member Secretary, MPCB after hearing the concerned industries. Request is granted and correction accordingly be made in the order dated 22 December 2011.

15. Copies of the affidavits/reports shall be served on the learned Counsel for all the parties and also on the President of Mahad Manufacturers Association by March 26, 2012.

16. The next date of hearing of this PIL and the interim injunction application in the said suit No.28 of 2006 shall be **Friday 30 March 2012 at 3.00 p.m.**

*(CHIEF JUSTICE)*

*(MRS.ROSHAN DALVI, J.)*