

Judicial Foresight and Legislative Delay: A Critical Analysis of A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718

– Keshav Joshi¹, Siddharth Uppal²

INTRODUCTION

A.P. Pollution Control Board v. Prof. M.V. Nayudu is an important landmark case in Indian environmental jurisprudence. The judgment has an important position in Indian public law because it addressed not only substantive principles of environmental protection but also the institutional challenges involved in adjudicating scientifically complex disputes. In doing so, the court went beyond the immediate controversy before the Court and also considered how environmental justice should be administered in India. What makes this

case significant is not the principles it laid down, but the institutional vision it advanced. At a time when specialised environmental adjudicatory mechanisms were largely absent, the Court recognised that conventional judicial processes were often inadequate for resolving disputes involving technical and scientific questions. This recognition forms the central theme of the judgment and distinguishes it from many earlier environmental decisions that primarily focused on developing substantive legal principles.

The case was decided on 27 January, 1999, by a Division Bench of the Hon'ble Supreme Court of India comprising S.B. Majmudar and M. Jagannadha Rao, JJ. The case can be seen as an example of advanced judicial thinking. Rather than limiting itself to the immediate dispute,

¹ Student, SVKM'S Narsee Monjee Institute of Management Studies, Deemed to be University, Indore.

² Student, SVKM'S Narsee Monjee Institute of Management Studies, Deemed to be University, Indore.

the Court examined broader problems in environmental governance and considered how institutional reforms could improve the quality of environmental adjudication in the future. At the fundamental level, this case deals with three interrelated challenges, the inability of the traditional Court to handle complex scientific questions, the need for a principled framework for determining industrial pollution risks and the structural limitation of the environmental appellate architecture. These concerns showed a growing judicial awareness that effective environmental protection depends not only upon substantive legal principles but also upon the institutional capacity to implement them. Without scientifically competent adjudicatory bodies, even well-developed environmental laws risk ineffective enforcement.

The Court laid down principles such as the precautionary principle, reversed the

burden of proof and the power of the Court to refer matters to expert bodies, that continue to influence the environmental adjudication in India to this day.³ Environmental disputes creates particular challenges for constitutional courts because they often involve scientific uncertainty, competing expert opinions and the possibility of irreversible ecological damage. This is different from conventional litigation because environmental adjudication often requires courts to balance developmental objectives with ecological preservation while making decisions even when complete scientific certainty is not available. The present case addressed these difficulties by advocating a preventive approach to environmental governance and recognising the need for expert-assisted decision-making. In this respect, the judgment not only resolved a dispute concerning industrial pollution but also

³ A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Others, (1999) 2 SCC 718.

presented a broader institutional approach that ultimately contributed to the development of specialised environmental justice in India. This paper critically analyses the judgement across factual, doctrinal and institutional dimensions recognizing both the contributions and its limitations.

FACTS OF THE CASE

In January 1995, Surana Oils and Derivatives (India) Ltd. (hereinafter "the Company") was incorporated as a public limited company for the production of BSS grade castor oil derivatives, including hydrogenated castor oil. On September 1995 the company purchased 12 acres of land and sought clearance from the A.P. Pollution Control Board (hereinafter "the board") under section 25 of the water (prevention and control of pollution) Act, 1974⁴.

The board rejected the application, classifying the industry as falling under

the "red" (hazardous) category under MOEF classification, and the proposed site was within the 10 km catchment area of the Himayat Sagar and Osman Sagar Lakes, which is the principal source of the drinking water for the cities of Hyderabad and Secunderabad. The Government of Andhra Pradesh had itself prohibited various forms of development within this 10 km radius to protect water quality.⁵

Aggrieved, the Company appealed under Section 28 of the Water Act. The appellate authority (Justice M. Ranga Reddy, Retd.) by order dated 5-1-1998 held the industry was not a polluting one, relying on expert affidavits filed by the Company, and directed the Board to grant consent. The Hon'ble High Court upheld this order. The Board, along with the Society for Preservation of Environment and Quality of Life (SPEQL), appealed to the Hon'ble Supreme Court.⁶

⁴ *Id.* at para. 9.

⁵ *Id.* at para. 15; Government of Andhra Pradesh, GOMs No. 192 dated 31-3-1994.

⁶ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, paras. 16-20.

ISSUES BEFORE THE COURT

Following were the issues identified by the Hon'ble Supreme Court for determination:

- Whether the Supreme Court or the High Courts while dealing with the environmental matters under art. 32, 136 or 226 of the constitution, can refer scientific and technical aspects for investigation and opinions to expert statutory bodies?
- What is the status and applicability of the precautionary principle in Indian environmental jurisprudence?
- Whether the current appellate framework under Indian environmental statute meets the standard of adequate judicial and scientific expertise?

THE JUDGMENT

A. Power of Courts to Refer Matters to Expert Bodies

The Court held, in the affirmative, that both the Supreme Court under Articles 32 and 136 and High Courts under Article 226 may refer scientific and technical aspects of environmental matters for investigation and opinion to expert bodies such as the NEAA. The Court's reasoning rested on the constitutional equivalence between environmental concerns and human rights, both traceable to Article 21, which guarantees the right to life and liberty. While environmental aspects touch "life", human rights aspects concern "liberty".⁷ Drawing upon the precedent in *Paramjit Kaur v. State of Punjab*,⁸ where the Court had used the National Human Rights Commission as an institutional arm, the Court held that the NEAA comprising a retired Supreme Court Judge and technical members with environmental expertise could function as a reference body, its opinions being subject to the Court's ultimate approval.

⁷ *Id.* at paras. 57–58.

⁸ *Paramjit Kaur v. State of Punjab*, (1999) 2 SCC 131.

Accordingly, two questions were referred to the NEAA for opinion within three months: (a) whether the respondent-industry was a hazardous one, and what was its pollution potentiality having regard to its products, effluents and location; and (b) whether its operation was likely to affect the sensitive catchment area of the Himayat Sagar and Osman Sagar Lakes supplying drinking water to Hyderabad and Secunderabad.⁹

B. The Precautionary Principle and Reversal of Burden of Proof

The Court undertook an elaboration of the precautionary principle and made a significant shift from the 'assimilative capacity model' of the 1972 Stockholm Declaration, which assumed that "scientific knowledge could adequately predict environmental harm", to the 'precautionary model' reflected in the Rio Declaration, 1992. The latter

recognizes that "where there is a threat of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as the reason for postponing the cost-effective measures to prevent the environmental degradation".¹⁰ The Court reaffirmed the position taken in *Vellore Citizens' Welfare Forum v. Union of India*,¹¹ wherein it declared that both the precautionary principle and the polluter pay principle to be firmly embedded in Indian environmental law.

Further the Court recognized a special rule regarding the burden of proof applicable in environmental cases. It held that the burden to prove absence of any injurious effect on the environment lies upon the party seeking to alter the status quo, such as the developers or

⁹ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, paras. 59, 62.

¹⁰ Rio Declaration on Environment and Development, Principle 15 (1992); *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, paras. 31-35.

¹¹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, para. 14.

industrialists, rather than those who are seeking to preserve it.¹²

C. Deficiencies in Environmental Appellate Bodies

The Court critically examined appellate authorities under the Water Act, the Air Act, the Hazardous Wastes Rules, and the Environment (Protection) Act, finding that most lacked the requisite combination of judicial and scientific expertise. It directed the Central and State Governments to urgently amend relevant statutes, rules, and notifications to ensure that all environmental Courts, tribunals, and appellate authorities invariably include a Judge of the rank of a High Court Judge, sitting or retired and a scientist or group of scientists of high ranking and experience.¹³

CRITICAL ANALYSIS

¹² *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, paras. 37-39; Indian Evidence Act, 1872, §§101, 106, No. 1, Acts of Parliament, 1872 (India).

¹³ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, paras. 42-43, 47-48.

A. Judicial Legislation in the Absence of Parliamentary Action: The NGT Connection

The significant dimension of this judgment is its examination of the relation between judicial direction and legislative response to a problem in India. In the year 1999, the Court identified the absence of scientifically competent appellate bodies as a "grave inadequacy" and gave directions for statutory amendment.¹⁴ However, despite these directions, Parliament did not make any legislative action. Only after a decade, along with sustained pressure of environmental litigation, the Parliament enacted the National Green Tribunal Act, 2010. This established the institution that the Court had envisioned in this case, 'a body consisting of judicial and scientific experts in environmental disciplines'.¹⁵ The considerable gap

¹⁴ *Id.* at para. 41.

¹⁵ National Green Tribunal Act, 2010, § 4(1), No. 19, Acts of Parliament, 2010 (India); SHYAM DIVAN & ARMIN ROSENCRAZ, ENVIRONMENTAL LAW AND POLICY IN INDIA 50-60 (2d ed. 2001).

between the Court's recommendation and its eventual legislative implementation is itself significant. During this period, environmental disputes continued to be dealt with by appellate authorities that often lacked the combination of judicial and scientific expertise considered essential by the Court. As a result, the institutional deficiencies identified by the judgment continued for more than a decade, this shows that even well-reasoned judicial directions cannot by themselves bring about structural reform unless there is also legislative action to support them. This represents a relatively rare situation where judicial vision went ahead of legislative action, instead of merely responding to legislative action.

The Court in this case was not merely deciding a dispute, but in substance was also suggesting an institutional design. Ordinarily, questions concerning the composition, jurisdiction and functioning of adjudicatory institutions fall within the legislative domain. Courts

are generally expected to interpret and apply the law rather than recommend the structural design of future institutions. However, environmental adjudication presented an exceptional situation because the existing statutory framework failed to provide a forum capable of effectively dealing with complex scientific questions. It was this institutional vacuum that prompted the Court to move beyond conventional adjudication and recommend systemic reforms. While it was necessary to make a foundation for Indian environmental jurisprudence, it raises a broader question regarding the separation of power. This is not the first time of such judicial action. In the case of *M.C. Mehta v. Union of India (Oleum Gas Leak case)*,¹⁶ the Court evolved the doctrine of absolute liability, thereby creating a new standard of liability in absence of legislative guidance. Such development shows how judicial intervention, though necessary sometimes, can blur the boundaries

¹⁶ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

between adjudication and legislation. Unlike the evolution of legal doctrines through judicial interpretation, recommendations concerning institutional reforms have consequences extending beyond the immediate dispute. They influence the future structure of environmental governance and the manner in which similar disputes will be resolved. This makes judicial observations regarding institutional design particularly significant, while simultaneously inviting greater scrutiny from the perspective of constitutional separation of powers. Moreover, the direction given in this case without any timeline becomes aspirational rather than obligatory, effective only when Parliament chose to act.¹⁷

Yet to classify this as judicial overreach would be to misread the constitutional context. Articles 32 and 21,¹⁸ impose an

affirmative obligation on the Court to ensure protection of fundamental rights, which includes the right to a clean and healthy environment. In situations where Parliament has failed to create such mechanisms, the Court's intervention becomes the only safeguard available to citizens. This action finds its legitimacy in the case of *Bandhua Mukti Morcha v. Union of India*,¹⁹ where the hon'ble Court held that "when the fundamental rights are affected due to state inaction, the Court is not only empowered but obligated to fill the vacuum". Thus, what appears as judicial overreach can also be understood as the constitutional necessity. Nevertheless, such judicial expansion must remain within constitutional limits, as cautioned in *Divisional Manager, Aravali Golf Club v. Chander Hass*,²⁰ to preserve the balance between institutional roles.

¹⁷ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, para. 65.

¹⁸ INDIA CONST. Arts. 21, 32.

¹⁹ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

²⁰ *Divisional Manager, Aravali Golf Club v. Chander Hass*, (2008) 1 SCC 683.

B. The Precautionary Principle: India's Broader Adoption and Its Costs

India's judicial adoption of the precautionary principle, as seen in this case and in *Vellore Citizens Welfare Forum v. Union of India*,²¹ is broader in certain important respects than its international formulation. Rio Principle 15 contemplates action in the face of threats of "serious or irreversible" damage, a relatively high threshold. However, the Court in the present case applied precautionary reasoning at the permission stage itself, before the industry had commenced operations, and without conclusively establishing that the proposed activity posed a threat of serious or irreversible harm. The harm was uncertain, not demonstrably serious.²² This reflects a shift from a

threshold-based application of the principle to a more expansive, risk-averse approach in Indian environmental jurisprudence. This approach demonstrates the Court's preference for preventive environmental governance over reactive regulation. By requiring potential risks to be evaluated before industrial activities commence, the Court sought to minimise the possibility of irreversible environmental harm rather than relying solely upon remedial measures after damage had already occurred.

Moreover, the Court in this case reversed the evidentiary burden which goes beyond what most international instruments require. At its core, the International environmental law provides that, "*do not wait for full scientific certainty before taking protective measures*". But, the Court in this case added, "*the developer must prove that its activity is safe*". This is an important doctrinal addition, one that departs from the framework of Sections 101 and 106 of

²¹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

²² Rio Declaration on Environment and Development, Principle 15 (1992); Charmian Barton, The Status of the Precautionary Principle in Australia, 22 HARV. ENV'T L. REV. 509, 510–11 (1998), cited in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, para. 29.

the Evidence Act, 1872 without any legislative mandate to do so.²³ The Court relied instead on the evolving principles of customary international law, a basis that while persuasive, is not equivalent to statutory authority in domestic law. This raises important concerns regarding the legitimacy of judicially altering evidentiary standards in the absence of clear legislative sanction. Nevertheless, the unique nature of environmental disputes provides a practical justification for this approach. Developers generally have greater access to scientific data and technical information about the environmental impact of their proposed activities. Affected communities may not have the same resources. For this reason, placing a greater evidentiary responsibility on developers can be justified.

However, this approach has also been criticised. In *Narmada Bachao Andolan v. Union of India*, the Supreme Court

cautioned against excessive reliance on precaution in the absence of concrete evidence of harm, emphasizing on the balance between environmental protection and economic progress. The Court permitted the construction of the dam despite the environmental concern raised, signalling that precaution should not operate as an absolute barrier to development.²⁴

The broader application of the principle also raises practical concerns. The effectiveness of this approach, however, depends upon the availability of reliable scientific assessments and consistent regulatory standards. Where objective scientific evidence is lacking, the principle may be applied inconsistently. This can create uncertainty for both regulators and industries. The principle is particularly important in ecologically sensitive areas, such as the catchment zones of drinking water lakes. That is especially relevant in the present case,

²³ Indian Evidence Act, 1872, §§ 101, 106, No. 1, Acts of Parliament, 1872 (India).

²⁴ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

where regulatory failure could have serious consequences. At the same time, its application may create difficulties for legitimate industrial activity. Small and medium-sized enterprises may not have the financial or technical resources required for extensive environmental assessments. A more balanced way to this principle would be to 'limit the reversal of the burden of proof to the cases involving sensitive ecosystems or inherently hazardous activities'. This would be a more practical and equitable approach. This marks a clear judicial shift from evidentiary neutrality to a precaution-driven allocation of risk.

C. Structural Failure of the Appellate Authority: A Self-Proving Problem

The Court's criticism of existing appellate authorities is particularly evident in the case before it. The appellate authority that overturned the Board's rejection was a single retired High Court Judge with no scientific member. He relied entirely upon

affidavits submitted by experts engaged by the Company, a body of evidence that was neither independent nor adversarial tested.²⁵ This is not a procedural technicality. The composition of an adjudicatory body directly influences the quality of its decision-making, particularly in disputes involving specialised scientific knowledge. Where technical issues are assessed without adequate scientific assistance, there is a greater risk that legal conclusions may fail to reflect the underlying environmental realities. The determination of whether a chemical industry poses a pollution risk to drinking water sources, at its core, is a question of science, not of legal interpretation. Such environmental disputes need "*technocratic adjudication*", a concept that is increasingly recognised under environmental governance literature, that combines legal reasoning with scientific expertise. Such a

²⁵ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, para. 16.

multidisciplinary approach acknowledges that environmental disputes cannot be resolved solely through conventional legal analysis. Effective adjudication requires judges and scientific experts to complement one another, ensuring that legal principles are applied with an informed understanding of the technical issues involved in each case.

Lord Woolf's observations, cited by the Court are opposite, 'a multi-skilled body combining judicial and technical expertise would be a "one-stop shop" for environmental disputes, leading to faster, cheaper, and more effective resolution'.²⁶ Beyond improving efficiency, specialised environmental adjudicatory bodies also enhance the credibility and legitimacy of environmental decision-making. Decisions supported by independent scientific expertise are more likely to inspire public confidence and reduce disputes arising from conflicting

technical opinions. The Court's endorsement of this vision, along with its finding that India's existing appellate bodies fell far short of it, represents one of the most significant practical aspects of the judgment. The direction to include highly qualified scientists alongside judicial members in environmental appellate fora was not merely a peripheral observation. It formed the central part of the Court's institutional critique. This vision ultimately laid the foundation for the later establishment of specialised environmental tribunals in India.

D. The Development-Environment Tension: An Unresolved Legacy

The judgment does not completely resolve the question of whether the Company should be permitted to operate. It refers two questions to the NEAA and leaves the matter open. The Court left the Company in a state of prolonged uncertainty after having invested substantially in land and other

²⁶ Lord Woolf, *Are the Judiciary Environmentally Myopic?*, 4 J. ENV'T L. 1 (1992).

preparatory work. The Gram Panchayat of Peddaspur, which had approved plans for the factory, and the local workforce that would have been employed by it, received no consideration in the Court's reasoning.²⁷

The case presents a broader tension between the precautionary principle and sustainable development in the environmental jurisprudence. Although, the Court recognized sustainable development as a constitutional value, in practice it is unclear. Sustainable development, as recognized under Articles 47 and 48A of the constitution,²⁸ does not bar industrial activity; rather, such practices must be regulated in a way that meets the needs of sustainable development. A truly sustainable development structure would also take responsibility for the social and economic costs of prohibition. For a developing country like India, it is

difficult to ignore the loss of livelihoods, reduced tax revenue and the forgone regional development that may result from excessive restrictions on industrial activity.²⁹ The Court's analysis, though rich in environmental doctrine, is correspondingly thin on this dimension. This results in an implicit prioritization of environmental protection over developmental considerations. The similar concern has been addressed by the Hon'ble Supreme Court in the *Narmada Bachao Andolan v. Union of India*,³⁰ where the Court emphasised the need to balance environmental protection with development priorities. Thus, the judgment leaves unresolved 'the fundamental challenge of reconciling environmental caution with developmental necessity in a developing economy'.

IMPACT AND SIGNIFICANCE

²⁷ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, para. 3.

²⁸ INDIA CONST. arts. 47, 48A.

²⁹ WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 43 (Oxford University Press 1987).

³⁰ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

This judgement is significant because it functions at three levels. First, at doctrinal level, it introduced the precautionary principle and reversed the burden of proof, making it a feature of the environmental law. It gives the Courts and tribunals a much-needed coherent framework that navigates scientific uncertainty. In doing so, the judgment strengthened the ability of constitutional courts to address environmental disputes where scientific evidence is uncertain or contested. Its doctrinal contribution continues to guide judicial reasoning in situations where environmental risks cannot be established with complete certainty.

Second, at institutional level, it recognized the structural deficiencies, which was later addressed by the National Green Tribunal act 2010. This makes it one of the rare judgments whose directions were implemented by legislative action.³¹ The eventual

establishment of the National Green Tribunal demonstrates that judicial observations, although not immediately enforceable as legislative measures, can influence the long-term development of legal institutions. In this respect, the judgment shows how constitutional adjudication can shape environmental governance beyond the immediate dispute.

Further, at the constitutional level, this case expanded the scope of article 21.³² The Court treated environmental protection as an important component of human rights, recognising that both are connected to the right to life and liberty. Later judgments, including *M.C. Mehta v. Union of India* and decisions of the NGT, have relied on this constitutional foundation. More broadly, the judgment continues to hold an important place in Indian environmental jurisprudence because it brings together constitutional values, environmental principles and

³¹ National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).

³² *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, paras. 36-39.

institutional reform. Its influence therefore extends beyond the dispute itself. The judgment provides a useful reference for understanding the changing relationship between environmental protection, scientific expertise and constitutional governance.

CONCLUSION

A.P. Pollution Control Board v. Prof. M.V. Nayudu presents not only a precedent, but also acts as a diagnosis. It identified the two core issues of Indian environmental adjudication in 1999, the ill-equipped Courts to decide scientific claims, and the appellate bodies, structurally incapable of combining legal and technical competence. The precautionary principle and the reversal of burden of proof were the response of the judgement to these issues.

The judgment's lasting contribution is giving a new dimension to environmental jurisprudence. In directing the legislation for the creation

of the bodies with legal and scientific expertise, the Court planted an idea that took 11 years to take shape in the form of the National Green Tribunal. The delay in itself shows the limit of judicial direction in a constitutional democracy. Yet, the institution has finally emerged. For a student of environmental law, the lesson is clear, *"sometimes the most important thing a Court can do is not to decide a case but articulate a vision"*.