O P I N I O N

GREENPEACE INDIA … QUERIST

I have gone through the case for opinion and the accompanying papers and documents. I have also had the benefit of a conference with instructing advocate Bikash Mohanty and representatives of the Querist.

Supreme Court judgments have clearly laid down as part of Indian jurisprudence that in case of accidents occurring in plants run by enterprises which are engaged in a hazardous or inherently dangerous activity that poses a potential threat to the health and safety of persons such enterprises applying the Polluter Pays Principle owe an absolute and non-delegable duty to ensure that no harm results to anyone [see *MC Mehta* vs. *Union of India*, AIR 1987 SC 1086 at 1098].

The Polluter Pays Principle was elaborated by the Supreme Court in its judgment in *Indian Council of Enviro-Legal Action* vs. *Union of India* [1996 (3) SCC 212]. The Court ruled that according to this principle "once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. … It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers – and not the person affected and the practical difficulty (on the part of the

affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise [see page 246 para 65]. In the said judgment the court ruled that the responsibility for repairing the damage is that of the offending industry [see page 248] and imposed on the offending industry the obligation for carrying out necessary remedial measures to repair the environmental damage caused [see page 247 para 67].

This Polluter Pays Principle was reaffirmed with the consequential imposition of absolute liability and the obligation to adopt remedial measures for environmental damage caused in a later judgment in *Vellore Citizens' Welfare Forum* vs. *Union of India* [1996 (5) SCC 647]. A three judge bench of the Supreme Court reaffirmed in these terms:

> "The Polluter Pays Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology" [see page 659].

Importantly the Supreme Court ruled that "the Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land" and referred to Articles 21, 47, 48-A and 51-A(g) of the Constitution in this connection. The Supreme Court further held that "the 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign" [see page 658 para 11].

In view of these Supreme Court judgments which are part of Indian jurisprudence and whose thrust is for the protection of victims of accidents as part of their fundamental rights under Article 21 of the Constitution, there is no warrant or justification for capping nuclear liability, as is sought to be done. Any such move will be in defiance of the aforesaid Supreme Court judgments and will be contrary to the interest of people of India and their fundamental rights under Article 21 of the Constitution.

I have nothing further to add.

New Delhi
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Soli J Sorabjee
Senior Advocate