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**(2011) 11 PAT CK 0013**  
**In the Patna High Court**  
**Case No : CWJC No. 13534 of 2011**

Ban Bihari

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision :** 15-11-2011

**Acts Referred:**

**Citation :** (2012) 2 PLJR 570

**Hon'ble Judges :** Shivaji Pandey, J; Shiva Kirti Singh, J

**Bench :** Division Bench

**Advocate :** Y.V. Giri, Kamlesh Kishore and Raju Kumar Singh, for the Appellant; Binod Kanth, Mukul Sinha for the Respondent No. 8, Mr. Santosh Kumar Singh for the Union of India, Mr. Shivendra Kishore for the Respondent No. 4, M/s Ajay, Rakesh Kumar Ranjan for the State and M/s Jitendra Singh and Mrigank Mauli for the Interveners, for the Respondent

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## **Judgement**

1. Heard the parties. This Public Interest Litigation has been filed by a journalist, newspaper editor of Hindi daily, Amritvarsha with office in the town of Patna. From the complaints made by the residents of the area, the petitioner claims to have learnt that a factory meant to manufacture Asbestos (white variety) is being set up by respondent no. 8, UAL Industries Ltd., situated in Village Chaksultan, Rampur Rajdhari, District-Vaishali, Bihar, against the parameters set out for establishment of such industry and without meeting the norms of preventing air and other kinds of pollution set up by the Bihar State Pollution Control Board, respondent no. 4.

2. In respect of alleged violation of parameters which require certain distance to be maintained from main habitation ar(sic) around such industry, schools, highways and rivers, the responsibility of granting environment clearance certificate is upon the Ministry and respondent no. 2, the Chairman, Expert Appraisal Committee, Ministry of Environment and Forest, Government of India. A favourable report of respondent no. 2 or the committee on the basis whereof clearance may be granted by the concerned Ministry is available on record.

Similarly, no objection certificate issued by respondent no. 4, Bihar State Pollution Control Board alongwith various conditions is also available on record. The report of Expert Appraisal Committee is Annexure-R1/1 and no objection certificate of respondent no. 4 is Annexure-K to the relevant counter affidavit.

3. On behalf of the petitioner as well as interveners who have intervened in support of the petitioner claiming to be residents of areas near the proposed factory, it has been submitted that permission to set up as well as no objection certificate have been issued under the influence of the industrialist without bestowing required attention as to where the battery area is to be located, which alone is the point from where the distance of 500 meter is to be measured for meeting the requirement of distance that the factory must maintain from habitation, highway etc. It has further been submitted that since the area available with the factory is less than the area on which the proposed factory was to be established, it may not be possible for the respondent no. 8 to provide green area over 33% of the factory premises which is essential to protect the environment as well as health of the persons residing in the neighbourhood.

4. The factory has not been set up as yet. Only the boundary work and approach road appear to have been constructed or are in the process of construction. Marked on a Google map, the revised layout plan has been annexed as Annexure-H to the counter affidavit filed on behalf of respondents no. 4 and 5. The petitioner or the interveners are not satisfied with the revised layout plan because according to them the battery area must be clearly demarcated and shown on the site plan of the factory so that in future the construction and location of the battery area may be monitored by the respondent no. 4, Bihar State Pollution Control Board. According to them the revised layout plan on the Google map is too vague and is difficult to be monitored. The further grievance of the petitioner and interveners about green area to meet the requirement of preventing pollution has already been noticed.

5. On hearing the arguments of the parties, we are of the view that so far as public interest is concerned, it requires that the actual parameters and conditions on which permission to construct the factory has been or may be granted by respondent no. 2, must be maintained [n course of the construction and the distance from the battery area must be verifiable and should be verified after the same is constructed.

6. It is the stand of respondent no. 8 that in the revised layout plan the area left for green cover is six acres out of 18 acres available with the factory at present, i.e., 33%. Appropriate condition in this regard has already been indicated in the no objection certificate granted by respondent no. 4. This aspect also needs to be monitored by respondent no. 4 so that in future absence of green cover does not cause health hazard for the nearby residents.

7. Learned counsel for respondent no. 8, UAL Industries Ltd., has shown to us the revised layout plan which has certain extra specifications and features in

addition to the lay out plan available on record as Annexure-H as noticed above. In fact the revised layout plan shown to us is improvement and addition upon the survey drawing of the plot available as Annexure-3. The battery area as shown in the revised layout plan is shown to be situated towards south east of the rectangular chunk in the centre but it is surprising as to why the detailed layout plan has not been brought on record.

8. Learned Senior Counsel appearing for the respondent no. 8 submits that fearing unnecessary spate of litigation, the respondent no. 8 has only indicated the area where the battery area will be situated in Annexure-H which is verifiable as it is on a Google map showing distance from road and other locations. Without going into the issue as to whether apprehension of respondent no. 8 about litigation is correct or not, we direct the respondent no. 8 to serve a copy of the revised detailed layout plan shown to us, upon Mr. Shivendra Kishore, learned counsel representing the Bihar State Pollution Control Board in a sealed cover. Whenever required the Pollution Control Board can use that copy after obtaining the same from Mr. Shivendra Kishore and in case of need this court also may take help of that in future. Generally, the copy shall be kept in sealed cover and will be used only upon specific directions of this court. Such copy must be made available to Mr. Shivendra Kishore within two days from today in a sealed cover.

9. Since the recommendation of Expert Appraisal Committee for the environment clearance by the Ministry of Environment and Forest is already available, the Ministry can act upon the report. It should also provide for monitoring of the conditions at construction stage so that proposed factory does not cause any environment problem in future on account of deviation from the norms.

10. Similarly respondent no. 4, the Bihar State Pollution Control Board is directed to ensure that its conditions mentioned in the no objection certificate are meticulously followed and observed in course of setting up the industry so that there is no violation of the norms which are meant to prevent environment pollution and protect the health of nearby residents.

11. We appreciate the concern of the petitioner and interveners who claim to be nearby residents because Asbestos producing industry is considered to be hazardous industry as indicated in paragraph 15 of the judgment of the Supreme Court in the case of Kalyaneshwari vs. Union of India & Ors. in Writ Petition (Civil) No. 260/2004 disposed of on 21.1.2011. We, therefore, emphasize the observations made in Paragraph-16 of that judgment and expect that respondent nos. 2 and 4 shall ensure that environment and health of nearby residents is protected, by following strictly the laid down norms.

12. The authorities and respondent no. 8 may proceed further in accordance with law in the light of aforesaid directions. The writ petition is disposed of with liberty to the writ petitioner as well as the interveners that in case they find that the norms noticed above with regard to environment pollution and guidelines to control pollution are not observed in setting up the factory then they may file an

affidavit before this court so that this court, if satisfied, may take up monitoring of the construction activity or may issue necessary directions, if required, in public interest. The interim order dated 19.8.2011 shall not survive any further.