

**HON'BLE THE CHIEF JUSTICE SRI MADAN B. LOKUR
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR**

**WRIT PETITION Nos.28026, 28111, 28114, 28122, 28170, 28343, 28346, 28371,
28372, 28374, 28376, 28377 and 29080 of 2009, 935, 939, 941, 944, 956 and
973 of 2010**

28th February, 2012

W.P.No.28026 of 2009

**-
Between:**

M/s. Ramakrishna Binny Rice Mill,
Saroor Nagar, Hyderabad,
Represented by its sole Proprietor,
Mr. V.Yadaiah. ... Petitioner

And

The State of Andhra Pradesh,
Represented by its Secretary,
EFS & T Department, Hyderabad & others. ... Respondents

Counsel for the petitioner : Sri S.Ravi, Senior Advocate,
assisted by Sri Ch. Pushyam Kiran.

Counsel for respondent No.1 : Government Pleader for Forests

Counsel for respondent Nos.2 & 3 : Sri Y. Srinivasa Murthy,
Standing Counsel for A.P. Pollution
Control Board

Counsel for respondent No.4 : Sri O. Manohar Reddy,
Standing Counsel for A.P.TRANSCO

Counsel for respondent No.5 : Sri A. Sekhar Reddy

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ORDER: (Per Hon'ble the Chief Justice Sri Madan B. Lokur)

This batch of 19 writ petitions has been preferred by rice mills who are said to be polluting the air (and we find it to be so) and have been asked to shut down their operations. The case presents a rather sad and sorry state of affairs with regard to environmental pollution in a residential area. It is sad because the problem has been persisting for more than a decade and it is sorry because the polluting rice mills are recalcitrant and incorrigible while the residents of the locality are helpless spectators to the mocking at the directions given by the Andhra Pradesh Pollution Control Board ("APPCB" short) to the rice mills.

The facts:

2. On 7.9.1989, a master plan for a non-municipal (residential) area in Karmanghat Village and Lingoijiguda Village in Ranga Reddy district was prepared and published in the Official Gazette in accordance with the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975.
3. On individual applications made by rice mills, parts of the residential area were converted for industrial use by G.O.Ms. issued on 16.10.1989 (and thereafter) in terms of Section 12(2) of the Andhra Pradesh Urban Areas (Development) Act, 1975. Certain conditions were laid down for conversion such as payment of development charges to the Hyderabad Urban Development Authority, development of 20% of the area with afforestation to avoid pollution etc. It is very doubtful whether the rice mills complied with the condition of afforestation, but the fact remains that they nevertheless set up their industries and were allowed to run them in the two villages above mentioned.
4. We are informed that the Ministry of Environment and Forests of the Government of India has classified industries for consent management into Red, Orange and Green. Rice Mills falling in the small scale sector are in the Green category (non-polluting industries) and are entitled to the issuance of a simplified No Objection Certificate or Consent from the State Pollution Control Board. It appears that pursuant to this categorization read with G.O.Ms. Nos.1 and 2, Environment, Science and Technology dated 23.1.1995 rice mills were permitted to set up their industry in a residential area, after part conversion thereof for industrial use.
5. Even though rice mills fall in the Green category, they seem to generate a huge amount of dust due to the rice husk. This resulted in the residents of the area that we are concerned with making serious and repeated complaints regarding the pollution caused by the rice mills.
6. Since no visible action was being taken to arrest the pollution, the residents

of the area through their Thapovan Welfare Association, Thapovan Colony, Saroor Nagar, Hyderabad, addressed a letter to Hon'ble the Chief Justice. In this letter, it was alleged that several rice mills are operating without necessary measures to check pollution in the nearby colonies resulting in the residents of the colony being exposed to health hazards. It was alleged that despite several representations to the concerned authorities including the APPCB, no effective action was taken to check the pollution caused by the rice mills.

7. Hon'ble the Chief Justice treated the letter as a taken-up Writ Petition No.16252 of 1996. Notices were then issued to the concerned respondents including the APPCB, the rice millers association and some individual rice mills.

8. In response, the APPCB filed an affidavit in which it was deposed that a detailed study was conducted in and around the area. It was pointed out in the report that husk and dust were spreading all over the residential areas settling down on houses, roof tops, tree tops, walls, roads etc. thereby adversely affecting the environment. Some steps were suggested by the APPCB to reduce the health hazards. The Hyderabad-Ranga Reddy Rice Millers Association also filed an affidavit in which it was alleged that the petition was motivated and that the rice mills had obtained permissions, approvals and no objection certificates for running their business.

9. While disposing of the writ petition, the learned Single Judge observed in his order dated 29.9.1997 that merely because the rice mills had obtained permissions and clearance certificates was no reason for them to be oblivious to the health hazards being caused to the residential locality. It was noted that in view of the report given by the APPCB, necessary directions may be issued to the rice mills under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act'). It was also directed that such remedial measures should be taken as are necessary to mitigate the sufferings of the residents of Thapovan Colony and Srinivasa Nagar Colony.

10. Pursuant to the directions given by the learned Single Judge, the APPCB inspected the rice mills and monitored the ambient air quality for almost one month. Thereafter, by an order dated 18.1.1999 the APPCB directed the rice mills to carry out the following remedial measures:-

- i) Compound wall with a minimum height of 12 feet all around the factory shall be constructed within two months of time.
- ii) Closed husk rooms to store the husk with vents, fine screen mesh so as to prevent dust within one month's time.
- iii) Loading of husk shall be carried out only inside the husk room by providing rolling shutters for entry of vehicles and to prevent the dust

nuisance.

iv) Milling operation should not be carried out during night time i.e. 6 p.m. to 6 a.m.

v) Tree plantation (tall trees) shall be taken up immediately all around the factory to control both dust and noise levels.

11. By another order passed on the same day, the APPCB served closure orders on four rice mills since the suspended particulate matter (SPM) exceeded the stipulated standards. A few months later, on 8.4.1999, closure orders were issued to five other rice mills for non-compliance with the directions given by the APPCB on 18.1.1999. For reasons that are not very clear, the closure orders in respect of these nine rice mills were subsequently revoked.

12. Be that as it may, notwithstanding the directions and closure orders issued by the APPCB and the monitoring of air and noise pollution in the area, the problems seem to have persisted. It is not necessary to go into the details of what transpired over the next few years, and indeed it is not possible since the record before us is not very clear in this regard. Suffice it to say, the air and noise pollution continued unabated in the area resulting in complaints by the residents of Srinivasa Nagar Colony, Saroor Nagar and issuance of directions by the APPCB to the rice mills etc. This situation continued for about 4-5 years with the pendulum swinging one way and then the other depending upon the manner in which the rice mills reacted to the directions issued and orders passed by the APPCB and the manner in which the APPCB enforced its directions and orders.

13. However, what is on record is that the local Member of the Legislative Assembly (MLA) convened a meeting on 8.4.2003 of the stakeholders, including the rice mills and the residents of the locality wherein the following decisions were taken:

- “1. The Rice Mills shall comply with the directions issued by the Hon’ble High Court of Andhra Pradesh.
2. Speed Breakers are to be erected within the Colony to reduce speed of the vehicles.
3. The Rice Millers should punish the rash drivers.
4. Cement concrete roads shall be laid from wall to wall to reduce dust pollution. He assured that 50% of the total cost would be born by the local Municipality and remaining 50% shall be born by the Rice Millers Association. Similar contribution shall be done for potable water supply scheme.
5. Parking of heavy vehicles within the Colony shall be avoided.
6. The street of the Colony shall be adopted by the Rice Millers to develop and maintain green belt on either side of the streets, which would help in reducing both the dust and noise pollution.
7. A Monitoring Committee constituting of 8 Members be constituted with four representatives of Rice Mills and four from the residents of

Srinivasa Nagar Colony. Accordingly, as suggested above a Monitoring Commission was constituted with the following eight members:

Representatives of Rice Mills

Residents of Srinivasa Nagar Colony

Sri G. Jitender Kumar
Sri B. Rangayya
Sri S. Yellaiah
Sri M. Bal Reddy

Sri M. Madhusudan Rao
Sri N. Anjaiah
Sri V.V. Sambasiva Rao
Sri P. Sobha.”

14. Notwithstanding the above, the air and noise pollution did not reduce and on 31.12.2003, the Environmental Engineer of the APPCB, Regional Office-I, Ranga Reddy district submitted a report to the effect that the rice mills have constructed a room/shed to minimize the dust pollution, but the dust and noise due to the movement of lorries in the area cannot be controlled. It was recommended that the rice mills should shift to a new industrial estate in view of rapid urbanization around the industrial estates. However, this recommendation has not yet been implemented.

15. On its part, the APPCB continued its monitoring activity and prepared a report on 22.12.2005, which was reiterated in another report dated 9.6.2006 to the following effect:-

“Even though the rice mills have provided husk rooms to collect the husk generated from the process, still, due to tremendous growth of urban agglomeration round the rice mills, the surrounding residents still feel inconvenience due to the husk and dust generated by the movement of trucks. From the past record, it is observed that regular complaints are being received from the residents and the problem still persists. Considering the location of the rice mills amidst the residential area, it is suggested that the rice mills may have to be shifted to suitable alternate site in a phased manner.”

16. Even this report had no significant impact and since the air and noise pollution continued unabated nor did the rice mills shift out, the Thapovan Welfare Association filed Writ Petition No.9961 of 2007 in this Court. The prayer in the writ petition was to the effect that the State Government as well as the APPCB and the rice mills should take action pursuant to the report submitted on 9.6.2006 and implement the orders passed by this Court on 29.9.1997 in Writ Petition No.16252 of 1996.

17. When this writ petition was taken up for consideration on 25.8.2009, it was noted by the Division Bench hearing the matter that in the meanwhile closure orders had been issued in respect of all the rice mills. It was also noted that

against the closure orders issued by the APPCB, appellate remedies were being pursued. Therefore, nothing survived in the writ petition which was accordingly disposed of as infructuous.

First set of closure orders dated 29.9.2007:

18. The first set of closure orders were passed on 29.9.2007 in respect of six rice mills. The closure orders are identical, except for the degree of air pollution. The relevant extract of the closure order (taken from Writ Petition No.973 of 2010) reads as follows:

“WHEREAS, vide reference 2nd cited, the Board Officials have inspected your unit on 11.06.98 and 27.12.98 and issued with the following directions on 18.01.99, vide reference 3rd cited.

- Compound wall with a minimum height 12 feet, all around the factory, shall be constructed within two months of time.
- Closed husk rooms to store the husk with vents, fine screen mesh so as to prevent dust within one month's time.
- Loading of husk shall be carried out only inside the husk room by providing rolling shutters for entry of vehicles and to prevent the dust nuisance.
- Milling operation should not be carried out during night time i.e. 6 P.M. to 6 A.M.
- Tree plantation (tall trees) shall be taken up immediately all around the factory to control both dust and noise levels.

WHEREAS, vide reference 4th cited, the Board issued Closure Orders on 08.04.99 for non compliance of the Board directions.

WHEREAS, you have represented the Board for seeking revocation of Closure Orders issued by the Board on 12.04.99. The Board Officials have inspected your unit on 17.04.1999 and 19.04.1999. subsequently, the Board has issued temporary revocation of closure orders on 24.04.1999.

WHEREAS, vide reference 5th cited, a complaint was made by Sri C.H. Venkateswarlu, Councillor, 18th Ward, L.B. Nagar Municipality. The Board Officials carried out Ambient Air Quality Monitoring on 18.11.2000. The analysis reports results indicates ambient air exceeding the Boards standards.

WHEREAS, vide reference 6th cited, the Board has issued the following directions to your industry on 22.12.2000.

- The husk shall be stored in a closed room only and lifted periodically. At no point of time the husk should be stored in an open area.
- Loading of husk in gunny bags and stitching of the gunny bags shall be carried out only inside the husk room. After stitching the gunny bags, the same shall be loaded in the vehicles.
- Milling (hulling) operations should not be carried out during night time i.e., after 6.00 PM to 6 AM. The industry is permitted to carry out only polishing during this period.
- The industry shall carry out wetting of internal roads of the colonies, once in 3 hours.
- Tree plantation (tall trees) shall be taken up immediately all around the

factory to control both dust and noise levels.

- The units shall carry out ambient air quality monitoring inside and outside the premises and furnish the analysis report every month to the Board.

WHEREAS, vide reference 7th cited, Thapovan Welfare Association, Lingoiguda, Saroornagar, Ranga Reddy District has filed a petition in Hon'ble High Court, W.P.No.9961 of 2007, against the Rice Mills located at Lingoiguda, Saroornagar Mandal, Ranga Reddy District.

WHEREAS, vide reference 8th cited, the Board officials inspected your Rice Mill on 10.8.2007 and conducted Ambient Air Quality Monitoring in your premises. The analysis report indicates that the Total Suspended Particulate Matter (TSPM) – 345 ug/m³ exceeding the stipulated standard of 200 ug/m³.

WHEREAS, vide reference 9th cited, Board has issued a notice on 23.8.2007 to your Rice Mill for causing air pollution in the area and non-compliance of Board directions.

WHEREAS, vide reference 10th cited, you were given an opportunity for hearing on 27.9.2007 before the Board's CFO Committee. The industry representative attended the hearing. The CFO committee noted that,

- 1.The industry is surrounded by residential houses.
- 2.The TSPM levels from the industry exceeding the Board standards.
- 3.The industry is not submitting ambient air quality analysis reports monthly to the Board.

After detailed discussion, the committee recommended to issue closure order to the industry for not complying with the directions issued by the Board and causing air pollution in the surrounding area.

After careful consideration of the material facts of the case available on the records the Board is of the firm opinion that you have not taken adequate measure to control air pollution from your Rice Mill thereby causing air pollution in the surrounding area and not submitting the monthly Ambient Air Quality Monitoring reports. Under the powers vested with the A.P. Pollution Control Board under Section 31(A) of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for the reasons discussed above, the Board hereby issues closure orders to your industry in the interest of protecting public health and environment."

The six rice mills appealed against the closure through Appeal Nos.1 to 6 of 2008 preferred before the Appellate Authority under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Appellate Authority').

19. In the meanwhile, when Writ Petition No.9961 of 2007 came up for consideration on 14.11.2007, it was represented to the Division Bench that the rice mills had removed the shortcomings pointed out by the APPCB and a

representation had been made for withdrawing the closure order. It was submitted that due to the pendency of the writ petition, the APPCB was not passing any orders on the representation.

20. The Division Bench then passed a direction to the effect that the APPCB may consider the representation and pass appropriate orders. If it is found that the rice mills have made sufficient safeguards and are not responsible for causing any pollution, the APPCB may consider revoking the closure orders. But if there is still a possibility of pollution, the APPCB may refuse to revoke the closure orders.

21. It appears that the APPCB then considered the matter but declined to revoke the closure order and, therefore, the appeals being Appeal Nos.1 to 6 of 2008 were taken up for consideration by the Appellate Authority. The appeals were heard and dismissed by a common order passed by the Appellate Authority on 24.10.2009 (impugned). These rice mills have filed writ petitions being Writ Petition Nos.935, 939, 941, 944, 956 and 973 of 2010.

Second set of closure orders dated 21.2.2009:

22. The second set of closure orders was passed by the APPCB on 21.2.2009 in respect of ten rice mills. The closure orders are identical, except for the degree of air pollution. The relevant extract of the closure order (taken from Writ Petition No.28114 of 2009) is reproduced below:-

“7. Vide reference 4th cited, the Board officials conducted ambient air quality monitoring in your premises. The analysis report indicated that the total suspended particulate matter (TSPM) – 400 ug/ml) exceeding the stipulated standards of 200 ug/ml. A copy of the analysis report is enclosed.

8. Vide reference 6th cited, you were given an opportunity for hearing held on 21.2.2009 before the CFO Committee of Zonal Office, APPCB, Hyderabad and the unit's representative has attended the hearing.

The CFO committee noted that,

- 1.The industry is surrounded by residential houses.
- 2.The TSPM levels from the industry exceeding the Board's standards.
- 3.The industry is not complying the Board directions issued vide order dated 29.9.2007 to control dust emissions.

After detailed discussion, the committee recommended to issue closure order to the industry for operating the unit in the residential area, operating without consent of the Board, not taking pollution control measures and causing air pollution in the surrounding area affecting the public health and environment.

9. After careful consideration of the material facts of the case the Board is of the firm opinion that you are operating the unit in the residential area, operating without consent of the Board, not taking pollution control measures and causing air pollution in the surrounding area affecting the public health and environment Under the powers vested with the A.P. Pollution Control Board under Section 31(A) of the Air (Prevention and Control of Pollution) Amendment Act, 1987 and under Section 33(A) of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for the reasons discussed above, the Board hereby issues closure orders to your industry in the interest of protecting public health and environment.”

All the ten rice mills appealed against the closure orders to the Appellate Authority being Appeal Nos.15 to 24 of 2009. The appeals were heard and dismissed by the same common order passed by the Appellate Authority on 24.10.2009 (impugned). Seven of these rice mills have filed writ petitions being Writ Petition Nos.28114, 28122, 28170, 28346, 28371, 28377 and 29080 of 2009.

Third set of closure orders dated 13.8.2009:

23. The third set of closure orders was passed on 13.8.2009 again in respect of ten rice mills. The closure orders are identical and the relevant extract of the closure order (taken from Writ Petition No.28026 of 2009) reads as follows:-

“3. You are operating the unit without valid consent of the Board as required under Section 21/22 of Air (Prevention and Control of Pollution) Act, 1981 and under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974.

4. Vide reference 2nd cited, the Board has issued following directions to your industry on 29.9.2007 and 21.2.2009.

- a. The husk shall be stored in a closed room only and lifted periodically. At no point of time the husk should be stored in an open area.
- b. Loading of husk in gunny bags and stitching of the gunny bags shall be carried out only inside the husk room. After stitching the gunny bags, the same shall be loaded in the vehicles.
- c. Milling (hulling) operations should not be carried out during night time i.e. after 6.00 p.m. to 6.00 a.m. The industry is permitted to carry out only polishing during this period.
- d. The industry shall carry out wetting of internal roads of the colonies once in 3 hours.
- e. The Tree plantation (tall trees) shall be taken up immediately all around the factory to control both dust and noise levels.
- f. The unit shall carry out ambient air quality monitoring inside and outside the premises and furnish the analysis report every month to the Board.
- g. The industry shall provide a sprinkler with a tank of adequate capacity of water for wetting of internal roads of the colonies, once in 3 hours.
- h. The industry shall maintain records of operations i.e., milling and polishing showing the details of quantities, timings etc.
- i. The industry shall shift the rice mills away from the residential area within 3 months time.

5. Vide reference 3rd cited, the Board officials inspected your unit on 25.6.2009 to verify the compliance of the Board directions.

6. Vide reference 4th cited, the Regional Office has issued notice to the rice mill for non-compliance of the Board directions and directed to submit reply.

7. Vide reference 5th cited, the rice mill has submitted that they have been maintaining 'B-Register' showing the purchase of paddy, milling, sales & opening and closing balances etc. as required under A.P. Rice Procurement (Levy) Order and that the Board has no locus standi to furnish the information and the rice mill has submitted that there is no need to provide water tanker for wetting of internal roads and that the wetting of internal roads is the responsibility of the GHMC.

8. Vide reference 7th cited, you were given an opportunity for hearing held on 13.8.2009 before the CFO Committee of Zonal Office, APPCB, Hyderabad and the unit's representative has attended the hearing.

The CFO committee noted that:

- a. The industry is not complying with the Board directions issued vide order dated 29.9.2007 & 21.2.2009 to control the dust emissions.
- b. The industry is not carrying out wetting of internal roads of the colonies, once in 3 hours.
- c. The industry has not provided a sprinkler with a tank of adequate capacity of water for wetting of internal roads.
- d. The industry is not maintaining records of operations i.e., milling and polishing showing the details of quantities, timings etc.
- e. Further it is felt that the unit is not complying with the directions and causing air pollution and dust nuisance in the surroundings even after giving several directions and opportunities.

After detailed discussions, the Committee decided to issue closure order to Rice Mill, not carrying out wetting of internal roads, not provided a sprinkler with a tank of adequate capacity of water for wetting of internal roads, not maintaining records of operations i.e., milling and polishing showing the details of quantities, timings etc., not taking pollution control measures and causing air pollution in the surrounding area affecting the public health and environment.

9. After careful consideration of the material facts of the case the Board is of the firm opinion that the rice mill not carrying out wetting of internal roads, not provided a sprinkler with a tank of adequate capacity of water for wetting of internal roads, not maintaining records of operations i.e., milling and polishing showing the details of quantities, timings etc., not taking pollution control measures and causing air pollution in the surrounding area affecting the public health and environment. Under the powers vested with the A.P. Pollution Control Board under Section 31(A) of the Air (Prevention and Control of Pollution) Amendment Act, 1987 and under Section 33(A) of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for the reasons discussed above, the Board hereby issues closure orders to your industry in the interest of protecting public health and environment."

These rice mills filed Appeal Nos.46 to 55 before the Appellate Authority and they too were heard and dismissed by the impugned common order dated 24.10.2009. Six of the rice mills have filed writ petitions being Writ Petition Nos.28026, 28111, 28343, 28372, 28374 and 28376 of 2009.

Appellate order:

24. While dismissing the appeals on merits, the Appellate Authority observed, inter alia:

- (i) that the APPCB has shown great indulgence to the rice mills by giving several opportunities to control and abate the pollution levels, but they have failed to do so;
- (ii) that apart from the emissions and noise resulting from the operation of the rice mills, there is bound to be a good deal of dust pollution from the heavy vehicular traffic movement associated with the activities of the rice mills;
- (iii) that the rice mills were directed by the APPCB to arrange for wetting the internal roads by water tankers, but they refused to comply stating that it is the responsibility of the municipal authorities;
- (iv) that some of the rice mills were operating at night, despite directions of the APPCB thereby causing inconvenience to the public.

It was held that under the circumstances, there was no option but to order the closure of the rice mills since it was not practical or possible to constantly monitor their activities on a daily basis. Accordingly, it was directed that the rice mills should shift to an alternative location, in their own interest, and for that purpose a period of three months was granted during which time status quo was required to be maintained.

Proceedings in this Court:

25. Feeling aggrieved by the impugned common order, the present batch of writ petitions was filed. When this batch was taken up for consideration on 20.1.2010, this Court suspended the operation of the impugned order passed by the Appellate Authority. The relevant portion of the order passed by this Court is of some importance and it reads as follows:-

“Notice before admission.

.....

At the hearing, Sri S. Ravi, learned Senior Counsel and Sri S.V. Bhatt, learned counsel appearing for the petitioners in the respective writ petitions strenuously contended that neither the closure orders passed

by respondent No.2 nor the appellate order passed by the appellate authority dealt with the details regarding the ambient air quality qua each of the rice mills. According to the learned counsel, if proper tests are conducted it will come out that the petitioners' rice mills are maintaining ambient air quality in accordance with the prescribed standards.

A *prima facie* perusal of the order supports the submission of the learned counsel for the petitioners that the details regarding ambient air quality with reference to each of the petitioners' rice mills are not mentioned in the orders passed by the primary as well as the appellate authorities. Therefore, we deem it appropriate to direct respondent No.2 to carry out ambient air quality tests both at the premises of each of the rice mills and also in the residential areas in the vicinity of the rice mills and submit a report.

.....

By the next date of hearing, respondent No.2 shall file the test reports. The impugned orders are suspended for a period of four weeks, subject to the petitioners continuing the bank guarantees furnished by them in pursuance of the directions of the appellate authority.

.....”

26. Pursuant to the above order, the APPCB conducted an analysis of the ambient air quality in respect of each of the rice mills and gave individual reports in respect of each of them. These reports were prepared on or about 16.2.2010 and were furnished to us during the course of hearing on 14.12.2011.

27. As per the reports, the respirable suspended particulate matter (RSPM) for a residential area should not exceed 100 ug/m^3 and the total suspended particulate matter (TSPM) should not exceed 200 ug/m^3 . The reports show that in respect of some rice mills, the RSPM is less than 100 ug/m^3 while in respect of others it exceeds 100 ug/m^3 . Significantly, in respect of each rice mill, the report of the APPCB states that the mill was not operating to its full capacity when the inspection was conducted.

Submissions and findings:

28. Learned counsel for the rice mills made five submissions before us.

1) In a majority of the cases, the reports dated 16.2.2010 submitted to this Court pursuant to the order dated 20.1.2010 show that the RSPM is within the limits specified by the National Ambient Air Quality Standards (NAAQS) set down by the Ministry of Environment & Forests of the Government of India. That being the position, air pollution is caused by only some rice mills and this does not justify closure of all of them.

2) Monitoring of the ambient air quality, as is apparent from the reports

dated 16.2.2010 prepared pursuant to the order dated 20.1.2010 passed by this Court, is faulty. The NAAQS clearly stipulate as follows:-

“Whenever and wherever monitoring results on two consecutive days of monitoring exceed the limits specified above for the respective category, it shall be considered adequate reason to institute regular or continuous monitoring and further investigation.”

The NAAQS itself postulates consecutive monitoring for two consecutive days, but the reports submitted to this Court bring out that the ambient air quality monitoring was carried out only on one day.

3) Due to business considerations and other factors, the intensity of the activity by the rice mills has come down in the area and, therefore, the pollution levels have also abated. In view of this, closure of the rice mills is no longer justified.

4) The TSPM standards are not valid since November, 2009 since the NAAQS refer only to RSPM standards.

There is no difficulty in accepting this submission and indeed this was not even opposed by learned counsel for the APPCB. However, this makes no difference to our conclusions that are based on TSPM levels before November, 2009 and RSPM levels after November, 2009, as will be discussed during our consideration of the first two submissions of learned counsel.

5) The air quality samples were drawn from within the factory premises in an industrial area, while the standards applicable to residential areas were applied. This is said to be impermissible.

29. In our opinion, none of the submissions can withstand any careful or objective scrutiny. But before dealing with the submissions made, it is necessary to appreciate the scope and purport of the order dated 20.1.2010 passed by this Court since the first two submissions of learned counsel for the rice mills depend on this.

30. The order of this Court is an interim order passed ex parte. It proceeded on the submission made by learned counsel for the rice mills that neither the closure orders nor the impugned order passed by the Appellate Authority concerns itself with the ambient air quality in respect of each rice mill. However, this submission is factually not correct.

31. The first set of closure orders dated 29.9.2007 (a sample of one such order has been reproduced above) clearly mentions that the rice mill was inspected and it was found that the TSPM level exceeded the permissible limit. It is stated that:

“WHEREAS, vide reference 8th cited, the Board officials inspected your Rice Mill on 10.8.2007 and conducted Ambient Air Quality Monitoring in

your premises. The analysis report indicates that the Total Suspended Particulate Matter (TSPM) – 345 ug/m³ exceeding the stipulated standard of 200 ug/m³.”

Similarly, the second set of closure orders dated 21.2.2009 (a sample of one such order has been reproduced above) also refers to the ambient air quality of that rice mill in the following words:

“7. Vide reference 4th cited, the Board officials conducted ambient air quality monitoring in your premises. The analysis report indicated that the total suspended particulate matter (TSPM) – 400 ug/ml) exceeding the stipulated standards of 200 ug/ml. A copy of the analysis report is enclosed.”

Finally, the third set of closure orders dated 13.8.2009 mentions that the rice mills have been operating without valid consent from the APPCB under the provisions of the Air Act and the Water Act and are not performing their obligation of maintaining and furnishing a monthly record of the analysis of the ambient air quality both inside and outside the premises, despite directions to this effect.

32. Factually, therefore, the closure orders did concern themselves with the ambient air quality but this Court seems to have been led into believing otherwise.

33. The APPCB is really required to play the role of a monitor of pollution levels. It can do so by setting up ambient air quality monitoring stations in select locations to gather real time data. But this is not always possible and as is apparent in the present case, an ambient air quality monitoring station was not set up by the APPCB in the area that we are concerned with. However, nothing much turns on this. It is equally the duty and obligation of the rice mills to maintain records of the ambient air quality and submit monthly analysis reports to the APPCB in this regard. This is clear from the third set of closure orders. If this data shows that there is air pollution, then it can be confirmed by the APPCB by checking the ambient air quality. There is nothing on record to suggest that the rice mills carried out their obligation. Protection and improvement of the environment is not a one-way traffic but a two-way traffic, with the State having some obligations under Article 48-A of the Constitution and the citizen having some obligations under Article 51-A(g) of the Constitution. The rice mills cannot expect the APPCB alone to protect the environment by setting up air quality monitoring stations within and around the vicinity of each and every industrial unit – this is physically not practicable – and in the absence of such stations, the rice mills must themselves maintain records of the ambient air quality and submit monthly analysis reports to the APPCB. This they have failed to do.

34. It is also not correct to say that the Appellate Authority did not deal with the ambient air quality. It is true that the order of the Appellate Authority does not refer to each and every rice mill, but that was not necessary on the facts and circumstances of the case. The issues before the Appellate Authority were wide ranging and have to be appreciated in the context in which they were raised, namely, were the rice mills guilty of polluting the atmosphere around the residential locality. This was answered in the affirmative by the Appellate Authority in the following words:

“It is evident from the material on record that the Ambient Air Quality Monitoring and Noise Monitoring Tests were got conducted by the Board in and around these rice mills a number of times from 1998 onwards and the analysis reports in that behalf indicate that the values of RSPM and TSPM levels were exceeding the prescribed standards. Even though most of the appellants obtained conversion orders permitting the change of land use from residential to industrial purpose, such orders are limited to the actual area occupied by the rice mills only and the classification of the surrounding area as residential area is not changed. Even assuming for the sake of argument that Ambient Air Quality standards applicable to industrial area have to be applied within the rice mill premises and for the outside area residential standards have to be applied as contended by the learned counsel for the appellants, it can be seen from the analysis reports available on record, that in all cases the values of Ambient Air Quality are far in excess of the standards prescribed for residential area, and in some of the cases they are also exceeding the standards prescribed for industrial area. Likewise the noise levels also are found to be in excess of the prescribed standards in most of the cases. The learned counsel for the appellants has relied upon some analysis reports commissioned by the appellants through EPTRI and some other private agencies to show that in most of the cases the actual values are less than the prescribed standards. We have carefully examined these reports as well. They too indicate that in some instances the actual values have exceeded the prescribed standards. We are therefore not persuaded to reject the test reports of the Board officials.”

35. The ex parte ad interim order passed by this Court and the reports submitted by the APPCB have to be understood in the above perspective. On the asking of learned counsel for the rice mills, this Court only sought to ascertain whether the rice mills were maintaining the prescribed ambient air quality limits at that time. The order dated 20.1.2010 was not intended to confirm or reject earlier reports of the APPCB or to gather evidence for or against the rice mills. The scope of the order passed by this Court was limited and was confined to the necessity of granting or refusing interim relief to the rice mills – nothing more and nothing less. In our opinion, it would not be appropriate to read too much into the order passed by this Court on 20.1.2010 or into the reports submitted by the APPCB pursuant

the said order. Any other view would be a rather simplistic way of looking at the entire case since the reports given by the APPCB pursuant to the order dated 20.1.2010, one way or the other, could not conclude the matter. We propose to leave it at that.

36. With regard to the applicability of the NAAQS, it is an admitted position that the revised standards came into effect sometime in November, 2009. The closure orders issued by the APPCB and the impugned common order passed by the Appellate Authority are prior to that. The ambient air quality standards specified in Schedule VII read with Rule 3B of the Environment (Protection) Rules, 1986 as they existed at the relevant time (and they are no different from the present day standards) read as follows:

National Ambient Air Quality Standards (NAAQS)

Pollutants	Time weighted average	Concentration of Ambient Air			
		Indus-trial areas	Residential Rural & other areas	Sensitive areas	Method of Measurement
Suspended Particulate Matter (SPM)	Annual average *	360 ug/m3	140 ug/m3	70 ug/m3	High Volume Sampling (average flow rate not less than 1.1 m3/minute
	24 hours**	500 ug/m3	200 ug/m3	100u g/m3	
Respirable Particulate Matter (size less than 10 ug) (RPM)	Annual average *	120 ug/m3	60 ug/m3	50 ug/m3	Respirable particulate matter sampler
	24 hours **	150 ug/m3	100 ug/m3	75 ug/m3	

* Annual arithmetic mean of minimum 104 measurements in a year taken twice a week 24 hourly at uniform intervals.

** 24 hourly / 8 hourly values shall be met 98% of the time in a year. 2% of the time, it may exceed but not on two consecutive days.

The APPCB found, in the first and second set of closure orders, that the SPM values were exceeded by the rice mills even applying the industrial standards. If the residential standards are made applicable, the ambient air quality would be even worse! The rice mills, therefore, have no reason to complain about the applicability of the NAAQS in respect of the first two set of closure orders. As far as the third set is concerned, the ambient air quality was not checked by the APPCB. Even the rice mills failed to maintain the required data for analysis, despite directions given by the APPCB. Fault cannot be found only with the APPCB in this

regard. The only slip-up that could perhaps be found with the APPCB is that it did not take a sample check before issuing the closure order. However, in our opinion, this is not enough to vitiate the third set of closure orders. The fact remains that the rice mills failed to carry out the directions given by the APPCB and in the absence of records being maintained by them, an adverse inference must necessarily be drawn against them.

37. Additionally, we are of the view that non-compliance with the directions of the APPCB issued from time to time is itself enough to lead to the conclusion that air pollution continued. Directions were issued by the APPCB only to check or minimize check air pollution – there was no other reason to issue such directions. That they were not implemented indicates that the existing air pollution continued unabated.

38. Learned counsel for the rice mills referred to and relied on the November 2009 NAAQS to contend that TSPM levels are today not relevant. Therefore, the reports dated 16.2.2010 furnished by the APPCB pursuant to the order of this Court passed on 20.1.2010 are not relevant to the extent they refer to the TSPM levels. The present day NAAQS read as follows:-

National Ambient Air Quality Standards (NAAQS)

Pollutants	Time weighted average	Old Standards			Revised Standards (2009)	
		Indus-trial areas	Residential Rural & other areas	Sensitive areas	Industrial, Residential, Rural and other area	Ecologically sensitive area (notified by Central Government)
Respirable Particulate Matter (RPM) (size less than 10 microns) ug/m ³	Annual average *	120	60	50	60	60
	24 hours**	150	100	75	100	100
Particulate Matter (size less than 2.5 microns) or PM 2.5/ug/m ³	Annual *	--	--	--	40	40
	24 hours **	--	--	--	60	60

* Annual arithmetic mean of minimum 104 measurements in a year at a particular site taken twice a week 24 hourly at uniform intervals.

** 24 hourly or 8 hourly or 1 hourly monitored values, as applicable, shall be complied with 98% of the time in a year. 2% of the time, they may exceed the limits but not on two consecutive days of monitoring.

Note: Whenever and wherever monitoring results on two consecutive days of monitoring exceed the limits specified above for the respective category, it shall

be considered adequate reason to institute regular or continuous monitoring and further investigation.

39. If the present day standards are juxtaposed with the reports dated 16.2.2010 and only the RSPM levels are taken into account, we find that the rice mills are equally badly positioned in terms of air pollution. Admittedly, the RSPM levels in respect of some rice mills exceed the earlier and present day NAAQS (both of which are the same). Learned counsel for the rice mills then submitted that the readings were taken by the APPCB from within the mill premises and not from the residential area. We are afraid that even this submission does not come to the aid of the rice mills. What is overlooked is that (unlike the earlier standards) the present day standards do not make any distinction between industrial and residential areas. The NAAQS are the same for both. But as we have earlier noted, too much is sought to be read into the order dated 20.1.2010 and the reports dated 16.2.2010. That is not at all necessary or relevant.

40. The history of the present batch of cases shows that the problem of air and noise pollution is not confined to a day or two. The problem has been persisting for more than a decade. From time to time, the rice mills were served with closure orders because they were polluting the air and as per the reports submitted by the APPCB, air and noise pollution was rampant in the nearby residential area. It is not that if, on a given day, the RSPM levels are within the limits prescribed by the NAAQS and so the rice mills may be allowed to continue their activity. An overall and historical perspective is required to be taken.

41. The closure orders issued by the APPCB also indicate that they were passed not only because the TSPM/RSPM levels exceeded the limits prescribed by the NAAQS - they were ordered to close down for various other violations. For example, in the closure order dated 21.2.2009, it is mentioned that the directions given by the APPCB on 29.9.2007 have not been complied with. Similarly, in the closure order dated 13.8.2009, it is mentioned that the rice mills were not complying with the directions issued by the Board on 29.9.2007 and 21.2.2009 and no steps were taken for wetting internal roads of the colony once in three hours and the records of operations that is milling and polishing showing the details of quantity, timings etc. were not maintained. Even otherwise the rice mills were carrying on an activity affecting the public health and environment. It is, therefore, not correct for the rice mills to contend that the closure orders were passed only because some of the rice mills were not complying with the RSPM limits laid down in the NAAQS.

42. It must also be appreciated that the area we are concerned with is essentially a residential area and a part of it has been converted to industrial use. It is but natural that in a residential area, houses are likely to be built up and there will be an increase in population due to urban agglomeration. This is precisely what has happened. Over the years, the area has now become quite well populated and continuance of the rice mills (which might have been justified in the 1990s) cannot be justified today. The situation at the ground level has changed to a very large extent, it has now become rather grim and that cannot be overlooked.

43. According to the APPCB, the activity of the rice mills has resulted in dust and husk being deposited on roof-tops, on roads, on tree tops etc. Clearly, the air in the area is rather unhealthy. Added to this is the fact that there is an increase in the movement of lorries and trucks. It has been observed that not only is dust raised by vehicular movement but there is an increase in the noise levels due to the presence of a large number of lorries and trucks. Moreover, the vehicles are parked in a manner causing inconvenience to the residents of the area. To make matters worse, the rice mills are carrying on activity even during night-time despite being directed by the APPCB not to do so. Obviously, apart from the air and noise pollution, there is great inconvenience to the residents of the area.

44. To minimize air pollution, the APPCB had directed the rice mills to wet the roads so that the dust and husk settle down. The rice mills declined to do so, on the specious ground that wetting the roads is the responsibility of the municipal authorities. The attitude of the rice mills exhibits their unfortunate disdain for the residents of the area, while showing their intention of exploiting their presence to the hilt, until they are forced to shut down their operations or shift to an industrial estate.

45. If the matter is looked at in the overall context, there is no doubt that over a prolonged period of time, the rice mills were regularly violating the directions issued by the APPCB and causing air and noise pollution thereby posing a health hazard to the residents of the nearby area, apart from damaging the environment.

46. The Appellate Authority has looked at the matter in detail and has noticed several issues that have not been adequately addressed by the rice mills. These issues have been mentioned by us above and need not be repeated, but they clearly show that there is little or no justification for the rice mills to continue operating any longer.

47. We are also not impressed with the contention of learned counsel that the air quality monitoring is required to be carried out consecutively over a period of two days. The NAAQS clearly indicate that the 24-hourly monitored values shall be

complied with 98% of the time in a year. Only 2% of the time can they exceed the limits but not on two consecutive days of monitoring. What this postulates is a daily monitoring of the ambient air quality throughout the year. As indicated above, in the absence of air quality monitoring stations, this is not possible for the APPCB. It is for this reason that the rice mills were required to carry out ambient air quality monitoring inside and outside the mill premises and submit monthly analysis reports. Unfortunately, the rice mills did not do so. If the rice mills had done their part of the job, the grievance now voiced may have had some legs to stand on and perhaps the present issue would not even have arisen. The failures of the rice mills cannot be placed entirely on the shoulders of the APPCB, nor can their responsibility be passed on only to the APPCB.

48. It is also important to appreciate that the requirement of monitoring the air quality for two consecutive days is in a different context from what is sought to be argued by learned counsel. The note to the NAAQS states that when monitoring results on two consecutive days exceed the specified limits, then there is adequate reason to institute regular or continuous monitoring and further investigation. This does not preclude monitoring of ambient air quality on a single day. What conclusion should be drawn from a one-day exercise is a completely different issue altogether. But, as we have held above, learned counsel for the rice mills is reading too much into the order passed by this Court on 20.1.2010 and the reports prepared by the APPCB pursuant thereto.

49. In our opinion, the third submission of learned counsel must also be rejected. The business activity of the rice mills has not come down over the years – there is no evidence of this. On the contrary, it seems to have increased with the mushrooming of rice mills in the area and the increased vehicular traffic catering to their requirements.

50. Indeed, an increase in the business activity was noted by the Regional Office of the APPCB as far back as in 2003, when it was suggested that the rice mills should shift to a new industrial estate. This was not only mentioned in the report dated 31.12.2003, but also in the subsequent reports dated 22.12.2005 and 9.6.2006. Unfortunately, despite these reports the rice mills did not prepare Plan B for shifting out nor did they think of mitigating the health hazards to the residents of the area. The attitude of the rice mills has, in our opinion, been rather callous and disrespectful to the rights of the residents of the area for clean air and a healthy environment.

51. Even if the business activity of the rice mills has reduced over a period of time, that would not legitimize their continuance in the area to the detriment of the

health of the residents. We find no merit in this submission.

52. In ***N.D. Jayal v. Union of India, (2004) 9 SCC 362*** the Supreme Court observed in paragraph 54 of the Report:

“Right to health is a fundamental right under Article 21. Protection of this is inextricably linked with clean environment. Clean and healthy environment itself is a fundamental right.”

53. Similarly, in an extremely elaborate decision rendered by the Supreme Court in ***Noise Pollution (V), In re v., (2005) 5 SCC 733*** it was held in paragraph 117 of the Report:

“We have referred to a few, not all available judgments. Suffice it to observe that Indian judicial opinion has been uniform in recognising the right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution, and noise pollution beyond permissible limits as an inroad into that right.”

54. The pollution caused by the rice mills, whether it is in terms of air pollution or noise pollution, infringes the fundamental rights of the residents of the nearby residents to a clean environment.

55. The final submission of learned counsel for the rice mills is that the ambient air quality was tested from within the factory premises and not in the residential area and, therefore, it cannot be accepted. This submission is only stated to be rejected. The revised NAAQS clearly show that the ambient air quality standards fixed with effect from November, 2009 are applicable equally to industrial, residential, rural and other areas. Merely because samples have been taken from within the factory premises of the rice mills is not of any relevance.

Conclusion:

56. In our opinion, the rice mills have not been able to make out any case for interfering with the orders passed by the Appellate Authority. We may add that no jurisdictional error has been pointed out in the order passed by the Appellate Authority. We are of the view that the Appellate Authority has fully considered the facts of the case and has rightly upheld the closure orders issued by the APPCB.

57. We find from the order passed by the appellate authority that the rice mills were required to furnish a bank guarantee of Rs.1 lakh. By the order dated 20.1.2010, this Court has required the rice mills to continue the bank guarantees. We presume that the bank guarantees have been kept alive by the rice mills. In our opinion, the APPCB is entitled to encash the bank guarantees submitted by each of the petitioners and accordingly direct the APPCB to encash them. If the bank

guarantees are not kept alive or are not capable of being encashed for whatever reason, we direct the petitioners to deposit with the A.P. State Legal Services Authority a sum of Rs. 1 lakh each as costs, which will then be handed over to Srinivasa Nagar Welfare Association/Tapovan Welfare Association equally.

58. With the above observations, all the writ petitions are dismissed with costs as above.

59. Miscellaneous applications are also dismissed.

MADAN B. LOKUR, C.J.

28th February, 2012.

SANJAY KUMAR, J.

ARS/tnb