

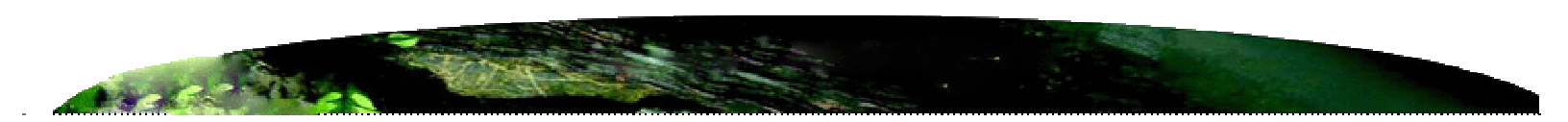
OLEUM GAS LEAK CASE ON STRICT LIABILITY

Writ Petition (Civil) No.12739 of 1985, M.C.Mehta Vs Union of India & Ors.



Cost of resistance: Adivasi burn their dead

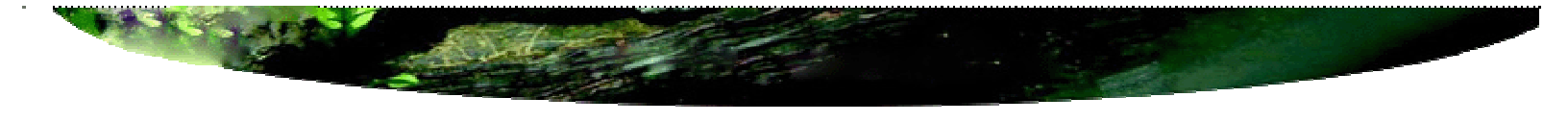
The petitioner, Shri M.C.Mehta filed this Writ Petition in the year 1985 under Article 32 of the Constitution of India, and sought directions from the Hon'ble Court that various units of Shriram Industries were hazardous to the community therefore directed to be closed. After hearing the arguments, the three judges Bench passed the judgment on 17.2.1986, permitted the Shriram Food and Fertilisers Industries (hereinafter referred to as SFFI) to restart its power plant and also plants for manufacture of caustic chlorine including its by-products and recovery plants like soap, glycerin and technical hard oil subject to certain conditions given in the three judges Bench judgment. The only point in dispute related whether the units of SFFI should be directed to be removed from the place where they were presently situated and relocated in another place where there would not be much human habitation so that these would not be any real danger to the health and safety of the people is to be decided.

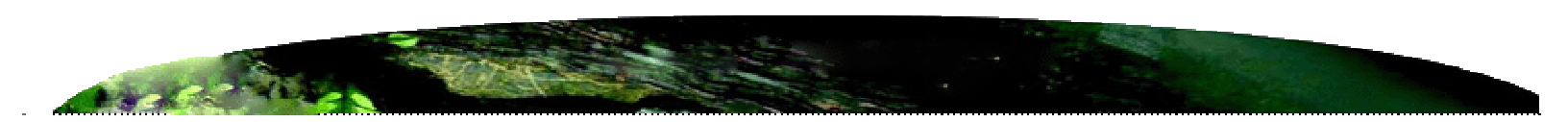


But while the writ petition was pending, there was a leak of oleum gas from one of the units of SFFI on 4th and 6th December, 1985. A Number of applications were filed by the Delhi Legal Aid & Advice Board and the Delhi Bar Association for award of compensation to the persons who suffered on account of leakage of oleum gas. When the matter for compensation heard by three judges Bench it was felt that since the issues raised involved substantial question of law relating to the interpretation of Article 21 and 32 of the Constitution, and the case was referred to a larger Bench of five judges.

On behalf of SFFI Industries, a preliminary objection was raised that the Court can't proceed to decide compensation since there was no claim for compensation originally made in the writ petition and those issues could not be said to arise on the writ petition. The Petitioner even not applied for amendment of the Petition so as to include a claim for compensation for the victims of the oleum gas. After hearing the counsels of the both sides, the Hon'ble Court held as follows:

"These applications for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hypertechnical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of Law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court".



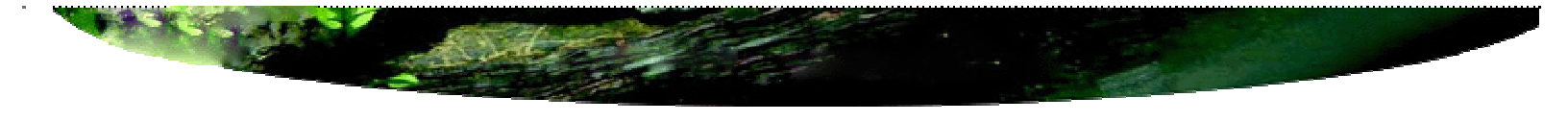


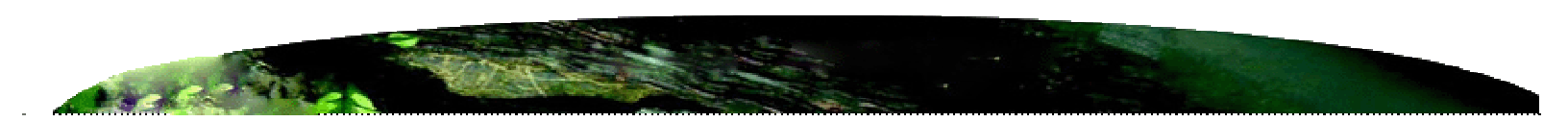
The Hon'ble Court further observed that if the court was prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who could not approach the court for justice, there was no reason why these applications for compensation of the persons affected by the oleum gas leak should not be entertained under Article 21 of the Constitution.

"As regards to the first question as to what is the scope and ambit of the jurisdiction of this Court under Article 32, the Hon'ble court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people particularly in the case of poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning".

The Hon'ble Court observed that the industry was located in an 'air pollution control area' and also subjected to regulation of the Air (Prevention and Control of Pollution) Act, 1981. Moreover, the SFFI industries was engaged in the manufacturing of caustic soda, chlorine, etc. It's various units were set up in a single complex surrounded by thickly populated colonies. The Chlorine gas is admittedly dangerous to life and health. If the gas escaped either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well being of the people living in the vicinity could be seriously affected. Thus, the SFFI was engaged in an activity which has the potential to invade the right of life of large section of people.

The Court while determining the liability of the industry, the question as to what was the measure of liability of an enterprise which was engaged in an hazardous or inherently dangerous including if by an accident persons died or were injured. Did the rule in **Rylands Vs Flecher** apply? The rule in Rylands Vs Flecher was evolved in the year 1866 and it provided, "a person who for his own purposes bring on to his land and collect and keeps there anything likely to do

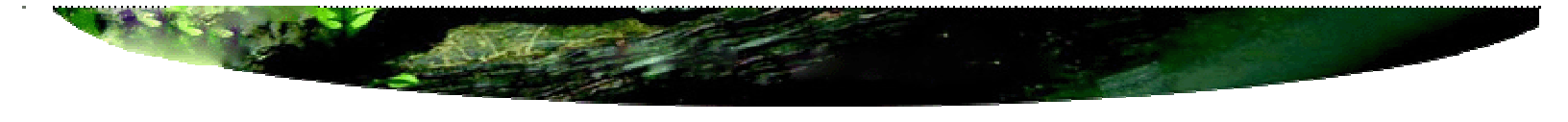


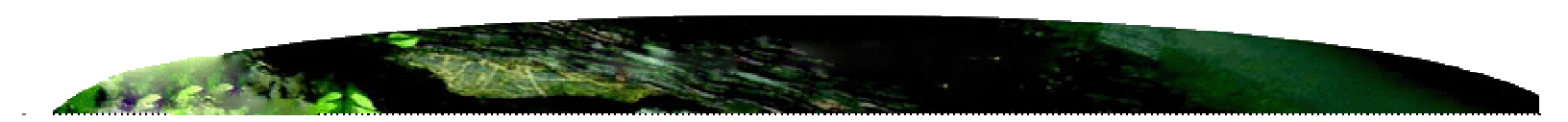


mischief if it escaped must keep it at his peril, if he failed to do so, was prima facie liable for the damages". The liability under this rule was strict and it was no defence that thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that a person who on his land collected and kept anything likely to harm and if such things escaped and did damage to another, he was liable to compensate for the damage caused.

This rule applies only to non-natural user of the land or where the escape was due to an act of God and an act of a stranger or by the default of the person injured. The Hon'ble Court observed that an enterprise which was engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm caused to anyone on account of hazardous or inherently dangerous nature of the activity which it had undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

Since, the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous matter of inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost

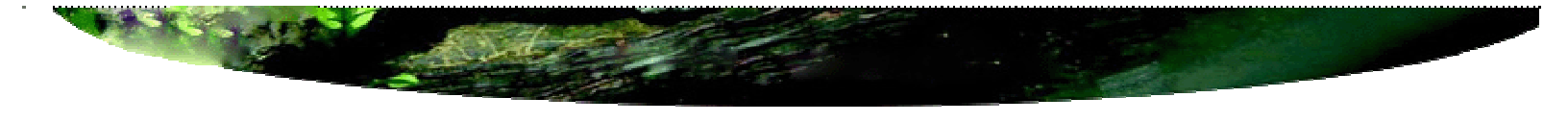


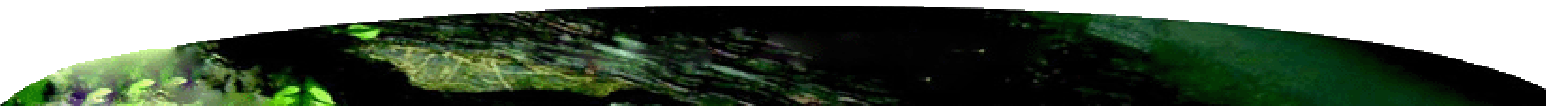


of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. The Hon'ble Court therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortuous principle of strict liability under the rule in **Rylands vs. Fletcher**.

The Hon'ble Court observed that the measure of compensation be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

The Hon'ble Court further ordered that it would not be justified in setting up a special machinery for investigation of the claims for compensation made by the victims of oleum gas leak. But the Delhi Legal Aid and Advice Board directed to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from the date of this





order and the Delhi Administration was directed to provide necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court would nominate one or more Judges as may be necessary for the purpose of trying such actions so that they might be expeditiously disposed of. With these directions the petition was disposed of on 20.12.1986.

