

**IN THE SUPREME COURT OF INDIA  
(CIVIL ORIGINAL JURISDICTION)**

**Writ Petition (Civil) No. 407 of 2012**

PUBLIC INTEREST LITIGATION

**IN THE MATTER OF:**

1. CENTRE FOR PUBLIC INTEREST LITIGATION  
THROUGH ITS GENERAL SECRETARY,  
43, LAWYER'S CHAMBERS,  
SUPREME COURT OF INDIA  
NEW DELHI-110001  
...PETITIONER No. 1
2. COMMON CAUSE  
THROUGH ITS DIRECTOR  
5, INSTITUTIONAL AREA  
NELSON MANDELA ROAD  
VASANT KUNJ, NEW DELHI-110070  
...PETITIONER No. 2
3. DR. E A S SARMA  
FORMER SECRETARY  
GOVERNMENT OF INDIA  
14-40-4/1, GOKHALE ROAD  
MAHARANIPETA,  
VISHAKHAPATNAM-530002  
...PETITIONER No. 3
4. G. SUNDARRAJAN  
S/O SHRI K. GOMATHINAYAGAM  
R/O 106/2 (FIRST FLOOR)  
KANAGA DURGA COMPLEX  
GANGAI AMMAN KOIL STREET  
VADAPALANI, CHENNAI-600026  
...PETITIONER No. 4

**VERSUS**

1. UNION OF INDIA  
THROUGH ITS SECRETARY  
DEPARTMENT OF ATOMIC ENERGY  
ANUSHAKTI BHAVAN, CSM MARG  
MUMBAI-400001  
... THE RESPONDENT

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN THE INTEREST OF NUCLEAR SAFETY AND FOR PROTECTION OF RULE OF LAW, SEEKING APPROPRIATE WRIT FOR DECLARING THAT THE NUCLEAR REACTOR SUPPLIERS OF THE KUDANKULAM NUCLEAR PLANTS WOULD BE GOVERNED BY THE PRINCIPLE OF ABSOLUTE LIABILITY AND POLLUTER PAYS IN CASE OF ANY NUCLEAR ACCIDENT IRRESPECTIVE OF ANY AGREEMENT OR ANY GOVERNMENT UNDERTAKING IN THE INTEREST OF NUCLEAR SAFETY TO PROTECT RIGHTS UNDER ARTICLE 21 OF MILLIONS OF PEOPLE LIVING IN THE NEAR VICINITY OF KUDANKULAM PLANT

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION  
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the  
Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

1) The petitioner is filing the instant writ petition in public interest seeking appropriate writ declaring that the Kudankulam nuclear plant would be governed by the law of the land as laid down by this Hon'ble Court i.e. the constitutional principles of absolute liability and polluter pays principle. On the other hand, Civil Liability for Nuclear Damage Act 2010 channels the liability of a nuclear accident to the operator (Government undertaking) of the said plant and then limits the same at Rs 1500 crores. Under section 17, it provides that the operator of the plant would have a right to recourse against the supplier (the reactor manufacturer) under certain circumstances. Though the said Act imposes very minimal liability on the nuclear reactor supplier/manufacturer (putting to grave risk the safety of the power plants) in violation of the 'polluter pays' and 'absolute liability principle', the Government of India has made Russian company exempt from even this minimal liability also by giving an undertaking to the Russia that Indian public exchequer and the Indian taxpayers would foot the

bill in case of an accident and Russians would be indemnified. The said undertaking or agreement has inherently dangerous implications as is shown in the instant petition. It is a settled law that all agreements/undertakings in conflict of the law or public policy are void to the extent of the said conflict. Also, any action of the executive that requires expenditure from the exchequer (in case of a nuclear accident, this would run into lakhs of crores of rupees, as borne out by the experience in Chernobyl and more recently in Fukushima) would require Parliamentary approval as per the Constitution. No such approval has been taken.

#### THE PETITIONERS

a) Centre for Public Interest Litigation (CPIL), is a registered society (Registration number S-14654) formed for the purpose of taking up causes of grave public interest and conducting public interest litigation in an organized manner. Its founder President was the late Shri V.M. Tarkunde and founder members consisted of several senior advocates including Shri Fali S. Nariman, Shri Shanti Bhushan, Shri Anil Divan, Shri Rajinder Sachar, Shri Colin Gonsalves among others. Petitioner No.2 has, in the past, filed several important petitions in public interest in this Hon'ble Court. Ms. Kamini Jaiswal, general secretary of CPIL, is authorized to file this PIL.

b) Common Cause is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating common problems of the people and securing their resolution. It has brought before this Hon'ble Court various

Constitutional and other important issues and has established its reputation as a bona fide public interest organization. Mr. K K Jaswal, director of petitioner no. 2 is authorized to file this PIL.

c) Petitioner No. 3 is Dr. E A S Sarma. He is a distinguished former Power Secretary to the Government of India, former Secretary in the Ministry of Finance, and former energy advisor to the Planning Commission. He has a master's degree in nuclear physics and a doctorate in energy policy analysis from IIT Delhi. He chaired the Experts Committee set up by Department of Atomic Energy during 1994-95 to review the methodology and the norms for pricing nuclear power in the country. He was a research scholar at Tata Institute of Fundamental Research when veteran nuclear physicist Dr. Homi J Bhabha was its Director.

CPIL, Common Cause and Dr. Sarma are, amongst others, the petitioners in the writ petition (c) 464 of 2011 challenging the constitutional validity of the Civil Liability for Nuclear Damage Act, which has been admitted by this Hon'ble Court vide order dated 16.03.2012.

d) Petitioner No. 4 is a social activist from Tamil Nadu and is the petitioner in similar matter (SLP (C) 27335/2012) regarding the safety of Kudankulam nuclear plant. He was the petitioner in other important PILs before the Madras HC on the issue of the safety and environmental impact of the Kudankulam nuclear plant.

Petitioner No. 3, Dr. Sarma had sent two letters to the Prime Minister objecting to the clauses indemnifying the suppliers and putting a cap on financial liability of the operator. He stated that this would have a severe impact on the safety of the reactors. Copies of the letters sent by Dr. Sarma to the Prime Minister dated 16.12.2009 and 10.04.2011 are annexed as **Annexure P1 (Colly)**. (Page \_\_\_\_\_). The authorities have not responded to these representations.

#### THE CASE IN BRIEF

2) The Government, entered into an agreement with erstwhile USSR to set-up nuclear power plants at Kudankulam in the year 1988. A supplementary agreement was signed in 1998 with Russia. There is also an agreement signed in 2008. Under these agreements, mega-nuclear plants are being set up at Kudankulam in Tamil Nadu. Government of India has steadfastly refused to make the agreements public, by denying all demands for its disclosure. It is widely reported that the Government has given an undertaking that in case of an accident at Kudankulam nuclear plant, the Government would indemnify the Russian company that is supplying the nuclear plant. This fact is confirmed by several news reports, the statement of the Russian Ambassador and the complete non-denial of this fact by the Government. The news reports are annexed as **Annexure P2 (Colly)**. (Page \_\_\_\_\_) A report on the interview of Russian Ambassador dated 12.12.2011 is annexed as **Annexure P3**. (Page \_\_\_\_\_) Russians have repeatedly stated that they are neither liable for any claim for damages nor are they covered by Liability law passed by Parliament.

3) Though none of the said agreements of 1988, of 1998 or of 2008, have been made public, but petitioners understand that Section 13 of the 2008 agreement states: *“The Indian Side and its authorised organisation at any time and at all stages of the construction and operation of the NPP power units to be constructed under the present Agreement shall be the Operator of power units of the NPP at the Kudankulam Site and be fully responsible for any damage both within and outside the territory of the Republic of India caused to any person and property as a result of a nuclear incident occurring at the NPP.”*

Thus neither there is any liability of the nuclear supplier in case of an accident nor there is any right to recourse provided to the operator. The entire liability would be borne by the Government owned operator of the plant. An article written by Editor of The Hindu dated 30.07.2010 on this issue that was never denied by the Government is annexed as **Annexure P4**. (Page \_\_\_\_\_).

4) The petitioners had earlier filed a petition (WPC 464 of 2011) challenging the Constitutional validity of the Civil Liability for Nuclear Damage Act 2010 (hereinafter ‘**the Act**’). A copy of the Act is annexed as **Annexure P5**. (Page \_\_\_\_\_) This Hon’ble Court was pleased to issue Rule and expedite the hearing vide order dated 16.03.2012. A copy of the said order is annexed as **Annexure P6**. (Page \_\_\_\_\_) The grounds on which the petitioners had challenged the said Act were i) violation of absolute liability principle, ii) violation of polluter pays principle and iii) serious dangers to nuclear safety. The

Government filed its affidavit stating that the Act is constitutional since it provides for strict liability of the operator and right of recourse to the operator against the supplier. A copy of the said affidavit dated 05.09.2012 is annexed as **Annexure P7**. (Page\_\_\_\_\_)

5) The said Act channels the liability of a nuclear accident to the operator of the said plant and then limits the same at Rs 1500 crores. Under section 17 it provides that the operator of the plant would have a right to recourse against the supplier under 3 circumstances:

- i) Such right is expressly provided in the contract;
- ii) Accident is due to act of supplier, including supply of equipment with patent or latent defects; or
- iii) Accident is due to a deliberate attempt to cause nuclear damage

6) Petitioner submits that it is settled law that any legislation in violation of constitutional principles as propounded by this Hon'ble Court is void. This is clear from the ratio of the PUCL case (2003) 4 SCC 399. Therefore the said legislation in as much as it violates the said principles of 'polluter pays' and 'absolute liability' is void.

7) This Hon'ble Court has held that "*The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in*

*either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.”* (Council for Environ-Legal Action v. Union of India, (1996) 3 SCC 212.) The said Act clearly violates this principle that this Hon’ble Court has held to be part of the law of the land under Article 21 of the Constitution of India.

8) The provisions of the Indo-Russian agreement and of the Liability Act also go against the principle of Absolute liability as laid down by this court in M.C. Mehta v UoI (*Oleum Gas leak case*). Understanding the need of increasing liability, this court in the Oleum gas leak case used the principle of strict liability as laid down in Rylands v Fletcher to devise the principle of Absolute liability. This was a step forward as the court desired to do away with the drawbacks of the strict liability principle and bring about greater accountability, thus the strict liability principle was made more rigid. This Hon’ble court in the said case (1987 1 SCC 395) held that if an enterprise engages in an inherently dangerous and hazardous activity and if some harm is caused as a result of this activity then the liability is absolute and not subjected to any exceptions as stated in Rylands v Fletcher. The court held that only the industry had the resources to discover, guard and warn against the hazards and dangers. And that the industry is in the best position to absorb the cost of the accident and it should bear the cost of the accident irrespective of what the cause of the accident was. This Act not only makes the operator liable only in certain circumstances, but also states that only the Government owned operator can choose to have a right to recourse against the supplier in certain limited



circumstances, and the victims would have no role. Thus it clearly violates the said principle also. But even from this minimal liability, the Russian supplier company has been made exempt.

9) Leading constitutional expert and former Attorney General Shri Soli Sorabjee wrote a categorical article stating:

*“It is understood that the government to appease foreign investors proposes to introduce a Civil Nuclear Liability Bill whereby inter alia the compensation payable in case of a nuclear accident is capped at \$450 million.”*

*“This would be directly contrary to the Supreme Court’s ruling that it is not the role of the government to meet the costs involved. The effect of a cap in reality would be to shift the financial burden of the consequences of the accident to the taxpayer.”*

*“Health, well-being and protection of our people are paramount and must override dollar considerations. Foreign multinationals are not solicitors of the fundamental rights of our people. The Bhopal case is a burning reminder.”*

*“Any legislation that attempts to dilute the Polluter Pays and Precautionary Principle and imposes a cap on liability is likely to be struck down as it would be in blatant defiance of the Supreme Court judgments.”*

A copy of the article published in The Hindu dated 13.12.2009 is annexed as **Annexure P8**. (Pages \_\_\_\_\_).

10) After this the Government made Civil Liability for Nuclear Damage Rules 2011 that further restrict liability of the nuclear

suppliers. Under the Act only the NPCIL had right to recourse against the foreign suppliers and that too only after proving fault in supplier equipment. The Rules make that completely subject to contract signed between government operator and the nuclear supplier, over which the citizens and the potential victims have no role. They also restrict the financial extent and time limit of suppliers' limited liability that was provided in the law. Rules 24 states:

*“24. Right of recourse – (1) A contract referred to in clause (a) of section 17 of the Act shall include a provision for right to recourse for not less than the extent of the operator's liability under sub-section (2) of section 6 of the Act or the value of the contract itself, whichever is less.*

*(2) The provision for right of recourse referred to in sub-rule (1) shall be for the duration of initial license issued under the Atomic Energy (Radiation Protection) Rules 2004 or the product liability period, whichever is longer.*

*Explanation 1 – For the purposes of this rule, the expressions-*

- a) “product liability period” means the period for which the supplier has undertaken liability for patent or latent defects or sub-standard services under a contract,*
- b) “supplier” shall include a person who-*

- i) manufactures and supplier, either directly or through an agent, a system, equipment or component or builds a structure on the basis of functional specification, or*
- ii) provided build to print or detailed design specifications to a vendor for manufacturing a system, equipment or component or building a structure and is responsible to the operator for design and quality assurance; or*
- iii) provides quality assurance or design services*

*Explanation 2 – For the removal of doubts it is clarified that an operator's claim under this rule shall in no case*

*exceeded the actual amount of compensation paid by him up to the date of filing such claim.”*

A copy of the relevant chapter on Right to Recourse, where Rule 24 places limits on the said right that are not envisaged under the Act is annexed as **Annexure P9**. (Pages \_\_\_\_\_). A copy of the press release issued by Department of Atomic Energy dated 15.12.2011 explaining the import of the said Rules is annexed as **Annexure P10**. (Pages \_\_\_\_\_).

11) In a large number of cases, like in Commissioner of Income Tax Bombay v Gwalior Rayon Silk Manufacturing Company Ltd., AIR 1992 SC 1782 this Hon'ble Court has held: *“The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect.”*

12) Shri Sorabjee has again given a categorical opinion to environmental organization Greenpeace that the said Rules are ultra-vires. He has stated:

*“It is plain that the proposed Rule 24 is unduly restrictive as it limits the amount which can be claimed by exercise of the right of recourse to the extent of the operator's liability or the value of the contract, whichever is less. This would cause great hardship. To illustrate: Take a case where a major nuclear accident occurs due to the fault of the supplier and the value of the contract is say ten lakh rupees. In such a situation while the damages paid by the operator to victims could run into crores of rupees yet the supplier will not be liable for anything more than the value of the contract*

*i.e ten lakh rupees. A criterion such as the value of the contract has no rational nexus to the object sought to be achieved and hence there is no rational basis for curtailing supplier's liability. Moreover, in my opinion Rule 24(1) is clearly inconsistent with Section 6 of the said Act read with Section 17 inasmuch as it scales down and reduces the liability prescribed by the said Act. Consequently the said proposed Rule is ultra vires the said Act and is invalid.*

*According to my instructions the period provided for under Rule 24(2) works out to five years. According to the Act, the time limit to claim right to recourse by the operators against the supplier is not provided in the Act and hence it is unlimited. Therefore the proposed Rule 24(2) which restricts the time limit cannot be said to be carrying out the purposes of the said Act but is in fact in conflict with it. Therefore in my opinion Rule 24(2) is clearly ultra vires of the said Act and is invalid."*

A copy of the said opinion dated 09.12.2011 is annexed as **Annexure P11**. (Page \_\_\_\_\_)

13) Recently the Parliamentary Committee on Subordinate Legislation has given its report on the said Rules. The said Committee in its report dated 28.08.2012 has recommended:

*"Rule 24 of the CLND Rules has the effect of diluting the stringent liability provided in section 17 of the CLND Act by imposing limitations in terms of the amount which can be claimed by exercising right to recourse (limiting to the extent of operator's liability or the value of the contract*

*whichever is less) and also the duration for which a supplier can be held liable, not contemplated under the CLND Act. The Committee hold that delegated legislation (viz. rules made by the Executive) should be consistent with the substantial provisions of the Act and should not contain any limitations or excesses which are not contemplated under the Act. The Committee are of the firm view that rule 24 has inserted limitations not mandated by the CLND Act as brought out above. The Committee, therefore, exhort DAE to amend rule 24 suitably to remove the limitations imposed on liability as well as the duration of the liability period.”*

14) The Three Mile Island accident, in Pennsylvania is testament to the fact that major nuclear accidents can occur due to faulty design. The suppliers of the nuclear reactor in that case failed to provide the operators with appropriate guidelines for dealing with certain kinds of occurrences (occurrences that eventually led to the accident). The supplier failed to do so not only on the first instance but also when it was informed of these dangers. If there were no or little financial liability, the supplier would not want to invest in safer technology, as there would be no incentive in doing the same.

15) The cap on liability will have a severe impact on the safety of nuclear installations in the country. Cost of a single reactor is as high as Rs. 30,000 crores or more. So the cost of the reactor can be 20 times the amount of liability. This means that it is be cheaper for the

operator to take the risk of paying the maximum liability than to spend, 10% extra to add safety features to the plant.

16) Additionally it should be noted that by indemnifying the supplier the Government is encouraging them to dispense with their liability at the earliest. Nuclear power is extremely expensive. Suppliers might want a reactor that is safe but at the same time they would want a reactor whose design is economical. Without liability there is less incentive for the supplier to design safe plants. If the supplier is indemnified from potential liability, then the primary aim would be to get certification, by whatever means necessary, from the regulatory authority, it would at no point feel obligated to inform the authority of the future risks that might occur and it is aware of. Thus by indemnifying the supplier the Government is grossly neglecting the interest and safety of the people of this nation, in the interest of few multinational companies.

17) If the financial liability is limited, the supplier would rather bear the burden of this liability in the event the accident occurs than take measures and pressurize its suppliers for safer technology, as doing that so be more expensive. This can be contrasted with the amount of 20 billion dollars (roughly Rs. 1,00,000 crores) that was recovered from the company BP for causing an oil spill. This amount was recovered only when marine life was put to danger. Hence, the amount sated in the Nuclear Liability Act is grossly insufficient especially considering human lives, the loss of which cannot be put in monetary terms, is

involved. Even this minimum liability has been done away with in the case of Kudankulam nuclear plant.

18) By limiting the financial liability and by indemnifying the supplier the Government is facilitating an environment where operators and suppliers would prefer to invest and develop cheaper nuclear reactor rather than safer reactors, which is the need of the hour and in the best interest of the people. The fact that the liability cap is much less compared to the cost of a reactor, which may be Rs. 30,000 crores, means that cost of even small repairs on the reactor may easily exceed the maximum liability. Hence this provides a huge incentive to the supplier and operator to take risks with safety. That is why initially the Russian supplier had agreed to provide seamless reactor, but now has given a reactor with welding and joints. This is the hazard in indemnifying the supplier.

19) Thus it is evident that the Government is not working in the interest of the people but in the interest of nuclear suppliers and corporates. By allowing a mindset where suppliers and operators find it more beneficial to adopt technology that is cheaper and less safe we are endangering the safety of the people of the nation. This clearly violates the Right to Life, Health and Safe & Clean Environment that is encompassed in the broader Right to Life enshrined in Article 21 of the Constitution.

20) Two well-known physicists M V Ramana and Suvrat Raju have written extensively on the dangers of indemnifying suppliers. Two such

articles published in Economic & Political Weekly (17.04.2010), and The Hindu (20.08.2010) are collectively annexed as **Annexure P12 (Colly)**. (Pages\_\_\_\_\_)

An article written by senior journalist Praful Bidwai stating that the nuclear liability law is unconstitutional since it violates several legal norms, in his column in Frontline dated 09.04.2010 is annexed as **Annexure P13**. (Pages\_\_\_\_\_).

21) Prof. Brahma Chellaney (one of the country's leading strategic thinkers) wrote on the nuclear liability law: *"The government's nuclear-accident liability bill seeks to burden Indian taxpayers with a huge hidden subsidy by protecting foreign reactor builders from the weight of the financial consequences of severe accidents... What will it do to nuclear safety to free foreign suppliers upfront from the 'precautionary principle' and the 'polluter pays principle' and turn their legal liability for an accident into mere compensation, that too at an inconsequential level?"* A copy of his articles published in The Hindu dated 15.02.2010 and 12.03.2010 are annexed as **Annexure P14 (Colly)**. (Pages\_\_\_\_\_)

22) The Civil Nuclear Liability law as it exists today has incorporated a cap of Rs. 1,500 crores (equivalent roughly to US\$300 million) on the liability that could be imposed, whereas recent reports on Fukushima accident indicate that the damage costs could run into hundreds of billions of dollars. It will take decades to clean up the Fukushima site from radioactivity and the clean up may never be complete. In such a situation the lakhs of poor victims would have nowhere to go.



23) A leaked report of the Russian Government reveals that Russian reactors are far from safe and not prepared to deal with both natural and man-made disasters. An excerpt of the said report, a news report on the same and an article is annexed as **Annexure P15 (Colly)**. (Page \_\_\_\_\_). The reactor called VVER 1000 that is being used at Kudankulam is Russian pressurized water reactor. There are severe accident risks that such a reactor faces putting the lives of millions of individuals at stake. A study on the same is annexed as **Annexure P16**. (Page \_\_\_\_\_).

24) It is strange that Government relies on the assurances of the foreign reactor suppliers who claim their reactors are “100% safe”, even though those suppliers themselves want to be first shielded of all liability before they sell the reactor. This shows that those suppliers are themselves not confident about the safety of their own reactors, and are willing to sell it only on the condition that they would be shielded from all liability and the public exchequer would pay on their behalf.

25) The Petitioners have not filed any other writ, complaint, suit or claim in any manner regarding the liability issue of the Kudankulam nuclear plant in this Hon’ble court or any other court or tribunal throughout the territory of India. The petitioners (Common Cause, CPIL, Dr. Sarma & Others) have earlier filed a petition (WPC 464/2011) challenging the constitutional validity of the Liability Act which has been admitted by this Hon’ble Court vide order dated 16.03.2012. Petitioner No. 4 (Mr. G. Sundarrajan) has filed a petition

(SLP(C) 27335/2012) on the safety issue of the Kudankulam nuclear plant that is pending before this Hon'ble Court.

#### GROUNDS

- A. That the Government's undertaking to or agreement with Russia that indemnifies the Russian supplier is void ab initio as it violates the polluter pays and absolute liability principle.
- B. That this Hon'ble Court has held that "*The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.*" (Council for Environ-Legal Action v. Union of India, (1996) 3 SCC 212.)
- C. That this Hon'ble court in M.C. Mehta v UoI (*Oleum Gas leak case*) (1987 1 SCC 395) held that if an enterprise engages in an inherently dangerous and hazardous activity and if some harm is caused as a result of this activity then the liability is absolute and not subjected to any exceptions as stated in *Rylands v Fletcher*. This Hon'ble Court also held that only the industry had the resources to discover, guard and warn against the hazards and dangers. This Hon'ble Court held that the industry is in the best position to absorb the cost of the accident and it should bear the cost of the accident irrespective of what the cause of the accident was.

- D. That noted constitutional expert Shri Soli Sorabjee has given a categorical opinion that suppliers must be made absolutely liable to the victims in accordance with the law of the land as laid down by this Hon'ble Court. He has also stated that Rule 24 is ultra-vires the parent Liability Act.
- E. That by limiting the financial liability and by indemnifying the supplier the Government is facilitating an environment where operators and suppliers would prefer to invest and develop cheaper nuclear reactor rather than safer reactors, which is the need of the hour and in the best interest of the people. The fact that the liability cap is much less compared to the cost of a reactor, which would be Rs. 30,000 crores or more, means that cost of even small repairs on the reactor may easily exceed the maximum liability. Hence this provides a huge incentive to the supplier and operator to take risks with safety.
- F. That the Rule 24 make the right of recourse provided under the Liability Act completely subject to contract signed between government operator and the nuclear supplier, over which the citizens and the potential victims have no role. They also restrict the financial extent and time limit of suppliers' limited liability that was provided in the law.
- G. That the Parliamentary Committee on Subordinate Legislation has also found Rule 24 to be ultra-vires. It has recommended:  
*"Rule 24 of the CLND Rules has the effect of diluting the stringent liability provided in section 17 of the CLND Act by imposing limitations in terms of the amount which can be claimed by exercising right to recourse (limiting to the extent of operator's*

*liability or the value of the contract whichever is less) and also the duration for which a supplier can be held liable, not contemplated under the CLND Act. The Committee hold that delegated legislation (viz. rules made by the Executive) should be consistent with the substantial provisions of the Act and should not contain any limitations or excesses which are not contemplated under the Act. The Committee are of the firm view that rule 24 has inserted limitations not mandated by the CLND Act as brought out above. The Committee, therefore, exhort DAE to amend rule 24 suitably to remove the limitations imposed on liability as well as the duration of the liability period.”*

- H. That in a large number of cases, like in Commissioner of Income Tax Bombay v Gwalior Rayon Silk Manufacturing Company Ltd., AIR 1992 SC 1782 this Hon’ble Court has held: *“The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect.”*
- I. That in the interest of safety, it is absolutely essential to clear the wrong impression held by the Russian Government and Russian supplier company that it is not bound by the law of the land in India.
- J. That the actions of the Government in seeking to indemnify the nuclear supplier at Kudankulam plant in Tamil Nadu put to grave risk the life and health of millions of people living in the vicinity of the plant, resulting in violation of their rights under Article 21 of the Constitution which guarantees right to clean, safe, healthy environment free from radiation.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to: -

- a. Issue appropriate writ declaring that the nuclear suppliers of the Kudankulam nuclear plant in Tamil Nadu would be bound by the principles of polluter pays and absolute liability in case of an accident and that the victims of the said accident would be able to file case(s) for damages against the reactor supplier even if the Government or its undertaking choose not to file for the same  
  
AND/OR

Issue appropriate writ declaring that the nuclear suppliers of the Kudankulam nuclear plant in Tamil Nadu would be bound by the Civil Liability for Nuclear Damage Act, 2010, irrespective of any agreement or undertaking to the contrary

- b. Issue appropriate writ setting aside the Rule 24 of the Civil Liability for Nuclear Damage Rules 2011 (Annexure P9) as ultra vires of the parent Act and/or Constitution
- c. Issue or pass any writ, direction or order, which this Hon'ble court may deem proper in the interest of nuclear safety and rule of law.

Petitioner  
Through

PRASHANT BHUSHAN  
Counsel for the Petitioners

Drawn By: Pranav Sachdeva  
Drawn On: 16<sup>th</sup> September 2012  
Filed On: 17<sup>th</sup> September 2012  
New Delhi